

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. CV NO. 02233-MIN, January 22, 2014 ]**

**RECHEL FAITH F. GO, PLAINTIFF-APPELLEE, VS. ANTONIO  
SANTILLAN, DEFENDANT, ADOLFO ANG, DEFENDANT-  
APPELLANT.**

### **DECISION**

**INTING, J.:**

Before Us is an Appeal<sup>[1]</sup> filed by Adolfo Ang (Ang) assailing the Decision<sup>[2]</sup> and the Order<sup>[3]</sup> denying his motion for reconsideration of Branch 5, Regional Trial Court (RTC), Tagum City holding Ang liable for damages for the death of Wilson Y. Go (Wilson) as a consequence of a vehicular collision between the bus of Ang and the Isuzu elf of the deceased, the dispositive portion of the decision states:

The court finds that plaintiff presented sufficient evidence to prove her causes of action. Defendant Adolfo Ang is hereby held liable to pay plaintiff the following amounts:

- a) P280,000.00 as actual damages;
- b) P500,000.00 for loss of earning;
- c) P30,000.00 for moral damages;
- d) P30,000.00 for exemplary damages;
- e) P30,000.00 for litigation expenses;
- f) P30,000.00 for attorney's fees.

SO ORDERED.

The facts of the case are as follows:

In the morning of February 23, 2001, Santillan, employee-driver of Ang, approached Ang to inform him that there seems to be wrong with the engine of the Tristan bus he was driving.<sup>[4]</sup> Consequently, Ang told Santillan to bring the bus to his own repair shop and have it checked by Ang's trusted mechanic, Romeo Campos.<sup>[5]</sup> The repair was finished in the afternoon of the same day.<sup>[6]</sup>

Sometime in that afternoon, Santillan, Campos and two other employees of Ang went to test-drive the Tristan bus.<sup>[7]</sup> That same afternoon, Wilson was also driving his Isuzu elf with two (2) passengers.<sup>[8]</sup>

While cruising along the highway, the Tristan bus was following a Jian bus which was also following a pedicab.<sup>[9]</sup> The vehicles in front of the Tristan bus suddenly stopped

and thus Santillan, who was driving the Tristan bus, stepped on his brakes to slow down and avoid bumping the Jian bus.<sup>[10]</sup> Santillan then swerved the Tristan bus to overtake the Jian bus and the pedicab.<sup>[11]</sup> It was when the Tristan bus was on the opposite lane that the collision took place since the Isuzu elf was also navigating the same lane.<sup>[12]</sup> The collision resulted to the instantaneous death of Wilson and his passenger Victoriano Bano.<sup>[13]</sup>

Consequently, Rachel Faith Go, the widow of Wilson, instituted an action for damages against Santillan as driver of the Tristan bus and against Ang as owner of the Tristan bus.<sup>[14]</sup> Santillan is at large.<sup>[15]</sup> Ang, on the other hand, alleged that he exercised the diligence of a good father of the family in the selection and supervision of his employees asserting that (1) he has been in the transportation business for 29 years; (2) he personally interviewed Santillan and required him to submit a medical certificate before hiring him; (3) he asked his trusted mechanic to test the driving skills of Santillan before hiring him; and (4) he talks to his drivers every 15th and 30th of the month reminding them to drive carefully.<sup>[16]</sup>

The RTC ruled against Santillan and Tan and awarded damages to Go.<sup>[17]</sup> Ang's motion for reconsideration was denied with modification on the award of damages by: (1) deleting attorney's fees and exemplary damages; (2) awarding death indemnity in the amount of P50,000.00; and (3) confirming the award of actual damages, moral damages, loss of earning capacity and litigation cost.<sup>[18]</sup> Aggrieved, Ang filed the instant appeal and raised following errors:

I.

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT ANTONIO SANTILLAN LIABLE FOR THE ACCIDENT BY REASON OF RECKLESS IMPRUDENCE FOR THE DEATH OF THE PLAINTIFF-APPELLEE'S HUSBAND, WILSON Y. GO, DRIVER OF THE ISUZU ELF;

II.

THE TRIAL COURT ERRED IN FINDING CO-DEFENDANT-APPELLANT ADOLFO ANG, WHOSE LIABILITY WITH HIS DRIVER AND CO-DEFENDANT ANTONIO SANTILLAN, IS PRIMARY AND DIRECT TO THE PLAINTIFF FOR THE CLAIM OF DAMAGES;

III.

THE TRIAL COURT ERRED IN FINDING THAT THE DECEASED WILSON Y. GO HAD NO CONTRIBUTORY NEGLIGENCE AT ALL TO THE ACCIDENT, WHEN HE SHOULD HAVE BEEN FOUND SOLELY RESPONSIBLE FOR HIS OWN DEATH BECAUSE OF HIS RECKLESSNESS AND IRRESPONSIBILITY;

IV.

THE COURT A QUO ERRED IN AWARDING DAMAGES TO THE PLAINTIFF WHEN THE PLAINTIFF CONCURRED WITH BY THE TWO PRESIDING JUDGES OF RTC BRANCH 1, TAGUM CITY ADMITTED AND CONFIRMED THAT WILSON Y. GO HAD NO VISIBLE MEANS OF LIVELIHOOD DURING HIS LIFETIME AND HAS NEVER FILED ANY INCOME TAX RETURN TO PROVE THE SAME BECAUSE HE WAS DISQUALIFIED TO DO SO.

## **Our Ruling**

We affirm the conviction but with slight modification.

Campos testified that because there was a blind curve, they did not see the Isuzu elf coming.<sup>[19]</sup> He also admitted that they intended to overtake the Jian bus and the pedicab which were both at full stop.<sup>[20]</sup> The overtaking was done even when the view was obstructed.<sup>[21]</sup> There is a 32-meter<sup>[22]</sup> skid mark of the Tristan bus indicating that it was running really fast. Clearly, Santillan was grossly negligent. Knowing that his view of the opposite lane is obstructed, he did not stay on his proper lane and instead tried to overtake two vehicles which resulted in the collision with the Isuzu elf, which was on its proper lane. Thus in one case the Supreme Court held that *"Considering the road condition, and that there was only one lane on each side of the center line for the movement of traffic in opposite directions, it would have been more prudent for him to confine his bus to its proper place. Having thus encroached on the opposite lane in the process of overtaking the jeepney, without ascertaining that it was clear of oncoming traffic that resulted in the collision with the approaching dump truck driven by deceased Asumbrado, Salvaña was grossly negligent in driving his bus. He was remiss in his duty to determine that the road was clear and not to proceed if he could not do so in safety."*<sup>[23]</sup>

There is no question that Santillan is an employee of Ang. At the time of the collision, Santillan was doing a test drive of the Tristan bus after it was repaired. Clearly, this is within his assigned task as driver of the Tristan bus owned by Ang. *"Negligent acts of employees, whether or not the employer is engaged in a business or industry, are covered so long as they were acting within the scope of their assigned task, even though committed neither in the service of the branches nor on the occasion of their functions. For, admittedly, employees oftentimes wear different hats. They perform functions which are beyond their office, title or designation but which, nevertheless, are still within the call of duty."*<sup>[24]</sup>

*"When an injury is caused by the negligence of an employee, a legal presumption instantly arises that the employer was negligent. This presumption may be rebutted only by a clear showing on the part of the employer that he exercised the diligence of a good father of a family in the selection and supervision of his employee. If the employer successfully overcomes the legal presumption of negligence, he is relieved of liability. In other words, the burden of proof is on the employer."*<sup>[25]</sup>

To rebut the presumption, Ang alleged, among others, that: (1) he has been in the transportation business for 29 years; (2) he personally interviewed Santillan and required him to submit a medical certificate before hiring him; (3) he asked his trusted mechanic to test the driving skills of Santillan before hiring him; (4) he talks to his drivers every 15th and 30th of the month reminding them to drive carefully; (5) he owns his own repair shop; and (6) he is accessible to his drivers when they need him.<sup>[26]</sup>

The Supreme Court once held:

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulations for the guidance