

FIFTH DIVISION

[CA-G.R. CV NO. 83839, July 31, 2006]

**MILAGROS REYES, DARYL REYES AND DENISE
REYES, PLAINTIFFS-APPELLEES, VS. FIVE STAR BUS CO., INC.,
DEFENDANT-APPELLANT.**

DECISION

BARRIOS, J.:

Because of that vehicular incident on March 29, 1998 along MacArthur Highway in Brgy. San Agustin, San Miguel, Tarlac, the appellees Milagros and her minor children Daryl and Denise, all surnamed Reyes (or appellees for brevity unless referred to by their names), filed against the appellant Pangasinan Five Star Bus Co., Inc. (or Five Star) a case for *Damages* before the Regional Trial Court of Kalookan City. Judgment was rendered in their favor disposing that:

WHEREFORE, prescinding from the foregoing, this Court finds the defendant, Five Star Bus Co., Inc., liable to pay the plaintiffs, Milagros Reyes, Daryl Reyes and Denise Reyes, the following:

1. One Hundred Thousand Pesos (Php100,000.00) for the death indemnities of Darly Reyes and his son Mark Davis Reyes;
2. One Million Seven Hundred Thirty Nine Thousand Seven Hundred Pesos (Php1,739,700.00) for lost income of Darly Reyes;
3. Two Hundred Ten Thousand Pesos (Php210,000.00) for medical and hospitalization expenses;
4. Two Million Pesos (Php2,000,000.00) for moral and compensatory damages;
5. Fifty Thousand Pesos (Php50,000.00) for exemplary damages; and
6. Fifty Thousand Pesos (Php50,000.00) for attorney's fees.

No costs. (p. 378, record, Vol. III)

The road incident happened at about 1:50 a.m. as the appellees and their family were traveling south towards Manila on board two (2) vehicles both owned by Milagros, a jeepney with plate number URC-396 and a Mitsubishi Lancer with Plate No. PWJ 252. Ahead was the jeepney driven by her cousin-in-law Reggie Reyes and on board was her son Mark Davis. Trailing the jeepney was the Mitsubishi Lancer driven by her husband Darly, with Milagros and their other children as passengers. Traveling at the other lane going north to the opposite direction was a passenger bus with Plate No. NXW-658 owned and operated by Five Star and driven

by its employee Eustaquio Loyola (or Loyola). The bus encroached on the lane for southbound vehicles and collided with the jeepney and caromed on the Lancer which was about 15 meters behind the jeepney. Because of the collision Darly and Mark Davis died instantaneously, the Lancer and jeepney were totally wrecked, and the other riders suffered grave injuries. Darly was then 34 years old and earning, while Mark Davis was 8.

In their complaint the appellees averred that at the time of the collision, Loyola was driving in a reckless manner and at an excessive speed without due regard to traffic rules. The bus was running out of its proper lane and had encroached the lane of the jeepney and the Lancer. At the time of the accident Loyola had no driver's license and was holding only an expired Traffic Violation Receipt (TVR). As a result of the accident and the untimely demise of Darly and Mark Davis, appellees sought the award of damages and attorney's fees in the total amount of P10,580,000.00, broken down as follows:

P150,000.00 as compensatory damages for the funeral and interment of Darly and Mark;

P60,000.00 representing expenses for hospitalization, medicine and treatment which appellees sustained;

P40,000.00 as the estimated expenses for future corrective surgery and treatment for Milagros' fractured leg;

P600,000.00 combined cost of the two vehicles that were damaged;

P5,580,000.00 representing the amount of Darly's expected income;

P4,000,000.00 for moral damages; and

P150,000.00 as attorney's fees.

Five Star denied liability and claimed that at the time of the accident its driver Loyola was not driving recklessly and was cruising at a speed of about 50 kph only. The Lancer was tailgating the jeepney and both were traveling at about 80 kph in the opposite direction. While running at a very high speed, these two vehicles occupied their left lane and when they tried to return to their correct lane both drivers miscalculated and sideswiped the Five Star bus one after the other. This damaged the left side of the bus just beside the driver's seat.

According to Five Star it is not possible for its driver Loyola to have been overtaking another vehicle because the road during those hours was almost without vehicles. It denied too that its bus could not be possibly maneuvered from one lane to another because it was a straight road. Five Star also alleged that the police report does not conform with the scene sketch report of the accident. The positions of the vehicles after the collision would show that it was the appellees' vehicles that had encroached on the lane of the bus so much so that after the accident the jeepney was found in the shoulder of the lane of the bus. Five Star averred that the drivers of the car and the jeepney were the ones who had been reckless and careless and drove without regard to the safety of their own passengers. It defended too that the fact that Loyola had no license and was only a holder of a TVR, is

inconsequential to the accident. Five Star alleged that the driver of the jeepney was a holder of a mere non-professional driver's license and Darly had an expired non-professional driver's license. In refuting the allegation that it was negligent, Five Star claimed that it has been very careful and diligent in the selection and supervision of its employees and drivers. With these arguments, Five Star averred that it is the appellees who should be liable for damages and attorney's fees.

On March 24, 2004, the court *a quo* rendered the appealed judgment. Insisting that it is not liable, Five Star brought this appeal assigning the following as the errors committed by the court *a quo*:

- I. THE TRIAL COURT ERRED WHEN IT FOUND APPELLANT'S DRIVER LOYOLA AS THE DIRECT AND PROXIMATE CAUSE OF THE COLLISION;
- II. THE TRIAL COURT ERRED WHEN IT DID NOT DISMISS THE COMPLAINT FOR LACK OF CAUSE OF ACTION, ABSENT THE ELEMENT OF NEGLIGENCE AND RECKLESSNESS OF APPELLANT'S DRIVER LOYOLA;
- III. THE TRIAL COURT ERRED WHEN IT DECLARED THAT DEFENDANT COMPANY FAILED TO EXERCISE DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEE (page 36 dec);
- IV. THE TRIAL COURT ERRED WHEN IT AWARDED DAMAGES ARISING FROM LOSS OF EARNINGS OF HUSBAND OF APPELLEE MILAGROS REYES WHO DIED AS A RESULT OF THE COLLISION DESPITE UTTER LACK OF EVIDENCE ON THIS POINT AND WHEN IT ALSO AWARDED MORAL AND EXEMPLARY DAMAGES AND ATTORNEYS FEES. (p. 85, rollo)

Negligence is the failure to observe, for the protection of the interest of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury (Jarco Marketing Corporation vs. Court of Appeals, 321 SCRA 375). From the evidence presented it was established that the driver of the bus was negligent and that he was the proximate cause of the collision. The collective testimonies from the appellees point out that the bus had encroached on the lane of the car and the jeepney (tsn, February 25, 1999, p. 9, August 4, 2000, p. 8). These testimonies was corroborated by the testimony of SPO1 Danilo Espiritu who went to the scene of the accident to investigate and prepared the sketch and the Vehicular Traffic Accident Report (Exhs."M" and "K", pp. 22 and 25, Vol. IV, record). It was stated in the said report that:

That the Sarao pass-type jeepney and the Mitsubishi lancer were traveling toward south direction of their authorized lane and upon reaching on (sic) aforementioned place accidentally bumped and hit by the Five Star bus from opposite direction which was (sic) then encroached their path. (ibid)

and as aptly found by the court *a quo*:

The sketch prepared by SPO1 Espiritu shows that the point of impact, or the spot where the vehicles collided, was within the lane that properly