

## FIFTH DIVISION

[ CA-G.R. CV NO. 71075, August 28, 2006 ]

**GILBERT ROMERO REPRESENTED BY HIS WIFE, MARILOU GABO-ROMERO, PLAINTIFF-APPELLEE, VS. ILUMINADA MALABUYOC AND ALEJANDRO RIVERA, DEFENDANT-APPELLANTS.**

### DECISION

**DIMAAMPAO, J.:**

Assailed in this *Appeal* is the *Decision*<sup>[1]</sup> dated 23 February 2001 of the Regional Trial Court (RTC), Fourth Judicial Region, Batangas City, Branch I, the decretal portion of which states:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, Gilbert Romero, and against the defendants, Alejandro Rivera and Iuminada Malabuyoc, ordering the latter to pay, solidarily to the former, the following:

1. P220,000.00 as actual damages;
2. 100,000.00 as moral damages;
3. 50,000.00 as attorney's fees; and
4. the costs of suit.

The Counterclaim is dismissed.

SO ORDERED."<sup>[2]</sup>

The facts of the case are simple.

The case stemmed from a Complaint for Damages<sup>[3]</sup> filed by plaintiff Gilbert Romero ("Romero") against defendant Alejandro Rivera ("Rivera"), the driver of a Fuso Truck owned by defendant Iuminada Malabuyoc ("Malabuyoc").

Romero alleged that at around 1:30 o'clock in the morning of 6 January 1996 while he was driving his tricycle along Barangay Kumintang Ibaba, Batangas City, he was sideswiped by the truck driven by defendant Rivera. Romero claimed that he and his passenger, Danilo Marasigan, suffered injuries because of the accident which was caused by the carelessness of Rivera. Romero further maintained that Malabuyoc, being the owner of the said truck, is liable for the recklessness, imprudence, negligence and fault of Rivera who is her employee.

Rivera, for his part, denied the foregoing allegations. He insisted that he did not sideswipe any vehicle. In fact, he did not see any vehicle along his way. Rivera also

claimed that he only came to know about the accident involving Romero and his passenger when a policeman blocked his way and told him that he was the one who caused the said accident. On the other hand, Malabuyoc, affirmed the statements made by Rivera. She also pointed out that if ever the said accident was caused by the recklessness of Rivera, she could not be held liable since she exercised due diligence in the selection, supervision and management of her employees.

On 23 February 2001, the court *a quo* rendered the assailed *Decision*.

Aggrieved, Rivera and Malabuyoc interposed the present appeal raising the following errors allegedly committed by the court *a quo*:

## I

**THE LOWER COURT FAILED TO CONSIDER THAT THERE WAS NO POSITIVE IDENTIFICATION OF THE VEHICLE WHICH SIDESWIPE THE TRICYCLE AS BEING THE TRUCK OWNED BY DEFENDANT MALABUYOC.**

## II

**ASSUMING ARGUENDO THAT THE DEFENDANT MALABUYOC'S TRUCK WAS INDEED RESPONSIBLE FOR THE SIDESWIPING, THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT ALEJANDRO RIVERA'S RECKLESSNESS AND IMPRUDENCE WAS THE PROXIMATE CAUSE OF THE ACCIDENT.**

The *Appeal* lacks merit.

At the outset, We stress that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect, unless the trial court ignored, misconstrued or misinterpreted facts and circumstances of substance, which if considered, will alter the outcome of the case.<sup>[4]</sup> We have judiciously reviewed the records of the case and find no cogent reason to deviate from this well-settled rule.

In the case at bench, the appellee presented SPO1 Daniel Barte who testified that he was near the place where the subject accident happened on January 6, 1996 at 1:30 o'clock in the morning. He categorically stated that:

"A There was a truck which came from the north going to the city proper and then there was a tricycle which came from the city proper going to the north and there was a portion full of water which the truck tried to avoid that sideswiped the tricycle, sir."<sup>[5]</sup>

The fact that witness SPO1 Barte did not mention that he saw the plate number of the said truck nor did he describe or give a particular identification thereof, is of no moment. It must be borne in mind that at the time of the accident, there were no other vehicles passing at the place where it happened except the tricycle driven by the appellee and the truck driven by appellant Rivera.<sup>[6]</sup> Appellant Rivera himself