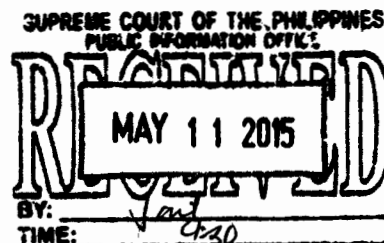




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2015** which reads as follows:*

“G.R. No. 161987 – ESTRELLO RIVAS TURTAL,* Petitioner, v. PEOPLE OF THE PHILIPPINES and EDNA PINILI GOBANTES, Respondents.

We resolve this appeal by the petitioner who has been found guilty beyond reasonable doubt of reckless imprudence resulting to homicide and damage to property. He was the driver of a passenger bus that collided with a motorcycle along a curve on the highway, instantly killing the motorcyclist due to the violent impact, and smashing the motorcycle beyond repair. He now assails the conviction, insisting that the motorcyclist was solely responsible for the fatal collision.

The information alleged as follows:¹

That on or about 3:00 O'clock in the afternoon of June 17, 1996, at sitio Kama, Malabuhan Siaton, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while driving a Ceres bus, a passenger liner operating in the island of Negros, owned by the Vallacar Transit, in a reckless and imprudent manner, and without taking the necessary precautions to avoid loss of life and damage to property, hit a motorcycle driven by one Engr. Noel K. Gobantes, thus causing the instantaneous death of the same victim and heavy damage to the same motorcycle, to the damage and prejudice of the heirs of the said Engr. Gobantes.

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* The erroneous surname *Tortal* appears on the front cover of the *rollo*, and on the first page of the petition for review on *certiorari*.

¹ Records, p. 1.

The commission of the crime is qualified in that the accused failed to lend on the spot to the herein victim such help as may be in his hand to give.

An Act defined and penalized by Article 365 of the Revised Penal

Code

The Regional Trial Court, Branch 37, in Dumaguete City (RTC) rendered the following antecedents, to wit:

From the prosecution's evidence, it appears that deceased victim Noel Gobantes was driving a motorcycle in the afternoon of June 17, 1996, in the vicinity of kilometer 44 on the National Highway, at Sitio Kama, Malabuhan, Siaton, Negros Oriental. He was on the right lane of the highway, and his direction was from Siaton to Dumaguete City. Airconditioned Ceres Bus No. 7802 was running from the opposite direction. It invaded the opposite or leftside of the road and collided or hit the victim and his motorcycle. The point of impact appears to be on the left lane of the highway on the Siaton-bound direction, where there was bloodstain. This is evident in the Sketch marked as Exhibit 'M' and 'M-1', prepared by Siaton police SPO1 Jovenal de la Peña Rado who repaired to the place accompanied by the accused shortly after the incident.

The body of the victim was thrown to and found outside the highway at its right side (Exhibit 'M-4') on the Dumaguete-bound direction. His left leg was detached from his body. It was found near a Gemilina tree to the right of the highway on the Dumaguete-bound direction. It had a distance of more than forty (40) meters from the point of impact (Exhibit 'M-6'). The skid mark of the Ceres bus appeared on the left lane of the highway starting near the point of impact on the Siaton-bound direction. It stopped on such extreme left side of the highway at a distance of about eighty-two (82) meters from the start of the skid mark (Exhibit 'M-3'). The motorcycle of the victim was pinned down under the left front wheel of the bus. (Exhibit "M-5").

The victim Noel K. Gobantes sustained the following injuries:

Amputated leg, at the level of the uppermost thigh, (L);

Abrasion forehead (L)' (Exhibit "N-1").

The Death certificate issued by Dr. Mitylene Tan, Municipal Health Officer of Siaton, who testified, shows that the causes of death of Gobantes are:

Hypovolemic shock
Sec. to Massive bleeding
Sec. to Multiple Fracture
Sec. to Vehicular Accident"
(Exhibits "F", "F-1" and "F-2").

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She certified in the same Death certificate that the victim died at 2:50 P.M.

The deceased victim was a licensed driver (Exhibits "D", "D-1", "E", and "E-1"). He was thirty-eight (38) years old at the time of his death. A Mechanical Engineer and employed as cadet engineer in the Herminio Teves Sugar Milling Company at Sta. Catalina, Negros Oriental since August 11, 1994, his salary was P3,500.00 a month (Exhibits "Q", "R" and "S"). Noel Gobantes was married to Edna Pinili Gobantes on February 16, 1987 (Exhibit "C"). They had no issue. The deceased victim is survived only by his wife Edna Pinili and his mother Prima Gobantes, who jointly spent ₱50,000.00 for interment, and another ₱50,000.00 for lawyer's fee. They claimed ₱2,000,000.00 for loss of earning capacity of the deceased. For their pain suffering and sleepless nights due to the sudden death of the victim, they asked the Court that they be paid by the accused moral damages of ₱500,000.00 for each one of them.

Upon the other hand, the evidence of the defense shows that accused Estrello Turtal was forty-five (45) years old, married, a driver by occupation with a professional driver's license (Exhibit 11-b). He has been driving passenger buses since 1987. On June 17, 1996, he drove a Ceres Airconditioned Bus No. 7802 bound for Bayawan, Negros Oriental. The 45-seater bus left its terminal in Dumaguete City at 2:00 P.M. on said date. It was filled to capacity.

At about 2:45 that afternoon in the vicinity of kilometer 44, national Highway, in Sitio Kama, Siaton, while running at 60 kilometers per hour as testified to by the accused, on a curve to the left on the Siaton-bound direction, a motorcycle was seen by accused Turtal running from the opposite direction. He first noticed the motorcycle at a distance of twenty (20) meters from him running on the right lane of the highway on the Dumaguete-bound direction. But when it was about five (5) meters away from the bus, the motorcycle was already on the bus lane, and its driver was looking back at its rear. The accused stepped on the brake but the two (2) vehicles collided. After the collision, the Ceres bus wobbled and there was an explosion on its front left side which caught fire. The bus continued to run along the left (wrong) side of the road leaving thereon tire marks as shown on the Traffic Accident Sketch (Exhibit '1'). The bus stopped at the extreme left side of the road (Exhibit '1'). He then tried to put out the fire with the fire extinguisher offered by a passenger. He peeped under the bus believing that the motorcycle rider was pinned down under it. He found him instead at the left side of the road already dead and his dismembered left leg was several meters away from the body. The accused then proceeded to Siaton to fetch a fire truck and to inform the police of the incident. He went back to the place of the incident with a policeman who drew a sketch (Exhibit '1'). Thereafter, he went back to the Siaton Police Station. He was placed in jail for safe-keeping.²

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² Rollo, pp. 188-190.

After trial, the RTC convicted the petitioner of the crime charged through its decision rendered on March 8, 2001,³ disposing thusly:

WHEREFORE, premises considered the Court finds accused Estrello Rivas Turtal guilty beyond reasonable doubt of “Reckless Imprudence Resulting to Homicide and Damage to Property”, penalized under Article 365, Par. No. 2 of the Revised Penal Code, and hereby sentences him, after applying the Indeterminate Sentence Law, to suffer an indeterminate prison term ranging from Four (4) Months of **arresto mayor** as minimum to two (2) Years, Four (4) Months and One (1) Day of **prision correccional** as maximum, together with the accessory penalties provided for in Art. 43, Revised Penal Code, to indemnify the lawful heirs of deceased victim Noel Gobantes the following:

- a.) ₱50,000.00 as death indemnity;
- b.) ₱50,000.00 as actual damages (Interment expenses);
- c.) ₱40,000.00 for the value of the motorcycle;
- d.) ₱1,174,740.00 for loss of earning capacity;
- e.) ₱100,000.00 for moral damages;
- f.) ₱40,000.00 for attorney’s honorarium; and
- g.) The costs.

The Jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.

The filing fees for the civil liability herein rendered against the accused shall constitute a first lien thereon. They should be paid by the offended parties jointly and severally upon execution thereof (Rule 111, Section 1, Revised Rules on Criminal procedure).

SO ORDERED.

The petitioner sought reconsideration, but the RTC denied the motion for reconsideration on July 17, 2001.⁴

Aggrieved, the petitioner appealed to the Court of Appeals (CA),⁵ attributing the following errors to the RTC,⁶ to wit:

1. THAT THE TRIAL COURT A QUO MISAPPREHENDED THE FACTS AND ITS FINDINGS IS (sic) TOTALLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD IN HOLDING THAT THE POINT OF IMPACT WAS AT OR INSIDE THE

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³ Records, pp. 364-374; penned by Acting Presiding Judge Eleuterio E. Chiu (who replaced Presiding Judge Temistocles B. Dies upon the latter’s retirement).

⁴ *Rollo*, p. 98.

⁵ *Id.* at 99.

⁶ *Id.* at 119-120.

LANE TRAVELLED BY (THE) MOTORCYCLE CONTRARY TO THE EXACT SPOT IN THE HIGHWAY WHERE THE TIRE MARK OF THE CERES BUS FIRST APPEARED AS SHOWN IN THE PICTURES ADMITTED ON EVIDENCE.

2. THAT THE TRIAL COURT A QUO MISAPPREHENDED THE FACTS AND ITS FINDINGS IS (sic) TOTALLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD IN NOT HOLDING THAT BEFORE THE TIRE MARKS PRODUCED BY THE BLOWN OUT LEFT FRONT TIRE OF THE CERES BUS VEERED TOWARDS THE LEFT SIDE OF THE HIGHWAY, THE SAME DEFINITELY ORIGINATED FROM INSIDE THE RIGHT LANE TRAVELLED BY THE CERES BUS.
3. THAT THE TRIAL COURT A QUO MISAPPREHENDED THE FACTS AND ITS FINDINGS IS (sic) TOTALLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD IN NOT HOLDING THAT IT WAS THE MOTORCYCLE, WHICH WAS RECKLESSLY DRIVEN AT A VERY FAST SPEED, AND WAS AT THAT TIME OF THE COLLISION, INTRUDING INTO THE LANE PROPERLY TRAVERSED BY THE CERES BUS.
4. THAT THE TRIAL COURT ERRED IN MAKING IN MAKING (sic) CONCLUSIONS BASED ON SURMISES, CONJECTURES AND SPECULATIONS, IN THAT THE POINT ON THE ROAD WHERE THE BLOODSTAINS WERE FOUND CANNOT AND SHOULD NOT HAVE BEEN THE BASIS FOR THE CONCLUSION THAT THE POINT OF IMPACT OF THE COLLISION WAS EXACTLY ON THE SAME SPOT.
5. THAT THE TRIAL COURT ERRED IN AWARDING EXCESSIVE DAMAGES, FOR EVEN ASSUMING WITHOUT ADMITTING, THAT THERE ARE LEGAL AND FACTUAL BASES FOR AWARDING DAMAGES, THE AWARD MADE IS TOO EXCESSIVE AS THE SAME WAS EITHER ARRIVED AT ON THE BASIS OF AN ERRONEOUS COMPUTATION INCONSISTENT WITH THE PREVAILING JURISPRUDENCE ON THE MATTER AND TOTALLY UNSUPPORTED BY THE EVIDENCE ON RECORD.
6. THAT THE TRIAL COURT ERRED IN FINDING THAT THE EVIDENCE ADDUCED BY THE PROSECUTION HAS OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE APPELLANT AND THEREBY CONVICTING THE LATTER BEYOND REASONABLE DOUBT.

The State, through the Office of the Solicitor General (OSG), countered that the RTC had properly convicted the petitioner of reckless imprudence resulting in homicide and damage to property; and that the

RTC correctly awarded to the heirs of the late Engr. Noel Gobantes the amounts of ₱50,000.00, ₱100,000.00, ₱1,174,740.00, ₱40,000.00, and ₱40,000.00 respectively as death indemnity, moral damages, loss of earning capacity, value of the motorcycle, and attorney's fees.⁷

On October 9, 2003,⁸ the CA promulgated its assailed judgment affirming the decision of the RTC subject to the following modifications, namely: (a) that the petitioner should suffer the indeterminate penalty of four months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum; and (b) that the petitioner should pay to the heirs of the late Noel Gobantes: (1) ₱27,500.00 as interment expenses; (2) ₱20,000.00 as value of the motorcycle; (3) ₱50,000.00 as death indemnity; (4) ₱588,000.00 as loss of earning capacity; (5) ₱100,000.00 as moral damages; and (6) ₱40,000.00 as attorney's fees; and (c) that Vallacar Transit, Inc., the petitioner's employer, was subsidiarily liable for the civil liabilities upon proof of the petitioner's insolvency.⁹

On October 29, 2003, the petitioner moved for the reconsideration of the judgment,¹⁰ arguing that there were serious errors in the findings of fact and law that would cause injustice to him unless reviewed and reversed; that the RTC judge who had penned the decision was not the RTC judge who had presided during the trial of the case; and that the ruling in *People v. Sanahon* (369 SCRA 347) did not apply. He prayed for the review of the evidence on: (1) the point of impact as to which the RTC had based its conclusions on the presence of bloodstains on the highway after the incident, per the sketch prepared by the investigating police officer; (2) the speed of the bus; (3) the time of the accident; (4) the finding that his testimony was of doubtful veracity; (5) his guilt for reckless imprudence resulting to homicide and damage to property that was not established beyond reasonable doubt; and (6) the award of damages. He insisted on the application of the emergency rule in view of the limited choices open to him at the time;¹¹ on his entitlement to some consideration by reason of the "suddenness" of the situation; and on the bloodstains not being the accurate point of reference.¹²

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⁷ Id. at 158-159.

⁸ Id. at 200-211; penned by Associate Justice Salvador J. Valdez, Jr. (retired/deceased), and concurred in by Associate Justice Perlita J. Tria Tirona (retired) and Associate Justice Arturo D. Brion (now a Member of this Court).

⁹ The dispositive portion reads:

WHEREFORE, the appealed decision is hereby AFFIRMED, with the MODIFICATIONS, as hereinabove indicated.

SO ORDERED.

¹⁰ CA rollo, pp.431-456.

¹¹ Rollo, pp. 233-234.

¹² Id. at 230.

On January 26, 2004, however, the CA denied the petitioner's motion for reconsideration,¹³ explaining:

In the case at bar, accused-appellant miserably failed to show that the trial court ignored any fact or circumstance of weight or substance which would materially affect the same if considered.

Our review of defense Exhibits "6" and "9", as well as that of prosecution Exhibits "G-6", "G-7" and "G-8", reveals that the bus tires were actually recessed or indented relative to the body of the bus, which protruded.

Clearly, even the tire marks as shown on Exhibit "6-a" appears (sic) to be within the Siaton-bound lane traveled by Ceres Bus No. 7802, the same cannot be said of its body, as the same impinged upon the Dumaguete-bound lane. As circumspectly observed by the trial court:

The place where the incident happened was on a curve to the left on the Siaton-bound direction. And yet, according to the accused himself, his speed was 60 kilometers per hour while he was negotiating the curve. This is an admission that he violated Section 35, R.A. 4136. The maximum speed limit is only 50 kilometers per hour for buses in open country road without blind corners. In this respect, he was reckless, for prudence dictates that he should have slowed down while approaching the curve to a speed of about 30 to 40 kilometers per hour. Added to this necessity to decelerate was the fact that his vehicle was to run along the outer side of the curve. Moreover, the Ceres bus did not completely keep itself to its lane on the outer side of the curve. Apparently, the accused cut corner. He invaded the opposite inner lane of the curve, which was the proper lane of the on-coming motorcycle. This is a violation of Sec. 37 of R.A. 4136. This could be the only cause or reason why the left front side of the bus (Exhibit "9") hit the deceased and his motorcycle in the motorcycle's lane in the inner side of the curve. The mute but eloquent physical evidence of this is the bloodstain on the motorcycle's lane (Exhibit "M", M-1"). It was unforgivably the height of recklessness for the accused to cut corner as doing so would cause danger to persons and property on the opposite side of the Ceres bus lane where they have the right to be.

As to whether the motorcycle was intruding on the bus' lane, to our mind, the aforestated issue raised by accused-appellant is factual in nature and boils down to the credibility of the witnesses and their respective testimonies. The time-honored doctrine is that the assessment of the credibility of the witnesses and their respective testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their

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¹³ Id. at 241-244.

demeanor, conduct and attitude under grilling examination. The issue on which witness to believe is one that should be best addressed by the lower court for the findings of fact of a trial judge are accorded great respect and are seldom disturbed on appeal for having the opportunity to directly observe the witnesses, and to determine by their demeanor on the stand the probative value of their testimonies. Accused-appellant miserably failed to advance any cogent reason for us to deviate in this case from this established rule.

The CA noted that the petitioner did not raise any new matter that warranted the relief prayed for; that he was raising matters already passed upon and fully threshed out in the decision under reconsideration; and that to pass upon them again would be superfluous.¹⁴

Issues

Hence, this appeal by petition for review on *certiorari*, whereby the petitioner submits the following as issues, to wit:

- I. WHETHER OR NOT THE PROSECUTION HAD OVERCOME THE PRESUMPTION OF INNOCENCE OF THE PETITIONER;
- II. WHETHER OR NOT THERE IS LEGAL BASIS FOR THE AWARD OF DAMAGES.

Ruling of the Court

The appeal lacks merit. The petitioner did not persuasively show that the CA erred in affirming the findings of fact of the RTC. All that he has done in this appeal is to rehash the arguments and submissions that the CA and the RTC had fully considered and resolved.

Firstly, reckless imprudence consists in voluntarily but without malice doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.¹⁵ On the other hand, simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.¹⁶

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¹⁴ Id. at 243.

¹⁵ Article 365, *Revised Penal Code*; see Reyes, *The Revised Penal Code*, 15th ed. (2001), p. 995.

¹⁶ Id.

To establish liability for criminal negligence, the nexus between the negligent act or omission and the injury must be proximate. As such, proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred.¹⁷

Negligence and proximate cause are factual issues.¹⁸ Yet, the appeal cannot deal with factual questions, because the Court's appellate jurisdiction under Rule 45 of the *Rules of Court* is limited to reviewing only errors of law, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.¹⁹ This is because the Court is not a trier of facts, and must perforce respect the assessment and findings by the trial court on the credibility of witnesses by virtue of its being in a better position to determine the question of credibility from directly hearing the witnesses themselves and personally observing their deportment and manner of testifying during the trial.²⁰ It is a long settled rule, indeed, that when the issue concerns the credibility of witnesses, the appellate courts will not generally disturb the findings of the trial court, and may review and reverse or modify such factual findings of the trial court if it appears from the records that the trial court erred.²¹ Thus, the Court accords the highest respect, even finality, to the evaluation made by the lower court of the testimonies of the witnesses presented before it, particularly when affirmed by the CA on intermediate review.

The rule against a review by the Court of the findings of fact of the CA in an appeal under Rule 45 is not always rigidly applied, however, especially if the judge who penned the decision was not the judge who heard the case. To insist on the application of the rule will be unreasonable, because the former, not having heard the testimonies himself, would not be in a better position to make such determination than the appellate judge.²² But then again, the fact alone that the judge who heard the evidence was not the one who rendered the judgment does not automatically make the judgment erroneous or irregular either. The circumstance that the judge penning the decision did not hear the testimonies of the prosecution witnesses does not taint or weaken his decision, considering that he had

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¹⁷ *Calimutan v. People*, G.R. No. 152133, February 9, 2006, 482 SCRA 44, 60; *Lambert v. Heirs of Roy Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 291; *St. Mary's Academy v. Carpitanos*, 426 Phil. 878, 886 (2002); *Raynera v. Hiceta*, 365 Phil. 546, 553 (1999).

¹⁸ *Kierulf v. Court of Appeals*, 336 Phil. 414, 423 (1997).

¹⁹ *Congregation of the Religious of the Virgin Mary v. Court of Appeals*, 353 Phil. 591 (1998); *Sarmiento v. Court of Appeals*, 353 Phil. 834, 835 (1998).

²⁰ *People v. Aquino*, 348 Phil. 395, 396 (1998).

²¹ *People v. Lagao*, 350 Phil. 255, 256 (1998).

²² *People v. Gecomo*, 324 Phil. 297, 310 (1996).

before him the records of the case including the transcripts of the stenographic notes. Verily, the validity and worth of a decision are not necessarily impaired by its writer having merely taken over from a judicial colleague who had presided at the trial unless there is a clear showing of grave abuse of discretion in the appreciation of the facts.²³ No such showing was made herein. It is worthy of mention that the records amply supported the factual findings of the trial court and its assessment of the credibility of the witnesses.

Secondly, the RTC and the CA both rejected the contention of the petitioner that the negligence of victim Engr. Gobantes in driving his motorcycle had directly caused the fatal collision with the bus. The rejection was justified considering the admission by the petitioner that his bus still hit Engr. Gobantes and his motorcycle despite his having applied his brakes. The petitioner declared that his speed was 60 kilometers/hour when he first noticed Engr. Gobantes and his motorcycle. Whether or not that rate of speed was safe under the circumstances should be judged by the skid marks that resulted from his application of the brakes. The skid marks, as depicted in the police sketch, were indicative of his bus running at a speed too fast to enable him to come to a full stop quickly enough to avoid the collision. In fact, his bus came to a full stop only after skidding the length of 82 meters.²⁴ This showed that the petitioner did not observe a safe stopping distance to avoid a collision in case of an emergency. In that situation, he did not exercise the necessary precaution to prevent the collision. Clearly, the petitioner could not evade the effects of his own negligence by citing the negligence of the other driver.²⁵

Thirdly, the petitioner argues that the emergency rule should apply.

We disagree. For the emergency rule to apply in his favor, the petitioner must show that his own negligence did not bring about the emergency in which he found himself.²⁶ Indeed, foreseeability is the fundamental test,²⁷ for negligence, which is conduct that creates undue risk of harm to another, is the failure to observe that degree of care, precaution

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²³ *People v. Fulinara*, 317 Phil. 31, 45 (1995).

²⁴ Exhibit M; Exhibit 1.

²⁵ *Del Prado v. Manila Electric Co.*, 52 Phil. 900 (1929).

²⁶ *Gan v. Court of Appeals*, No. L-44264, September 19, 1988, 165 SCRA 378, 382 (“[O]ne who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, **unless the emergency in which he finds himself is brought about by his own negligence.**”) (Citation omitted, emphasis supplied).

²⁷ *Achevara v. Ramos*, G.R. No. 175172, September 29, 2009, 601 SCRA 270.

and vigilance that the circumstances justly demand, whereby that other person suffers injury.²⁸ To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that the interests of certain persons were unreasonably subjected to a general but definite class of risks.²⁹ The standard test in determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is always necessary before negligence can be held to exist.³⁰

The Ceres Bus driven by the petitioner hit the motorcycle causing the instant death of Engr. Gobantes and the dismemberment of his left leg and its being thrown about 40 meters away.³¹ The collision rendered the motorcycle a total wreck having been smashed under the front left wheel of the bus.³² These physical effects belied the petitioner's claim of driving at a regular speed. The negligence of the petitioner was unquestionably the proximate cause of the fatality and the severe damage to property.

Fourthly, the awards of civil liability were not excessive but accorded with prevailing jurisprudence.

The award of ₱50,000.00 as civil indemnity,³³ without need of further proof other than the death of the victim,³⁴ was proper. This amount has been the standard in reckless imprudence resulting to homicide.³⁵

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²⁸ *Jarco Marketing Corp. v. Court of Appeals*, 378 Phil. 991,1002 (1999); *Bulilan v. Commission on Audit*, G.R. No. 130057, December 22, 1998, 300 SCRA 445, 452.

²⁹ *Achevara v. Ramos*, supra note 26.

³⁰ *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159270, August 22, 2005, 467 SCRA 569, 581.

³¹ Exhibit M-6.

³² Exhibits M, M-5 and G-7.

³³ *People v. Piamonte*, 363 Phil. 202, 204 (1999).

³⁴ *People v. Española*, G.R. No. 119308, April 18, 1997, 271 SCRA 689, 716.

³⁵ *Nueva España v. People*, G.R. No. 163351, June 21, 2005, 460 SCRA 547, 556; *Tabao v. People*, G.R. No. 187246, July 20, 2011, 654 SCRA 216, 223, 242; *Serra v. Mumar*, G.R. No. 193861, March 14, 2012, 668 SCRA 335, 350.

The records show that Engr. Gobantes, a Mechanical Engineer by profession, was gainfully employed at the time of his death. Accordingly, the heirs should be indemnified for the loss of his earning capacity pursuant to Article 2206 of the *Civil Code*.³⁶ Compensation of this nature is awarded not for loss of earnings but for loss of the capacity to earn money.³⁷ The amount recoverable for the loss of earning capacity of the deceased is based on two factors, namely: (1) the number of years on the basis of which the damages shall be computed; and (2) the rate at which the losses sustained by the heirs of the deceased should be fixed. The first factor is based on the formula $(2/3 \times 80 - \text{age of the deceased at the time of his death} = \text{life expectancy})$ adopted from the American Expectancy Table of Mortality.³⁸ Net income is computed by deducting from the amount of the victim's gross income the amount of his living expenses.

Inasmuch as there was no proof of Engr. Gobantes' living expenses, his net income was estimated to be 50% of the gross annual income.³⁹ In the computation of loss of earning capacity, only net earnings, not gross earnings, are considered; that is, the total of the earnings less expenses necessary for the generation of such earnings or income, and the living and other incidental expenses.⁴⁰ Edna Gobantes testified that her husband was 38 years old at the time of his death and earning ₱3,500.00/month as a Cadet Engineer at the Herminio Teves Sugar Milling Company at Sta. Catalina, Negros Oriental. Thus, the formula to determine his net earning capacity is as follows:

$$\begin{aligned}
 \text{Net Earning Capacity} &= \text{Life Expectancy} \times [\text{Gross Annual Income} - \text{Reasonable and Necessary Living Expenses}]^{41} \\
 &= \frac{2}{3} [80 - \text{age at time of death}] \times [\text{gross annual income} - 50\% \text{ of reasonable and necessary expenses}] \\
 &= \frac{2 [80 - 38] \times [₱42,000 - ₱21,000]}{3} \\
 &= 28 \times ₱21,000.00 \\
 &= ₱588,000.00
 \end{aligned}$$

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³⁶ Art. 2206. x x x

(1) **The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;**

x x x x (Emphasis supplied)

³⁷ *Heirs of George Y. Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009, 584 SCRA 152.

³⁸ *People v. Librando*, 390 Phil. 543, 559 (2000).

³⁹ *People v. Templo*, 400 Phil. 471, 494 (2000).

⁴⁰ *Smith Bell Dodwell Shipping Agency Corporation v. Borja*, 432 Phil. 913, 915 (2002).

⁴¹ *Id.* at 913-914.

In view of the foregoing, the CA correctly computed at ₱588,000.00 the loss of earning capacity of Engr. Gobantes.

As to actual damages, Art. 2199 of the *Civil Code* states that except as provided by law or by stipulation “one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.” To justify the grant of actual or compensatory damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party.⁴² Actual damages must be substantiated by documentary evidence, such as receipts, in order to substantiate the expenses incurred as a result of the death of the victim.⁴³ In that context, the CA only granted ₱27,500.00 because the funeral expenses duly proved consisted of ₱12,500.00 for the kilometrage from Siaton to Dumaguete City, the cost of the casket, the cost of the embalming and burial services in the Dumaguete Cemetery (as borne out by official receipt No. 5025, certified by Eterna Funeral Chapels),⁴⁴ ₱9,250.00 as the cost of the burial plot, ₱750.00 as the costs of Perpetual Care, and ₱5,000.00⁴⁵ as interment expenses based on the certification of the Dumaguete Memorial Park.

For moral damages, the CA allowed the amount of ₱100,000.00 to the heirs of Engr. Gobantes. That amount was warranted because it reflected what the heirs – his wife and his surviving parent – would be needing to recover from their mental anguish over the irreparable loss of his companionship and physical presence. As jurisprudence has well put it:

The award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual *status quo ante*. Moral damages are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person. Although incapable of pecuniary estimation, they must be proportionate to the suffering inflicted. The amount of the award bears no relation whatsoever with the wealth or means of the offender.⁴⁶

The collision caused severe material damage to the motorcycle of Engr. Gobantes. The CA sought to address the loss of this property by fixing temperate damages of ₱20,000.00 due to the absence of competent proof of the actual value of the motorcycle.⁴⁷ This appreciation was legally

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⁴² *Sumalpong v. Court of Appeals*, 335 Phil. 1219 (1997).

⁴³ *People v. Ibañez*, G.R. Nos. 133923-34, July 30, 2003, 407 SCRA 406.

⁴⁴ Exhibit O, Folder of Exhibits, p. 140.

⁴⁵ Exhibit P, Folder of Exhibits, p. 141.

⁴⁶ *Heirs of George Y. Poe v. Malayan Insurance Company, Inc.*, supra, at note 37, p. 180.

⁴⁷ Article 2225 of the Civil Code provides:

Art. 2225. Temperate damages must be reasonable under the circumstances.

justified because there was no question about the severe material damage to the motorcycle. Under Article 2224 of the *Civil Code*,⁴⁸ temperate damages are given in the absence of competent proof on the actual damages suffered,⁴⁹ when the court finds that some pecuniary loss had been suffered but its amount cannot, from the nature of the case, be proved with certainty. Here, what the CA awarded were in reality temperate damages.

The ₱40,000.00 allowed as attorney's fees are reasonable. According to Article 2208 of the *Civil Code*, the grant of attorney's fees may be made when the court deems attorney's fees just and equitable. The grant is proper if one was forced to litigate and incur expenses to protect one's rights and interest by reason of an unjustified act or omission on the part of the party from whom the award is sought.⁵⁰

All the sums of money awarded to the victims should earn 6% interest *per annum* from the finality of this decision until fully paid.⁵¹

Fifthly, Article 365 of the *Revised Penal Code* punishes any person who, by reckless imprudence, commits any act which, had it been intentional, would constitute a grave felony, with the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period. Under the same provision, however, when the death of a person is caused by imprudence or negligence and with a violation of the *Land Transportation and Traffic Code* (Republic Act No. 4136, as amended),⁵² the penalty shall be *prision correccional* in its medium and maximum periods.

Did the petitioner violate the *Land Transportation and Traffic Code*?

We answer the query in the affirmative. Section 35 of the *Land Transportation and Traffic Code* required the petitioner to proceed with "*careful and prudent speed, not greater nor less than is reasonable and*

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⁴⁸ Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

⁴⁹ *Viron Transportation Co., Inc. v. Delos Santos*, 399 Phil. 243, 255 (2000).

⁵⁰ *Asian Center for Career and Employment System and Services, Inc. v. NLRC*, 358 Phil. 380; 297 (1998).

⁵¹ *People v. Dadao*, G.R. No. 201860, January 22, 2014; *Avelino v. People*, G.R. No. 181444, July 17, 2013; *People v. Maglente*, G.R. No. 201445, November 27, 2013; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 459.

⁵² Republic Act No. 4136 repealed Article Act No. 3992 (Automobile Law).

proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead."⁵³ As borne out by the established circumstances, the petitioner violated Section 35 by overspeeding and failing to keep to a speed that would have enabled him to prevent the collision. Thus, his penalty is *prision correccional* in its medium and maximum periods.

We hold, however, that the indeterminate penalty of four months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum fixed by the CA is unwarranted. The CA probably failed to take into consideration the fact that Article 365 of the *Revised Penal Code* enjoins that in the imposition of the penalties, the court shall exercise its sound discretion, without regard to the rules prescribed in Article 64 of the *Revised Penal Code*. In the absence of any suitable explanation by the CA why the maximum of the indeterminate penalty should be four years and two months of *prision correccional*, the Court now reinstates the penalty of two years, four months and one day as the maximum imposed by the RTC.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on October 9, 2003 by the Court of Appeals in all respects subject to the following **MODIFICATIONS**, namely: (1) the indeterminate sentence shall be four months and one day of *arresto mayor*, as minimum, to two years, four months and one day of *prision correccional* as maximum; (2) the amount of ₱20,000.00 for the value of the motorcycle should be considered as temperate damages; (3) interest of 6% *per annum* shall be imposed on all the items of civil liability damages awarded from the date of the finality of this judgment until fully paid; and (4) the petitioner shall pay the costs of suit.

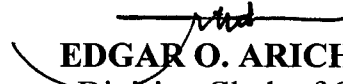
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⁵³ Section 35. Restriction as to speed. — (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *pk 11*
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