Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES TEODORO[1] and NANETTE PEREÑA, Petitioners,	**G.R. No. 157917**
	Present:
- versus -	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
SPOUSES NICOLAS and TERESITA L. ZARATE, PHILIPPINE NATIONAL RAILWAYS, and the COURT OF APPEALS Respondents.	Promulgated: 29 AUG 2012

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D E C I S I O N

BERSAMIN, *J.*:

The operator of a school bus service is a common carrier in the eyes of the law. He is bound to observe extraordinary diligence in the conduct of his business. He is presumed to be negligent when death occurs to a passenger. His liability may include indemnity for loss of earning capacity even if the deceased passenger may only be an unemployed high school student at the time of the accident.

The Case

By petition for review on *certiorari*, Spouses Teodoro and Nanette Pereña (Pereñas) appeal the adverse decision promulgated on November 13,

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[1] In the title of the case, the petitioner's name appears as Teodoro Pereña, but he signed his name as Teodorico Pereña in the verification/certification of the petition for review on *certiorari*.

2002, by which the Court of Appeals (CA) affirmed with modification the decision rendered on December 3, 1999 by the Regional Trial Court (RTC), Branch 260, in Parañaque City that had decreed them jointly and severally liable with Philippine National Railways (PNR), their co-defendant, to Spouses Nicolas and Teresita Zarate (Zarates) for the death of their 15-year old son, Aaron John L. Zarate (Aaron), then a high school student of Don Bosco Technical Institute (Don Bosco).

Antecedents

The Pereñas were engaged in the business of transporting students from their respective residences in Parañaque City to Don Bosco in Pasong Tamo, Makati City, and back. In their business, the Pereñas used a KIA Ceres Van (van) with Plate No. PYA 896, which had the capacity to transport 14 students at a time, two of whom would be seated in the front beside the driver, and the others in the rear, with six students on either side. They employed Clemente Alfaro (Alfaro) as driver of the van.

In June 1996, the Zarates contracted the Pereñas to transport Aaron to and from Don Bosco. On August 22, 1996, as on previous school days, the van picked Aaron up around 6:00 a.m. from the Zarates' residence. Aaron took his place on the left side of the van near the rear door. The van, with its air-conditioning unit turned on and the stereo playing loudly, ultimately carried all the 14 student riders on their way to Don Bosco. Considering that the students were due at Don Bosco by 7:15 a.m., and that they were already running late because of the heavy vehicular traffic on the South Superhighway, Alfaro took the van to an alternate route at about 6:45 a.m. by traversing the narrow path underneath the Magallanes Interchange that was then commonly used by Makati-bound vehicles as a short cut into Makati. At the time, the narrow path was marked by piles of construction materials and parked passenger jeepneys, and the railroad crossing in the

narrow path had no railroad warning signs, or watchmen, or other responsible persons manning the crossing. In fact, the bamboo *barandilla* was up, leaving the railroad crossing open to traversing motorists.

At about the time the van was to traverse the railroad crossing, PNR Commuter No. 302 (train), operated by Jhonny Alano (Alano), was in the vicinity of the Magallanes Interchange travelling northbound. As the train neared the railroad crossing, Alfaro drove the van eastward across the railroad tracks, closely tailing a large passenger bus. His view of the oncoming train was blocked because he overtook the passenger bus on its left side. The train blew its horn to warn motorists of its approach. When the train was about 50 meters away from the passenger bus and the van, Alano applied the ordinary brakes of the train. He applied the emergency brakes only when he saw that a collision was imminent. The passenger bus successfully crossed the railroad tracks, but the van driven by Alfaro did not. The train hit the rear end of the van, and the impact threw nine of the 12 students in the rear, including Aaron, out of the van. Aaron landed in the path of the train, which dragged his body and severed his head, instantaneously killing him. Alano fled the scene on board the train, and did not wait for the police investigator to arrive.

Devastated by the early and unexpected death of Aaron, the Zarates commenced this action for damages against Alfaro, the Pereñas, PNR and Alano. The Pereñas and PNR filed their respective answers, with cross-claims against each other, but Alfaro could not be served with summons.

At the pre-trial, the parties stipulated on the facts and issues, *viz*:

A. FACTS:

(1) That spouses Zarate were the legitimate parents of Aaron John L. Zarate;

(2) Spouses Zarate engaged the services of spouses Pereña for the adequate and safe transportation carriage of the former spouses' son from their residence in Parañaque to his school at the Don Bosco Technical Institute in Makati City;

(3) During the effectivity of the contract of carriage and in the implementation thereof, Aaron, the minor son of spouses Zarate died in connection with a vehicular/train collision which occurred while Aaron was riding the contracted carrier Kia Ceres van of spouses Pereña, then driven and operated by the latter's employee/authorized driver Clemente Alfaro, which van collided with the train of PNR, at around 6:45 A.M. of August 22, 1996, within the vicinity of the Magallanes Interchange in Makati City, Metro Manila, Philippines;

(4) At the time of the vehicular/train collision, the subject site of the vehicular/train collision was a railroad crossing used by motorists for crossing the railroad tracks;

(5) During the said time of the vehicular/train collision, there were no appropriate and safety warning signs and railings at the site commonly used for railroad crossing;

(6) At the material time, countless number of Makati bound public utility and private vehicles used on a daily basis the site of the collision as an alternative route and short-cut to Makati;

(7) The train driver or operator left the scene of the incident on board the commuter train involved without waiting for the police investigator;

(8) The site commonly used for railroad crossing by motorists was not in fact intended by the railroad operator for railroad crossing at the time of the vehicular collision;

(9) PNR received the demand letter of the spouses Zarate;

(10) PNR refused to acknowledge any liability for the vehicular/train collision;

(11) The eventual closure of the railroad crossing alleged by PNR was an internal arrangement between the former and its project contractor; and

(12) The site of the vehicular/train collision was within the vicinity or less than 100 meters from the Magallanes station of PNR.

B. ISSUES

(1) Whether or not defendant-driver of the van is, in the performance of his functions, liable for negligence constituting the proximate cause of the vehicular collision, which resulted in the death of plaintiff spouses' son;

(2) Whether or not the defendant spouses Pereña being the employer of defendant Alfaro are liable for any negligence which may be attributed to defendant Alfaro;

(3) Whether or not defendant Philippine National Railways being the operator of the railroad system is liable for negligence in failing to provide adequate safety warning signs and railings in the area commonly used by motorists for railroad crossings, constituting the proximate cause of the vehicular collision which resulted in the death of the plaintiff spouses' son;

(4) Whether or not defendant spouses Pereña are liable for breach of the contract of carriage with plaintiff-spouses in failing to provide adequate and safe transportation for the latter's son;

(5) Whether or not defendants spouses are liable for actual, moral damages, exemplary damages, and attorney's fees;

(6) Whether or not defendants spouses Teodorico and Nanette Pereña observed the diligence of employers and school bus operators;

(7) Whether or not defendant-spouses are civilly liable for the accidental death of Aaron John Zarate;

(8) Whether or not defendant PNR was grossly negligent in operating the commuter train involved in the accident, in allowing or tolerating the motoring public to cross, and its failure to install safety devices or equipment at the site of the accident for the protection of the public;

(9) Whether or not defendant PNR should be made to reimburse defendant spouses for any and whatever amount the latter may be held answerable or which they may be ordered to pay in favor of plaintiffs by reason of the action;

(10) Whether or not defendant PNR should pay plaintiffs directly and fully on the amounts claimed by the latter in their Complaint by reason of its gross negligence;

(11) Whether or not defendant PNR is liable to defendants spouses for actual, moral and exemplary damages and attorney's fees.[2]

The Zarates' claim against the Pereñas was upon breach of the contract of carriage for the safe transport of Aaron; but that against PNR was based on quasi-delict under Article 2176, *Civil Code*.

In their defense, the Pereñas adduced evidence to show that they had exercised the diligence of a good father of the family in the selection and

[2] CA *Rollo*, pp. 47-49.

supervision of Alfaro, by making sure that Alfaro had been issued a driver's license and had not been involved in any vehicular accident prior to the collision; that their own son had taken the van daily; and that Teodoro Pereña had sometimes accompanied Alfaro in the van's trips transporting the students to school.

For its part, PNR tended to show that the proximate cause of the collision had been the reckless crossing of the van whose driver had not first stopped, looked and listened; and that the narrow path traversed by the van had not been intended to be a railroad crossing for motorists.

Ruling of the RTC

On December 3, 1999, the RTC rendered its decision,[3] disposing:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering them to jointly and severally pay the plaintiffs as follows:
>
> (1) (for) the death of Aaron- Php50,000.00;
>
> (2) Actual damages in the amount of Php100,000.00;
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> (3) For the loss of earning capacity- Php2,109,071.00;
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> (4) Moral damages in the amount of (Php)4,000,000.00;
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> (5) Exemplary damages in the amount of Php1,000,000.00;
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> (6) Attorney's fees in the amount of Php200,000.00; and
>
> (7) Cost of suit.
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> SO ORDERED.

On June 29, 2000, the RTC denied the Pereñas' motion for reconsideration,[4] reiterating that the cooperative gross negligence of the Pereñas and PNR had caused the collision that led to the death of Aaron; and

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3 Id. at 47-55.
4 Id. at 142.

that the damages awarded to the Zarates were not excessive, but based on the established circumstances.

The CA's Ruling

Both the Pereñas and PNR appealed (C.A.-G.R. CV No. 68916).

PNR assigned the following errors, to wit:[5]

> The Court *a quo* erred in:
>
> 1. In finding the defendant-appellant Philippine National Railways jointly and severally liable together with defendant-appellants spouses Teodorico and Nanette Pereña and defendant-appellant Clemente Alfaro to pay plaintiffs-appellees for the death of Aaron Zarate and damages.
>
> 2. In giving full faith and merit to the oral testimonies of plaintiffs-appellees witnesses despite overwhelming documentary evidence on record, supporting the case of defendants-appellants Philippine National Railways.

The Pereñas ascribed the following errors to the RTC, namely:

> The trial court erred in finding defendants-appellants jointly and severally liable for actual, moral and exemplary damages and attorney's fees with the other defendants.
>
> The trial court erred in dismissing the cross-claim of the appellants Pereñas against the Philippine National Railways and in not holding the latter and its train driver primarily responsible for the incident.
>
> The trial court erred in awarding excessive damages and attorney's fees.
>
> The trial court erred in awarding damages in the form of deceased's loss of earning capacity in the absence of sufficient basis for such an award.

On November 13, 2002, the CA promulgated its decision, affirming the findings of the RTC, but limited the moral damages to ₱2,500,000.00;

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[5] Id. at 25-46.

and deleted the attorney's fees because the RTC did not state the factual and legal bases, to wit:[6]

> **WHEREFORE**, premises considered, the assailed Decision of the Regional Trial Court, Branch 260 of Parañaque City is **AFFIRMED** with the **modification** that the award of **Actual Damages** is reduced to **₱59,502.76**; **Moral Damages** is reduced to **₱2,500,000.00**; and the award for Attorney's Fees is **Deleted**.
>
> SO ORDERED.

The CA upheld the award for the loss of Aaron's earning capacity, taking cognizance of the ruling in *Cariaga v. Laguna Tayabas Bus Company and Manila Railroad Company*,[7] wherein the Court gave the heirs of Cariaga a sum representing the loss of the deceased's earning capacity despite Cariaga being only a medical student at the time of the fatal incident. Applying the formula adopted in the American Expectancy Table of Mortality:–

2/3 *x* (80 - age at the time of death) = life expectancy

the CA determined the life expectancy of Aaron to be 39.3 years upon reckoning his life expectancy from age of 21 (the age when he would have graduated from college and started working for his own livelihood) instead of 15 years (his age when he died). Considering that the nature of his work and his salary at the time of Aaron's death were unknown, it used the prevailing minimum wage of ₱280.00/day to compute Aaron's gross annual salary to be ₱110,716.65, inclusive of the thirteenth month pay. Multiplying this annual salary by Aaron's life expectancy of 39.3 years, his gross income would aggregate to ₱4,351,164.30, from which his estimated expenses in the sum of ₱2,189,664.30 was deducted to finally arrive at ₱ 2,161,500.00 as net income. Due to Aaron's computed net income turning out to be higher than

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6 *Rollo*, pp. 70-80.
7 110 Phil. 346 (1960).

the amount claimed by the Zarates, only ₱2,109,071.00, the amount expressly prayed for by them, was granted.

On April 4, 2003, the CA denied the Pereñas' motion for reconsideration.[8]

Issues

In this appeal, the Pereñas list the following as the errors committed by the CA, to wit:

> I. The lower court erred when it upheld the trial court's decision holding the petitioners jointly and severally liable to pay damages with Philippine National Railways and dismissing their cross-claim against the latter.
>
> II. The lower court erred in affirming the trial court's decision awarding damages for loss of earning capacity of a minor who was only a high school student at the time of his death in the absence of sufficient basis for such an award.
>
> III. The lower court erred in not reducing further the amount of damages awarded, assuming petitioners are liable at all.

Ruling

The petition has no merit.

1.
Were the Pereñas and PNR jointly and severally liable for damages?

The Zarates brought this action for recovery of damages against both the Pereñas and the PNR, basing their claim against the Pereñas on breach of contract of carriage and against the PNR on quasi-delict.

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[8] Id. at 82.

The RTC found the Pereñas and the PNR negligent. The CA affirmed the findings.

We concur with the CA.

To start with, the Pereñas' defense was that they exercised the diligence of a good father of the family in the selection and supervision of Alfaro, the van driver, by seeing to it that Alfaro had a driver's license and that he had not been involved in any vehicular accident prior to the fatal collision with the train; that they even had their own son travel to and from school on a daily basis; and that Teodoro Pereña himself sometimes accompanied Alfaro in transporting the passengers to and from school. The RTC gave scant consideration to such defense by regarding such defense as inappropriate in an action for breach of contract of carriage.

We find no adequate cause to differ from the conclusions of the lower courts that the Pereñas operated as a common carrier; and that their standard of care was extraordinary diligence, not the ordinary diligence of a good father of a family.

Although in this jurisdiction the operator of a school bus service has been usually regarded as a private carrier,[9] primarily because he only caters to some specific or privileged individuals, and his operation is neither open to the indefinite public nor for public use, the exact nature of the operation of a school bus service has not been finally settled. This is the occasion to lay the matter to rest.

A carrier is a person or corporation who undertakes to transport or convey goods or persons from one place to another, gratuitously or for hire. The carrier is classified either as a private/special carrier or as a

[9] Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* 1993 Edition, at p. 7.

common/public carrier.[10] A private carrier is one who, without making the activity a vocation, or without holding himself or itself out to the public as ready to act for all who may desire his or its services, undertakes, *by special agreement in a particular instance only*, to transport goods or persons from one place to another either gratuitously or for hire.[11] The provisions on ordinary contracts of the *Civil Code* govern the contract of private carriage. The diligence required of a private carrier is only ordinary, that is, the diligence of a good father of the family. In contrast, a common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, *offering such services to the public*.[12] Contracts of common carriage are governed by the provisions on common carriers of the *Civil Code*, the *Public Service Act*,[13] and other special laws relating to transportation. A common carrier is required to observe extraordinary diligence, and is presumed to be at fault or to have acted negligently in case of the loss of the effects of passengers, or the death or injuries to passengers.[14]

In relation to common carriers, the Court defined *public use* in the following terms in *United States v. Tan Piaco*,[15] *viz*:

> "Public use" is the same as "use by the public". The essential feature of the public use is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the

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10 Id. at 4.

11 Perez, *Transportation Laws and Public Service Act*, 2001 Edition, p. 6.

12 Article 1732 of the *Civil Code* states:

Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

13 Commonwealth Act No. 146, as amended, particularly by PD No. 1, Integrated Reorganization Plan and E.O. 546.

14 Article 1756 of the *Civil Code* reads:

Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

15 40 Phil 853, 856 (1920).

> owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The true criterion by which to judge the character of the use is whether the public may enjoy it *by right* or only by permission.

In *De Guzman v. Court of Appeals*,[16] the Court noted that Article 1732 of the *Civil Code* avoided any distinction between a person or an enterprise offering transportation on a regular or an isolated basis; and has not distinguished a carrier offering his services to the general public, that is, the general community or population, from one offering his services only to a narrow segment of the general population.

Nonetheless, the concept of a common carrier embodied in Article 1732 of the *Civil Code* coincides neatly with the notion of *public service* under the *Public Service Act*, which supplements the law on common carriers found in the *Civil Code*. Public service, according to Section 13, paragraph (b) of the *Public Service Act*, includes:

> x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, **with general or limited clientèle, whether permanent or occasional, and done for the general business purposes,** any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x.[17]

Given the breadth of the aforequoted characterization of a common carrier, the Court has considered as common carriers pipeline operators,[18]

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16 G.R. No. L-47822, December 22, 1988, 168 SCRA 612, 617-618.

17 Public Service Act.

18 *First Philippine Industrial Corporation v. Court of Appeals*, G.R. No. 125948, December 29, 1998, 300 SCRA 661, 670.

custom brokers and warehousemen,[19] and barge operators[20] even if they had limited clientèle.

As all the foregoing indicate, the true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the individual or the entity rendering such service is a private, not a common, carrier. The question must be determined by the character of the business actually carried on by the carrier, not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes.[21]

Applying these considerations to the case before us, there is no question that the Pereñas as the operators of a school bus service were: (*a*) engaged in transporting passengers generally as a business, not just as a casual occupation; (*b*) undertaking to carry passengers over established roads by the method by which the business was conducted; and (*c*) transporting students for a fee. Despite catering to a limited clientèle, the Pereñas operated as a common carrier because they held themselves out as a ready transportation indiscriminately to the students of a particular school living within or near where they operated the service and for a fee.

The common carrier's standard of care and vigilance as to the safety of the passengers is defined by law. Given the nature of the business and for reasons of public policy, the common carrier is bound "to observe

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19 *Calvo v. UCPB General Insurance Co.*, G.R. No. 148496, March 19, 2002, 379 SCRA 510, 516.
20 *Asia Lighterage and Shipping, Inc. v. Court of Appeals*, G.R. No. 147246, August 9, 2003, 409 SCRA 340.
21 Agbayani, *supra*, note 9, pp. 7-8.

extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."[22] Article 1755 of the *Civil Code* specifies that the common carrier should "carry the passengers safely *as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances*." To successfully fend off liability in an action upon the death or injury to a passenger, the common carrier must prove his or its observance of that extraordinary diligence; otherwise, the legal presumption that he or it was at fault or acted negligently would stand.[23] No device, whether by stipulation, posting of notices, statements on tickets, or otherwise, may dispense with or lessen the responsibility of the common carrier as defined under Article 1755 of the *Civil Code*.[24]

And, secondly, the Pereñas have not presented any compelling defense or reason by which the Court might now reverse the CA's findings on their liability. On the contrary, an examination of the records shows that the evidence fully supported the findings of the CA.

As earlier stated, the Pereñas, acting as a common carrier, were already presumed to be negligent at the time of the accident because death had occurred to their passenger.[25] The presumption of negligence, being a presumption of law, laid the burden of evidence on their shoulders to establish that they had not been negligent.[26] It was the law no less that required them to prove their observance of extraordinary diligence in seeing to the safe and secure carriage of the passengers to their destination. Until they did so in a credible manner, they stood to be held legally responsible

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22 Article 1733, *Civil Code*.
23 Article 1756, *Civil Code*.
24 Article 1757, *Civil Code*.
25 *Supra*, note 13.
26 31A CJS, Evidence §134, citing *State Tax Commission v. Phelps Dodge Corporation*, 157 P. 2d 693, 62 Ariz. 320; *Kott v. Hilton*, 114 P. 2d 666, 45 C.A. 2d 548; *Lindley v. Mowell*, Civ. Ap. 232 S.W. 2d 256.

for the death of Aaron and thus to be held liable for all the natural consequences of such death.

There is no question that the Pereñas did not overturn the presumption of their negligence by credible evidence. Their defense of having observed the diligence of a good father of a family in the selection and supervision of their driver was not legally sufficient. According to Article 1759 of the *Civil Code*, their liability as a common carrier did not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employee. This was the reason why the RTC treated this defense of the Pereñas as inappropriate in this action for breach of contract of carriage.

The Pereñas were liable for the death of Aaron despite the fact that their driver might have acted beyond the scope of his authority or even in violation of the orders of the common carrier.[27] In this connection, the records showed their driver's actual negligence. There was a showing, to begin with, that their driver traversed the railroad tracks at a point at which the PNR did not permit motorists going into the Makati area to cross the railroad tracks. Although that point had been used by motorists as a shortcut into the Makati area, that fact alone did not excuse their driver into taking that route. On the other hand, with his familiarity with that shortcut, their driver was fully aware of the risks to his passengers but he still disregarded the risks. Compounding his lack of care was that loud music was playing inside the air-conditioned van at the time of the accident. The loudness most probably reduced his ability to hear the warning horns of the oncoming train to allow him to correctly appreciate the lurking dangers on the railroad tracks. Also, he sought to overtake a passenger bus on the left side as both vehicles traversed the railroad tracks. In so doing, he lost his view of the train that was then coming from the opposite side of the passenger bus,

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[27] Article 1759, *Civil Code*.

leading him to miscalculate his chances of beating the bus in their race, and of getting clear of the train. As a result, the bus avoided a collision with the train but the van got slammed at its rear, causing the fatality. Lastly, he did not slow down or go to a full stop before traversing the railroad tracks despite knowing that his slackening of speed and going to a full stop were in observance of the right of way at railroad tracks as defined by the traffic laws and regulations.[28] He thereby violated a specific traffic regulation on right of way, by virtue of which he was immediately presumed to be negligent.[29]

The omissions of care on the part of the van driver constituted negligence,[30] which, according to *Layugan v. Intermediate Appellate Court*,[31] is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do,[32] or as Judge Cooley defines it, '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"[33]

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[28] *E.g.*, Section 42(*d*) of Republic Act No. 4136 (*Land Transportation and Traffic Code*), which pertinently provides:

Section 42. *Right of way*. — xxx

xxx

(*d*) **The driver of a vehicle upon a highway shall bring to a full stop such vehicle before traversing any "through highway" or railroad crossing**: **provided, that when it is apparent that no hazard exists, the vehicle may be slowed down to five miles per hour instead of bringing it to a full stop**.

[29] Article 2185 of the *Civil Code* provides:

Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. (n)

See also *BLT Bus Company v. Intermediate Appellate Court*, No. L-74387-90, November 14, 1988, 167 SCRA 379.

[30] *Yamada v. Manila Railroad Co.*, No. 10073, 33 Phil. 8, 11 (1915).

[31] G.R. No. L-73998, November 14, 1988, 167 SCRA 363.

[32] Citing Black Law Dictionary, Fifth Edition, p. 930.

[33] Citing Cooley on Torts, Fourth Edition, Volume 3, p. 265.

The test by which to determine the existence of negligence in a particular case has been aptly stated in the leading case of *Picart v. Smith,*[34] thuswise:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence**. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. **The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.**
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> **The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case.** Abstract speculation cannot here be of much value but this much can be profitably said: **Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger**. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. **Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist**. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: **Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.** (Emphasis supplied)

Pursuant to the *Picart v. Smith* test of negligence, the Pereñas' driver was entirely negligent when he traversed the railroad tracks at a point not allowed for a motorist's crossing despite being fully aware of the grave harm to be thereby caused to his passengers; and when he disregarded the foresight of harm to his passengers by overtaking the bus on the left side as to leave himself blind to the approach of the oncoming train that he knew was on the opposite side of the bus.

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[34] 37 Phil 809 (1918).

Unrelenting, the Pereñas cite *Phil. National Railways v. Intermediate Appellate Court,*[35] where the Court held the PNR solely liable for the damages caused to a passenger bus and its passengers when its train hit the rear end of the bus that was then traversing the railroad crossing. But the circumstances of that case and this one share no similarities. In *Philippine National Railways v. Intermediate Appellate Court*, no evidence of contributory negligence was adduced against the owner of the bus. Instead, it was the owner of the bus who proved the exercise of extraordinary diligence by preponderant evidence. Also, the records are replete with the showing of negligence on the part of both the Pereñas and the PNR. Another distinction is that the passenger bus in *Philippine National Railways v. Intermediate Appellate Court* was traversing the dedicated railroad crossing when it was hit by the train, but the Pereñas' school van traversed the railroad tracks at a point not intended for that purpose.

At any rate, the lower courts correctly held both the Pereñas and the PNR "jointly and severally" liable for damages arising from the death of Aaron. They had been impleaded in the same complaint as defendants against whom the Zarates had the right to relief, whether jointly, severally, or in the alternative, in respect to or arising out of the accident, and questions of fact and of law were common as to the Zarates.[36] Although the basis of the right to relief of the Zarates (*i.e.*, breach of contract of carriage) against the Pereñas was distinct from the basis of the Zarates' right to relief against the PNR (*i.e.*, quasi-delict under Article 2176, *Civil Code*), they nonetheless could be held jointly and severally liable by virtue of their

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[35] G.R. No. 70547, January 22, 1993, 217 SCRA 401.

[36] The rule on permissive joinder of parties is Section 6, Rule 3, of the *Rules of Court*, to wit:

Section 6. *Permissive joinder of parties*. — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest. (6)

respective negligence combining to cause the death of Aaron. As to the PNR, the RTC rightly found the PNR also guilty of negligence despite the school van of the Pereñas traversing the railroad tracks at a point not dedicated by the PNR as a railroad crossing for pedestrians and motorists, because the PNR did not ensure the safety of others through the placing of crossbars, signal lights, warning signs, and other permanent safety barriers to prevent vehicles or pedestrians from crossing there. The RTC observed that the fact that a crossing guard had been assigned to man that point from 7 a.m. to 5 p.m. was a good *indicium* that the PNR was aware of the risks to others as well as the need to control the vehicular and other traffic there. Verily, the Pereñas and the PNR were joint tortfeasors.

2.
Was the indemnity for loss of
Aaron's earning capacity proper?

The RTC awarded indemnity for loss of Aaron's earning capacity. Although agreeing with the RTC on the liability, the CA modified the amount. Both lower courts took into consideration that Aaron, while only a high school student, had been enrolled in one of the reputable schools in the Philippines and that he had been a normal and able-bodied child prior to his death. The basis for the computation of Aaron's earning capacity was not what he would have become or what he would have wanted to be if not for his untimely death, but the minimum wage in effect at the time of his death. Moreover, the RTC's computation of Aaron's life expectancy rate was not reckoned from his age of 15 years at the time of his death, but on 21 years, his age when he would have graduated from college.

We find the considerations taken into account by the lower courts to be reasonable and fully warranted.

Yet, the Pereñas submit that the indemnity for loss of earning capacity was speculative and unfounded. They cited *People v. Teehankee, Jr.*,[37] where the Court deleted the indemnity for victim Jussi Leino's loss of earning capacity as a pilot for being speculative due to his having graduated from high school at the International School in Manila only two years before the shooting, and was at the time of the shooting only enrolled in the first semester at the Manila Aero Club to pursue his ambition to become a professional pilot. That meant, according to the Court, that he was for all intents and purposes only a high school graduate.

We reject the Pereñas' submission.

First of all, a careful perusal of the *Teehankee, Jr.* case shows that the situation there of Jussi Leino was not akin to that of Aaron here. The CA and the RTC were not speculating that Aaron would be some highly-paid professional, like a pilot (or, for that matter, an engineer, a physician, or a lawyer). Instead, the computation of Aaron's earning capacity was premised on him being a lowly minimum wage earner despite his being then enrolled at a prestigious high school like Don Bosco in Makati, a fact that would have likely ensured his success in his later years in life and at work.

And, secondly, the fact that Aaron was then without a history of earnings should not be taken against his parents and in favor of the defendants whose negligence not only cost Aaron his life and his right to work and earn money, but also deprived his parents of their right to his presence and his services as well. Our law itself states that the loss of the earning capacity of the deceased shall be the liability of the guilty party in favor of the heirs of the deceased, and shall in every case be assessed and awarded by the court "unless the deceased on account of permanent physical

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[37] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

disability not caused by the defendant, had no earning capacity at the time of his death."[38] Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money.[39]

This favorable treatment of the Zarates' claim is not unprecedented. In *Cariaga v. Laguna Tayabas Bus Company and Manila Railroad Company,*[40] fourth-year medical student Edgardo Carriaga's earning capacity, although he survived the accident but his injuries rendered him permanently incapacitated, was computed to be that of the physician that he dreamed to become. The Court considered his scholastic record sufficient to justify the assumption that he could have finished the medical course and would have passed the medical board examinations in due time, and that he could have possibly earned a modest income as a medical practitioner. Also, in *People v. Sanchez,*[41] the Court opined that murder and rape victim Eileen Sarmienta and murder victim Allan Gomez could have easily landed good-paying jobs had they graduated in due time, and that their jobs would probably pay them high monthly salaries from ₱10,000.00 to ₱15,000.00 upon their graduation. Their earning capacities were computed at rates higher than the minimum wage at the time of their deaths due to their being already senior agriculture students of the University of the Philippines in Los Baños, the country's leading educational institution in agriculture.

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38 Article 2206 (1), *Civil Code*.
39 *People v. Teehankee, Jr., supra,* note 37, at 207. See also 25 CJS, Damages, §40.
40 110 Phil 346 (1960).
41 G.R. Nos. 121039-121045, October 18, 2001, 367 SCRA 520.

3.
Were the amounts of damages excessive?

The Pereñas plead for the reduction of the moral and exemplary damages awarded to the Zarates in the respective amounts of ₱2,500,000.00 and ₱1,000,000.00 on the ground that such amounts were excessive.

The plea is unwarranted.

The moral damages of ₱2,500,000.00 were really just and reasonable under the established circumstances of this case because they were intended by the law to assuage the Zarates' deep mental anguish over their son's unexpected and violent death, and their moral shock over the senseless accident. That amount would not be too much, considering that it would help the Zarates obtain the means, diversions or amusements that would alleviate their suffering for the loss of their child. At any rate, reducing the amount as excessive might prove to be an injustice, given the passage of a long time from when their mental anguish was inflicted on them on August 22, 1996.

Anent the ₱1,000,000.00 allowed as exemplary damages, we should not reduce the amount if only to render effective the desired example for the public good. As a common carrier, the Pereñas needed to be vigorously reminded to observe their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again. Only by an award of exemplary damages in that amount would suffice to instill in them and others similarly situated like them the ever-present need for greater and constant vigilance in the conduct of a business imbued with public interest.

WHEREFORE, we **DENY** the petition for review on *certiorari*; **AFFIRM** the decision promulgated on November 13, 2002; and **ORDER** the petitioners to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice