Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

R TRANSPORT CORPORATION, Petitioner,	**G.R. No. 174161**
	Present:
- *versus* –	VELASCO, JR., *J., Chairperson,* PERALTA, DEL CASTILLO,* VILLARAMA, JR., and REYES, *JJ.*
	Promulgated:
LUISITO G. YU, Respondent.	February 18, 2015

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution,[2] dated September 9, 2005 and August 8, 2006, respectively, of the Court of Appeals (*CA*) in CA-G.R. CV No. 84175.

The antecedent facts are as follows:

At around 8:45 in the morning of December 12, 1993, Loreta J. Yu, after having alighted from a passenger bus in front of Robinson's Galleria along the north-bound lane of Epifanio de los Santos Avenue (*EDSA*), was

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* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 1934 dated February 11, 2015.

1 Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Rebecca De Guia-Salvador and Arcangelita Romilla-Lontok concurring; *rollo*, pp. 23-30.

2 *Id.* at 32-33.

hit and run over by a bus driven by Antonio P. Gimena, who was then employed by petitioner R Transport Corporation. Loreta was immediately rushed to Medical City Hospital where she was pronounced dead on arrival.[3]

On February 3, 1994, the husband of the deceased, respondent Luisito G. Yu, filed a Complaint for damages before the Regional Trial Court (*RTC*) of Makati City against petitioner R Transport, Antonio Gimena, and Metro Manila Transport Corporation (*MMTC*) for the death of his wife. MMTC denied its liability reasoning that it is merely the registered owner of the bus involved in the incident, the actual owner, being petitioner R Transport.[4] It explained that under the Bus Installment Purchase Program of the government, MMTC merely purchased the subject bus, among several others, for resale to petitioner R Transport, which will in turn operate the same within Metro Manila. Since it was not actually operating the bus which killed respondent's wife, nor was it the employer of the driver thereof, MMTC alleged that the complaint against it should be dismissed.[5] For its part, petitioner R Transport alleged that respondent had no cause of action against it for it had exercised due diligence in the selection and supervision of its employees and drivers and that its buses are in good condition. Meanwhile, the driver Antonio Gimena was declared in default for his failure to file an answer to the complaint.

After trial on the merits, wherein the parties presented their respective witnesses and documentary evidence, the trial court rendered judgment in favor of respondent Yu ruling that petitioner R Transport failed to prove that it exercised the diligence required of a good father of a family in the selection and supervision of its driver, who, by its negligence, ran over the deceased resulting in her death. It also held that MMTC should be held solidarily liable with petitioner R Transport because it would unduly prejudice a third person who is a victim of a tort to look beyond the certificate of registration and prove who the actual owner is in order to enforce a right of action. Thus, the trial court ordered the payment of damages in its Decision[6] dated June 3, 2004, the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering defendants Rizal Transport and Metro Manila Transport Corporation to be primarily and solidarily liable and defendant Antonio Parraba Gimena subsidiarily liable to plaintiff Luisito Yu as follows:
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> 1. Actual damages in the amount of Php78,357.00 subject to interest at the legal rate from the filing of the complaint until fully paid;

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3 *Id*. at 136.
4 *Id*. at 24.
5 *Id*. at 137.
6 Penned by Presiding Judge Rebecca R. Mariano, *id*. at 136-140.

2. Loss of income in the amount of Php500,000.00;
3. Moral damages in the amount of ₱150,000.00;
4. Exemplary damages in the amount of ₱20,000.00;
5. Attorney's fees in the amount of ₱10,000.00; and
6. Costs of suit.[7]

On September 9, 2005, the CA affirmed the Decision of the RTC with modification that defendant Antonio Gimena is made solidarily liable for the damages caused to respondent. According to the appellate court, considering that the negligence of Antonio Gimena was sufficiently proven by the records of the case, and that no evidence of whatever nature was presented by petitioner to support its defense of due diligence in the selection and supervision of its employees, petitioner, as the employer of Gimena, may be held liable for the damage caused. The CA noted that the fact that petitioner is not the registered owner of the bus which caused the death of the victim does not exculpate it from liability.[8] Thereafter, petitioner's Motion for Reconsideration was further denied by the CA in its Resolution[9] dated August 8, 2006.

Hence, the present petition.

Petitioner essentially invokes the following ground to support its petition:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE REGIONAL TRIAL COURT FINDING PETITIONER LIABLE FOR THE DAMAGES CAUSED BY THE NEGLIGENCE OF ITS EMPLOYEE, WHICH WAS NOT SUPPORTED BY THE EVIDENCE ON RECORD.

Petitioner insists that the CA and the RTC were incorrect in ruling that its driver was negligent for aside from the mere speculations and uncorroborated testimonies of the police officers on duty at the time of the accident, no other evidence had been adduced to prove that its driver was driving in a reckless and imprudent manner. It asserts that contrary to the findings of the courts below, the bus from which the victim alighted is actually the proximate cause of the victim's death for having unloaded its passengers on the lane where the subject bus was traversing. Moreover, petitioner reiterates its argument that since it is not the registered owner of the bus which bumped the victim, it cannot be held liable for the damage caused by the same.

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7 *Id*. at 140.
8 *BA Finance Corp. v. Court of Appeals*, G.R. No. 98275, November 13, 1992, 215 SCRA 715, 720.
9 *Rollo*, pp. 32-33.

We disagree.

Time and again, it has been ruled that whether a person is negligent or not is a question of fact which this Court cannot pass upon in a petition for review on *certiorari*, as its jurisdiction is limited to reviewing errors of law.[10] This Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial and the appellate courts on the matter of petitioners' negligence coincide. As a general rule, therefore, the resolution of factual issues is a function of the trial court, whose findings on these matters are binding on this Court, more so where these have been affirmed by the Court of Appeals,[11]save for the following exceptional and meritorious circumstances: (1) when the factual findings of the appellate court and the trial court are contradictory; (2) when the findings of the trial court are grounded entirely on speculation, surmises or conjectures; (3) when the lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (6) when there is a misappreciation of facts; (7) when the findings of fact are themselves conflicting; and (8) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[12]

After a review of the records of the case, we find no cogent reason to reverse the rulings of the courts below for none of the aforementioned exceptions are present herein. Both the trial and appellate courts found driver Gimena negligent in hitting and running over the victim and ruled that his negligence was the proximate cause of her death. Negligence has been defined as "the 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."[13] Verily, foreseeability is the fundamental test of negligence.[14] It is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs,

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[10] *Filipinas Synthetic Fiber Corporation v. De los Santos, et. al*., G.R. No. 152033, March 16, 2011, 645 SCRA 463, 468, citing *Estacion v. Bernardo*, 518 Phil. 388, 398 (2006), citing *Yambao v. Zuñiga*, 463 Phil. 650, 657 (2003).

[11] *Lampesa v. De Vera*, 569 Phil. 14, 20 (2008), citing *Yambao v. Zuñiga*, *supra*, at 657-658.

[12] *Philippine Health-Care Providers, Inc. (Maxicare) v. Estrada*, 566 Phil. 603, 610 (2008), citing *Ilao-Quianay v. Mapile*, 510 Phil. 736, 744-745 (2005); *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168-1169 (1997).

[13] *Philippine National Railways v. Court of Appeals, et. al.*, 562 Phil. 141, 148 (2007), citing *Corliss v. The Manila Railroad Company*, 137 Phil. 101, 107 (1969).

[14] *Philippine Hawk Corporation v. Vivian Tan Lee*, 626 Phil. 483, 494 (2010), citing *Achevara v. Ramos*, 617 Phil. 72, 85 (2009).

would do, or the doing of something which a prudent and reasonable man would not do.[15]

In this case, the records show that driver Gimena was clearly running at a reckless speed. As testified by the police officer on duty at the time of the incident[16] and indicated in the Autopsy Report,[17] not only were the deceased's clothes ripped off from her body, her brain even spewed out from her skull and spilled over the road. Indeed, this Court is not prepared to believe petitioner's contention that its bus was travelling at a "normal speed" in preparation for a full stop in view of the fatal injuries sustained by the deceased. Moreover, the location wherein the deceased was hit and run over further indicates Gimena's negligence. As borne by the records, the bus driven by Gimena bumped the deceased in a loading and unloading area of a commercial center. The fact that he was approaching such a busy part of EDSA should have already cautioned the driver of the bus. In fact, upon seeing that a bus has stopped beside his lane should have signalled him to step on his brakes to slow down for the possibility that said bus was unloading its passengers in the area. Unfortunately, he did not take the necessary precaution and instead, drove on and bumped the deceased despite being aware that he was traversing a commercial center where pedestrians were crossing the street. Ultimately, Gimena should have observed due diligence of a reasonably prudent man by slackening his speed and proceeding cautiously while passing the area.

Under Article 2180[18] of the New Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Once negligence on the part of the employee is established, a presumption instantly arises that the employer was remiss in the selection and/or supervision of the negligent employee. To avoid liability for the quasi-delict committed by its employee, it is incumbent upon the employer to rebut this presumption by presenting adequate and convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employees.[19]

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15 *Pereña v. Zarate*, G.R. No. 157917, August 29, 2012, 679 SCRA 209, 230, citing *Layugan v. Intermediate Appellate Court*, 249 Phil. 363, 373 (1988), citing Black Law Dictionary, Fifth Edition, p. 930.

16 *Rollo*, p. 8.

17 *Id*. at 103.

18 Article 2180 of the New Civil Code provides:

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

19 *Lampesa v. De Vera, et. al*., *supra* note 11, at 20-21, citing *Syki v. Begasa*, 460 Phil. 381, 386 (2003).

Unfortunately, however, the records of this case are bereft of any proof showing the exercise by petitioner of the required diligence. As aptly observed by the CA, no evidence of whatever nature was ever presented depicting petitioner's due diligence in the selection and supervision of its driver, Gimena, despite several opportunities to do so. In fact, in its petition, apart from denying the negligence of its employee and imputing the same to the bus from which the victim alighted, petitioner merely reiterates its argument that since it is not the registered owner of the bus which bumped the victim, it cannot be held liable for the damage caused by the same. Nowhere was it even remotely alleged that petitioner had exercised the required diligence in the selection and supervision of its employee. Because of this failure, petitioner cannot now avoid liability for the quasi-delict committed by its negligent employee.

At this point, it must be noted that petitioner, in its relentless attempt to evade liability, cites our rulings in *Vargas v. Langcay*[20] and *Tamayo v. Aquino*[21] insisting that it should not be held solidarily liable with MMTC for it is not the registered owner of the bus which killed the deceased. However, this Court, in *Jereos v. Court of Appeals, et al.,*[22] rejected such contention in the following wise:

> **Finally, the petitioner, citing the case of *Vargas vs. Langcay*, contends that it is the registered owner of the vehicle, rather than the actual owner, who must be jointly and severally liable with the driver of the passenger vehicle for damages incurred by third persons as a consequence of injuries or death sustained in the operation of said vehicle.**
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> **The contention is devoid of merit. While the Court therein ruled that the registered owner or operator of a passenger vehicle is jointly and severally liable with the driver of the said vehicle for damages incurred by passengers or third persons as a consequence of injuries or death sustained in the operation of the said vehicle, the Court did so to correct the erroneous findings of the Court of Appeals that the liability of the registered owner or operator of a passenger vehicle is merely subsidiary, as contemplated in Art. 103 of the Revised Penal Code. In no case did the Court exempt the actual owner of the passenger vehicle from liability.** On the contrary, it adhered to the rule followed in the cases of *Erezo vs. Jepte, Tamayo vs. Aquino*, and *De Peralta vs. Mangusang*, among others, that the registered owner or operator has the right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused.
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> The right to be indemnified being recognized, recovery by the registered owner or operator may be made in any form-either by a cross-claim, third-party complaint, or an independent action. The result is the same.[23]

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20 116 Phil. 478 (1962).
21 105 Phil. 949 (1959).
22 202 Phil. 715 (1982).
23 *Jereos v. Court of Appeals, et al., supra,* at 720-721. (Emphasis ours; citations omitted)

Moreover, while We held in *Tamayo* that the responsibility of the registered owner and actual operator of a truck which caused the death of its passenger is not solidary, We noted therein that the same is due to the fact that the action instituted was one for breach of contract, to wit:

> The decision of the Court of Appeals is also attacked insofar as it holds that inasmuch as the third-party defendant had used the truck on a route not covered by the registered owner's franchise, both the registered owner and the actual owner and operator should be considered as joint tortfeasors and should be made liable in accordance with Article 2194 of the Civil Code. This Article is as follows:
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> > Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary.
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> **But the action instituted in the case at bar is one for breach of contract, for failure of the defendant to carry safely the deceased for her destination. The liability for which he is made responsible, i.e., for the death of the passenger, may not be considered as arising from a quasi-delict. As the registered owner Tamayo and his transferee Rayos may not be held guilty of tort or a quasi-delict; their responsibility is not solidary as held by the Court of Appeals.**
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> The question that poses, therefore, is how should the holder of the certificate of public convenience, Tamayo, participate with his transferee, operator Rayos, in the damages recoverable by the heirs of the deceased passenger, if their liability is not that of Joint tortfeasors in accordance with Article 2194 of the Civil Code. The following considerations must be borne in mind in determining this question. As Tamayo is the registered owner of the truck, his responsibility to the public or to any passenger riding in the vehicle or truck must be direct, for the reasons given in our decision in the case of *Erezo vs. Jepte*, *supra*, as quoted above. But as the transferee, who operated the vehicle when the passenger died, is the one directly responsible for the accident and death he should in turn be made responsible to the registered owner for what the latter may have been adjudged to pay. In operating the truck without transfer thereof having been approved by the Public Service Commission, the transferee acted merely as agent of the registered owner and should be responsible to him (the registered owner), for any damages that he may cause the latter by his negligence.[24]

However, it must be noted that the case at hand does not involve a breach of contract of carriage, as in *Tamayo*, but a tort or quasi-delict under Article 2176,[25] in relation to Article 2180[26] of the New Civil Code. As such, the liability for which petitioner is being made responsible actually arises not

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[24] *Tamayo v. Aquino, supra* note 21, at 953. (Emphasis ours)

[25] Article 2176 of the New Civil Code provides:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

[26] *Supra* note 17.

from a pre-existing contractual relation between petitioner and the deceased, but from a damage caused by the negligence of its employee. Petitioner cannot, therefore, rely on our ruling in *Tamayo* and escape its solidary liability for the liability of the employer for the negligent conduct of its subordinate is direct and primary, subject only to the defense of due diligence in the selection and supervision of the employee.[27]

Indeed, this Court has consistently been of the view that it is for the better protection of the public for both the owner of record and the actual operator to be adjudged jointly and severally liable with the driver.[28] As aptly stated by the appellate court, "the principle of holding the registered owner liable for damages notwithstanding that ownership of the offending vehicle has already been transferred to another is designed to protect the public and not as a shield on the part of unscrupulous transferees of the vehicle to take refuge in, inorder to free itself from liability arising from its own negligent act."[29]

Hence, considering that the negligence of driver Gimena was sufficiently proven by the records of the case, and that no evidence of whatever nature was presented by petitioner to support its defense of due diligence in the selection and supervision of its employees, petitioner, as the employer of Gimena, may be held liable for damages arising from the death of respondent Yu's wife.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision and Resolution, dated September 9, 2005 and August 8, 2006, respectively, of the Court of Appeals in CA-G.R. CV No. 84175 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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27 *Rafael Reyes Trucking Corporation v. People of the Philippines*, 386 Phil. 41, 57 (2000).

28 *Zamboanga Transportation Company, Inc. v. Court of Appeals,* 141 Phil. 406, 413 (1969), citing the Decision of Court of Appeals Justice Fred Ruiz Castro, citing *Dizon v. Octavio, et al.,* 51 O.G. No. 8, 4059-4061; *Castanares v. Pages*, CA-G.R. 21809-R, March 8, 1962; *Redado v.. Bautista*, CA-G.R. 19295-R, Sept. 19, 1961; *Bering v. Noeth*, CA-G.R. 28483-R, April 29 1965.

29 *Rollo*, p. 29.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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