



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VICENTE JOSEFA,
Petitioner,

G.R. No. 182705

Present:

- versus -

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

MANILA ELECTRIC COMPANY,
Respondent.

JUL 18 2014 *MANILA ELECTRIC COMPANY*

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*¹ filed by petitioner Vicente Josefa, doing business under the name and style of 747 Lumber and Construction Supply, to challenge the January 31, 2008 decision² and the April 29, 2008 resolution³ of the Court of Appeals (*CA*) in CA-G.R. CV No. 87512.

The Factual Antecedents

At around 1:45 p.m. on April 21, 1991, a dump truck, a jeepney and a car figured in a vehicular accident along Ortigas Avenue, Pasig City.⁴ As a result of the accident, a 45-foot wooden electricity post, three 75 KVA transformers, and other electrical line attachments were damaged.⁵ Upon investigation, respondent Manila Electric Company (*Meralco*) discovered

¹ Dated June 16, 2008 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 10-30.

² Id. at 38-50; penned by Associate Justice Vicente Q. Roxas, and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

³ Id. at 52.

⁴ Id. at 40.

⁵ Id. at 54.

that it was the truck with plate number PAK-874 and registered in Josefa's name that hit the electricity post.⁶

In a letter dated April 19, 1993, Meralco demanded from Josefa reimbursement for the replacement cost of the electricity post and its attachments, but Josefa refused to pay.⁷ Thus, on September 28, 1993, Meralco sued Josefa and Pablo Manoco, the truck driver, for damages before the Regional Trial Court (RTC) of Pasig City.⁸

Proceedings before the RTC

In its complaint, Meralco alleged that Manoco's reckless driving resulted in damage to its properties. It also imputed primary liability on Josefa for his alleged negligence in the selection and supervision of Manoco. It thus prayed for the indemnification of the amount of ₱384,846.00 as actual damages, ₱50,000.00 as attorney's fees, ₱10,000.00 as litigation expenses, and the costs of the suit.⁹

In defense, Josefa denied that Manoco was his employee when the accident occurred. He also maintained that he exercised the diligence of a good father of a family in the selection and supervision of all his employees. As a counterclaim, he sought the payment of attorney's fees for Meralco's filing of a baseless complaint.¹⁰

On January 11, 1994, Meralco amended its complaint to correct the name "Pablo Manoco" to Pablo Manojó Bautista (*Bautista*),¹¹ but soon dropped him as a party defendant in the case for failure to serve him summons.¹²

A. Evidence for Meralco

During trial, Meralco offered the testimonies of six witnesses as well as documentary evidence to substantiate its claim for damages against Josefa:

Juan Fernandez, Meralco's senior legal investigator, testified that he arrived at the scene of the accident at around 2:30 p.m. on that fateful day and saw Meralco employees installing a new electricity post. He interviewed the people in the vicinity who told him that it was the truck that rammed the electricity post.¹³ He thus proceeded to the police station at Caruncho Complex, Pasig City and talked to SPO2 Alexander Galang who informed

⁶ Id. at 42-43.

⁷ CA *rollo*, p. 391.

⁸ *Rollo*, pp. 53-55.

⁹ *Ibid.*

¹⁰ Id. at 56-57.

¹¹ Id. at 59-61.

¹² Id. at 65.

¹³ CA *rollo*, pp.129, 131.

him that the owner of the offending vehicle was Josefa.¹⁴ Fernandez also identified and authenticated the investigation report dated April 21, 1991¹⁵ (Exhibit “A”) summarizing the result of his investigation.¹⁶

Elmer Albio identified himself as the driver of the jeepney that was involved in the accident. He testified that a truck suddenly hit the rear of his jeepney while he was driving along Ortigas Avenue, Pasig City; he thus lost control of the jeepney and hit a Nissan car on the other lane of the road. Thereafter, the truck hit the electricity post.

SPO2 Manuel Valiente testified that he immediately went to the scene of the accident after a concerned citizen went to the police station and informed him about the accident.¹⁷ However, he could no longer recall the truck’s exact position with reference to the electricity post at the time of his arrival at the scene of the accident.¹⁸

SPO2 Galang stated that one of his functions as a traffic accident investigator was to record vehicular accidents in the police blotter book. He identified and authenticated a certified true copy of the police blotter dated January 7, 1994 (Exhibit “B”) but admitted that he neither saw nor investigated the accident.¹⁹

Vitaliano Espiritu, Meralco’s foreman, testified that he replaced the damaged electricity post, transformers, and other electrical line attachments after receiving an emergency radio call from a Meralco personnel.²⁰

Carlos Zapanta, Meralco’s supervising accountant, affirmed that Meralco incurred actual damages totaling ₱384,846.00. To support his finding, he identified and authenticated two pieces of evidence, the memorandum dated October 7, 1992 (Exhibit “C”) and the document dated March 29, 1993 (Exhibit “D”). Exhibit “C” is a letter from Meralco’s legal department requesting the accounting department for a computation of actual damages.²¹ On the other hand, Exhibit “D” provides a detailed computation of actual damages that Meralco allegedly suffered.²² On cross-examination, Zapanta stated that the computation was based on “supplementary time sheets,” “trip tickets,” and other documents provided by Meralco’s distribution office;²³ however, Meralco did not present these documents during trial.

¹⁴ Id. at 132-135.

¹⁵ Id. at 384.

¹⁶ Id. at 130.

¹⁷ CA *rollo*, pp. 159-161.

¹⁸ Id. at 163-164.

¹⁹ Id. at 264, 267.

²⁰ Id. at 275, 278.

²¹ Id. at 386.

²² Id. at 387-389.

²³ Id. at 296.

In an order dated January 15, 1997, the RTC admitted all documentary evidence that Meralco offered after its presentation of testimonial evidence.²⁴

B. Evidence for Josefa

Upon Meralco's presentment of evidence, Josefa filed a demurrer to evidence²⁵, but was denied by the RTC.²⁶ Josefa assailed the denial of his demurrer in a petition for *certiorari* before the CA which, however, affirmed the RTC rulings.²⁷ Thereafter, Josefa filed a motion for extension to file a petition for review on *certiorari* before the Court. After we denied the motion for its procedural infirmities,²⁸ the RTC ordered Josefa to present his evidence-in-chief. The RTC eventually declared the case as submitted for decision without Josefa's evidence-in-chief due to the numerous and unreasonable delays that he incurred in the presentation of evidence.²⁹

The RTC Ruling

In a decision dated April 10, 2006, the RTC dismissed the complaint for insufficiency of evidence. The RTC held that Meralco failed to establish that it was the truck that hit the electricity post. The RTC ruled that SPO2 Galang's account of the accident was merely hearsay since he did not personally witness the incident. It also did not give probative value to the police blotter entry dated January 7, 1994 since the accident had long occurred in 1991. The RTC likewise denied Meralco's claim for actual damages for lack of evidentiary support.³⁰

The CA Ruling

The CA reversed the RTC ruling and held that the RTC erred in disregarding the parties' stipulation at the pre-trial that it was the truck that hit the electricity post. The CA also found that Bautista was Josefa's employee when the accident occurred since Josefa did not specifically deny this material allegation in the amended complaint. It likewise noted that the sheriff's return stated that Bautista was under Josefa's employ until 1993.

The CA concluded that the fact that the truck hit the electricity post was sufficient to hold Josefa vicariously liable regardless of whether Bautista was negligent in driving the truck. In the same breath, the CA also stated that the employer's presumptive liability in quasi-delicts was anchored on injuries caused by the employee's negligence. It further ruled

²⁴ Id. at 314.

²⁵ Id. at 396-400.

²⁶ Id. at 406.

²⁷ Id. at 484.

²⁸ Id. at 509.

²⁹ Id. at 583.

³⁰ *Rollo*, pp. 69-84.

that Josefa failed to rebut the presumption that he negligently selected and supervised Bautista in employment since he did not present his evidence-in-chief during trial. Even assuming that Bautista was not Josefa's employee, the CA maintained that Josefa would still be liable for damages since the law presumes that the registered owner has control of his vehicle and its driver at the time of the accident. It thus ordered Josefa to pay Meralco: (1) ₱384,846.00 as actual damages; (2) ₱50,000.00 as attorney's fees; (3) ₱10,000.00 as expenses of litigation; and (4) double the costs of the suit.

Josefa filed the present petition after the CA denied³¹ his motion for reconsideration.³²

The Petition

Josefa argues that the CA gravely erred in reversing the RTC's factual findings. He insists that the finding that it was the truck that hit the electricity post lacks evidentiary support. Furthermore, Meralco failed to substantiate its claim for actual damages by competent testimonial and documentary evidence. Josefa likewise asserts that Meralco is not entitled to attorney's fees since it also contributed to the delay in the proceedings. He points out that Meralco sought for postponements of hearings during trial and failed to assist the sheriff in serving the summons to Bautista.³³

The Respondent's Position

In its *Comment*, Meralco takes the opposite view that it is the RTC ruling that is unsupported by evidence. Meralco maintains that the RTC erroneously ruled in favor of Josefa who did not present his evidence-in-chief during trial. Meralco also posits that Josefa's vicariously liability finds support in Articles 2176 and 2180 of the Civil Code which hold the employer primarily liable for damages caused by the employee who acted within the scope of his assigned tasks. It also asserts that Josefa's unjustified refusal to pay its just and valid claim for actual damages warrants the award of attorney's fees.³⁴

The Issues

This case presents to us the following issues:

- (1) Whether the truck with plate number PAK-874 hit the electricity post;
- (2) Whether Bautista exercised due diligence in driving when the truck hit the electricity post;

³¹ *Supra* note 3.

³² *Supra* note 2.

³³ *Supra* note 1.

³⁴ *Id.* at 107-112.

- (3) Whether Josefa is vicariously liable for Bautista's negligence under paragraph 5, Article 2180 of the Civil Code;
 - (a) Whether there is an employer-employee relationship between Bautista and Josefa;
 - (b) Whether Josefa exercised the diligence of a good father of a family in the selection and supervision of Bautista; and
- (4) Whether Meralco is entitled to actual damages, attorney's fees, and expenses of litigation.

Our Ruling

We partially affirm the CA's ruling.

I. The Court may review factual questions in a petition for review on certiorari when a conflict exists in findings of the lower courts

We are aware that the issues before us involve factual questions which require us to review the presented pieces of evidence before the trial court. While a petition for review on *certiorari* precludes this Court from entertaining factual issues, we can review the pieces of evidence, by way of exception, when a conflict exists in the findings of the RTC and the CA.³⁵ We see this exceptional situation here and thus examine the relevant pieces of evidence presented before the trial court.

II. Bautista's negligence was the proximate cause of the property damage caused to Meralco

A. The truck hit the electricity post

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. This fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict.³⁶ Thus, for a quasi-delict case to prosper, the complainant must establish: (1) damages to the complainant; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond, was guilty; and **(3) the connection of cause and effect between such negligence and the damages.**³⁷ With respect to the

³⁵ *Carvajal v. Luzon Development Bank and/or Ramirez*, G.R. No. 186169, August 1, 2012, 678 SCRA 132-133, 140-141; and *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224.

³⁶ CIVIL CODE, Article 2176.

³⁷ *Vergara v. Court of Appeals*, 238 Phil. 566, 568 (1987).

third element, the negligent act or omission must be the proximate cause of the injury.

Contrary to the CA's finding, the parties did not stipulate that the truck hit the electricity post. The pre-trial order shows that the parties merely agreed that the truck "was **involved** in an accident on April 21, 1991 at around 1:45 o'clock in the afternoon along Ortigas Avenue, Rosario, Pasig City." The parties in fact posed the issue of whether the truck rammed the electricity post as one of the factual questions to be resolved by the trial court during the pre-trial conference.³⁸

We also agree with Josefa that Fernandez and SPO2 Galang's testimonies regarding the truck hitting the electricity post are hearsay and should not be given credence. Fernandez and SPO2 Galang merely testified and conveyed to the court matters only narrated to them by other people who were not presented in court. Hearsay evidence has no probative value because it is merely the witness' recitation of what someone else has told him, whether orally or in writing. A witness can testify only to those facts which are derived from his own perception.³⁹

Nonetheless, Meralco has sufficiently established the direct causal link between the truck and the electricity post through Abio's testimony. Abio categorically stated during trial that he saw the truck hit the electricity post. We find his first-hand account of the incident during the direct-examination frank and straightforward. More importantly, Josefa failed to impeach the veracity of Abio's testimony during the cross-examination. Abio even reiterated that it was Josefa's truck that rammed the electricity post.⁴⁰ We thus give full faith and credence to his positive, unrebutted, and

³⁸ The Pre-Trial Order dated May 22, 1996 provides:

ADMISSIONS:

1. That Vicente Josefa is the owner of a dump truck with plate number PAK-874;
2. That said dump truck is being used in the defendant's business, 747 Lumber and Construction Supply located at Caruncho Avenue, Pasig City.
3. **That said dump truck was involved in an accident on April 21, 1991 at around 1:45 o'clock in the afternoon along Ortigas Avenue, Rosario, Pasig City; and**
4. That said dump truck was brought to the police precinct at the corner of Ortigas Avenue and Ortigas Avenue Extension.

ISSUES TO BE RESOLVED:

1. **Whether or not it was the dump truck of the defendant which bumped or hit the Meralco pole carrying three (3) transformers which were damaged due to the impact; x x x [emphasis ours] (see *rollo*, p. 66)**

³⁹ RULES OF COURT, Rule 130, Section 36.

⁴⁰ Elmer Abio testified during his direct-examination:

Q: On April 21, 1991, and Sunday, do you recall having driven your passenger jeep?

A: Yes, sir.

Q: By the way, who is the owner of this passenger jeep that you are driving?

A: It's my brother jeep, sir.

Q: What's the name of your brother?

A: Juanito Abio.

categorical declaration on the witness stand, made under solemn oath, that it was the truck that caused damage to Meralco's property.

Even without Abio's testimony, it does not escape this Court's attention that Josefa **judicially admitted** in his motions and pleading that his truck hit the electricity post. In a motion to dismiss dated March 17, 1997, Josefa stated:

"1. This action was commenced by plaintiff to recover from defendant the sum of P384,846.00 as actual damages resulting from the vehicular mishap which occurred on April 21, 1991 along Ortigas Avenue, Rosario, Pasig City, Metro Manila, whereby **defendant's dump truck with plate No. PAK 874 hit and bumped plaintiff's 45-foot wooden pole;**⁴¹" (emphasis and underline ours)

Josefa further declared in his motion for reconsideration dated February 22, 2008:

Q: Do you recall of any unusual incident in connection with the performance of your job on April 21, 1991.

A: Yes, sir.

Q: Will you kindly tell us what is that unusual incident all about?

A: My jeep was running going to Crossing, before reaching the corner of Tramo, I saw a truck which is fast approaching. My speed is 30 to 40 because there were many people crossing. After that, there is somebody bumped my back, then, when I was bumped a car is approaching I had no control because it was sudden, I bumped the approaching car while **the truck bumped into the Meralco post that has three (3) transformers.**

Q: You said you saw the speeding delivery truck, how?

A: Coming from the top, the bridge of Tramo, I saw him on speeding but I'm on the line, "Siyempre. Medyo alalay lang ako ng kaunti, pero wala siyang signal pang emergency na kung siya ay pupunta sa kaliwa or kung saan siya pupunta."

X X X X

COURT: Mr. Witness, the question is how did you see the truck. How?

A: I saw it when it was bumped the post.

X X X X

Q: How about the delivery truck, you said a while ago that it hit the Meralco pole, with 3 transformers were you able to check or verify what portion of the truck was damaged?

A: The front portion.

Q: How about the Meralco pole and three (3) transformers, what happened?

A: The pole fell on the truck.

He further testified during the cross-examination:

Q: You are telling us that allegedly the truck hit the Meralco pole and after the Meralco pole was hit it fell into the truck?

A: Yes sir.

X X X X

COURT: "Teka...teka, wala daw bang parte ng transformers na tumama sa truck dahil young parte daw ang tumama sa truck, ganon ba yon?"

A: The truck bumped the post which broke because the truck move forward a little bit after the bumping of the post the Meralco pole fell on the truck and if the transformers hit the ground then it would have sparked. [Emphases ours] see CA rollo, 190-192, 201-202.

⁴¹ CA rollo, p. 396.

[T]he manner who and why the accident occurred was not explained. In the absence of any description on such important aspect, fault or negligence **cannot be properly imputed to Pablo Manojó Bautista simply because the truck he was then driving bumped to electric post.** The causal connection between the fault or negligence and the damage must be shown. x x x

Analyzing the testimony of Elmer Abio, what was established is the following:

- a) **Somebody** bumped the back of the jeepney he was driving on April 21, 1991;
- b) When his back was bumped, he had no control because it was so sudden;
- c) **He bumped the approaching car, while the truck bumped into the Meralco post that three (3) transformers;**
- d) **The pole with 3 transformers fell on the truck.**

It may be asked: “**Who** was that **somebody** that bumped the back of Abio” “**What was the reason why the truck bumped the post?**” “What happened to the car that was bumped by Abio because he had no control?” “Which happened first, the bumping of the back of Abio or **the bumping of the post by the truck?**” “Was the bumping of the back of Abio and the bumping of the car the proximate cause why **the truck hit the Meralco post?**”⁴² (Emphases and underlines ours)

Lastly, Josefa pleaded in his petition before this Court:

Nowhere in the records was it shown how and why the accident occurred on April 21, 1991.

In the absence of any description on such important aspect, fault or negligence cannot be properly imputed to petitioner, simply because his truck bumped into Meralco’s electricity post. The causal connection between the petitioner’s supposed negligence and the damage was not shown. Neither was it proved to be the proximate cause of the damage.⁴³ (Emphases and underlines ours)

These statements constitute deliberate, clear and unequivocal admissions of the causation in fact between the truck and the electricity post. Judicial admissions made by the parties in the pleadings or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them. These admissions cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made.⁴⁴ A party who judicially admits

⁴² *Rollo*, pp. 92-93.

⁴³ *Id.* at 28.

⁴⁴ RULES OF COURT, Rule 129, Section 4.

a fact cannot later challenge this fact for the reason that judicial admissions remove an admitted fact from the field of controversy.⁴⁵

B. Bautista is presumed to be negligent in driving the truck under the doctrine of res ipsa loquitur

Contrary to the CA's opinion, the finding that it was the truck that hit the electricity post would not immediately result in Josefa's liability. It is a basic rule that it is **essentially the wrongful or negligent act or omission** that creates the *vinculum juris* in extra-contractual obligations.⁴⁶ In turn, the employee's negligence established to be the proximate cause of the damage would give rise to the disputable presumption that the employer did not exercise the diligence of a good father of a family in the selection and supervision of the erring employee.⁴⁷

Nonetheless, in some cases where negligence is difficult to prove, the doctrine of *res ipsa loquitur* permits an inference of negligence on the part of the defendant or some other person who is charged with negligence where the thing or transaction speaks for itself.⁴⁸ This doctrine postulates that, as a matter of common knowledge and experience and in the absence of some explanation by the defendant who is charged with negligence, the very nature of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury. In other words, *res ipsa loquitur* is grounded on the superior logic of ordinary human experience that negligence may be deduced from the mere occurrence of the accident itself.⁴⁹

The procedural effect of *res ipsa loquitur* in quasi-delict cases is that the defendant's negligence is presumed. In other words, the burden of evidence shifts to the defendant to prove that he did not act with negligence.⁵⁰ This doctrine thus effectively furnishes a bridge by which the complainant, without knowledge of the cause of the injury, reaches over to the defendant, who knows or should know the cause, for any explanation of care exercised by him to prevent the injury.⁵¹ For this doctrine to apply, the complainant must show that: (1) the accident is of such character as to

⁴⁵ *Alfelor v. Halasan*, 520 Phil. 982, 990-991 (2006); *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 365 (2006).

⁴⁶ *Dela Llana v. Biong*, G.R. No. 182356, December 4, 2013; and *American Express International, Inc. v. Cordero*, 509 Phil. 619-620, 625 (2005).

⁴⁷ *De la Llana v. Biong*, *supra*.

⁴⁸ *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 277-278, 289-292 (2001).

⁴⁹ *Jarcia, Jr. and Bastan v. People of the Philippines*, G.R. No. 187926, February 15, 2012, 666 SCRA 345.

⁵⁰ *Spouses Custodio v. Court of Appeals*, 323 Phil. 585-586 (1996).

⁵¹ *Malayan Insurance Co., Inc. v. Alberto*, G.R. No. 194320, February 1, 2012, 664 SCRA 792, 800-804.

warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

The present case satisfies all the elements of *res ipsa loquitur*. It is very unusual and extraordinary for the truck to hit an electricity post, **an immovable and stationary object**, unless Bautista, who had the exclusive management and control of the truck, acted with fault or negligence. We cannot also conclude that Meralco contributed to the injury since it safely and permanently installed the electricity post beside the street. Thus, in *Republic v. Luzon Stevedoring Corp.*,⁵² we imputed vicarious responsibility to Luzon Stevedoring Corp. whose barge rammed the bridge, also an immovable and stationary object. In that case, we found it highly unusual for the barge to hit the bridge which had adequate openings for the passage of water craft unless Luzon Stevedoring Corp.'s employee had acted with negligence.

In his pleadings, Josefa raises the possibility that the fault or negligence of the jeepney and/or the car drivers may have been the proximate cause of the damage. *As a matter of defense, Josefa should have substantiated this theory considering that the burden of evidence has shifted against him after Meralco had established that it was the truck that hit the electricity post.* However, Josefa did not adduce any evidence in support of his defense during trial. Consequently, we sustain the CA's finding that there is a direct and proximate causal link between the truck and the injury that Meralco suffered.

III. Josefa is vicariously liable under paragraph 5, Article 2180 of the Civil Code

A. There is an employer-employee relations between Bautista and Josefa

The finding that Bautista acted with negligence in driving the truck gives rise to the application of paragraph 5, Article 2180 of the Civil Code which holds the employer vicariously liable for damages caused by his employees within the scope of their assigned tasks. In the present case, Josefa avoids the application of this provision by denying that Bautista was his employee at the time of the incident.

⁵²

G.R. No. L-21749, September 29, 1967, 21 SCRA 279, 282.

Josefa cannot evade his responsibility by mere denial of his employment relations with Bautista in the absence of proof that his truck was used without authorization or that it was stolen when the accident occurred.⁵³ In quasi-delict cases, the registered owner of a motor vehicle is the employer of its driver in contemplation of law.⁵⁴ The registered owner of any vehicle, even if not used for public service, would primarily be responsible to the public or to third persons for injuries caused while the vehicle was being driven on highways or streets. The purpose of motor vehicle registration is precisely to identify the owner so that if any injury is caused by the vehicle, responsibility can be imputed to the registered owner.⁵⁵

B. Josefa failed to show that he exercised the diligence of a good father of a family in the selection and supervision of Bautista

In order for Josefa to be relieved of his vicarious liability, he must show that he exercised due diligence in the selection and supervision of Bautista. In concrete terms, Josefa should show by competent object or documentary evidence that he examined Bautista as to the latter's qualifications, experience and service records prior to employment. He should likewise prove by competent object or documentary evidence that he formulated standard operating procedures, monitored their implementation and imposed disciplinary measures for breach of these procedures.⁵⁶ However, Josefa failed to overcome the presumption of negligence against him since he waived his right to present evidence during trial. We are thus left with no other conclusion other than to rule that Josefa is primarily liable for all natural and probable consequences of Bautista's negligence.⁵⁷

IV. Meralco is only entitled to temperate damages with interest at legal rate

A. Meralco failed to prove its entitlement to actual damages

Despite Josefa's vicarious liability in this case, Meralco failed to point out the specific facts that afford a basis for its claim for actual

⁵³ *Del Carmen v. Bacoy*, G.R. No. 173870, April 25, 2012, 671 SCRA 111, citing *Duquillo v. Bayot*, 67 Phil. 131 (1939), and *Duavit v. Court of Appeals*, 255 Phil. 470 (1989)

⁵⁴ *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, 579 Phil. 418-420, 424-426 (2008). See Article 2184 of the Civil Code in relation to Article 2180 of the Civil Code.

⁵⁵ *Ibid*; *Del Carmen v. Bacoy*, G.R. No. 173870, April 25, 2012, 671 SCRA 92-93, 109-111.

⁵⁶ *Victory Liner, Inc. v. Heirs of Malecdan*, G. R. No. 154278, December 27, 2002, 394 SCRA 526; and *Syki v. Begasa*, G.R. No. 149149, October 23, 2003, 414 SCRA, 237, 242.

⁵⁷ CIVIL CODE OF THE PHILIPPINES, Article 2202.

damages.⁵⁸ Actual damages cannot be presumed; they must be pleaded and proven in court in order to be recoverable. One is entitled to an adequate compensation only for the pecuniary loss that he has adequately proved based upon competent proof and on the best evidence obtainable by him.⁵⁹

We cannot give weight to Exhibit “D” as to the amount of actual damages for being hearsay. Exhibit “D” constitutes hearsay evidence since it was derived on alleged pieces of documentary evidence that were not identified and authenticated in court during trial. The trial court thus erred in even admitting Exhibit “D” in evidence whose contents were offered without any other competent evidence to corroborate them. Consequently, we delete the CA’s award of actual damages for lack of evidentiary support.

B. Meralco is entitled to temperate damages because it clearly suffered pecuniary loss as a result of Bautista and Josefa’s negligence

Nonetheless, Meralco is entitled to temperate damages because there is no doubt that it suffered pecuniary loss as a result of Bautista and Josefa’s negligence.⁶⁰ When the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, the court may award temperate damages in the exercise of its sound discretion.⁶¹ Considering the attendant circumstances of this case, we find the amount of ₱200,000.00 to be a fair and sufficient award by way of temperate damages.

C. Meralco is not entitled to attorney’s fees and expenses of litigation

The CA likewise erred in awarding Meralco attorney’s fees and expenses of litigation without explaining its basis. In *Buan v. Camaganacan*,⁶² we held that the text of the decision should state the reason why attorney’s fees are being awarded; otherwise, the award should be disallowed. Besides, no bad faith has been imputed to Josefa that would warrant the award of attorney’s fees under Article 2208 (5) of the Civil Code. It is a settled rule that attorney’s fees shall not be recovered as cost where the party’s persistence in litigation is based on his mistaken belief in

⁵⁸ *PNOC Shipping and Transport Corp. v. Court of Appeals*, G.R. No. 107518, October 8, 1998, 297 SCRA 402-403, 418.

⁵⁹ CIVIL CODE OF THE PHILIPPINES, Article 2199.

⁶⁰ CIVIL CODE OF THE PHILIPPINES, Article 2224.

⁶¹ *Ibid*; and *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008, 569 SCRA 323, 329.

⁶² 123 Phil. 134 (1966).


the righteousness of his cause.⁶³ There is also no factual, legal, or equitable justification that would justify the Court's award of attorney's fees under Article 2208 (11) of the Civil Code.

D. The award of temperate damages is subject to 6% per annum reckoned from the promulgation of the decision until fully paid


Finally, we impose an interest rate of 6% per annum on temperate damages pursuant to the guidelines enunciated in *Eastern Shipping Lines v. CA*,⁶⁴ as modified by *Nacar v. Gallery Frames*.⁶⁵ The interest rate shall commence to run from the promulgation of this decision, the date when the amount of temperate damages has been determined with certainty.

WHEREFORE, premises considered, we **PARTIALLY GRANT** the petition. The January 31, 2008 decision and the April 29, 2008 resolution of the Court of Appeals in CA-G.R. CV. No. 87512 is **AFFIRMED** with **MODIFICATION**. Petitioner Vicente Josefa is ordered to pay respondent Manila Electric Company the amount of ₱200,000.00 as temperate damages with legal interest at 6% per annum from the promulgation of this decision until full payment has been effected. Costs against petitioner Vicente Josefa.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


⁶³ *ABS-CBN Broadcasting Corp. v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 575, 589.

⁶⁴ G.R. No. 97412, July 12, 1994, 234 SCRA 95-97.

⁶⁵ G.R. No. 189871, August 13, 2013.



MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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