Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GREENSTAR EXPRESS, INC. and FRUTO L. SAYSON, JR., *Petitioners,*	**G.R. No. 205090**
	Present:
- versus -	CARPIO, *Chairperson,* BRION, DEL CASTILLO, MENDOZA, *and* LEONEN,* *JJ.*
UNIVERSAL ROBINA CORPORATION and NISSIN UNIVERSAL ROBINA CORPORATION, *Respondents.*	Promulgated: 17 OCT 2016

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside: a) the September 26, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96961 affirming the April 4, 2011 Decision[3] of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31 in Civil Case No. SPL-0969; and b) the CA's December 28, 2012 Resolution[4] denying herein petitioners' Motion for Reconsideration.[5]

Factual Antecedents

Petitioner Greenstar Express, Inc. (Greenstar) is a domestic corporation engaged in the business of public transportation, while petitioner Fruto L. Sayson, Jr. (Sayson) is one of its bus drivers.

* On official leave.
1 *Rollo*, pp. 3-20.
2 Id. at 22-38; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan.
3 Id. at 47-54; penned by Judge Sonia T. Yu-Casano.
4 Id. at 41.
5 Id. at 495-507.

Respondents Universal Robina Corporation (URC) and Nissin Universal Robina Corporation (NURC) are domestic corporations engaged in the food business. NURC is a subsidiary of URC.

URC is the registered owner of a Mitsubishi L-300 van with plate number WRN 403 (URC van).[6]

At about 6:50 a.m. on February 25, 2003, which was then a declared national holiday,[7] petitioner's bus, which was then being driven toward the direction of Manila by Sayson, collided head-on with the URC van, which was then being driven Quezon province-bound by NURC's Operations Manager, Renante Bicomong (Bicomong). The incident occurred along Km. 76, Maharlika Highway, Brgy. San Agustin, Alaminos, Laguna. Bicomong died on the spot, while the colliding vehicles sustained considerable damage.

On September 23, 2003, petitioners filed a Complaint[8] against NURC to recover damages sustained during the collision, premised on negligence. The case was docketed as Civil Case No. SPL-0969 and assigned to Branch 31 of the RTC of San Pedro, Laguna. An Amended Complaint[9] was later filed, wherein URC was impleaded as additional defendant.

URC and NURC filed their respective Answers,[10] where they particularly alleged and claimed lack of negligence on their part and on the part of Bicomong.

After the issues were joined, trial proceeded. During trial, only Sayson was presented by petitioners as eyewitness to the collision.

Ruling of the Regional Trial Court

On April 4, 2011, the RTC issued its Decision, which decreed thus:

> During the trial on the merits, plaintiffs[11] presented five witnesses namely Josephine Gadiaza, Miguel Galvan, SPO3 Ernesto Marfori, Fruto Sayson and Lilia Morales.
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> Plaintiff Fruto Sayson testified that on that fateful day, he was driving the

6 Id. at 94.

7 Presidential Proclamation No. 331, issued on February 19, 2003, declared February 25, 2003 as a special national holiday "to honor the memory of the EDSA People Power Revolution."

8 *Rollo*, pp. 59-63.

9 Id. at 69-74.

10 Id. at 127-133, 134-138.

11 Herein petitioners.

plaintiff passenger bus from Lucena City going to Manila at a speed of more or less 60 kilometers per hour when he met a vehicular accident at Barangay San Agustin, Alaminos, Laguna. He saw from afar an L-300 UV coming from the shoulder going on the opposite direction to Lucena City. Said vehicle was already near his bus when it (UV) managed to return to its proper lane, then hit and swerved his vehicle. He tried to prevent the collision by swerving to the right but it was too late. As a result, the left front portion of the bus was damaged while the front portion of the L-300 UV was totally wrecked. He and his conductor, one Mendoza, managed to get out of the bus by forcibly opening the automatic door which was also damaged due to the impact. After getting out of the bus, he looked for the driver of the L-300 UV but he was informed by a bystander that he was thrown in a canal and already dead. For fear of possible reprisals from bystanders as experienced by most drivers involved in an accident, he boarded another bus owned by his employer. Before he left, he indorsed the matter to his conductor and line inspector. Thereafter, he reported to their office at San Pedro, Laguna. He executed a statement on the same day x x x and submitted the same to their operations department. He likewise testified that before the incident, he was earning ₱700.00 to ₱900.00 a day on commission basis and he drives 25 days in a month. However, after the incident, he was not able to drive for almost two months.

On cross-examination, it was established that the incident happened along the Maharlika Highway along Kilometer 72. There were no structures near the site of the incident. The highway has two lanes which can accommodate the size of the bus about 3 meters wide and a light vehicle. He was bound for Manila and had about ten passengers. He saw the L-300 UV on the shoulder of the opposite lane about 250 meters away from his bus while he was driving [at] a speed of 60 kilometers per hour. He did not sense any danger when he saw the vehicle from afar. He cannot drive fast as there were five vehicles ahead of his bus. When the L-300 UV managed to return to its proper lane coming from the shoulder, it was heading directly towards his direction at a distance of more or less five meters away from his bus. He noticed that the L-300 UV was running at full speed as he saw dust clouds. The point of impact happened on his lane. He tried to swerve his bus to prevent the impact but he admitted that at his speed, it was difficult for him to maneuver his vehicle.

Investigator SPO3 Ernesto Marfori of the Alaminos Police Station testified that at about 7:00 in the morning, he received a report from the Barangay Chairman of a vehicular accident that occurred at Brgy. San Agustin, Alaminos, Laguna. He proceeded to the site with SPO2 Rolando Alias. Upon arrival at the scene of the accident, he attended to the victim but found him dead inside the L-300 UV. He came to know later that he was Renante Bicomong. He immediately called up his office and requested that funeral services for the dead man be arranged. Thereafter, he photographed the damaged vehicles (Exhibits "F" and sub-markings) and interviewed some witnesses. He made a sketch depicting the damages suffered by both vehicles (Exhibit "D-2"), the L-300 IV at the front portion (Exhibit "D-4") while the bus at the left side of its front portion (Exhibit "D-3"). Based on the sketch he prepared, the impact happened almost at the right lane which was the bus lane (Exhibit "D-6"). He likewise noticed some debris also found at the bus lane. He was able to interview the bus conductor and a fruit store owner in [sic] the names of Apolinar Devilla and Virgilio Adao. He did not see the driver of the bus at the scene of the accident and he was told that he had left the place. Based on his investigation, the possible cause of the accident was the swerving to the left lane [by] the driver of the L-300 UV which resulted in the encroaching of the bus' lane. He reduced his findings into writing

in a Report dated February 28, 2003 (Exhibits "D" and sub-markings).

On cross-examination, the witness admitted that he was not present when the vehicles collided. The entries he made in the blotter report were mainly based on the accounts of the witnesses he was able to interview who however did not give their written statements. When he arrived at the scene of the accident, the L-300 UV was already on the shoulder of the road and it was totally wrecked. According to reports, the van spun around when it was hit causing the metal scar found on the road.

On the other hand, the defendants[12] presented three witnesses: its employees Alexander Caoleng and John Legaspi and deceased Renante Bicomong's widow, Gloria Bicomong. These witnesses were presented to prove that deceased Bicomong was acting in his personal capacity when the mishap happened on February 25, 2003 as that day had been declared an official holiday and the L-300 UV he was driving had not been issued to him, among others.

Alexander Caoleng, HR Manager of defendant NURC, testified that deceased Bicomong worked as the Operations Manager of defendant NURC until his death as evidenced by a Certificate of Employment dated December 9, 2008 (Exhibit "I"). His last assignment was in First Cavite Industrial Estate (FCIE). He died in a vehicular accident in Alaminos, Laguna on February 25, 2003 which was declared a holiday by virtue of Proclamation No. 331 (Exhibit "2"). Despite having been issued his own service vehicle (Exhibits "3", "4" and "5"), he used the L-300 UV which was not officially issued to him but in the name of Florante Soro-Soro, defendant NURC's Logistics Manager at that time (Exhibits "7" and "8"). The said vehicle was used mainly to transport items coming from their office at Pasig to Cavite and vice versa (Exhibit "9").

John Legaspi, Project Manager of defendant NURC, testified that he was first assigned in its Cavite Plant in 1999 with deceased Bicomong as his immediate supervisor being the Production Manager then. He last saw him in the afternoon of February 24, 2003 at about 6:00 pm when they had a short chat. He (Bicomong) was then transferring his things from his executive vehicle which was a Toyota Corolla to the L-300 UV which was a company vehicle. He (Bicomong) shared that he would go home to Quezon Province the following day (February 25) to give money to his daughter. He knew that his trip to Quezon was not work-related as February 25, 2003 was declared a holiday. Besides, there exists no plant owned by defendant NURC in the provinces of Quezon, Laguna or Bicol as attested to by the General Manager of defendant NURC in a Certification to that effect (Exhibit "11").

On cross-examination, he distinguished the use of an executive vehicle assigned to an executive officer for his personal use and the company vehicle which was supposed to be for official use only.

Finally, Gloria Bicomong, widow of deceased Reynante Bicomong testified that she knew that her husband was going home to Calendaria (sic), Quezon on February 25, 2003 because he informed their daughter. He was on his way home when he met a vehicular accident in Alaminos, Laguna which claimed his life. She was informed about the accident involving her husband by a high school friend who was also traveling to Quezon at that time. She filed a criminal complaint at Alaminos, Laguna but it was dismissed for reasons

[12] Herein respondents.

unknown to her. She likewise filed a civil complaint for damages before the Regional Trial Court of Lucena City docketed as Civil Case No. 2103-135.

On cross-examination, she narrated that aside from the Toyota Corolla service of her husband, he would use the L-300 UV whenever he had to bring bulky things home. As far as she can recall, he used the L-300 UV about 5 times.

After an evaluation of the foregoing testimonies and documentary evidence of the parties, the court had [sic] arrived at the following findings and conclusions:

Plaintiff has no cause of action and cannot recover from the defendants even assuming that the direct and proximate cause of the accident was the negligence of the defendant's employee Renato Bicomong.

Pursuant to Article 2184 of the New Civil Code, the owner of a motor vehicle is solidarily liable with his driver if at the time of the mishap, the owner was in the vehicle and by the use of due diligence could have presented (sic) the misfortune; if the owner is not in the motor vehicle, the provision of Article 2180 is applicable. The defendants being juridical persons, the first paragraph of Article 2184 is obviously not applicable.

Under Article 2180, "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. "In other words, for the employer to be liable for the damages caused by his employee, the latter must have caused the damage in the course of doing his assigned tasks or in the performance of his duties" (Yambao vs. Zuñiga, G.R. No. 146173, December 11, 2003)

In this case, it is beyond cavil that the deceased Renante Bicong [sic] was not in the performance of his duty on that fateful day of February 25, 2003. In the first place that day was a holiday; there was no work and it was not shown that he was working as indeed his work assignment is operations manager of the company's plant in Cavite while the accident happened while he was in Alaminos, Laguna on his way home to Candelaria, Quezon. Secondly, as an operations manager, he was issued an executive car for his own use, a Toyota Corolla vehicle and he merely preferred to use the L-300 UV when going home to his family in Quezon. Even assuming that the company allowed or tolerated this, by itself, the tolerance did not make the employer liable in the absence of showing that he was using the vehicle in the performance of a duty or within the scope of his assigned tasks. But as clearly relayed by defendant's witnesses, defendants have no business or plant in Quezon. The L-300 vehicle was for the hauling of items between their Pasig and Cavite offices and was merely borrowed by Bicomong in going to Candelaria, Quezon on that day.

The accident having occurred outside Renante Bicomong's assigned tasks, defendant employers cannot be held liable to the plaintiffs, even assuming that it is the fault of defendants' employee that was the direct and proximate cause of their damages.

However, the question of whose fault or negligence was the direct and proximate cause of the mishap is material to the resolution of defendants' counterclaim.

The rule is that the burden of proof lies on him who claims a fact (Federico Ledesma vs. NLRC, G.R. No. 175585, October 19, 2007). Therefore, to be able to recover in their counterclaim, the defendants must prove by preponderance of evidence that the direct and proximate cause of their losses was the fault of the plaintiff-driver.

Defendants were not able to present any witness as to how the mishap occurred. Their witnesses were limited to proving that Renante Bicomong was not in the performance of his assigned task when the incident happened.

A reading of their answer would reveal that their attribution of fault to the plaintiff-driver is based only on the point of impact of the two vehicles. Thus:

> *'4.3 Based on the damage sustained by the passenger bus, plaintiffs' claim that Renante Bicomong swerved on the left lane and encroached on the path of the said bus moments before the accident could not have been true. Such claim would have resulted to a head-on collision between the vehicle driven by Mr. Bicomong and the bus; the latter would have sustained damage on its front side. However, based on Annexes "B" and "C" of the Complaint, the said bus sustained damage on its left side. Clearly, it was the passenger bus that swerved on the left lane, which was being traversed by Renante Bicomong, and while returning to the right lane, said bus hit the vehicle being driven by Mr. Bicomong. Thus, explaining the damage sustained by the said bus on its left side just below the driver's seat.'*

The foregoing however is a mere interpretation or speculation and not supported by any account, either by an eyewitness [or by] a explanation tracing the relative positions of the two vehicles in relation to the road at the time of impact and the movements of the two vehicles after the impact. For this reason, it will be unfair to make an interpretation of the events based alone on the point of impact [on] the vehicles. The points of impact by themselves cannot explain the positions of the vehicles on the road.

Defendants Memorandum attributed the cause of the mishap to the excessive speed of the bus. In their Memorandum, the defendants content [sic] that if the driver had seen the L-300 UV meters away in front of him running along the shoulder and negotiating back to its lane, the bus driver would have watched out and slackened his speed. Considering the damage to both the vehicles and the fact that the L-300 UV span [sic] and was thrown 40 feet away from the point of impact and its driver was thrown 14 feet away from his vehicle, defendant argued that the bus could not be running at 60 kilometers only. But assuming the bus indeed was running at high speed that alone does not mean that the negligence of the driver was the direct and proximate cause. If it is true that the L-300 UV ran from the right shoulder, climbed up to the right lane but overshoot [sic] it and occupied the bus' lane, the speed of the bus cannot be considered the proximate and direct cause of the collision. But as stated earlier, this were [sic] merely conjectures and surmises of the defendants and not proven by competent evidence.

All told, defendants were not able to prove by their own evidence that the direct and proximate cause of the collision was the fault of plaintiff's driver. Hence, they cannot hold plaintiffs liable for the loss of their L-300 UV. As both parties failed to prove by their respective evidence where the fault that occasioned their losses lie, they must bear their respective losses.

> Anent defendants' counterclaim for attorney's fees and exemplary damages, there is no evidence to show that the filing of this suit was motivated [by] malice. It cannot be denied that plaintiffs suffered damages. The court mainly dismissed the complaint for lack of cause of action as Renante Bicomong was not performing his assigned tasks at the time of the incident. Besides, to hold them liable to defendants for attorney's fees and exemplary damages simply because they failed to come up with sufficient evidence will be tantamount to putting a price on one's right to sue.
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> WHEREFORE, judgment is hereby rendered dismissing the complaint as well as the counterclaim.
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> No costs.
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> SO ORDERED.[13]

Ruling of the Court of Appeals

Petitioners filed an appeal before the CA, docketed as CA-G.R. CV No. 96961. They argued that Bicomong's negligence was the proximate cause of the collision, as the van he was driving swerved to the opposite lane and hit the bus which was then traveling along its proper lane; that Bicomong's act of occupying the bus's lane was illegal and thus constituted a traffic violation; that respondents are liable for damages as the registered owner of the van and failing to exercise due diligence in the selection and supervision of its employee, Bicomong. Respondents countered that the bus driven by Sayson was running at high speed when the collision occurred, thus indicating that Sayson was in violation of traffic rules; and that Sayson had the last clear chance to avert collision but he failed to take the necessary precaution under the circumstances, by reducing his speed and applying the brakes on time to avoid collision.

On September 26, 2012, the CA rendered the assailed Decision containing the following pronouncement:

> The present case involving an action for damages based on quasi-delict is governed by Articles 2176 and 2180 of the New Civil Code, pertinent provisions of which read:
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> > '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.
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> > 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.

[13] *Rollo*, pp. 49-54.

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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.'

Under Article 2180 of the New Civil Code, employers shall be held primarily and solidarily liable for damages caused by their employees acting within the scope of their assigned tasks. To hold the employer liable under this provision, it must be shown that an employer-employee relationship exists, and that the employee was acting within the scope of his assigned task when the act complained of was committed.

Records bear that the vehicular collision occurred on February 25, 2003 which was declared by former Executive Secretary Alberto G. Romulo, by order of former President Gloria Macapagal-Arroyo, as a special national holiday, per Proclamation No. 331 dated February 19, 2003. Renante Bicomong had no work on that day and at the time the accident occurred, he was on his way home to Candelaria, Quezon. There was no showing that on that day, Renante Bicomong was given by defendants-appellees[14] an assigned task, much less instructed to go to Quezon. As testified to by Renante Bicomong's widow Gloria Bicomong, Renante Bicomong was on the road that day because he was going home to Candelaria, Quezon. Thus, he was then carrying out a personal purpose and not performing work for defendants-appellees.

Apropos is *Castilex Industrial Corp. vs. Vicente Vasquez, Jr.*,[15] wherein the Supreme Court held that the mere fact that an employee was using a service vehicle at the time of the injurious incident is not of itself sufficient to charge his employer with liability for the operation of said vehicle unless it appeared that he was operating the vehicle within the course or scope of his employment. Thus:

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> 'The court *a quo* and the Court of Appeals were one in holding that the driving by a messenger of a company-issued vehicle is within the scope of his assigned tasks regardless of the time and circumstances.
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> We do not agree. The mere fact that ABAD was using a service vehicle at the time of the injurious incident is not of itself sufficient to charge petitioner with liability for the negligent operation of said vehicle unless it appears that he was operating the vehicle within the course or scope of his employment.
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> The following are principles in American Jurisprudence on the employer's liability for the injuries inflicted by the negligence of an employee in the use of an employer's motor vehicle.
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[14] Herein respondents.

[15] 378 Phil. 1009, 1019-1022 (1999).

III. Use of Employer's Vehicle Outside Regular Working Hours

An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employees negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employees negligent operation of the vehicle during the return trip.

The foregoing principles and jurisprudence are applicable in our jurisdiction albeit based on the doctrine of *respondeat superior*, not on the principle of *bonus pater familias* as in ours. Whether the fault or negligence of the employee is conclusive on his employer as in American law or jurisprudence, or merely gives rise to the presumption *juris tantum* of negligence on the part of the employer as in ours, it is indispensable that the employee was acting in his employer's business or within the scope of his assigned task.

In the case at bar, it is undisputed that ABAD did some overtime work at the petitioner's office, which was located in Cabangcalan, Mandaue City. Thereafter, he went to Goldie's Restaurant in Fuente Osmeña, Cebu City, which is about seven kilometers away from petitioner's place of business. A witness for the private respondents, a sidewalk vendor, testified that Fuente Osmeña is a lively place even at dawn because Goldie's Restaurant and Back Street were still open and people were drinking thereat. Moreover, prostitutes, pimps, and drug addicts littered the place.

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To the mind of this Court, ABAD was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident. It was then about 2:00 a.m. of 28 August 1988, way beyond the normal working hours. ABAD's working day had ended; his overtime work had already been completed. His being at a place which, as petitioner put it, was known as a haven for prostitutes, pimps, and drug pushers and addicts, had no connection to petitioner's business; neither had it any relation to his duties as a manager. Rather, using his service vehicle even for personal purposes was a form of a fringe benefit or one of the perks attached to his position.

Since there is paucity of evidence that ABAD was acting within the scope of the functions entrusted to him, petitioner CASTILEX had no duty to show that it exercised the diligence of a good father of a family in providing ABAD with a service vehicle. Thus, justice and equity require that petitioner be relieved of vicarious liability for the consequences of the negligence of ABAD in driving its vehicle.

Accordingly, in the absence of showing that Renante Bicomong was acting within the scope of his assigned task at the time of the vehicular collision, defendants-appellees had no duty to show that they exercised the diligence of a

good father of a family in providing Renante Bicomong with a service vehicle. Thus, the trial court did not err in holding that:

> 'Under Article 2180, '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. 'In other words, for the employer to be liable for the damages caused by his employee, the latter must have caused the damage in the course of doing his assigned tasks or in the performance of his duties.' (Yambao vs. Zuñiga, G.R. No. 146173, December 11, 2003.)
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> In this case, it is beyond cavil that the deceased Renante Bicong [sic] was not in the performance of his duty on that fateful day of February 25, 2003. In the first place that day was a holiday; there was no work and it was not shown that he was working as indeed his work assignment [was as] operations manager of the company's plant in Cavite while the accident happened while he was in Alaminos, Laguna on his way home to Candelaria, Quezon. Secondly, as an operations manager, he was issued an executive car for his own use, a Toyota Corolla vehicle and he merely preferred to use the L-300 UV when going home to his family in Quezon. Even assuming that the company allowed or tolerated this, by itself, the tolerance did not make the employer liable in the absence of showing that he was using the vehicle in the performance of a duty or within the scope of his assigned tasks. But as clearly relayed by defendant's witnesses, defendants have no business or plant in Quezon. The L-300 vehicle was for the hauling of items between their Pasig and Cavite offices and was merely borrowed by Bicomong in going to Candelaria, Quezon on that day.
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> The accident having occurred outside Renante Bicomong's assigned tasks, defendant employers cannot be held liable to the plaintiffs, even assuming that it is the fault of defendants' employee that was the direct and proximate cause of their damages.'

In sum, squarely applicable in this case is the well-entrenched doctrine that the assessment of the trial judge as to the issue of credibility binds the appellate court because he is in a better position to decide the issue, having heard the witnesses and observed their deportment and manner of testifying during the trial, except when the trial court has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case, or where the assessment is clearly shown to be arbitrary. Plaintiffs-appellants have not shown this case to fall under the exception.

WHEREFORE, the trial court's Decision dated April 4, 2011 is affirmed.

SO ORDERED.[16]

Petitioners filed a Motion for Reconsideration, which the CA denied in its subsequent December 28, 2012 Resolution. Hence, the present Petition.

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16 *Rollo*, pp. 29-37.

Issues

In a July 14, 2014 Resolution,[17] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

> I.
> THE HONORABLE COURT OF APPEALS ERRED IN ISSUING THE ASSAILED DECISION AND RESOLUTION THAT RESPONDENTS ARE NOT LIABLE TO PETITIONERS FOR THE DAMAGES THEY SUSTAINED CONSIDERING THAT THE ACCIDENT WAS ATTRIBUTED TO THE NEGLIGENCE OF RENANTE BICOMONG.
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> II.
> THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING DEFENSES NOT PLEADED IN THE MOTION TO DISMISS OR IN RESPONDENTS' ANSWER.[18]

Petitioners' Arguments

Petitioners insist that respondents should be held liable for Bicomong's negligence under Articles 2176, 2180, and 2185 of the Civil Code;[19] that Bicomong's negligence was the direct and proximate cause of the accident, in that he unduly occupied the opposite lane which the bus was lawfully traversing, thus resulting in the collision with Greenstar's bus; that Bicomong's driving on the opposite lane constituted a traffic violation, therefore giving rise to the presumption of negligence on his part; that in view of this presumption, it became incumbent upon respondents to rebut the same by proving that they exercised care and diligence in the selection and supervision of their employees; that in their respective answers and motion to dismiss, respondents did not allege the defense. which they tackled only during trial, that since February 25, 2003 was a declared national holiday, then Bicomong was not acting within the scope of his assigned tasks at the time of the collision; that for failure to plead this defense or allegation in their respective answers and pleadings, it is deemed waived pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure[20] (1997 Rules); that just the same,

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17 Id. at 558-559.

18 Id. at 11-12.

19 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.
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.
x x x x
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.
Art. 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.

20 Rule 9, Effect of Failure to Plead
Section 1. Defenses and objections not pleaded. -- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action

respondents failed to prove that Bicomong was not in the official performance of his duties or that the URC van was not officially issued to him at the time of the accident – and for this reason, the presumption of negligence was not overturned; and that URC should be held liable as the registered owner of the van.

In their Reply,[21] petitioners add that while some of the issues raised in the Petition are factual in nature, this Court must review the case as the CA gravely erred in its appreciation of the evidence and in concluding that respondents are not liable. Finally, they argue that URC should be held liable for allowing "a non-employee to use for his personal use the vehicle owned" by it.

Respondents' Arguments

Pleading affirmance, respondents argue in their Comment[22] that the issues raised in the Petition are factual in nature; that the collision occurred on a holiday and while Bicomong was using the URC van for a purely personal purpose, it should be sufficient to absolve respondents of liability as evidently, Bicomong was not performing his official duties on that day; that the totality of the evidence indicates that it was Sayson who was negligent in the operation of Greenstar's bus when the collision occurred; that Bicomong was not negligent in driving the URC van; that petitioners' objection – pertaining to their defense that the collision occurred on a holiday, when Bicomong was not considered to be at work – was belatedly raised; and that in any case, under Section 5, Rule 10 of the 1997 Rules,[23] their pleadings should be deemed amended to conform to the evidence presented at the trial, which includes proof that the accident occurred on a holiday and while Bicomong was not in the performance of his official tasks and instead going home to his family in Quezon province.

Our Ruling

The Court denies the Petition.

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pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

21 *Rollo*, pp. 542-555.

22 Id. at 518-535.

23 Rule 10, Amended and Supplemental Pleadings

Sec. 5. Amendment to conform to or authorize presentation of evidence. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

In *Caravan Travel and Tours International, Inc. v. Abejar*,[24] the Court made the following relevant pronouncement:

> **The resolution of this case must consider two (2) rules. First, Article 2180's specification that '[e]mployers shall be liable for the damages caused by their employees . . . acting within the scope of their assigned tasks[.]' Second, the operation of the registered-owner rule that registered owners are liable for death or injuries caused by the operation of their vehicles.**
>
> These rules appear to be in conflict when it comes to cases in which the employer is also the registered owner of a vehicle. Article 2180 requires proof of two things: first, an employment relationship between the driver and the owner; and second, that the driver acted within the scope of his or her assigned tasks. On the other hand, applying the registered-owner rule only requires the plaintiff to prove that the defendant-employer is the registered owner of the vehicle.
>
> The registered-owner rule was articulated as early as 1957 in *Erezo, et al. v. Jepte*,[25] where this court explained that the registration of motor vehicles, as required by Section 5(a) of Republic Act No. 4136, the Land Transportation and Traffic Code, was necessary 'not to make said registration the operative act by which ownership in vehicles is transferred, . . . but to permit the use and operation of the vehicle upon any public highway[.]' Its 'main aim . . . is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner.'
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> xxxx
>
> *Aguilar, Sr. v. Commercial Savings Bank*[26] recognized the seeming conflict between Article 2180 and the registered-owner rule and applied the latter.
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> xxxx
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> Preference for the registered-owner rule became more pronounced in *Del Carmen, Jr. v. Bacoy*:[27]
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> xxxx
>
> *Filcar Transport Services v. Espinas*[28] stated that the registered owner of a vehicle can no longer use the defenses found in Article 2180:
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> xxxx
>
> *Mendoza v. Spouses Gomez*[29] reiterated this doctrine.
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> However, *Aguilar, Sr.*, *Del Carmen, Filcar,* and *Mendoza* should not be

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24 G.R. No. 170631, February 10, 2016.
25 102 Phil. 103 (1957).
26 412 Phil. 834 (2001).
27 686 Phil. 799 (2012).
28 688 Phil. 430 (2012).
29 736 Phil. 460 (2014).

taken to mean that Article 2180 of the Civil Code should be completely discarded in cases where the registered-owner rule finds application.

As acknowledged in *Filcar*, there is no categorical statutory pronouncement in the Land Transportation and Traffic Code stipulating the liability of a registered owner. The source of a registered owner's liability is not a distinct statutory provision, but remains to be Articles 2176 and 2180 of the Civil Code:

> While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car.

Thus, it is imperative to apply the registered-owner rule in a manner that harmonizes it with Articles 2176 and 2180 of the Civil Code. Rules must be construed in a manner that will harmonize them with other rules so as to form a uniform and consistent system of jurisprudence. In light of this, the words used in *Del Carmen* are particularly notable. There, this court stated that Article 2180 'should defer to' the registered-owner rule. It never stated that Article 2180 should be totally abandoned.

Therefore, the appropriate approach is that in cases where both the registered-owner rule and Article 2180 apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in question. Once the plaintiff successfully proves ownership, there arises a disputable presumption that the requirements of Article 2180 have been proven. As a consequence, the burden of proof shifts to the defendant to show that no liability under Article 2180 has arisen.

This disputable presumption, insofar as the registered owner of the vehicle in relation to the actual driver is concerned, recognizes that between the owner and the victim, it is the former that should carry the costs of moving forward with the evidence. The victim is, in many cases, a hapless pedestrian or motorist with hardly any means to uncover the employment relationship of the owner and the driver, or any act that the owner may have done in relation to that employment.

The registration of the vehicle, on the other hand, is accessible to the public.

Here, respondent presented a copy of the Certificate of Registration of the van that hit Reyes. The Certificate attests to petitioner's ownership of the van. Petitioner itself did not dispute its ownership of the van. Consistent with the rule we have just stated, a presumption that the requirements of Article 2180 have been satisfied arises. It is now up to petitioner to establish that it incurred no liability under Article 2180. **This it can do by presenting proof of any of the following: first, that it had no employment relationship with Bautista; second, that Bautista acted outside the scope of his assigned tasks; or third, that it exercised the diligence of a good father of a family in the selection and supervision of Bautista.** (Emphasis supplied)

In the present case, it has been established that on the day of the collision – or on February 25, 2003 – URC was the registered owner of the URC van, although it appears that it was designated for use by NURC, as it was officially assigned to the latter's Logistics Manager, Florante Soro-Soro (Soro-Soro); that Bicomong was the Operations Manager of NURC and assigned to the First Cavite Industrial Estate; that there was no work as the day was declared a national holiday; that Bicomong was on his way home to his family in Quezon province; that the URC van was not assigned to Bicomong as well, but solely for Soro-Soro's official use; that the company service vehicle officially assigned to Bicomong was a Toyota Corolla, which he left at the Cavite plant and instead, he used the URC van; and that other than the Cavite plant, there is no other NURC plant in the provinces of Quezon, Laguna or Bicol.

Applying the above pronouncement in the *Caravan Travel and Tours* case, it must be said that when by evidence the ownership of the van and Bicomong's employment were proved, the presumption of negligence on respondents' part attached, as the registered owner of the van and as Bicomong's employer. The burden of proof then shifted to respondents to show that no liability under Article 2180 arose. This may be done by proof of **any** of the following:

1. That they had no employment relationship with Bicomong; or

2. That Bicomong acted outside the scope of his assigned tasks; or

3. That they exercised the diligence of a good father of a family in the selection and supervision of Bicomong.

In denying liability, respondents claimed in their respective answers the defense of absence of negligence on their part. During trial, they presented evidence to the effect that on the day of the collision, which was a declared national non-working holiday, Bicomong was not performing his work, but was on his way home to Quezon on a personal undertaking, that is, to give money to his daughter and spend the holiday with his family; and that the vehicle he was driving was not an NURC vehicle, nor was it assigned to him, but was registered to URC and assigned to its Logistics Manager, Soro-Soro. Petitioners object to this, claiming that this defense was not alleged in the respondents' respective answers. The Court disagrees. The failure to allege these facts in the answers does not preclude respondents from proving them during trial; these facts are precisely illustrative of their defense of absence of negligence. Just the same, petitioners' failure to object to the respondents' presentation of such evidence below is tantamount to a waiver; Section 5, Rule 10 of the 1997 Rules – on amendments to conform to or authorize presentation of evidence – will have to apply, but the failure to amend the pleadings does not affect the result of the trial of these issues.

> The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude an adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings, or serve as a basis for a higher award of damages. Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended. x x x[30]

Respondents succeeded in overcoming the presumption of negligence, having shown that when the collision took place, Bicomong was not in the performance of his work; that he was in possession of a service vehicle that did not belong to his employer NURC, but to URC, and which vehicle was not officially assigned to him, but to another employee; that his use of the URC van was unauthorized – even if he had used the same vehicle in furtherance of a personal undertaking in the past,[31] this does not amount to implied permission; that the accident occurred on a holiday and while Bicomong was on his way home to his family in Quezon province; and that Bicomong had no official business whatsoever in his hometown in Quezon, or in Laguna where the collision occurred, his area of operations being limited to the Cavite area.

On the other hand, the evidence suggests that the collision could have been avoided if Sayson exercised care and prudence, given the circumstances and information that he had immediately prior to the accident. From the trial court's findings and evidence on record, it would appear that immediately prior to the collision, which took place very early in the morning – or at around 6:50 a.m., Sayson saw that the URC van was traveling fast Quezon-bound on the shoulder of the opposite lane about 250 meters away from him; that at this point, Sayson was driving the Greenstar bus Manila-bound at 60 kilometers per hour; that Sayson knew that the URC van was traveling fast as it was creating dust clouds from traversing the shoulder of the opposite lane; that Sayson saw the URC van get back into its proper lane but directly toward him; that despite being apprised of the foregoing information, Sayson, instead of slowing down, maintained his speed and tried to swerve the Greenstar bus, but found it difficult to do so at his speed; that the collision or point of impact occurred right in the middle of the road;[32] and that Sayson absconded from the scene immediately after the collision.

From the foregoing facts, one might think that from the way he was driving immediately before the collision took place, Bicomong could have fallen asleep or ill at the wheel, which led him to gradually steer the URC van toward the shoulder of the highway; and to get back to the road after realizing his mistake, Bicomong must have overreacted, thus overcompensating or oversteering to the left, or

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30 *Philippine National Bank v. Manalo*, G.R. No. 174433, February 24, 2014, 717 SCRA 254, citing *Talisay-Silay Milling Co., Inc. v. Associacion de Agricultores de Talisay-Silay, Inc.*, 317 Phil. 432, 452-453 (1995).

31 His wife testified that in the past, he had used the same vehicle in getting home to Quezon.

32 *Rollo*, p. 162; Police Sketch of the collision, petitioners' Exhibit "D-2," admitted in evidence.

toward the opposite lane and right into Sayson's bus. Given the premise of dozing off or falling ill, this explanation is not far-fetched. The collision occurred very early in the morning in Alaminos, Laguna. Sayson himself testified that he found Bicomong driving on the service road or shoulder of the highway 250 meters away, which must have been unpaved, as it caused dust clouds to rise on the heels of the URC van. And these dust clouds stole Sayson's attention, leading him to conclude that the van was running at high speed. At any rate, the evidence places the point of impact very near the middle of the road or just within Sayson's lane. In other words, the collision took place with Bicomong barely encroaching on Sayson's lane. This means that prior to and at the time of collision, Sayson did not take any defensive maneuver to prevent the accident and minimize the impending damage to life and property, which resulted in the collision in the middle of the highway, where a vehicle would normally be traversing. If Sayson took defensive measures, the point of impact should have occurred further inside his lane or not at the front of the bus – but at its side, which should have shown that Sayson either slowed down or swerved to the right to avoid a collision.

Despite having seen Bicomong drive the URC van in a precarious manner while the same was still a good 250 meters away from his bus, Sayson did not take the necessary precautions, as by reducing speed and adopting a defensive stance to avert any untoward incident that may occur from Bicomong's manner of driving. This is precisely his testimony during trial. When the van began to swerve toward his bus, he did not reduce speed nor swerve his bus to avoid collision. Instead, he maintained his current speed and course, and for this reason, the inevitable took place. An experienced driver who is presented with the same facts would have adopted an attitude consistent with a desire to preserve life and property; for common carriers, the diligence demanded is of the highest degree.

> The law exacts from common carriers (i.e., those 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) the highest degree of diligence (i.e., extraordinary diligence) in ensuring the safety of its passengers. Articles 1733 and 1755 of the Civil Code state:
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> > Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe 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.
> >
> > Art. 1755. A common carrier is bound to 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.
>
> In this relation, Article 1756 of the Civil Code provides that '[i]n 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. x x x"[33]

However, Sayson took no defensive maneuver whatsoever in spite of the fact that he saw Bicomong drive his van in a precarious manner, as far as 250 meters away – or at a point in time and space where Sayson had all the opportunity to prepare and avert a possible collision. The collision was certainly foreseen and avoidable but Sayson took no measures to avoid it. Rather than exhibit concern for the welfare of his passengers and the driver of the oncoming vehicle, who might have fallen asleep or suddenly fallen ill at the wheel, Sayson coldly and uncaringly stood his ground, closed his eyes, and left everything to fate, without due regard for the consequences. Such a suicidal mindset cannot be tolerated, for the grave danger it poses to the public and passengers availing of petitioners' services. To add insult to injury, Sayson hastily fled the scene of the collision instead of rendering assistance to the victims – thus exhibiting a selfish, cold-blooded attitude and utter lack of concern motivated by the self-centered desire to escape liability, inconvenience, and possible detention by the authorities, rather than secure the well-being of the victims of his own negligent act.

> x x x The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence. x x x[34]

Petitioners might object to the treatment of their case in the foregoing manner, what with the additional finding that Sayson was negligent under the circumstances. But their Petition, "once accepted by this Court, throws the entire case open to review, and x x x this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."[35]

WHEREFORE, the Petition is **DENIED**. The September 26, 2012 Decision and December 28, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 96961 are **AFFIRMED *in toto***.

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[33] *G.V. Florida Transport, Inc. v. Heirs of Battung, Jr.*, G.R. No. 208802, October 14, 2015.

[34] *Philippine National Railways Corporation v. Vizcara*, 682 Phil. 343, 358 (2012), citing *Canlas v. Court of Appeals*, 383 Phil. 315, 324 (2000), citing *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 680 (1997), citing *LBC Air Cargo, Inc. v. Court of Appeals*, 311 Phil. 715, 722-724 (1995); *Picart v. Smith*, 37 Phil. 809, 814 (1918); *Pantranco North Express, Inc. v. Baesa*, 258-A Phil. 975, 980 (1989); *Glan Peoples Lumber and Hardware v. Intermediate Appellate Court*, 255 Phil. 447, 456-457 (1989).

[35] *Barcelona v. Lim*, 734 Phil. 766 795 (2014); *Carvajal v. Luzon Development Bank*, 692 Phil. 273, 282 (2012).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
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

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