



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**BJDC CONSTRUCTION,  
 REPRESENTED BY ITS  
 MANAGER/PROPRIETOR  
 JANET S. DELA CRUZ,**  
 Petitioner,

**G.R. No. 161151**

Present:

SERENO, *C.J.*,  
 LEONARDO-DE CASTRO,  
 \*BRION,  
 BERSAMIN, and  
 REYES, *JJ.*

- versus -

**NENA E. LANUZO, CLAUDETTE  
 E. LANUZO, JANET E. LANUZO,  
 JOAN BERNABE E. LANUZO,  
 and RYAN JOSE E. LANUZO,**  
 Respondents.

Promulgated:

**MAR 24 2014**

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**D E C I S I O N**

**BERSAMIN, J.:**

The party alleging the negligence of the other as the cause of injury has the burden to establish the allegation with competent evidence. If the action based on negligence is civil in nature, the proof required is preponderance of evidence.

This case involves a claim for damages arising from the death of a motorcycle rider in a nighttime accident due to the supposed negligence of a construction company then undertaking re-blocking work on a national highway. The plaintiffs insisted that the accident happened because the construction company did not provide adequate lighting on the site, but the latter countered that the fatal accident was caused by the negligence of the motorcycle rider himself. The trial court decided in favor of the construction company, but the Court of Appeals (CA) reversed the decision and ruled for the plaintiffs.

\* Vice Associate Justice Martin S. Villarama, Jr., who penned the decision under review, pursuant to the raffle of May 8, 2013.

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Hence, this appeal.

### **Antecedents**

On January 5, 1998, Nena E. Lanuzo (Nena) filed a complaint for damages<sup>1</sup> against BJDC Construction (company), a single proprietorship engaged in the construction business under its Manager/Proprietor Janet S. de la Cruz. The company was the contractor of the re-blocking project to repair the damaged portion of one lane of the national highway at San Agustin, Pili, Camarines Sur from September 1997 to November 1997.

Nena alleged that she was the surviving spouse of the late Balbino Los Baños Lanuzo (Balbino) who figured in the accident that transpired at the site of the re-blocking work at about 6:30 p.m. on October 30, 1997; that Balbino's Honda motorcycle sideswiped the road barricade placed by the company in the right lane portion of the road, causing him to lose control of his motorcycle and to crash on the newly cemented road, resulting in his instant death; and that the company's failure to place illuminated warning signs on the site of the project, especially during night time, was the proximate cause of the death of Balbino. She prayed that the company be held liable for damages, to wit: (a) ₱5,000.00 as the actual damage to Balbino's motorcycle; (b) ₱100,000.00 as funeral and burial expenses; (c) ₱559,786.00 representing the "unearned income in expectancy" of Balbino; (d) ₱100,000.00 as moral damages; (e) ₱75,000.00 as attorney's fees, plus ₱1,500.00 per court appearance; and (f) ₱20,000.00 as litigation costs and other incidental expenses.

In its answer,<sup>2</sup> the company denied Nena's allegations of negligence, insisting that it had installed warning signs and lights along the highway and on the barricades of the project; that at the time of the incident, the lights were working and switched on; that its project was duly inspected by the Department of Public Works and Highways (DPWH), the Office of the Mayor of Pili, and the Pili Municipal Police Station; and that it was found to have satisfactorily taken measures to ensure the safety of motorists.

The company further alleged that since the start of the project in September 1997, it installed several warning signs, namely: (a) big overhead streamers containing the words SLOW DOWN ROAD UNDER REPAIR AHEAD hung approximately 100 meters before the re-blocking site, one facing the Pili-bound motorists and another facing the Naga-bound motorists; (b) road signs containing the words SLOW DOWN ROAD UNDER REPAIR 100 METERS AHEAD placed on the road shoulders below the streamers; (c) road signs with the words SLOW DOWN ROAD

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<sup>1</sup> Records, pp. 2-6.

<sup>2</sup> Id. at 17-22.

UNDER REPAIR 50 METERS AHEAD placed 50 meters before the project site; (d) barricades surrounded the affected portion of the highway, and a series of 50-watt light bulbs were installed and switched on daily from 6:00 p.m. until the following morning; (e) big warning signs containing the words SLOW DOWN ROAD UNDER REPAIR and SLOW DOWN MEN WORKING were displayed at both ends of the affected portion of the highway with illumination from two 50-watt bulbs from 6:00 p.m. until the following morning; and (f) the unaffected portion of the highway was temporarily widened in the adjacent road shoulder to allow two-way vehicular traffic.

The company insisted that the death of Balbino was an accident brought about by his own negligence, as confirmed by the police investigation report that stated, among others, that Balbino was not wearing any helmet at that time, and the accident occurred while Balbino was overtaking another motorcycle; and that the police report also stated that the road sign/barricade installed on the road had a light. Thus, it sought the dismissal of the complaint and prayed, by way of counterclaim, that the Nena be ordered to pay ₱100,000.00 as attorney's fees, as well as moral damages to be proven in the course of trial.

The RTC subsequently directed the amendment of the complaint to include the children of Nena and Balbino as co-plaintiffs, namely: Janet, Claudette, Joan Bernabe and Ryan Jose, all surnamed Lanuzo. Hence, the plaintiffs are hereinafter be referred to as the Lanuzo heirs.

### **Decision of the RTC**

On October 8, 2001, the RTC rendered judgment in favor of the company, as follows:

Plaintiffs are the survivors of Balbino Los Baños Lanuzo who met a traumatic death on 30 October, 1997 at about 6:30 p.m., when he bumped his motorcycle on a barricade that was lighted with an electric bulb, protecting from traffic the newly-reblocked cement road between San Agustin and San Jose, Pili, Camarines Sur; they claim defendant's OMISSION in lighting up the barricaded portion of the reblocking project being undertaken by defendant was the proximate cause of the accident, leaving them bereaved and causing them actual and moral damages.

Defendant DENIED the claim of plaintiffs; both parties offered testimonial and documentary evidence, from which this Court,

### **FINDS**

that: plaintiff DID NOT present an eyewitness account of the death of their decedent; on the contrary, the flagman of defendant was present when the accident occurred, which was caused by the decedent having

overtaken a motorcycle ahead of [him] and on swerving, to avoid the barricade, hit it, instead, breaking the lighted electric bulb on top of the barricade, resulting in the fall of the decedent about 18 paces from where his motorcycle fell on the reblocked pavement; the police investigator, policeman Corporal, by Exh. 1, confirmed the tale of the flagman, aside from confirming the presence of the warning devices placed not only on the premises but at places calculated to warn motorists of the ongoing reblocking project.

#### OPINION

From the foregoing findings, it is the opinion of this Court that the plaintiffs were unable to make out a case for damages, with a preponderance of evidence.

WHEREFORE, Judgment is hereby rendered, DISMISSING the complaint.<sup>3</sup>

#### Decision of the CA

The Lanuzo heirs appealed to the CA.

On August 11, 2003, the CA promulgated its decision declaring that the issue was whether the company had installed adequate lighting in the project so that motorists could clearly see the barricade placed on the newly cemented lane that was then still closed to vehicular traffic,<sup>4</sup> thereby reversing the judgment of the RTC, and holding thusly:

WHEREFORE, premises considered, the present appeal is hereby GRANTED and the decision appealed from in Civil Case No. P-2117 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered ordering the defendant-appellee to pay the plaintiff-appellants, heirs of the victim Balbino L. B. Lanuzo, the sums of ₱50,000.00 as death indemnity, ₱20,000.00 by way of temperate damages and ₱939,736.50 as loss of earning capacity of the deceased Balbino L. B. Lanuzo.

SO ORDERED.<sup>5</sup>

The CA ruled that the following elements for the application of the doctrine of *res ipsa loquitur* were present, namely: (1) the accident was of such character as to 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

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<sup>3</sup> *Rollo*, pp. 52-53; penned by Presiding Judge Nilo A. Malanyaon.

<sup>4</sup> *Id.* at 40-49; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of the Court), with Associate Justice Cancio C. Garcia (later Presiding Justice, and a Member of this Court, since retired) and Associate Justice Mario L. Guariña III (retired) concurring.

<sup>5</sup> *Id.* at 48.

accident must not have been due to any voluntary action or contribution on the part of the person injured.

The CA regarded as self-serving the testimony of Eduardo Zamora, an employee of the company who testified that there was an electric bulb placed on top of the barricade on the area of the accident. It held that Zamora's statement was negated by the statements of Ernesto Alto and Asuncion Sandia to the effect that they had passed by the area immediately before the accident and had seen the road to be dark and lit only by a gas lamp. It noted that SPO1 Corporal, the police investigator, had noticed the presence of lighted electric bulbs in the area, but the same had been installed on the other side of the street opposite the barricade.

The CA ruled that the placing of road signs and streamers alone did not prove that the electric bulbs were in fact switched on at the time of the accident as to sufficiently light up the newly re-blocked portion of the highway. It opined that "[t]he trial court gave undue weight to the self-serving statement of appellee's employee, Eduardo Zamora, which was supposedly corroborated by SPO1 Pedro Corporal. SPO1 Corporal arrived at the scene only *after* the accident occurred, and thus the electric bulbs could have already been switched on by Zamora who was at the area of the project." It concluded that the negligence of the company was the proximate cause of Balbino's death; hence, the company was liable for damages.

The company filed a motion for reconsideration,<sup>6</sup> but the CA denied the motion in the resolution promulgated on November 13, 2003.

### Issues

In this appeal, the company submits the following issues, namely:

I. The application by the Honorable Court of Appeals of the doctrine of *res ipsa loquitur* to the case at bar, despite and contrary to the finding, among others, by the trial court that the proximate cause of the accident is the victim's own negligence, is "not in accord with the law or with the applicable decisions of the Supreme Court" [Sec. 6 (a), Rule 45, Rules of Court].

II. The Honorable Court of Appeals, by substituting its own findings of fact and conclusion with those of the trial court despite the lack of "strong or cogent reasons" therefor, "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of the power of supervision" by this Honorable Supreme Court [Sec. 6 (b), *Ibid.*].

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<sup>6</sup> CA *rollo*, pp. 90-106.

III. The findings by the Honorable Court of Appeals that respondents (appellants therein) “had satisfactorily presented a *prima facie* case of negligence which the appellee (petitioner herein) had not overcome with an adequate explanation” and which alleged negligence is “the proximate cause of death of Lanuzo” are manifestations of grave abuse of discretion in the appreciation of facts, and constitute a judgment based on a misinterpretation of facts, which justify a review by this Honorable Supreme Court.<sup>7</sup>

The company reiterates the categorical finding of the RTC that the proximate cause of the accident was Balbino’s own negligence, and that such finding was based on the conclusion stated by SPO1 Corporal in his investigation report to the effect that the incident was “purely self accident,” and on the unrebutted testimony of Zamora to the effect that Balbino was driving his motorcycle at a fast speed trying to overtake another motorcycle rider before hitting the barricade. On the other hand, it insists that its documentary and testimonial evidence proved its exercise of due care and observance of the legally prescribed safety requirements for contractors.

The company maintains that Balbino was familiar with the re-blocking project that had been going on for months because he had been passing the area at least four times a day during weekdays in going to and from his place of work in the morning and in the afternoon; and that he could have avoided the accident had he exercised reasonable care and prudence.

The company assails the application of the doctrine of *res ipsa loquitur*, positing that the Lanuzo heirs did not establish all the requisites for the doctrine to apply.

Anent the first requisite, the company states that the Lanuzo heirs did not successfully counter its documentary and testimonial evidence showing that Balbino’s own negligence had caused the accident. It cites the fact that Balbino was familiar with the road conditions and the re-blocking project because he had been passing there daily; and that Balbino had been driving too fast and not wearing the required helmet for motorcycle drivers, which were immediately evident because he had been thrown from his motorcycle and had landed “18 paces away” from the barricade that he had hit.

On the second requisite, the company argues that Balbino’s driving and operation of his motorcycle on the day of the accident indicated that the accident was not within its exclusive management and control; and that as to the matters that were within its control, it sufficiently showed its observance of due and reasonable care and its compliance with the legally prescribed safety requirements.

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<sup>7</sup> *Rollo*, pp. 19-20.

Regarding the third requisite, the company reminds that Zamora and SPO1 Corporal revealed that Balbino was overtaking another motorcycle rider before hitting the barricade. The credibility of said witnesses was not challenged, and their testimonies not rebutted; hence, the CA erred in relying on the recollections of Asuncion Sandia and Ernesto Alto who were not present when the incident took place. Sandia and Alto's testimonies could not be accorded more weight than Zamora's eyewitness account, considering that the latter was believed by the trial judge who had the first-hand opportunity to observe the demeanor of the witnesses.

Whose negligence was the proximate cause of the death of Balbino?

### **Ruling of the Court**

Inasmuch as the RTC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue.<sup>8</sup> The Court must ascertain whose evidence was preponderant, for Section 1, Rule 133 of the *Rules of Court* mandates that in civil cases, like this one, the party having the burden of proof must establish his case by a preponderance of evidence.<sup>9</sup>

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.<sup>10</sup> It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.<sup>11</sup> Generally, the party who denies has no burden to prove.<sup>12</sup> In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.<sup>13</sup> The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*, but it may rest on the defendant if he admits expressly or impliedly

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<sup>8</sup> *Sealoder Shipping Corporation v. Grand Cement Manufacturing Corporation*, G.R. Nos. 167363 & 177466, December 15, 2010, 638 SCRA 488, 509-510.

<sup>9</sup> Section 1, Rule 133 of the *Rules of Court* states:

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

<sup>10</sup> *People v. Macagaling*, G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299, 320.

<sup>11</sup> *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325; *Coronel v. Court of Appeals*, G.R. No. 103577, October 7, 1996, 263 SCRA 15, 35.

<sup>12</sup> *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 596.

<sup>13</sup> *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. No. 109373, March 27, 1998, 288 SCRA 197, 206].

the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.<sup>14</sup>

By preponderance of evidence, according to *Raymundo v. Lunaria*:<sup>15</sup>

x x x is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of evidence” or “greater weight of the credible evidence.” It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

In addition, according to *United Airlines, Inc. v. Court of Appeals*,<sup>16</sup> the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant’s.

Upon a review of the records, the Court affirms the findings of the RTC, and rules that the Lanuzo heirs, the parties carrying the burden of proof, did not establish by preponderance of evidence that the negligence on the part of the company was the proximate cause of the fatal accident of Balbino.

Negligence, the Court said in *Layugan v. Intermediate Appellate Court*,<sup>17</sup> is “the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do,<sup>18</sup> or as Judge Cooley defines it, ‘(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.’”<sup>19</sup> In order that a party may be held liable for damages for any injury brought about by the negligence of another, the claimant must prove that the negligence was the immediate and proximate cause of the injury. Proximate cause is defined as “that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.”<sup>20</sup>

The test by which the existence of negligence in a particular case is determined is aptly stated in the leading case of *Picart v. Smith*,<sup>21</sup> as follows:

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<sup>14</sup> *Sambar v. Levi Strauss & Co.*, G.R. No. 132604, March 3, 2002, 378 SCRA 365.

<sup>15</sup> G.R. No. 171036, October 17, 2008, 569 SCRA 526, 532.

<sup>16</sup> G.R. No. 124110, April 20, 2001, 357 SCRA 99, 107.

<sup>17</sup> No. L-73998, November 14, 1988, 167 SCRA 363, 372-373.

<sup>18</sup> *Id.*, citing Black Law Dictionary, Fifth Edition, 930.

<sup>19</sup> *Id.*, citing Cooley On Torts, Fourth Edition, Vol. 3, 265.

<sup>20</sup> *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 518.

<sup>21</sup> 37 Phil 809, 813 (1918).



The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.

First of all, we note that the Lanuzo heirs argued in the trial and appellate courts that there was a total omission on the part of the company to place illuminated warning signs on the site of the project, especially during night time, in order to warn motorists of the project. They claim that the omission was the proximate cause of the death of Balbino.<sup>22</sup> In this appeal, however, they contend that the negligence of the company consisted in its omission to put up *adequate* lighting and the required signs to warn motorists of the project, abandoning their previous argument of a total omission to illuminate the project site.

During the trial, the Lanuzo heirs attempted to prove inadequacy of illumination instead of the total omission of illumination. Their first witness was Cesar Palmero, who recalled that lights had been actually installed in the site of the project. The next witness was Ernesto Alto, who stated that he had seen three light bulbs installed in the site, placed at intervals along the stretch of the road covered by the project. Alto further stated that he had passed the site on board his tricycle on October 30, 1997 prior to the accident, and had seen only a gas lamp, not light bulbs, on his approach. Another witness of the plaintiffs, Asuncion Sandia, claimed that she had also

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<sup>22</sup> Records, p. 3; CA *rollo*, pp. 31, 38.

passed the site on board a bus on the night just prior to the accident, and had seen the site to be dark, with only one lane open to traffic, with no light at all. Obviously, the witnesses of the plaintiffs were not consistent on their recollections of the significant detail of the illumination of the site.

In contrast, the company credibly refuted the allegation of inadequate illumination. Zamora, its flagman in the project, rendered an eyewitness account of the accident by stating that the site had been illuminated by light bulbs and gas lamps, and that Balbino had been in the process of overtaking another motorcycle rider at a fast speed when he hit the barricade placed on the newly cemented road. On his part, SPO1 Corporal, the police investigator who arrived at the scene of the accident on October 30, 1997, recalled that there were light bulbs on the other side of the barricade on the lane coming from Naga City; and that the light bulb on the lane where the accident had occurred was broken because it had been hit by the victim's motorcycle. Witnesses Gerry Alejo and Engr. Victorino del Socorro remembered that light bulbs and gas lamps had been installed in the area of the project.

Secondly, the company presented as its documentary evidence the investigation report dated December 3, 1997 of SPO1 Corporal (Annex 1), the relevant portions of which indicated the finding of the police investigator on the presence of illumination at the project site, *viz*:

SUBJECT: Investigation Report Re: Homicide Thru Reckless Imprudence  
(Self Accident)

x x x x

## II. MATTERS INVESTIGATED:

1. To determine how the incident happened.
2. To determine the vehicle involved.

## III. FACTS OF THE CASE:

3. At 6:45 P.M. October 30, 1997, Elements of Pili Municipal Police Station led by SPO2 Melchor Estallo, SPO2 Cesar Pillarda, both members of the patrol section and SPO1 Pedro D. Corporal, investigator reported having conducted an on the spot investigation re: vehicular incident (Self Accident) that happened on or about 6:30 o'clock in the evening of October 30, 1997 along national highway, San Agustin, Pili, Camarines Sur, wherein one Balbino Lanuzo y Doe, of legal age, married, a public school teacher, a resident of San Jose, Pili, Camarines Sur while driving his Honda motorcycle 110 CC enroute to San Jose, Pili, Camarines Sur from Poblacion, this municipality and upon reaching at road re: blocking portion of the national highway at barangay San Agustin, Pili, Camarines Sur and while overtaking another motorcycle ahead incidentally side-swiped a road sign/barricade installed at the lane road re: blocking of the national highway, causing said motorcycle

rider to swerved his ridden motorcycle to the right and stumble down and fell to the concrete cemented road. Victim was rushed to Bicol Medical Center, Naga City for treatment but was pronounced dead on arrival.

4. **That upon arrival at the scene of the incident it was noted that road sign/barricade installed on the road has a light.**
5. That said road was under repair for almost a month which one lane portion of the national highway is possible of all passing vehicles from south and north bound.
6. That said motorcycle stumble down on the newly repair portion of the national highway and the driver lying down beside the motorcycle.

x x x x

8. That one of the passerby revealed that the victim possibly be miscalculated the road block that made him to tumble down when he applied sudden brake.

#### IV. FINDINGS/DISCUSSION:

9. The time of the incident was at about 6:30 o'clock in the evening a time wherein dark of the night is approaching the vision of the driver is affected with the changing condition and it is all the time when driver should lights his driven vehicle, as to this case, the driver Balbino Lanuzo y Doe (victim has exercise all precautionary measures to avoid accident but due to self accident he incidentally sideswiped the road sign/barricade of the re: Blocking portion of the national highway resulting him to stumble down his motorcycle and fell down to the concrete cement road.
10. The driver/victim met unexpectedly (sic) along that one lane potion of the re: blocking and considering it was night time, confusion overthrew him and because of sudden impulse, he lost control on the motorcycle he was driving.
11. That the driver/victim has no crush (sic) helmet at the time of the incident considering that it should be a basic requirement as to prevent from any accident.

#### V. RECOMMENDATION:

12. Basing on the above discussion and facts surroundings the case was purely self accident resulting to Homicide Thru Reckless Imprudence and the case must be closed. (Emphasis ours.)<sup>23</sup>

Additionally, the company submitted the application for lighting permit covering the project site (Annex 7) to prove the fact of installation of the electric light bulbs in the project site.

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<sup>23</sup> Records, pp. 178-179.

In our view, the RTC properly gave more weight to the testimonies of Zamora and SPO1 Corporal than to those of the witnesses for the Lanuzo heirs. There was justification for doing so, because the greater probability pertained to the former. Moreover, the trial court's assessment of the credibility of the witnesses and of their testimonies is preferred to that of the appellate court's because of the trial court's unique first-hand opportunity to observe the witnesses and their demeanor as such. The Court said in *Cang v. Cullen*:<sup>24</sup>

The findings of the trial court on the credibility of witnesses are accorded great weight and respect - even considered as conclusive and binding on this Court - since the trial judge had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh of a witness, or his scant or full realization of an oath - all of which are useful aids for an accurate determination of a witness' honesty and sincerity. He can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.

Absent any showing that the trial court's calibration of the credibility of the witnesses was flawed, we are bound by its assessment. This Court will sustain such findings unless it can be shown that the trial court ignored, overlooked, misunderstood, misappreciated, or misapplied substantial facts and circumstances, which, if considered, would materially affect the result of the case.<sup>25</sup>

The Court observes, too, that SPO1 Corporal, a veteran police officer detailed for more than 17 years at the Pili Police Station, enjoyed the presumption of regularity in the performance of his official duties.<sup>26</sup> The presumption, although rebuttable, stands because the Lanuzo heirs did not adduce evidence to show any deficiency or irregularity in the performance of his official duty as the police investigator of the accident. They also did not show that he was impelled by any ill motive or bias to testify falsely.

Thirdly, the CA unreasonably branded the testimonies of Zamora and SPO1 Corporal as "self-serving." They were not. Self-serving evidence refers to out-of-court statements that favor the declarant's interest;<sup>27</sup> it is disfavored mainly because the adverse party is given no opportunity to dispute the statement and their admission would encourage fabrication of

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<sup>24</sup> G.R. No. 163078, November 25, 2009, 605 SCRA 391, 398.

<sup>25</sup> *Id.* at 401-402.

<sup>26</sup> Section 3 (m), Rule 131 of the *Rules of Court* states:

Section 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

x x x x

<sup>27</sup> *National Development Co. v. Workmen's Compensation Commission*, 19 SCRA 861, 865-866.

testimony.<sup>28</sup> But court declarations are not self-serving considering that the adverse party is accorded the opportunity to test the veracity of the declarations by cross-examination and other methods.

There is no question that Zamora and SPO1 Corporal were thoroughly cross-examined by the counsel for the Lanuzo heirs. Their recollections remained unchallenged by superior contrary evidence from the Lanuzo heirs.

Fourthly, the doctrine of *res ipsa loquitur* had no application here. In *Tan v. JAM Transit, Inc.*,<sup>29</sup> the Court has discussed the doctrine thusly:

*Res ipsa loquitur* is a Latin phrase that literally means “the thing or the transaction speaks for itself.” It is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for defendant to meet with an explanation. Where the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care. This rule is grounded on the superior logic of ordinary human experience, and it is on the basis of such experience or common knowledge that negligence may be deduced from the mere occurrence of the accident itself. Hence, the rule is applied in conjunction with the doctrine of common knowledge.

For the doctrine to apply, the following requirements must be shown to exist, namely: (a) the accident is of a kind that ordinarily does not occur in the absence of someone's negligence; (b) it is caused by an instrumentality within the exclusive control of the defendant or defendants; and (c) the possibility of contributing conduct that would make the plaintiff responsible is eliminated.<sup>30</sup>

The Court has warned in *Reyes v. Sisters of Mercy Hospital*,<sup>31</sup> however, that “*res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case.”

Based on the evidence adduced by the Lanuzo heirs, negligence cannot be fairly ascribed to the company considering that it has shown its installation of the necessary warning signs and lights in the project site. In

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<sup>28</sup> *Hernandez v. Court of Appeals*, G.R. No. 104874, December 14, 1993, 228 SCRA 429, 436.

<sup>29</sup> G.R. No. 183198, November 25, 2009, 605 SCRA 659, 667-668.

<sup>30</sup> *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 755.

<sup>31</sup> G.R. No. 130547, October 3, 2000, 341 SCRA 760, 772.

that context, the fatal accident was not caused by any instrumentality within the exclusive control of the company. In contrast, Balbino had the exclusive control of how he operated and managed his motorcycle. The records disclose that he himself did not take the necessary precautions. As Zamora declared, Balbino overtook another motorcycle rider at a fast speed, and in the process could not avoid hitting a barricade at the site, causing him to be thrown off his motorcycle onto the newly cemented road. SPO1 Corporal's investigation report corroborated Zamora's declaration. This causation of the fatal injury went uncontroverted by the Lanuzo heirs.

Moreover, by the time of the accident, the project, which had commenced in September 1997, had been going on for more than a month and was already in the completion stage. Balbino, who had passed there on a daily basis in going to and from his residence and the school where he then worked as the principal, was thus very familiar with the risks at the project site. Nor could the Lanuzo heirs justly posit that the illumination was not adequate, for it cannot be denied that Balbino's motorcycle was equipped with headlights that would have enabled him at dusk or night time to see the condition of the road ahead. That the accident still occurred surely indicated that he himself did not exercise the degree of care expected of him as a prudent motorist.

According to Dr. Abilay, the cause of death of Balbino was the fatal depressed fracture at the back of his head, an injury that Dr. Abilay opined to be attributable to his head landing on the cemented road after being thrown off his motorcycle. Considering that it was shown that Balbino was not wearing any protective head gear or helmet at the time of the accident, he was guilty of negligence in that respect. Had he worn the protective head gear or helmet, his untimely death would not have occurred.

The RTC was correct on its conclusions and findings that the company was not negligent in ensuring safety at the project site. All the established circumstances showed that the proximate and immediate cause of the death of Balbino was his own negligence. Hence, the Lanuzo heirs could not recover damages.<sup>32</sup>

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on August 11, 2003 by the Court of Appeals; **REINSTATES** the decision

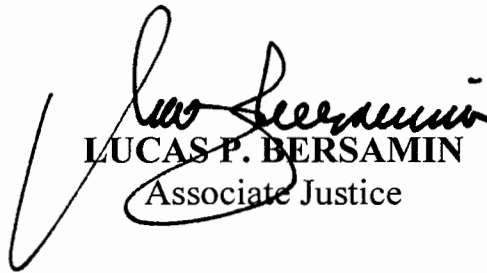
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<sup>32</sup> The *Civil Code* states:

Article 2179. **When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.** But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

rendered on October 8, 2001 by the Regional Trial Court, Branch 32, in Pili, Camarines Sur dismissing the complaint; and **MAKES** no pronouncements on costs of suit.

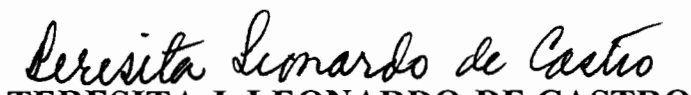
**SO ORDERED.**

  
**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice