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without consideration and fraudulent, executed merely to lend color of authenticity to what was calculated as Nicanor's would-be status of insolvency. Since both the mortgage and the sale were fictitious and simulated, they were void *ab initio* [New Civil Code, Art. 1409. *See Mapalo v. Mapalo*, L-21489 & L-21628, 19 May 1966; 17 SCRA 114; *Vda. de Rodriguez v. Rodriguez*, L-23002, 31 July 1967; 20 SCRA 908]. In the contemplation of law, it is as if they never were, with the result that the lands covered by the instruments remain under the ownership of the alleged mortgagor-vendor, Nicanor Escutin, and his successors-in-interest.

WHEREFORE, the judgment of dismissal is hereby affirmed. Without costs.

SO ORDERED.

Antonio (Actg. Chairman), Aquino, Santos, and *De Castro, JJ.*, concur.

De Castro, J., has been designated to sit with the Second Division.

Barredo and *Concepcion Jr., JJ.*, on leave.

FIRST DIVISION

[G.R. No. L-29889. May 31, 1979]

VICTORINO CUSI and PILAR POBRE, *plaintiffs-appellees, vs.* **PHILIPPINE NATIONAL RAILWAYS,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FINDINGS OF FACT OF LOWER COURT; DESERVES GREAT RESPECT.

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— The question of negligence being one of fact, the lower court's finding of negligence deserves serious consideration by the appellate court. It commands great respect and weight, the reason being that the trial judge, having the advantage of hearing the parties testify and of observing their demeanor on the witness stand, is better situated to make conclusions of fact, Thus, it has been the standing practice of appellate courts to accord lower court's judgments the presumption of correctness. And unless it can be shown that the error or errors, substantial in character, be shown in the conclusion arrived at, or that there was abuse of judicial scrutiny, the Supreme Court is bound by their judgments.

2. **CIVIL LAW; TORTS AND DAMAGES; NEGLIGENCE; NATURE AND DEFINITION.** — Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. By such degree of care and vigilance is measured; it is dependent upon the circumstances on which a person to use that care and diligence expected of reasonable men under similar circumstances.

3. **ID.; ID.; ID.; CIRCUMSTANCES SHOWING NEGLIGENCE.** — Where it appears that at the time of the accident there was no guard or flagman assigned at the railroad crossing to operate the manually operated warning devices installed therein; that the warning devices were not operating and there was no notice to the public that the same were inoperative; that the train was on an unscheduled trip; and that the locomotive driver did not blow his horn and the train was at full speed, these circumstances show negligence on the part of the defendant railroad company.

4. **ID.; ID.; ID.; SIGNAL DEVICES; MOTORISTS MAY RELY ON THESE SIGNAL DEVICES AT RAILROAD CROSSING.** — To warn the travelling public of the impending dangers, the manually operated signal device must be manned at all times. The act of a railroad company in allowing its locomotive to travel through the unattended crossing with inoperative signal devices, without sending any of its employees to operate the signal devices so as to warn oncoming motorist of the approach of one of its locomotive cannot be justified or condoned. The inoperation

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of the warning devices creates a situation which may be misunderstanding by the riding public to mean safe passage. If warning devices are installed in railroad crossings, the travelling public has the right to rely on such warning devices to put the travelers of their guard and take the necessary precaution before crossing the tracks. A need therefore exists for the railroad company to use reasonable care to keep such devices in good condition and in working order or to give notice that they are not operating, since if such a signal is misunderstood it is a menace.

5. **ID., ID., ID., EVIDENCE OF NEGLIGENCE.** — If a railroad company maintains a signaling devise at a crossing to give warning of the approaching train, the failure of the device to operate is generally held to be evidence of negligence, which may be considered with all the circumstances of the case in determining whether the rail company was negligent as a matter of fact.

6. **ID.; ID.; ID.; CONTRIBUTORY NEGLIGENCE; NOT ESTABLISHED FOR FAILURE TO MAKE FULL STOP BEFORE CROSSING RAILROAD TRACKS.** — The failure of a motorist to make a full stop before proceeding to traverse a railroad crossing does not constitute such contributory negligence as would preclude him from recovering indemnity, because the exception, clause of Section 56 (a) of the Motor Vehicle Law allows motorist to cross without coming to a full stop when in their opinion no hazard exist.

7. **ID.; ID.; ID.; ID.; ID.; NOT A CASE OF CONTRIBUTORY NEGLIGENCE.** — Where it appears that when the motorist crossed the railroad track, the level bar as raised, there were no warning lights flashing nor warning bells ringing, nor whistle from an oncoming train; that the motorist, relying on his faculties of sight and hearing, had no reason to anticipate the impending danger, because he had earlier safely traversed the same crossing and with the impression that the crossing was safe for passage as before, he merely slackened his speed and proceeded to cross the tracks, driving at the proper speed for going over railroad crossing, HELD: these circumstances established the fact that the motorist had not contributed to the accident as would preclude him from recovering indemnity.

8. **ID.; ID.; ACTUAL DAMAGES; REASONABLENESS.** — The award of actual damages in the amount of ₱23,946.72 to plaintiffs,

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consisting of medical expenses for injuries suffered, repair of their car, and loss of a pair of earnings and a wrist watch is affirmed, the same being reasonable and substantiated.

9. **ID.; ID.; ID.; INCLUDES IMPAIRMENT OF INCOME.** — The award of ₱12,000 for loss of income for three years that plaintiff was under constant medical treatment; and ₱14,000 for impairment of her earning capacity is reasonable it appearing that plaintiff, *previously a skilled piano teacher averaging a monthly income* of ₱600, can no longer teach nor play the piano since the accident which resulted in the loss of the dexterity of her fingers.

10. **ID.; ID.; ID.; ID.; INCLUDES LOSS OF INCOME.** — The award of ₱40,000 for loss of income for eight months that plaintiff was disabled and impaired of his earning capacity is reasonable it appearing that as a result of the accident plaintiff can no longer vigorously attend to his businesses which previously netted him a monthly average income of ₱5,000.

11. **ID.; ID.; ID.; ID.; INCLUDES UNREALIZED PROFITS.** — The award of ₱20,000 for unrealized profits is affirmed, defendant having failed to present an iota of evidence to overcome plaintiff's evidence credited by the lower court as to the certainty of the materialization of the stated transaction.

12. **ID.; ID.; MORAL DAMAGES; WHEN REASONABLE.** — The award of ₱70,000 to the wife and ₱50,000 to the husband as moral damages is not excessive it being shown that in their own respective fields, both were successful, and that because of the accident they have to bear throughout their whole lifetime the humiliation wrought by their physical deformation which affect their social lives, their financial undertaking and even their mental attitudes.

13. **ID.; ID.; ATTORNEY'S FEES; WHEN REASONABLE.** — The amount of ₱10,000 given as attorney's fees and expenses of litigation is not unreasonable.

14. **ID.; ID.; MAY BE BEAR LEGAL INTERESTS.** — The total amount of damages awarded by the trial court should bear legal interest at 6% from the rendition of the trial court's judgment.

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APPEARANCES OF COUNSEL

Francisco V. Marasigan for plaintiffs-appellees.
Leopoldo M. Abellera for defendant-appellant.

D E C I S I O N

GUERRERO, *J.*:

Direct appeal from the decision of the Court of First Instance of Rizal ordering defendant-appellant to indemnify the plaintiffs-appellees in the total amount of Two Hundred Thirty-Nine Thousand and Six Hundred Forty-Eight Pesos, and Seventy-Two Centavos (₱239,648.72) for injuries received in a collision caused by the gross negligence of defendant-appellant, plus Ten Thousand Pesos (₱10,000.00) as attorney's fees and expenses of litigation.

Upon the amended and supplemental complaints for damages filed by plaintiffs-appellees, the spouses Victorino Cusi and Pilar Pobre before the Court of First Instance of Rizal against the Manila Railroad Company, now the Philippine National Railways and duly answered by the latter and after due hearing, the following facts appear as undisputed: On the night of October 5, 1963, plaintiffs-appellees attended a birthday party inside the United Housing Subdivision in Parañaque, Rizal. After the party which broke up at about 11 o'clock that evening, the plaintiffs-appellees proceeded home in their Vauxhall car with Victorino Cusi at the wheel. Upon reaching the railroad tracks, finding that the level crossing bar was raised and seeing that there was no flashing red light, and hearing no whistle from any coming train, Cusi merely slackened his speed and proceeded to cross the tracks. At the same time, a train bound for Lucena traversed the crossing, resulting in a collision between the two. The impact threw the plaintiffs-appellees out of their car which was smashed. One Benjamin Franco, who came from the same party and was driving a vehicle right behind them, rushed to their aid and brought them to San Juan de Dios Hospital for emergency treatment. Later, the plaintiffs-appellees were

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transferred to the Philippine General Hospital. A week later, Mrs. Cusi transferred to the Manila Doctors Hospital where Dr. Manuel Rivera, head of the Orthopedic and Fracture Service of the Philippine General Hospital, performed on her a second operation and continued to treat her until her discharge from the hospital on November 2, 1963. Thereafter, Dr. Rivera treated her as an out-patient until the end of February, 1964 although by that time the fractured bones had not yet healed. Mrs. Cusi was also operated on by Dr. Francisco Aguilar, Director of the National Orthopedic Hospital, in May, 1964 and in August, 1965, after another operation in her upper body from the chest to the abdomen, she was placed in cast for some three (3) months and her right arm immobilized by reason of the cast.

As enumerated in the Medical Certificate (Exh. "J"), Mrs. Cusi suffered the following:

"(1) Fracture open middle third humerus, right
(2) Fracture mandible right paramedian
(3) Fracture fibula left distal
(4) Concussion, cerebral
(5) Abrasions, multiple (face, head, lumbo-sacral and extremities)
(6) Lacerations (2) right temporal
(7) Contusions with hematoma left forehead and parieto occipital, right."

For these injuries, she underwent a total of four surgical operations in a period of two years. As a result of the fracture on her right arm, there was a shortening of about 1 cm. of that arm. She lost the flexibility of her wrist, elbow and shoulder. Up to the time she took the witness stand in August, 1966, she still had an intermedullary nail in the bone of her right arm. Likewise, Victorino Cusi suffered brain injuries which affected his speech, memory, sense of hearing and neck movement. For a long period, he also felt pain all over his body.

Victorino Cusi claimed that prior to the accident he was a successful businessman — the Special Assistant to the Dolor Lopez Enterprises, the managing partner of Cusi and Rivera Partnership, the manager of his ricemill, and with substantial investments in other business enterprises. As a result of his

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injuries, he was unable to properly attend to his various business undertakings. On the other hand, his wife, Pilar, was a skilled music and piano teacher. After the accident, she lost the dexterity of her fingers forcing her to quit her profession. She also bore ugly scars on several parts of her body, and she suffered anxiety of a possible miscarriage being then five (5) months pregnant at the time of the accident.

The defense is centered on the proposition that the gross negligence of Victorino Cusi was the proximate cause of the collision; that had he made a full stop before traversing the crossing as required by Section 56(a) of Act 3992 (Motor Vehicle Law), he could have seen and heard the approach of the train, and thus, there would have been no collision.

After a protracted trial, the lower court rendered the decision now subject of the appeal. Defendant-appellant seeks the reversal of said decision; but should we affirm the same, that the award be reduced to a reasonable amount.

As the action is predicated on negligence, the New Civil Code[1] making clear that "whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done," the crucial question posed in the petition at bar is the existence of negligence on the part of defendant-appellant as found by the lower court.

1. The question of negligence being one of fact, the lower court's finding of negligence on the part of the defendant-appellant deserves serious consideration by the Court. It commands great respect and weight, the reason being that the trial judge, having the advantage of hearing the parties testify and of observing their demeanor on the witness stand, is better situated to make conclusions of facts. Thus, it has been the standing practice of appellate courts to accord lower court's judgments the presumption of correctness. And unless it can be shown that error or errors, substantial in character, be shown in the conclusion arrived at, or that there was abuse in judicial scrutiny,

[1] Article 2176.

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We are bound by their judgments. On this ground alone We can rest the affirmance of the judgment appealed from.[2]

2. Nor is the result different even if no such presumption were indulged in, that is, even if We were to resolve whether or not there exist compelling reasons for an ultimate reversal.

The judicial pronouncement below that the gross negligence of defendant-appellant was the proximate cause of the collision has been thoroughly reviewed by this Court and we fully affirm the same.

Negligence has been defined by Judge Cooley in his work on Torts (3d. ed.), Sec. 1324[3] as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury." By such a test, it can readily be seen that there is no hard and fast rule whereby such degree of care and vigilance is measured, it is dependent upon the circumstances in which a person finds himself so situated. All that the law requires is that it is always incumbent upon a person to use that care and diligence expected of reasonable men under similar circumstances.

These are the circumstances attendant to the collision. Undisputably, the warning devices installed at the railroad crossing were manually operated; there were only 2 shifts of guards provided for the operation thereof — one, the 7:00 A.M. to 3:00 P.M. shift, and the other, the 3:00 P.M. to 11:00 P.M. shift. On the night of the accident, the train for Lucena was on an unscheduled trip after 11:00 P.M. During that precise hour, the warning devices were not operating for no one attended to them. Also, as observed by the lower court, the locomotive

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[2] *Corliss v. Manila Railroad Co.*, 27 SCRA 674, citing *Medina v. Collector of Internal Revenue*, L-15113, January 28, 1961; *Jai-Alai Corporation v. Ching Kiat*, L-7969, March 30, 1961; *Arrieta v. National Rice & Corn Corp.*, L-15645, January 31, 1964.

[3] Quoted with approval in *U.S. v. Juanillo*, 23 Phil. 212 (1912) and *U.S. v. Barias*, 23 Phil. 434 (1912).

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driver did not blow his whistle, thus: "x x x he simply sped on without taking an extra precaution of blowing his whistle from a distance of 50 to 10 meters from the crossing. That the train was running at full speed is attested to by the fact that notwithstanding the application of the emergency brakes, the train did not stop until it reached a distance of around 100 meters."

These facts assessed together show the inadequacy, nay, the absence, of precautions taken by the defendant-appellant to warn the travelling public of the impending danger. It is clear to Us that as the signal devices were wholly manually-operated, there was an urgent need for a flagman or guard to man the crossing at all times. As it was, the crossing was left unattended to after eleven o'clock every night and on the night of the accident. We cannot in all reason justify or condone the act of the defendant-appellant allowing the subject locomotive to travel through the unattended crossing with inoperative signal devices, but without sending any of its employees to operate said signal devices so as to warn oncoming motorists of the approach of one of its locomotives. It is not surprising therefore that the inoperation of the warning devices created a situation which was misunderstood by the riding public to mean safe passage. Jurisprudence recognizes that if warning devices are installed *in railroad crossings, the travelling public has the right* to rely on such warning devices to put them on their guard and take the necessary precautions before crossing the tracks. A need, therefore, exists for the railroad company to use reasonable care to keep such devices in good condition and in working order, or to give notice that they are not operating, since if such a signal is misunderstood it is a menace.[4] Thus, it has been held that if a railroad company maintains a signalling device at a crossing to give warning of the approach of a train, the failure of the device to operate is generally held to be evidence of negligence, which maybe considered with all the circumstances of the case in determining whether the railroad company was negligent as a matter of fact.[5]

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[4] See 74 C.J.S., 1347, 1348.

[5] 44 Am. Jur. 766, pp. 8-9.

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The set of circumstances surrounding the collision subject of this case is very much similar to that of *Lilius v. Manila Railroad Company,* 59 Phil. 758 (1934), where this Court upheld the lower court's finding of negligence on the part of defendant locomotive company upon the following facts —

"x x x on the part of the defendant company, for not having had on that occasion any semaphore at the crossing at Dayap, to serve as a warning to passersby of its existence in order that they might take the necessary precautions before crossing the railroad; and, on the part of its employees — the flagman and switchman, for not having remained at his post at the crossing in question to warn passersby of the approaching train; the station master, for failure to send the said flagman and switchman to his post on time; and the engineer, for not having taken the necessary precautions to avoid an accident, in view of the absence of said flagman and switchman, by slackening his speed and continuously ringing the bell and blowing the whistle before arriving at the crossing."

Defendant-appellant rests its defense mainly on Section 56(a) of the Motor Vehicle Law. Thus:

"Section 56(a) — Traversing through streets and railroad crossing, etc. — All vehicles moving on the public highways shall be brought to a full stop before traversing any 'through street' or railroad crossing. Whenever any such 'through street' or crossing is so designated and signposted, it shall be unlawful for the driver of any vehicle to fail to stop within twenty meters but not less than two and one-half meters from such 'through street' or railroad crossing."

The defense presupposes that the failure of plaintiffs-appellees to stop before proceeding to traverse the crossing constitutes contributory negligence, thereby precluding them from recovering indemnity for their injuries and damages.

The candor of defendant-appellant in interposing such a defense is doubtful. As seemingly observed by the lower court, the defense, through inadvertence or deliberateness, did not pursue further the excepting clause of the same section, thus to go on:

"Provided, however, that the driver of a passenger automobile or motorcycle may *instead of coming to a full stop*, slow down to not

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more than ten kilometers per hour whenever it is apparent that no hazard exists."

After a thorough perusal of the facts attendant to the case, this Court is in full accord with the lower court. Plaintiff-appellee Victorino Cusi had exercised all the necessary precautions required of him as to avoid injury to himself and to others. We find no need for him to have made a full stop; relying on his faculties of sight and hearing, Victorino Cusi had no reason to anticipate the impending danger. The record shows that the spouses Cusi previously knew of the existence of the railroad crossing, having stopped at the guardhouse to ask for directions before proceeding to the party. At the crossing, they found the level bar raised, no warning lights flashing nor warning bells ringing, nor whistle from an oncoming train. They safely traversed the crossing. On their return home, the situation at the crossing did not in the least change, except for the absence of the guard or flagman. Hence, on the same impression that the crossing was safe for passage as before, plaintiff-appellee Victorino Cusi merely slackened his speed and proceeded to cross the tracks, driving at the proper rate of speed for going over railroad crossings. Had defendant-appellant been successful in establishing that its locomotive driver blew his whistle to warn motorists of his approach to compensate for the absence of the warning signals, and that Victorino Cusi, instead of stopping or slackening his speed, proceeded with reckless speed and regardless of possible or threatened danger, then We would have been put in doubt as to the degree of prudence exercised by him and would have, in all probability, declared him negligent.[6] But as the contrary was established, we remain convinced that Victorino Cusi had not, through his own negligence, contributed to the accident so as to deny him damages from the defendant-appellant.

The only question that now remains to be resolved is the reasonableness of the amount awarded as damages to the plaintiffs-appellees.

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[6] See *Yamada v. Manila Railroad Co., et al.*, 33 Phil. 8 (1915); *Corliss v. Manila Railroad Co. (supra).*

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The following actual expenses and losses are fully substantiated:

(a) Hospital bills of Mrs. Cusi from October, 1963 to May, 1964 in the amount of Thirteen Thousand Five Hundred Fifty Pesos and Five Centavos (₱13,550.05);

(b) Another hospital bill of Mrs. Cusi in 1965 in the amount of Three Thousand and One Pesos and Ninety Centavos (₱3,001.90);

(c) Doctor's fees for two surgical operations performed on Mrs. Cusi by one Dr. Manuel Rivera in the amount of One Thousand and Five Hundred Pesos (₱1,500.00);

(d) Loss of Victorino's wrist watch valued at Two Hundred and Fifty Pesos (₱250.00);

(e) Loss of Pilar's half of her pair of demand earrings (1-1/2 carrats) valued at Two Thousand Seven Hundred and Fifty Pesos (₱2,750.00);

(f) Repair of the damaged Vauxhall car in the amount of Two Thousand Eight Hundred and Ninety Four Pesos and Seventy-Seven Centavos (₱2,894.77).

The total award of actual damages in the amount of Twenty Three Thousand Nine Hundred Forty-Six Pesos and Seventy-Two Centavos (₱23,946.72) is, therefore, correct.

The lower court awarded Twenty-One Thousand Six Hundred Pesos (₱21,600.00) to Mrs. Cusi for loss of income for the three years that she was under constant medical treatment, and Fourteen Thousand Pesos (₱14,000.00) for impairment of her earning capacity; and Forty Thousand Pesos (₱40,000.00) to Mr. Cusi for loss of income for the eight months that he was disabled and impairment of his earning capacity. We find the award reasonable. The records show that Mrs. Cusi, previously a skilled piano teacher averaging a monthly income of Six Hundred Pesos (₱600.00), cannot now teach nor play the piano since the accident which resulted in the loss of the dexterity of her fingers; likewise, Mr. Cusi cannot now vigorously attend to his businesses which previously netted him a monthly average income of Five Thousand Pesos (₱5,000.00).

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As regards the award of Twenty Thousand Pesos (₱20,000.00) for profits which Victorino Cusi failed to realize from a certain real estate transaction with the Dolor Lopez Enterprises, We affirm the same as the defendant-appellant has failed to present an iota of evidence to overcome plaintiffs-appellees' evidence credited by the lower court as to the certainty of the materialization of the stated transaction.

The award of Seventy Thousand Pesos (₱70,000.00) to Mrs. Cusi and Fifty Thousand Pesos (₱50,000.00) to Victorino Cusi as moral damages is not excessive. In their own respective fields of endeavor, both were successful. Now they have to bear throughout their whole lifetime the humiliation wrought by their physical deformities which no doubt affected, and will continue to do so, their social lives, their financial undertakings, and even their mental attitudes.

Likewise, the amount of Ten Thousand Pesos (₱10,000.00) given as attorney's fees and expenses of litigation is not unreasonable.

The total amount of damages awarded by the trial court should bear legal interest at 6% from the rendition of the judgment, which was on March 26, 1968.

WHEREFORE, the judgment of the lower court is hereby AFFIRMED with the modification that the total amount of damages shall bear legal interest at six per cent (6%) from the rendition of the decision dated March 26, 1968.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.,* concur.