

Mis. DC Batt

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Division Clerk of Court
Third Division

AUG 05 2020



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HEIRS OF CATALINA P.
MENDOZA,

Petitioners,

G.R. No. 243237

Present:

LEONEN, J.,
Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

ES TRUCKING AND
FORWARDERS,

Respondent.

Promulgated:

February 17, 2020

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DECISION

CARANDANG, J.:

Challenged in this Petition for Review on *Certiorari*¹ under Rule 45 is the Decision² dated February 15, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 04394-MIN, affirming the Decision³ dated April 21, 2016 of the Regional Trial Court (RTC) of Zamboanga City, Branch 12, in Civil Case No. 6538, dismissing the complaint for damages filed by petitioners Heirs of Catalina P. Mendoza (Heirs of Catalina). Likewise assailed is the Resolution⁴ dated September 25, 2018 denying the Motion for Reconsideration of the Heirs of Catalina.⁵

¹ Rollo, pp. 9-20.

² Penned by Associate Justice Edgardo A. Camello, with Associate Justices Perpetua T. Atal-Paño and Walter S. Ong, concurring; id. at 24-32.

³ Penned by Presiding Judge Gregorio V. Dela Peña, III; id. at 58-66.

⁴ Id. at 34-35.

⁵ Id. at 35.

Ruling of the Court of Appeals

In the Decision²⁷ dated February 15, 2018, the CA affirmed the ruling of the RTC.²⁸ The CA held that it was incorrect for the Heirs of Catalina to conclude that a criminal conviction will establish ES Trucking's civil liability. For the CA, even if there is such negligence, the employer may defend itself through proof that it exercised due diligence in the selection and supervision of its employees. To rule otherwise will create an absurd result, where the case for quasi-delict is already prejudged and predetermined by the guilty verdict in the Reckless Imprudence case, thus rendering the proceedings in the former without purpose at all.²⁹ It was ruled that judicial notice of the subsequent finality of the judgment of the MTCC in the Reckless Imprudence case is discretionary only.³⁰

Based on the records, the CA found that there was no sufficient evidence of negligence because: (1) none of the petitioners' witnesses saw the moment of impact; (2) ES Trucking's witnesses saw no person walk across the street or in front of the truck; (3) there was no warning beforehand that a person could have crossed the street as there was no possible threat or obstacle in front of the truck; and (4) the police investigator confirmed that he saw no evidence of negligent driving. The CA concluded that the death of Catalina was brought about by a terrible accident, which could only be blamed on being in the wrong place at the wrong time. The CA noted that caution and exercise of due diligence must be exercised by all persons, drivers, and pedestrians alike in the use of streets.³¹

The Heirs of Catalina filed a Motion for Reconsideration, which was denied³² in the Resolution³³ dated September 25, 2018.

In the present petition, the Heirs of Catalina maintain that ES Trucking did not exercise due diligence of a good father of a family in the selection and supervision of the driver because it hired a driver who did not have the necessary training for driving a trailer truck pursuant to Department Order No. 2011-25 issued by Department of Transportation (DOTr).³⁴ The Heirs of Catalina further argue that the Court should take cognizance of the existence of negligence established from the driver's conviction. As the Heirs of Catalina argue on the belief that ES Trucking is a common carrier, there is a presumption of negligence that may only be defeated if evidence of observance of the diligence required by law is presented. Due to the alleged failure of ES Trucking to present such evidence, the Heirs of Catalina insist that they are entitled to damages.³⁵

²⁷ Supra note 2.
²⁸ *Rollo*, p. 31.
²⁹ Id. at 30.
³⁰ Id. at 28.
³¹ Id. at 28-29.
³² Id. at 35.
³³ Supra note 4.
³⁴ *Rollo*, p. 67.
³⁵ Id. at 9-10, 14-19.

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On the other hand, ES Trucking insists in its Comment³⁶ that it cannot be held vicariously liable for damages as there is no sufficient evidence that Timtim was negligent. ES Trucking argues that it had successfully proven its diligence not only in the selection but also in the supervision of its driver.³⁷

Issues

The issues to be resolved are:

- (1) Whether Clin Timtim was negligent in driving the vehicle that caused the death of Catalina to hold his employer ES Trucking liable under Article 2180 of the New Civil Code;
- (2) Whether the complaint for quasi-delict against ES Trucking, Timtim's employer, may proceed independently of the criminal action for Reckless Imprudence resulting to Homicide;
- (3) Whether ES Trucking is a common carrier required by law to observe extraordinary diligence in the carriage of passengers and goods.
- (4) Whether ES Trucking exercised due diligence in the selection and supervision of its driver, Timtim; and
- (5) Whether the Heirs of Catalina are entitled to damages.

The Court's Ruling

**Timtim was recklessly driving
the prime mover truck that caused
the death of Catalina Mendoza.**

It would be a grave injustice to simply accept the testimony of PO3 Agbalos and adopt the conclusion of the CA that the terrible incident "could only be blamed on being in the wrong place at the wrong time."³⁸ This incident would not have happened had Timtim been vigilant in checking his front, rear, and side mirrors for any obstruction on the road, and had he timely stepped on his breaks to avoid hitting Catalina.

Contrary to the ruling of the lower courts, the fact that the truck was traveling on the right lane when the incident happened does not automatically mean that the driver was not negligent. Catalina had already crossed half of the road when she was sideswiped by the vehicle driven by Timtim. This is the reason why her body was found under the fuel tank behind the left front wheel of the truck.³⁹ Had he been driving with caution, he would have seen that Catalina was already attempting to cross the second half of the road in front of him. A prudent driver would have immediately slowed down and stopped the vehicle to give way to the pedestrian crossing the road.

³⁶ Id. at 75-79.

³⁷ Id. at 76.

³⁸ Id. at 29.

³⁹ TSN dated March 10, 2015, pp. 20-21.

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Ruste's testimony regarding the nature of the registration of the vehicle is crucial in concluding that it is not duly registered with the LTFRB. ES Trucking's flawed understanding of the concept of a common carrier was highlighted in the testimony of Edgardo Rustre, the relevant portion of which is reproduced below:

ATTY. FAUNDO, Bernardo Jr. C:

Q Your truck bears Plate No. NAO 152, correct? This truck?

A That's correct; if that's what appears in the document (*sic*) that's correct.

Q The trailer plate number is JZA 163, correct?

A Also correct.

Q So you registered the truck and the trailer. They have different registrations?

A yes.

Q The truck bears the plate number NAO 152 in green?

A Yes.

Q Green prints?

A Yes that's the original

Q Isn't it (*sic*) a fact that it should be a yellow print?

A No, yellow plate once we register in LTFRB

Q You mean to say Mr. Witness you did not register it with LTFRB?

A We registered it with the LTFRB but because of some differences that we were not able to have it change plate to register, but it is in the list of the LTFRB that we filed franchise. In fact, after this incident when you filed the complaint LTFRB cancelled that particular unit for registration but we did not go on with the registration with the LTFRB because once you register with the LTFRB you have to change plate with the LTO.

Q Mr. Witness, when you register this truck with the LTFRB you are supposed to be given a yellow plate, correct?

A No, LTFRB is not the one giving the yellow plate, it's the LTO.

Q In other words, when the yellow plate is issued by the LTO what does it mean?

A I cannot answer you what does it mean because there is no confirmation from LTFRB that we can transfer, change the plate from green to yellow.

x x x x

Q **So because you were not able to get a yellow plate you were not issued a Certificate of Public Convenience insofar as this truck is concerned?**

A **Yes...**

Q **You were not issued?**

A **We were not issued certification, confirmation.**

Q And when you say you were not issued certification, what kind of certification?

A A Certification issued to us is the franchise, that covers the filing of getting a yellow print with the LTFRB.

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We have furnished list of units for registration into yellow plate.

Q **So this Prime Mover, this truck, was not issued a franchise by the LTFRB?**

A **There was none.**

Q So if you have no franchise you cannot operate?

A No...

Q As a trucking service?

A **No, we can operate because we are using it with our own [sic] as a private company. That is registered.**

Q At the time of the incident, Mr. Witness, you were moving a cargo or you were able to move a cargo, correct?

A Yes.

Q **Whose cargo was that? Is that your own cargo or cargo of a customer?**

A **That's our cargo.**

Q **Your very own cargo?**

A **No, cargo of our customer.**

Q What's the name of the customer?

A That I cannot identify to you.

Q But you are very sure it was a customer?

A Yes.⁴⁸ (Emphasis and underscoring supplied.)

From the foregoing, it is clear to Us that ES Trucking engaged in a truck for hire business, offering their vehicles to transport the cargo of its customers. Noticeably, Edgardo Ruste admitted that they filed an application to have the vehicle included in their Certificate of Public Convenience yet their application was never granted.⁴⁹ This is inconsistent with his own claim that ES Trucking does not need to register with the LTFRB because it is not a common carrier but a private company.⁵⁰ The fact that they considered applying for the inclusion of the vehicle in their Certificate of Public Convenience signifies that they are aware of the franchise requirement of the LTFRB. ES Trucking cannot be excused simply because it is not registered with the LTFRB and it is a private company. ES Trucking cannot be exonerated from liability and benefit from its own violation of the laws and rules governing trucks for hire.

As an entity engaged in the truck for hire business, it should have complied with the requirements of the Land Transportation and Traffic Code and the issuances of the LTFRB. Despite being registered as a private vehicle, the actual use of the vehicle and the clientele to whom ES Trucking offers its services remain controlling. The failure to register the vehicle as a public vehicle or a common carrier does not negate the true nature of the vehicle. It is settled that:

A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to

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⁴⁸ TSN dated January 19, 2015, pp. 10-12.

⁴⁹ Id.

⁵⁰ Id.

whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements. The business of a common carrier impinges directly and intimately upon the safety and wellbeing and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.⁵¹

Moreover, a careful scrutiny of the vehicle reveals that, while the plate number of the trailer was in the color yellow, signifying that it is a public utility vehicle, the prime mover truck's plate number was in the color green, signifying that it is registered as a private vehicle.⁵² As admitted by PO3 Agbalos and Edgardo Ruste, vehicles covered by a Certificate of Public Convenience are issued yellow plates, while private vehicles are issued green or white plates.⁵³ In this case, the prime mover truck was issued a green plate, while the trailer attached to it at the time of the incident had a yellow plate.⁵⁴ We cannot simply ignore the vital information that the trailer attached to the prime mover truck carried a yellow plate. It would be absurd to consider the prime mover truck private when it is offered for hire to the public. It would also be contrary to logic to consider only the trailer with the yellow plate as public utility vehicle, because the trailer cannot be moved and utilized for its intended purpose without being attached to the prime mover truck. It is more sensible to conclude that ES Trucking is a common carrier and that the prime mover truck should have been covered by a Certificate of Public Convenience.

It is also important to point out that the vehicle had been registered under the name of ES Trucking as early as September 17, 2009, yet the vehicle remained unregistered with the LTFRB at the time of the incident. The Order⁵⁵ dated July 29, 2013 of the LTFRB showed that ES Trucking failed to register the subject vehicle as "FOR HIRE" within one month from the receipt of the approved franchise in accordance with the conditions of the certificate of public convenience, particularly paragraph 2 therein. Thus, the certificate of public convenience granted in favor of ES Trucking on April 27, 2011 was cancelled on February 3, 2012.

⁵¹ *De Guzman v. Court of Appeals*, 250 Phil. 613, 619-620 (1988).

⁵² TSN dated September 8, 2014, pp. 10-11.

⁵³ TSN dated January 19, 2015, pp. 10-12.

⁵⁴ Id.

⁵⁵ Exhibit "O-1" of Plaintiff's Exhibits.

ES Trucking is required to observe due diligence in the selection and supervision of employees pursuant to Article 2180 of the Civil Code.

The basis for the liability of an employer of an erring driver resulting to injury or damage to a stranger may be found in Articles 2176 and 2180 of the New Civil Code, which state:

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

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

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)

In this case, it has been proven by preponderant evidence that Timtim recklessly drove the prime mover truck which caused the death of Catalina. Although the employer is not the actual tortfeasor, the law makes the employer vicariously liable on the basis of the civil law principle of *paterfamilias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another. When the employee causes damage due to his own negligence while performing his own duties, there arises a presumption that the employer is negligent. This may be rebutted only by proof of observance of the diligence of a good father of a family. The "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees.⁵⁶

In the selection of its prospective employees, the employer is required to examine them as to their qualifications, experience, and service records. ES Trucking did not require Timtim to present any document other than his professional driver's license and job application form. Edgardo Ruste's

⁵⁶ *Reyes v. Doctolero*, G.R. No. 185597, August 2, 2017.

testimony confirms the apparent laxity in the procedure for hiring and selection of ES Trucking, as disclosed in the following exchange:

Q OK, you said that you looked into their license. So, he was duly licensed?

A He is a professional licensed up to the maximum qualification.

Q He suffers none of the restrictions based on the driver's license?

A No, he is a qualified driver to the maximum.

Q So, he can drive the truck, correct?

A Yes.

x x x x

Q OK, you also said you based it on performance. What do you mean by performance?

A Performance from where he came from.

Q Ah... okay. So where did he come from?

A He came from a company in manila which is the one also supplying a truck with us in Zamboanga City. So we called up the owner and verifying the status of this driver. He is from Zamboanga, he came from Manila, transferred to his family in this place.

Q In other words, you made a background investigation on this person because you called his previous employer.

A The background as well as his performance with the company.

Q But you don't have documents to show that he worked in that company, correct?

A He did not present to us any evidence or documents.

Q So you have none?

A **Yes but as a company we don't require documents about his history. All we ask is the driver's license and verify it from where he came from.**

Q So that's confirmed, you just verified, no document?

A Yes. Of course there is document, the application form.

Q Ah, that's the only one, there were no attachments in the application form?

A No. That's normal SOP.

Q You made mention of experience. How did you determine his experience?

A Again it's through verification from the former employer.

x x x x

ATTY. FAUNDO, Bernardo Jr. C:

Q OK, so based on your investigation how long did he work with Pioneer Tractor?

A He worked there for about two years.

Q So that was his only experience when you obtained his services?

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- A Well, with regards [sic] to experience, Your Honor, it is not that you determine that you have to go a longer length of service as a driver. It is what kind of equipment that you are dealing with what kind of equipment you are driving because an ordinary driver cannot drive a tractor ...
- Q Uh-huh. And what other experience did you gather based on your background investigation??
- A No more experience, Your Honor, except what the company requires in hiring a driver then we are done with it.
- Q Mr. Witness, what other requirements did you ask your driver before he was hired? I'm referring to Timtim.
- A **Only job application and driver's license.**
- Q Those were the only?
- A Yes.

x x x x

- Q Did you not try to determine his moral character?
- A His moral character? He has a good character because of our verification in Manila.
- Q In other words, you did not check whether he has records with the police or NBI?
- A **We did not.**
- Q **Or in the barangay?**
- A **We did not because it's not the policy of the company it depends. Sometimes if we look at the applicant he is doubtful then therefore we let him go through the process of having drug test and other NBI clearance. We are private company and we are not a corporation.**
- Q OK, so that [sic] settled. He did not present any record of his good moral character, like the NBI, police or barangay clearance. There is none, okay?
- A **We don't require it.**
- Q OK. Now, did you not require him to attend trainings or seminars?
- A **No we did not because in the first place acquiring a license he passed already the seminar with the LTO or else he will not be issued a driver's license.**
- Q Are you not aware, Mr. Witness, that for public utility vehicles aside from acquiring the professional license they are also supposed to attend training and seminar on transport management road safety? Are you not aware of that?
- A **He did not attend seminar with the LTFRB because that unit was not registered or was not issued a confirmation by the LTFRB.**
- Q So while Mr. Timtim was working under your management he never attended any seminar or transport management and road safety, correct?
- A **None.**
- Q He never showed you any document that he also attended a transport management road safety while employed in another company?



A None because we did not require him.⁵⁷ (Emphasis supplied.)

Even if Timtim is a holder of a professional driver's license and is permitted to drive restriction no. 8, which refers to "ARTICULATED VEHICLE 4501 KGS & ABOVE G V W" and includes the vehicle (with gross vehicle weight capacity of 8000kg), no evidence was presented to prove that he was certified to drive a prime mover truck by Technical Education and Skills Development Authority (TESDA).⁵⁸ DOTr DO No. 2011-25 requires, as an additional requirement for the issuance of certificate of public convenience, that drivers of heavy trucks should be certified by TESDA with "Driving National Certificate (NC) III."⁵⁹ ES Trucking should not have been satisfied with the mere possession of a professional driver's license. Having failed to present proof that Timtim possesses the requisite certification from TESDA, ES Trucking cannot claim to have exercised due diligence in the selection and supervision of its employees.

ES Trucking was not only negligent in hiring Timtim but even in supervising the latter. ES Trucking permitted Timtim to drive the subject vehicle to transport goods of its customers knowing that the vehicle is not duly registered with the LTFRB.

In addition, it must be highlighted that ES Trucking is not only at fault for blatantly disregarding pertinent laws and rules governing trucks for hire but is also guilty of violating its undertaking to preserve the vehicle in its original state while the case is pending. Altering the body number of the vehicle⁶⁰ to avoid detection shows ES Trucking's wanton disregard of this undertaking and evident bad faith.

Atty. Faundo, counsel of the Heirs of Catalina, pointed out that the vehicle was released to the manager of ES Trucking, Sumarna Ruste, with an undertaking to assume custody of the truck at the company compound and to preserve its original condition pending investigation. However, at about 10:10 a.m. on July 19, 2013, the same vehicle was apprehended while trying to deliver goods. It was noticed that the original body no. 5 was altered to no. 15,⁶¹ presumably to avoid being detected by the authorities.

Considering all the evidence on record, We find that ES Trucking failed to sufficiently exercise the diligence of a good father of a family in the selection and supervision of its employee, Timtim.

⁵⁷ TSN dated January 19, 2015, pp. 13-17.

⁵⁸ Id. at 17.

⁵⁹ DOTr DO No. 2011-25.

⁶⁰ Exhibit "P" and "P-1" of Plaintiff's Exhibits.

⁶¹ Id.

The Heirs of Catalina are entitled to damages.

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis supplied.)

Thus, only the expenses proven by credible evidence may be awarded. In this case, the funeral and burial expenses amounting to ₱362,565.60 were duly supported with official receipts when presented in the RTC.

Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00.⁶² Thus, ES Trucking is liable to pay the Heirs of Catalina ₱50,000.00 for her death.

With regard to the award of moral damages, Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity. We find an award of ₱100,000.00 as moral damages sufficient to answer for the mental anguish suffered by the Heirs of Catalina because of her death.

In addition, We award exemplary damages upon finding that ES Trucking acted with gross negligence for failing to duly register the prime mover truck with the appropriate government agency, and for failing to impose a stringent selection procedure in hiring and supervising Timtim. The award of exemplary damages is justified further by ES Trucking's wanton disregard of the law and evident bad faith through its highly reprehensible conduct of altering the body number of the prime mover truck to avoid detection, in violation of its undertaking to preserve the original state of the vehicle while the case is pending. To ensure that such behavior will not be repeated, ES Trucking is directed to pay ₱50,000.00 as exemplary damage to the Heirs of Catalina.

With respect to the award of litigation expenses and attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. Considering the protracted litigation of this dispute, an award of ₱50,000.00 as attorney fees is awarded to the Heirs of Catalina.

Pursuant to the Court's ruling in *Nacar v. Gallery Frames*,⁶³ the Heirs of Catalina are entitled to interest of twelve percent (12%) *per annum* of the

⁶² *Torreón v. Aparra, Jr.*, G.R. No. 188493, December 13, 2017.

⁶³ 716 Phil. 267 (2013).

total monetary award, computed from the date of the filing of the complaint for quasi-delict on June 14, 2013 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.⁶⁴

WHEREFORE, the Decision dated February 15, 2018 Resolution dated September 25, 2018 of the Court of Appeals in CA-G.R. CV No. 04394-MIN is hereby **REVERSED** and **SET ASIDE**.

Respondent ES Trucking Forwarders is **DECLARED** liable to pay petitioners Heirs of Catalina Mendoza the following:

- a. ₱362,565.60 as actual damages for Catalina Mendoza's funeral expenses;
- b. ₱50,000.00 as civil indemnity for the death of Catalina Mendoza;
- c. ₱100,000.00 as moral damages for Catalina Mendoza's heirs;
- d. ₱50,000.00 as exemplary damages;
- e. ₱50,000.00 as attorney's fees; and
- f. costs of suit

Interest at twelve percent (12%) *per annum* of the total monetary awards, computed from the date of the filing of the complaint for quasi-delict on June 14, 2013 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction shall also be imposed on the total judgment award.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson



ALEXANDER G. GESMUNDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

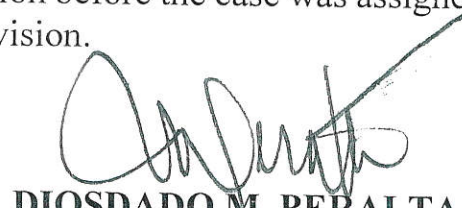
ATTESTATION

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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MisPOCBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
 AUG 05 2020