101 Phil. 523

[G. R. No. L-8721. May 23, 1957]

TEANQUILINO CACHEEO, PLAINTIFF AND APPELLANT, VS. MANILA YELLOW TAXICAB CO., INC., DEFENDANT AND APPELLANT.

D E C I S I O N

FELIX, J.:

There is no dispute as to the following facts: on December 13, 1952, Atty. Tranquilino F. Cachero boarded a Yellow Taxicab, with plate No. 2159-52 driven by Gregorio Mira Abinion and owned by the Manila Yellow Taxicab Co., Inc. On passing Oroquieta between Doroteo Jose and Lope de Vega streets, Gregorio Mira Abinibn bumped said taxicab against a Meralco post,. No. 1-4/387, with the result that the cab was badly smashed and the plaintiff fell out of the vehicle to the ground, suffering thereby physical injuries, *slight in nature*.

The chauffeur was subsequently prosecuted by the City Ifiscal and on February 26, 1953, upon his plea of guilty the Municipal Court of Manila sentenced him to suffer 1 month and 1 day of *arresto mayor*, and to pay the costs.

On December 17, 1952, Tranquilino F. Cachero addressed a letter to the Manila Yellow Taxicab Co., Inc., which was followed by another of January 6, 1953, which reads as follows:

"Manila, *January 6, 1953*

The MANILA YELLOW TAXICAK CO., INC.
1338 Arlegui, Manila

Dear Sirs:

As you have been already advised* by the letter dated December 17, 1952, on December 13, 1952, while I was a passenger of your taxieab bearing plate No.

2159 and driven by your chauffeur Gregorio Mira and through his negligence and the bad condition of the said car, he bumped the same against the pavement on the street (Oroquieta—between Doroteo Jose and Lope de Vega streets, Manila) and hit the Meralco post on said street, resulting in the smashing of the said taxicab, and as a result thereof I was gravely injured and suffered and is still suffering physical, mental and moral damages and not being able to resume any daily calling.

For the said damages, I hereby make a demand for the payment of the sum of P79,245.65, covering expenses for transportation to the hospital for medical treatment, medicines, doctors bills, actual monetary loss, moral, compensatory and exemplary damages, etc, within 5 days from date of receipt hereof.

I trust to hear from you on the matter within the period of 5 days above specified.

Truly yours,

(Sgd.) TRANQUILINO F. CACHERO
2256 Int. B, Misericordia St.
Sta. Cruz, Manila" (Exhibit K)

The Taxicab Co. to avoid expenses and time of litigation offered to settle the case amicably with plaintiff but the latter only agreed to reduce his demand to the sum of P72.050.20 as his only basis for settlement which, of course, was not accepted by said company. So plaintiff instituted this action on February 2, 1953, in the Court of First Instance of Manila, praying in the complaint that the defendant be condemned to pay him: •

"(a) The sum of P72,050.20, the total sum of the itemized losses and/or damages under paragraph 7 of the complaint, with legal interest thereon from the date of the filing of the complaint;
(b) The sum of P5,000 as attorney's fee; and the costa of the suit; and
Plaintiff further respectfully prays for such other and further reliefs as the facts and the law pertaining to the case may warrant."

The defendant answered the complaint setting forth affirmative defenses; and a counterclaim for P930 as damages and praying for the dismissal of plaintiff's action. After hearing the Court rendered decision only July 20, 1954, the dispositive part of which is as follows:

> "In view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant, sentencing the latter to pay the former the following: (1) For medicine, doctor's fees for services rendered and transportation, P700; (2) professional fee as attorney for the defendant in Criminal Case No. 364, 'People vs. Manolo Maddela et al. of the Court of First Instance of Nueva Vizeaya, P3,000; (3) professional fees as attorney Tor the defendant in Civil Case No. 23891 of the Municipal Court of Manila, 'Virginia Tangulan vs. Leonel da Silva,' and for the taking of the deposition of Gabina Angrepan in a case against the Philippine National Bank, P200; and (4) moral damages iri'idie amount of P2,000.

Defendant's countercl4im. is hereby; dismissed.
Defendant shall also pay the costs."
From this decision both parties appealed to Us, plaintiff ¦ limiting his appeal to the part of the decision which refers to the moral damages awarded to 'him which he considered inadequate, and to. the failure of said judgment to grant the attorney's fees asked for in the prayer of his complaint. Defendant in turn alleges that the trial Court erred in awarding to the plaintiff the following:

> "(1) P700—for medicine, doctor's fees and transportation expenses;
> (2) P3,000—as supposedly unearned full professional fees as attorney for the defendant in Criminal Case No. 364, 'People vs. Manob Maddela et al.;
> (3) P200—as supposedly unearned professional fees as attorney for the defendant in Civil Case No. 23891 of the Manila Municipal Court, 'Virginia Tangrulan vs. Leonel de Silva', and for failure to take the deposition of a certain Gabina Angrepah in an unnamed case; and
> (4). P2,000—as moral damages, amounting to the grand total of P5,900, these amounts being very much greater than what plaintiff deserves."

In connection with his appeal, plaintiff calls attention to the testimonies of Dr. Modesto S. Purisima and of Dr. Francisco Aguilar, a member of the staff of the National Orthopedic Hospital, which he considers necessary as a basis for ascertaining not only the physical sufferings undergone by him, but also for determining the adequate compensation for moral damages that he should be awarded by reason of said accident.

The exact nature of plaintiff's injuries, their degree of seriousness and the period of his involuntary disability can be determined by the medical certificate (Exhibit D) issued by the National Orthopedic Hospital on December 16, 1952, and the testimonies of Dr. Francisco Aguilar, physician in said hospital, and of Dr. Modesto Purisima, a private practitioner. The medical certificate (Exhibit D) lists: (a) a *subluxation* of the right shoulder joint; (b) a *contusion* on the right chest; and (c) a "suspicious fracture" of the upper end of the right humerus. Dr. Aguilar who issued the medical certificate admitted, however, with regard to the "suspicious fracture", that in his opinion with (the aid of), the x-ray there was no fricttlre. According to this doctor plaintiff went to the'

National Orthopedic Hospital at least six times during the period from December 16, 1952, to April 7, 1953; that he strapped plaintiff's body (see Exhibit K), which strap was not removed until after a period of six weeks had elapsed. Dr, Modesto Purisima, a private practitioner, testified that he *advised* and *treated* plaintiff from December 14, 1952, to the end of March (1953), Plaintiff was never hospitalized for treatment of the injuries he received in said accident.

Counsel for the defendant delves 'quite extensively on these injuries. He says in his brief the following:

> "Just what is a subluxation? *Luxation* is another term for dis- location (Dorland, W.A.N., The American Illustrated Medical Dictionary (13th ed.)3 P- 652), and hence, a *subluxation* is an incomplete or partial *dislocation* (Ibid., p. 1115). While a dislocation is the displacement of a bone or bones from its or their normal setting (and, therefore, applicable and occurs only to joints and not to rigid or non-movable parts of the skeletal system) (Ibid., p. 358; Christopher, P., A Textbook- of Surgery (5th ed.),.p. 342), it should be distinguished from a fracture which, is a break or rupture in a bone or cartilage, usually due to external violence (Christopher, F., A Textbook of Surgery (5th ed.), p. 194; Dorland, W.A.N., The American Illustrated Mediical Dictionary (13th ed.), p.

459), Because, unlike *fractures* which may be partial (a crack in the bone) or total (a complete break in the bone), there can be no halfway situations with regard to dislocations of the shoulder joint, (the head or ball of the humerus—the humerus is the bone from, the elbow to the shoulder) must be either inside the socket of the scapula or shoulder blade (in which case there is no dislocation) or put of the latter (in which event there is a dislocation), to denote a condition where due to external violence, the muscles and ligaments connecting the Giunierus to the scapula have subjected to strain intense enough to produce temporary distension or less sening of their tautness and feonsequently resulting in the loosening' or wrenching of the ball of the humerus from its snug fit in. the socket of the scapula, by using the terms subluxation or partial dislocation (as, used in the medical certificate), is to fall into a misnomer—a term often used by 'chiropractors' and by those who would want to sound impressive, hut generally unfavored by the medical profession. To describe the above condition more aptly, the medical ¦ profession usually employs the expression *luxatio imperfecta*, or, in simple language, a sprain (Dorland, W.A.N., The American Illustrated Medical Dictionary (13th ed.)> p. 652). The condition we have described is a paraphrase of the definition of a sprain. Plaintiff suffered this very injury (a sprained or wrenched . shoulder joint) and a cursory scrutiny of his x-ray plates (Exhibits A and B) by a qualified orthopedic surgeon or by a layman with a picture or x-ray plate of a normal shoulder joint (found in any standard textbook on human anatomy; the one we used was Scheffer, J.P., Morris' Human Anatomy (10 ed., p. 194) far comparison will bear out our claim.

Treatment for a sprain in by the use of adhesive or elastic bandage, elevation of the joint, heat, effteurage and! later massage , (Christopher, F., A Textbook of Surgery (5th- ed., p. 116). The treatment given to the plaintiff was just exactly that Dr. Aguilar bandaged (strapped) plaintiff's right shoulder and chest (t.s.n,, p. 31) in an elevated position (with the forearm horizontal to the ' chest (see photograph, Exhibit E), and certain vitamins were prescribed for him (t.s.n., p. 131). He also underwent massage for some time by Drs. Aguilar and Purisima. The medicines and appurtenances to treatment purchased by plaintiff from the Orthopedic Hospital, Botica Boie and Metro Drug Store were, by his own admission, adhesive plaster, bandlage, gauze, oil and 'tintura' arnica' (t.s,n., p. 3—continuation of transcript), and Dr. Purisima also

prescribed 'Numotizin', a heat generating ointment (t.s.n., p. 23), all of which are indicated for a sprain, and by their nature, can cure nothing more serious than a sprain anyway. Fractures and true dislocations cannot be cured by the kind of treatment and " medicines which plaintiff received. A true dislocation, for instance, is treated by means of reduction through traction of the arm until the humeral head returns to the proper position in the scapular' socket (pulling the arm at a 60 degree angle and guiding the ball of the humerus into proper position, in its socket) while the patient is under deep anaesthesia, and then, completely immobilizing the part until the injured capsule has healed (Christopher, F., A Textbook of Surgery, pp. 343 and 344). No evidence was submitted that plaintiff ever received the latter kind of treatment. Dr. Purisima even declared that after the plaintiff's first visit to the Orthopedic Hospital the latter informed him that *there was no fracture or dislocation* (t.s.n., p. 26). Dr. Purisima's statement is the truth of the matter as we have already explained—joints of the shoulder being only subject to total dislocation (due to their anatomical design), not to partial ones, and any injury approximating dislocation but not completely, it being classified as mere aprains, slight or bad.

The second and last injury plaintiff sustained was a contusion. What is a contusion? It is just a high flown expression for a bruise or the act of bruising (Dorland, W.A.N., The American Illustrated Medical Dictionary (13th ed., p. 290): No further discussion need be made on this particular injury since the nature of a bruise is of common knowledge (it's a bit uncomfortable but not disabling unless it occurs on movable parts like the finders or elbow, which is not the case herein having occurred in the right chest) and the kind of medical treatment or help it deserves is also well known." (pp. 10-14, defendant-appellant's brief).

The trial Judge undoubtedly did not give much value to the testimonies of the doctors when in the statement of facts made in his decision he referred to the physical injuries received by the plaintiff *as slight in nature* and the latter is estopped from discussing the same in order to make them appear as serious, because in the statement of facts made in his brief as appellant, he says the following:

> "The facts of the case as found by. the lower court in its decision, with the permission of this Honorable Court, *we respectfully quote them hereunder as our STATEMENT OF FACTS* for the purpose of this appeal."

Before entering into a discussion of the merits of plaintiff's appeal, We will say a few words as to the nature of the action on which his demand for damages is predicated.

> "The nature of an action as in contract or in tort is determined from the essential elements of the complaint, taken as a whole, in the ease of doubt a construction to sustain the action 'being1 given to it,
>
> While the prayer for relief or measure of damages sought does not necessarily determine the character of the action, it may be material in the determination the question and therefore entitled to consideration and in cases of doubt will often determine the character of the action and indeed there are actions whose character is necessarily determined thereby." (1 C.J.S. 1100)

A mere perusal of plaintiff's complaint will show that his action against the defendant is predicated on an alleged breach of contract of carriage, i.e., the failure of the defendant to bring him "safely and without mishaps" to his destination, and it is to be noted that the chauffeur of defendant's taxicab that plaintiff used when he received the injuries involved herein, Gregorio Mira, has not even been made a party defendant to this case.

Considering, therefore, the nature of plaintiff's action in this case, is he entitled to compensation for moral damages? Article 2219 of the Civil Code says the following:

> "Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
> (2) Quasi-delicts causing physical injuries;
> (3) Seduction, abduction, ¦ rape, or other lascivious acts;
> (4) Adultery or concubinage;
> (5) Illegal or arbitrary detention or arrest;
> (6) Illegal search;

(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in- Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

* * * * * * * * *

" Of the cases enumerated in the just quoted Article 2219. only the first two may have any bearing on the ease at bar. We find, however, with regard to the first that the defendant herein has not committed in connection with this case any "criminal offense resulting in physical injuries". The one that committed the offense against the plaintiff is .Gregorio Mira, and that is why he has been already prosecuted and punished therefor. Although (a) owners and managers of an establishment or enterprise are 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; (b) employers are likewise liable for damages caused by their employees and household helpers acting within the scope; of their assigned task (Article 2180 of the Civil Code) ; and (c) employers and corporations engaged m any kind of industry are subsidiarily civilly liable for felonies committed by their employees in the discharge of their duties (Art. 103, Revised Penal Code), plaintiff herein does not maintain this action under the provisions of any of the articles of the codes just mentioned and against all the persons who might' be liable for the damages caused, but as a result of an admitted breach of contract of carriage and against the defendant employer alone. We, therefore, hold that the case at bar does not come within the exception of paragraph 1, Article 2219 of the Civil Code.

The present complaint is not based either on a "quasi-delict' causing; physical injuries" (Art. 2219, par. 2, of the Civil Code). From the report of the Code Commission on the new Civil Code We copy the following:

"A question of nomenclature confronted the Commission, After a careful' deliberation, it was agreed to use the term 'quasi-delict' fo those obligations *which do not arise from law,.contracts, quasi-contracts, or criminal offenses*. , They are known in Spanish legal treatises as *'culpa aquiliana',. 'culpa-extra-contractual' or 'cuasi-delitos'*. The phrase 'culpa-extra-contractual' or its translation 'extra-rcontractual fault* was eliminated

because it did not exclude quasi-contractual or penal obligations. 'Aquilian fault' might have been selected, but it was thought inadvisable to refer to so ancient a law as the 'Lex Aquilia'. So 'quasi-delicts' was chosen, which more nearly corresponds to the Roman Law classification of obliga tions, and is in harmony with the nature of this kind of liability."

"The Commission also thought of the possibility of adopting the word 'tort-' from Anglo-Ameriean law. But tort' under that system is much broader than the Spanish-Philippine concept of obligations arising from non-contractual negligence. 'Tort' in Anglo-American jurisprudence includes not only negligence, but also- intentional criminal acts, such' as assault "and battery,' false imprisonment and deceit. In the general plan of the Philippine legal system, ' intentional and malicious acts are governed by the Penal Code, although certain exceptions are made in the Project." (Report of the Code Commission, pp. 161-162).

In the case of Cangeo vs. Manila Railroad, 38 Phil. 768, We established the distinction between obligation derived from negligence and obligation as a result of a breach of a contract. Thus, We said:

> "It is important to note that the foundation of the legal liability of the defendant is the contract of carriage, and that the obligation to respond for the damage which plaintiff has suffered arises, if at all, from the breach of that contract' by reason of the failure of defendant to exercise due care in its performance. That is to say,
>
> > its liability is direct and immediate, differing essentially. in the legal viewipoint from that presumptive responsibility for the negligence of its servants, imposed by Article 1903 of the Civil Code (Art. 2180 of the new), which can be rebutted by proof of the exercise of due care in their selection or supervision. Article 1903 is not applicable to obligatiovis a rising EX CONTRACTU, hut only to extra-contractual obligations—or to use the technical form of expression, that article relates only to culpa
>
> AQUILIANA and not fO CULPA CONTRACTUAL,.

" The decisions in the cases of Castro vs. Aero Taxicab ¦ (82 Phil., 359, 46 Off. Gaz., No.

5, p. 2023) ; Lilius et al. vs. Manila Railroad, (59 Phil. 758) and others, wherein moral damages were awarded to the plaintiffs, are not applicable to the case at bar because said decisions were rendered before the eft'ectivity of the new Civil Code (August 30, 1950) and for the further reason that the complaints filed therein were based on different causes of action.

In view of the foregoing the sum of P2,000 awarded as moral damages by the trial Court has to be eliminated, for under the law it is not a compensation awardable in a case like the one at bar.

As to plaintiff's demand for P5,000 as attorney's fees, the Civil Code provides the following:

> "Art. 2208. In the absence of stipulation, attorney's .fees and expenses of litigation, other than judicial costs, cannot be recovered, *except*:
>
> (1) When exemplary damages are awarded;
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
> (3) In criminal cases of malicious prosecution against the plaintiff;
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
> (6) In actions for legal support;
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
> (9) In a separate civil action to recover civil liability arising from a crime;
> (10) When at least double judicial costs are awarded;
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable."

The present case does not come under any of the exceptions enumerated in the preceding article, specially of paragraph 2 thereof, because defendant's failure to ' meet its responsibility was not the canse that compelled the plaintiff to litigate or to incur expenses to protect his interests. The present action was instituted because plaintiff demanded an exorbitant amount for moral damages (P60,000) and naturally the defendant did not and could not yield to such demand. This is neither a case that comes under paragraph 11 of Article 2208 because the Lower Court did not deem it just and equitable to award any amount for attorney's fees. As We agree with the trial Judge on,this point, We cannot declare that he erred for not awarding to plaintiff any such fees in this case.

Coming now to the appeal of the defendant, the Court, after due consideration of the evidence appearing on record:

(1) Approves the award of P700 for medicine, doctors' fees and transportation expenses;
(2) Reduces the award of P3,000 as attorney's fees to the sum of P2,000, as Manolo Maddela, defendant in Criminal Case No. 364 of the Court of First Instance of Nueva Vizcaya testified that, he has already paid to plaintiff part of the latter'a fees of P3,000, the amount of which was not disclosed, though it was. incumbent upon the plaintiff to establish how much he had been paid of said fees;
(3) Approves the award of P200 as unearned professional fees as attorney for the defendant in Civil Case No. 238191 of the Municipal Court of Manila whom plaintiff was unable to represent, and for the latter's failure to take the deposition of one Agripina Angrepah due to the automobile accident referred to in this case. Before closing this decision We deem it convenient to quote the following passage of defendant's brief as appellant:

> "Realizing its obligation under its contract of carriage with the plaintiff, and because the facts of the case, as have been shown, mark it as more proper for the Municipal Court only, the defendant, to avoid the expense and time of litigation, offered to settle the case amicably with plaintiff, but the latter refused and insisted on his demand for. P72,050.20. (Exhibit K) as the only basis for settlement, thus adding a clearly petty ease to the already overflowing desk of the Honorable Members of this Court.

> We admire and respect at all times a man for standing up and fighting' for his rights, and when said right consists in injuries sustained due to a breach of a contract of carriage with us, sympathy and understanding are' added thereto. But when a person starts demanding P72,050.20 for a solitary. bruise and sprain, injuries for which the trial court, even at its generous although erroneous best, could only grant P5,900, then respect and sympathy give way to something else. It is time to fight, for in our humble opinion, there is nothing more loathsome nor truly worthy of condemnation than one who uses his injuries for other purposes than just rectification. If plaintiff's claim is granted, it would be a blessing, not a misfortune, to be injured." (p. 34-35).

This case was. instituted by a lawyer who, as an officer of the courts, should be the first in helping Us in the administration of justice, and after going over the record of this case, we do not hesitate to say that the demand of P72,050.20 for a subluxation of the right humerus bone and an insignificant contusion in the chest, has not even the semblance of reasonableness. As a matter of fact, Dr. Aguilar himself said that the x-ray plates (Exhibits A, B and C) *"did not show anything significant* except that it shows a slight subluxation of the right shoulder, and that there is a suspicious fracture", which ultimately he admitted not to exist. The plaintiff himself must have felt embarrassed by his own attitude when after receiving defendant's brief as appellant, he makes in his brief as appellee the categorical statement that he "does not now insist not pretend in the least to collect from the defendant all the damages he had claimed in his complaint, but instead he is submitting his case to the sound discretion of the Honorable Court for the award of a reasonable and equitable damages allowable by law, to compensate the plaintiff of the suffering and losses he had undergone and incurred because of the accident oftentimes mentioned in this brief in which plaintiff was injured" (p. 17-18). This acknowledgment comes too late, for plaintiff has already deprived the Court of Appeals of the occasion to exercise its appellate jurisdiction over this case which he recklessly dumped to this Court. We certainly cannot look with favor at this attitude of plaintiff.

Wherefore, the decision appealed from is hereby modified by reducing the amount awarded as unearned professional fees from P3,000 to P2,000 and by eliminating the moral damages of P2,000 awarded by the Lower Court to the plaintiff. Said decision is in all other respects affirmed, without pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes,

J. B. L., and *Endencia, JJ.,* concur.

Date created: October 13, 2014