101 Phil. 1046

[G.R. No. L-9671. August 23, 1957]

CESAR L. ISAAC, PLAINTIFF AND APPELLANT, VS. A. L. AMMEN TRANSPORTATION CO., INC., DEFENDANT AND APPELLEE.

BAUTISTA ANGELO, J.:

A..L. Ammen Transportation Co., Inc., hereinafter referred to as defendant, is a corporation engaged in the business of transporting passengers by land for compensation in the Bicol provinces and one of the lines it operates is the one connecting Legaspi City, Albay with Naga City, Camarines Sur. One of the buses which defendant was operating is Bus No. 31.

On May 31, 1951, plaintiff boarded said bus as a passenger paying the required fare from Ligao, Albay bound for Pili, Camarines Sur, but before reaching his destination, the bus collided with a motor vehicle of the pick-up type coming from the opposite direction, as a result of which plaintiff's left arm was completely severed and the severed portion fell inside the bus. Plaintiff was rushed to a hospital in Iriga, Camarines Sur where he was given blood transfusion to save his life. After four days, he was transferred to another hospital in Tabaco, Albay, where he. under-went treatment for three months. He was moved later to the Orthopedic Hospital where he was operated on and stayed there for another two months. For these services, he incurred expenses amounting to P623.40, excluding medical fees which were paid by defendant.

As an aftermath, plaintiff brought this action against defendant for damages alleging that the collision which resulted in the loss of his left arm was mainly due to the gross incompetence and recklessness of the driver of the bus operated by defendant and that defendant incurred in *culpa contractual* arising from its non-compliance with its obligation to transport plaintiff safely to his destination. Plaintiff prays for judgment against defendant as follows: (1) P5,000 as expenses for his medical treatment, and P3,000 as the cost of an artificial arm, or a total of P8.000; (2) P6,000 representing loss of earning; (3) P75,000 for diminution of his earning capacity; (4) P50,000 as moral damages; and (5) P10,000 as attorneys' fees and costs of suit.

Defendant set up as special defense that the injury suffered by plaintiff was due entirely to the fault or negligence of the driver of the pick-up car which collided with the bus driven by its driver and to the contributory negligence of plaintiff himself. Defendant further claims that the accident which resulted in the injury of plaintiff is one which defendant could not foresee or, though fore-seen, was inevitable.

The court after trial found that the collision occurred due to the negligence of the .driver of the pick-up car and not to that of the driver of the bus it appearing that the latter did everything he could to avoid the same but that notwithstanding his efforts, he was not able to avoid it. As a consequence, the court dismissed the complaint, with costs against plaintiff. This is an appeal from said decision.

It appears that plaintiff boarded a bus of defendant as paying passenger from Ligao, Albay, bound for Pili, Camarines Sur,. but before reaching his destination, the bus collided with a pick-up car which was coming from the opposite direction and, as a result, his left arm was completely severed and fell inside the back part of the bus. Having this background in view, and considering that plaintiff chose to hold defendant liable on its contractual obligation to carry him safely to his place of destination, it becomes important to determine the nature and extent of the liability of a common carrier to a passenger in the light of the law applicable in this jurisdiction.

In this connection, appellant invokes the rule that, "when an action, is based on a contract of carriage, as in this case, all that is necessary to sustain recovery is proof of the existence of the contract and of the breach thereof by act or omission", and in support thereof, he cites several Philippine cases.[1] With this ruling in mind; appellant seems. to imply that once the contract of carriage is established and there is proof that the same was broken by failure of the carrier to transport the passenger safely to his destination, the liability of the former attaches. On the other hand, appellee claims that that is a wrong presentation of the rule. It claims that the decisions of this Court in the cases cited do not warrant the construction sought to be placed upon them by appellant for a mere perusal thereof would show that the liability of the carrier was predicated not upon mere breach of, its contract of carriage but upon the finding that its negligence was found to be the direct or proximate cause of the injury complained of. Thus, appellee contends that "if there is no negligence on the part of the common carrier but that the accident resulting in injuries is due to causes which are inevitable and which could not have been avoided or anticipated notwithstanding the exercise of that high degree of care and skill which the carrier is bound to exercise for the safety of, his passengers", neither

the common carrier nor the driver is liable therefor. We believe that the law concerning the liability of a common carrier has now suffered a substantial modification in view of the innovations introduced by the new Civil Code. These innovations are the ones embodied in Articles 1733, 1755 and 1756 in so far as the relation between a common carrier and its passengers is concerned, which, for ready reference, we quote hereunder:

> "Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them according to all the circumstances of each case.
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> "Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756."
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> "ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances."
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> "ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755."

The Code Commission, in justifying this extraordinary diligence required of a common carrier, says the following:

> "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using- the utmost diligence of very cautious persons, with due regard for all circumstances. This extraordinary diligence required of common carriers is calculated to protect the passengers from the tragic mishaps that frequently occur in connection with rapid modern transportation. This high standard of care is imperatively demanded by the preciousness of human life and fcy the consideration that every person must in every way be safeguarded against all injury. (Report of the Code Commission,

pp. 35-30)" (Padilla, Civil Code of the Philippines, Vol. IV, 1953 ed., p. 197).

From the above legal provisions, we can make the following restatement of the principles governing the liability of a common carrier: (1) the liability of a carrier is contractual and arises upon breach of its obligation. There is breach if it fails to exert extraordinary diligence according to all the circumstances of each case; (2) a carrier is obliged to carry its passenger with the utmost diligence of a very cautious person, having due regard for all the circumstances; (3) a carrier is presumed to be at fault or to have" acted negligently in case of death of, or injury to, passengers, it being its duty to prove that it exercised extraordinary diligence; and (4) the carrier is not an insurer against all risks of travel.

The question that now arises is: Has defendant observed extraordinary diligence or the utmost diligence of

every cautious person, having due regard for all circumstances, in avoiding the collision which resulted in the injury caused to the plaintiff?

After examining the evidence in connection with how the collision occurred, the lower court made the following finding:

> "Hemos examinado muy detenidamente las pruehas presentadas en la vista, prineipalmente, las declaraciones que hemos aeotado arriba, y hemos llegado a la conclusion de que el demandado ha hecbo, todo cuanto estuviere de su parte para evitar el accidente, pcro sin embargo, no lia podido evitarlo.
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> "El hecho de que el deraandado, antes del choquc, tuvo que hacer pasar su truck encima do los montones de grava que estaban depositados en la orilla del earaino, sin que haya ido mas alia, por ol grave riesgo que corrian las vidas de sus pasajeros, es prueba concluyente do lo que tenemos dicho a saber:— que el demandado hizo cuanto estaba de su parte, para evitar el aceidente, sin que haya podido evitarlo, por estar fuera de su control."

The evidence would appear to support the above finding. Thus, it appears that Bus No. 31, immediately prior to the collision, was running at a moderate speed because it had just stopped at the school zone of Matacong, Polangui, Albay. The pick-up car was at full speed

and was running outside of its proper lane. The driver of the bus, upon seeing the manner in which the pick-up was then running, swerved the bus to the very extreme right of the road until its front and rear wheels have gone over the pile of stones or gravel situated on the rampart of the road. Said driver could not move the bus farther right and run over a greater portion of the pile, the peak of which was about 3 feet high, without endangering the safety of his passengers. And notwithstanding all these efforts, the rear left side of the bus was hit by the pick-up car.

Of course, this finding is disputed by appellant who cannot see eye to eye with the evidence for the appellee and insists that the collision took place because the driver of the bus was going at a fast speed. He contends that, having seen that a car was coming from the opposite direction at a distance which allows the use of moderate care and prudence to avoid an accident, and knowing that on the side of the road along which he was going there was a pile of gravel, the driver of the bus should have stopped and waited for the vehicle from the opposite direction to pass, and should have proceeded only after the other vehicle had passed. In other words, according to appellant, the act of the driver of the bus in squeezing his way through between the oncoming- pick-up and the pile of gravel under the circumstances was considered negligent.

But this matter is one of credibility and evaluation of the evidence. This is the function of the trial court. The trial court ha3 already spoken on this matter as we have pointed out above. This is also a matter of appreciation of the situation on the part of the driver. While the position taken by appellant appeals more to the sense of caution that one should observe in a given situation to avoid an accident or mishap, such however can not always be expected from one who is placed suddenly in a predicament where he is not given enough time to take the proper course of action as he should under ordinary circumstances. One who is placed in such a predicament cannot exercise such coolness or accuracy of judgment as is required of him under ordinary circumstances and he cannot therefore be expected to observe the same judgment, care and precaution as in the latter.

For this reason, authorities abound where failure to observe the same degree of care that as ordinary prudent man would exercise under ordinary circumstances when confronted with a sudden emergency was held to be warranted and a justification to exempt the carrier from liability. Thus, it was held that "where a. carrier's employee is confronted with a sudden emergency, the fact that he is obliged to act quickly and without a chance for deliberation must be taken into account, and he is not' held to the

same degree of care that he would otherwise be required to exercise in the absence of such emergency but must exercise only such care as any ordinary prudent person would exercise under like circumstances and conditions, and the failure on his part to exercise the best judgment the case renders possible does not establish lack of care and skill on his part which renders the company, liable. * * *." (13 C. J. S., 1412; 10 C. J., 970). Considering all the circumstances, we are persuaded to conclude that the driver of the bus has done what a prudent man could have done to avoid the collision and in our opinion this relieves appellee from liability under our law.

A circumstance which militates against the stand of appellant is the fact borne out by the evidence that when he boarded the bus in question, he seated himself on the left side thereof resting his left arm on the window sill but with his left elbow outside the window, this being his position in the bus when the collision took place. It is for this reason that the collision resulted in the severance of said left arm from the body of appellant thus doing him a great damage. It is therefore apparent that appellant is guilty of contributory negligence. Had he not placed his left arm on the window sill with a portion thereof protruding outside, perhaps the injury would have been avoided as is the case with the other passengers. It is to be noted that appellant was the only victim of the collision.

It is true that such contributory negligence cannot relieve appellee of its liability but will only entitle it to a reduction of the amount of damage caused (Article 1762, new Civil Code), but this is a circumstance which further militates against the position taken by appellant in this case.

> "It is the prevailing rule that it is negligence per se for a passenger on a railroad voluntarily or inadvertently to protrude his arm, hand, elbow, or any other, part of his body through the window of a moving car beyond the outer edge of the window or outer surface of the ear, so as to come in contact with object? or obstacles near the track, and that no recovery can be had for an injury which but for such negligence would not have been sustained. * * *" (10 C. J. 1139)
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> "Plaintiff, (passenger) while riding on an interurban car, to flick the ashes from his cigar, thrust his hand over the guard rail a sufficient distance beyond the side line of the car to bring" it in contact with the trunk of a tree standing

> beside the track; the force of the blow breaking his wrist. *Held,* that he was guilty of contributory negligence as a matter of law." (Malakia *vs.* Khode, Island Co., 89 A., 837.)

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengson, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Endencia, and *Felix, JJ.,* concur.

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[1] Cangeo contra Manila Railroad Co., 38 Jur. Fil., p. 825; Juan Castro *vs.* Arco Taxieab Co., 82 Phil. 359, 46 Off. Gaz., (No. 3), pp. 2023, 2028-2029; and Enrique Layda *vs.* The Hon. Court of Appeals, et al., 90 Phil., 724.

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