104 Phil. 75

[G.R. No. L-10605. June 30, 1958]

PRECILLANO NECESITO, ETC., PLAINTIFF AND APPELLANT, VS. NATIVIDAD PARAS, ET AL., DEFENDANTS AND APPELLEES

G.R. No. L-10606

GERMAN NECESITO, ET AL., PLAINTIFFS AND APPELLANTS, VS. NATIVIDAD PARAS, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

REYES, J.B.L., J.:

These cases involve actions ex contractu against the owners and operators of the common carrier known as Philippine Rabbit Bus Lines, filed by one passenger, and the heirs of another, who were injured as a result of the fall into a river of the vehicle in which they were riding.

In the morning of January 28, 1954, Severina Garces and her one-year old son, Precillano Neeesito, carrying vegetables, boarded passenger auto truck or bus No. 199 of the Philippine Rabbit Bus Lines at Agno, Pangasinan. The passenger truck, driven by Francisco Bandonell, then proceeded on its regular run from Agno to Manila. After passing Mangatarem, Pangasinan, truck No. 199 entered a wooden bridge, but the front wheels swerved to the right; the driver lost control, and after wrecking the bridge's wooden rails, the truck fell on its right side into a creek where water was breast deep. The mother, Severina Garces, was drowned; the son, Precillano Neeesito, was injured, suffering abrasions and fracture of the left femur. He was brought to the Provincial Hospital at Dagupan, where the fracture was set but with fragments one centimeter out of line. The money, wrist watch and cargo of vegetables were lost.

Two actions for damages and attorney's fees totalling over P85,000 having been filed in the Court of First In- stance of Tarlac (Cases Nos. 908 and 909) against the carrier, the latter pleaded that the accident was due to "engine or mechanical trouble" independent or beyond

the control of the defendants or of the driver. Bandonell.

After joint trial, the Court of First Instance found that the bus was proceeding slowly due to the bad condition of the road; that the accident was caused by the fracture of the right steering knuckle, which was defective in that its center or core was not compact but “bubbled and cellulous”, a condition that could not be known or ascertained by the carrier despite the fact that regular thirty-day inspections were made of the steering knuckle, since the steel exterior was smooth and shiny to the depth of 3/16 of an inch all around; that the knuckles are designed and manufactured for heavy duty and may last up to ten years; that the knuckle of bus No. 199 that broke on January 28, 1954, was last inspected on January 5, 1954, and was due to be inspected again on February 5th. Hence, the trial court, holding” that the accident was exclusively due to fortuitous event, dismissed both actions. Plaintiffs appealed directly to this Court in view of the amount in controversy.

We are inclined to agree with the trial court that it is not likely that bus No. 199 of the Philippine Rabbit Lines was driven over the deeply rutted road leading to the bridge at a speed of 50 miles per hour, as testified for the plaintiffs. Such conduct on the part of the driver would have provoked instant and vehement protest on the part of the passengers because of the attendant discomfort, and there is no trace of any such complaint in the records. We are thus forced to assume that the proximate cause of the accident was the reduced strength of the steering knuckle of the vehicle caused by defects in casting it. While appellants hint that the broken knuckle exhibited in court was not the real fitting attached to the truck at the time of the accident, the records show that they registered no objection on that ground at the trial below.

The issue is thus reduced to the question whether or not the carrier is liable for the manufacturing defect of the steering knuckle, and whether the evidence discloses that in regard thereto the carrier exercised the diligence required by law (Art. 1755, new Civil Code).

> “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.”

It is clear that the carrier is not an insurer of the passengers’ safety. His liability rests upon negligence, his failure to exercise the “utmost” degree of diligence that the law requires,

and by Art. 1756, in case of a passenger's death or injury the carrier bears the burden of satisfying the court that he has duly discharged the duty of prudence required. In the American law, where the carrier is held to the same degree of diligence as under the new Civil Code, the rule on the liability of carriers for defects of equipment is thus expressed: "The preponderance of authority is in favor of the doctrine that a passenger is entitled to recover damages from a carrier for an injury resulting from a defect in an appliance purchased from a manufacturer, whenever it appears that the defect would have been discovered by the carrier if it had exercised the degree of care which under the circumstances was incumbent upon it, with regard to inspection and application of the necessary tests. For the purposes of this doctrine, the manufacturer is considered as being in law the agent or servant of the carrier, as far as regards the work of constructing the appliance. According to this theory, the good repute of the manufacturer will not relieve the carrier from liability" (10 Am. Jur. 205, s, 1324; see also Pennsylvania R. Co. vs. Roy, 102 U. S. 451; 20 L. Ed. 141; Southern R. Co. vs, Hussey, 74 ALR 1172; 42 Fed. 2d 70; and Ed Note, 29 ALR 788; Ann. Cas. 1916E 929).

The rationale of the carrier's liability is the fact that the passenger has neither choice nor control over the carrier in the selection and use of the equipment and appliances in use by the carrier. Having no privity whatever with the manufacturer or vendor of the defective equipment, the passenger has no remedy against him, while the carrier usually has. It is but logical, therefore, that the carrier, while not an insurer of the safety of his passengers, should nevertheless be held to answer for the flaws of his equipment if such flaws were at all discoverable. Thus Hannen, J., in Francis vs. Cockrell, LR 5 Q. B. 184, said:

> "In the ordinary course of things, the passenger does not know whether the carrier has himself manufactured the means of carriage, or contracted with someone else for its manufacture. If the carrier has contracted with someone else the passenger does not usually know who that person is, and in no case has he any share in the selection. The liability of the manufacturer must depend on the terms of the contract between him and the carrier, of which the passenger has no knowledge, and over which he can have no control, while the carrier can introduce what stipulations and take what securities he may think proper. For injury resulting to the carrier himself by the manufacturer's want of care, the carrier has a remedy against the manufacturer; but the passenger has no remedy against the manufacturer for damage arising from a mere breach of contract with the carrier . Unless, therefore, the presumed intention of the parties be that the

> pas- senger should, in the event of his being injured by the breach of the manufacturer's contract, of which he has no knowledge, be without remedy, the only way in which effect can be given to a different intention is by supposing that the carrier is to be responsible to the passenger, and to look for his indemnity to the person whom he selected and whose breach of contract has caused the mischief." (29 ALR 789)

And in the leading" case of Morgan vs. Chesapeake & 0. R. Co. 15 LRA (NS) 790, 16 Ann. Cas. 608, the Court, in holding the carrier responsible for damages caused by the fracture of a car axle, due to a "sand hole" in the course of moulding the axle, made the following observations.

> "The carrier, in consideration of certain well-known and highly valuable rights granted to it by the public, undertakes certain duties toward the public, among them being to provide itself with suitable and safe cars and vehicles in which to carry the traveling public. There is no such duty on the manufacturer of the cars. There is no reciprocal legal relation between him and the public in this respect. When the carrier elects to have another build its cars, it ought not to be absolved by that fact from its duty to the public to furnish safe cars. The carrier cannot lessen its responsibility by shifting its undertaking to another's shoulders. Its duty to furnish safe cars is side by side with its duty to fur- nish safe track, and to operate them in a safe manner. None of its duties in these respects can be sublet so as to relieve it from the full measure primarily exacted of it by law. The carrier selects the manufacturer of its cars, if it does not itself construct them, precisely as it does those who grade its road, and lay its tracks, and operate its trains. That it does not exercise control over the former is because it elects to place that matter in the hands of the manufacturer, instead of retaining the supervising control itself. The manufacturer should be deemed the agent of the carrier as respects its duty to select the material out of which its cars and locomotive are built, as well as in inspecting each step of their construction. If there be tests known to the crafts of car builders, or iron moulders, by which such defects might be discovered before the part was incorporated into the car, then the failure of the manufacturer to make the test will be deemed a failure by the carrier to make it. This is not a vicarious responsibility. It extends, as the necessity of this business demands, the rule of respondent superior to a situation

> which falls clearly within its scope and spirit. Where an injury is inflicted upon a passenger by the breaking or wrecking of a part of the train on which he is riding, it is presumably the result of negligence at some point by the carrier. As stated by Judge Story, in Story on Bailments, sec. 601a: 'When the injury or damage happens to the passenger by the breaking down or overturning of the coach, or by any other accident occurring on the ground, the presumption prima facie is that it occurred by the negligence of the coachmen, and onus probandi is on the proprietors of the coach to establish that there has been no negligence whatever, and that the damage or injury has been occasioned by inevitable casualty, or by some cause which human care and foresight could not prevent; for the law will, in tenderness to human life and limb, hold the proprietors liable for the slightest negligence, and will compel them to repel by satisfactory proofs every imputation thereof. When the passen- ger has proved his injury as the result of a breakage in the car or the wrecking of the train on which he was being carried, whether the defect was in the particular car in which he was riding or not, the burden is then cast upon the carrier to show that it was due to a cause or causes which the exercise of the utmost human skill and foresight could not prevent. And the carrier in this connection must show, if the accident was due to a latent defect in the material or construction of the car, that not only could it not have discovered the defect by the exercise of such care, but that the builders could not by the exercise of the same care have discovered the defect or foreseen the result. This rule applies the same whether the defective car belonged to the carrier or not."

In the case now before us, the record is to the effect that the only test applied to the steering knuckle in ques- tion was a purely visual inspection every thirty days, to see if any cracks developed. It nowhere appears that either the manufacturer or the carrier at any time tested the steering knuckle to ascertain whether its strength was up to standard, or that it had no hidden flaws that would impair that strength. And yet the carrier must have been aware of the critical importance of the knuckle's resistance; that its failure or breakage would result in loss of balance and steering control of the bus, with disas- trous effects upon the passengers. No argument is required to establish that a visual inspection could not directly determine whether the resistance of this critically important part was not impaired. Nor has it been shown that the weakening of the knuckle was impossible to detect by any known test; on the contrary, there is testimony that it could be detected. We are satisfied that the periodical visual inspection of the steering knuckle as practiced by the

carrier's agents did not measure up to the required legal standard of "utmost diligence of very cautious persons"—"as far as human care and foresight can provide", and therefore that the knuckle's failure can not be considered a fortuitous event that exempts the carrier from responsibility (Lasam vs. Smith, 45 Phil. 657; Son vs. Cebu Autobus Co., 94 Phil., 892.

It may be impracticable, as appellee argues, to require of carriers to test the strength of each and every part of its vehicles before each trip; but we are of the opinion that a due regard for the carrier's obligations toward the traveling public demands adequate periodical tests to determine the condition and strength of those vehicle portions the failure of which may endanger the safety of the passengers.

As to the damages suffered by the plaintiffs, we agree with appellee that no allowance may be made for moral damages, since under Article 2220 of the new Civil Code, in case of suits for breach of contract, moral damages are recoverable only where the defendant acted fraudulently or in bad faith, and there is none in the case before us. As to exemplary damages, the carrier has not acted in a "wanton, fraudulent, reckless, oppressive or malevolent manner" to warrant their award. Hence, we believe that for the minor Precillano Necesito (G. R. No. L-10605), an indemnity of P5,000 would be adequate for the abrasions and fracture of the femur, including medical and hospitalization expenses, there being no evidence that there would be any permanent impairment of his faculties or bodily functions, beyond the lack of anatomical symmetry. As for the death of Severina Garces (G. R. No. L-10606) who was 33 years old, with seven minor children when she died, her heirs are obviously entitled to indemnity not only for the incidental loses of property (cash, wrist watch and merchandise) worth P394 that she carried at the time of the accident and for the burial expenses of P490, but also for the loss of her earnings (shown to average F120 a month) and for the deprivation of her protection, guidance and company. In our judgment, an award of PI5,000 would be adequate (cf Alcantara vs. Surro, 49 Off. Gaz. 2769; 93 Phil., 472).

The low income of the plaintiffs-appellants makes an award for attorney's fees just and equitable (Civil Code, Art. 2208, par. 11). Considering that the two cases filed were tried jointly, a fee of P3,500 would be reasonable.

In view of the foregoing, the decision appealed from is reversed, and the defendants-appellees are sentenced to in- demnify the plaintiffs-appellants in the following amounts: P5,000 to Precillano Necesito, and P15,000 to the heirs of the deceased Severina Garces, plus P3,500 by way of attorney's fees and litigation expenses. Costs against defendants-

appellees. So ordered.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Conception, and *Endencia, JJ.,* concur. *Felix, J.,* concurs in the result.

RESOLUTION

September 11, 1958

REYES, J. B. L., J.:

Defendants-appellees have submitted a motion asking1 this Court to reconsider its decision of June 30, 1958, and that the same be modified with respect to (1) its holding the carrier liable for the breakage of the steering knuckle that caused the autobus No. 199 to overturn, whereby the passengers riding- in it were injured; (2) the damages awarded, that appellees argue to be excessive; and (3) the award of attorneys' fees.

(1) The rule prevailing in this jurisdiction as established in previous decisions of this Court, cited in our main opinion, is that a carrier is liable to its passengers for damages caused by mechanical defects of the conveyance. As early as 1924, in Lasam vs. Smith, 45 Phil. 659 this Court ruled:

> "As far as the record shows, the accident was caused either by defects in the automobile or else through the negligence of its driver. TJiat is not caso fortulto"

And in Son vs. Cebu Autobus Company, 94 Phil., 892, this Court held a common carrier liable in damages to a passenger for injuries caused by an accident due to the breakage of a faulty drag-link spring.

It can be seen that while the courts of the United States are at variance on the question of a carrier's liability for latent mechanical defects, the rule in this jurisdiction has been consistent in holding the carrier responsible. This Court has quoted from American and English decisions, not because it felt bound to follow the same, but merely in approval of the rationale of the rule as expressed therein, since the previous Philippine cases did not enlarge on the ideas underlying the doctrine established thereby.

The new evidence sought to be introduced do not warrant the grant of a new trial, since the proposed proof was available when the original trial was held. Said evidence is not newly discovered.

(2) With regard to the indemnity awarded to the child Precilliano Necesito, the injuries suffered by him are incapable of accurate pecuniary estimation, particularly because the full effect of the injury is not ascertainable immediately. This uncertainty, however, does not preclude the right to an indemnity, since the injury is patent and not denied (Civil Code, Art. 2224). The reasons behind this award are expounded by the Code Commission in its report:

> "There are cases where from the nature of the case, definite. proof of pecuniary loss cannot be offered, although the" court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress, from the defendant's wrongful act." (Report of the Code Commission, p. 75)

In awarding to the heirs of the deceased Severina Garles an indemnity for the loss of her "guidance, protection and company," although it is but moral damage, the Court took into account that the case of a passenger who dies in the course of an accident, due to the carrier's negligence constitutes an exception to the general rule. While, as pointed out in the main decision, under Article 2220 of the new Civil Code there can be no recovery of moral damages for a breach of contract in the absence of fraud malice) or bad faith, the case of a violation of the con- tract of carriage leading to a passenger's death escapes this general rule, in view of Article 1764 in connection with Article 2206, No. 3 of the new Civil Code.

> "Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier." "Art. 2206. * * *
>
> (3) The spouse, legitimate and illegitimate descendants and as- cendants of the

> deceased may demand moral damages for mental anguish by reason of the death of the deceased."

Being a special rule limited to cases of fatal injuries, these articles prevail over the general rule of Art. 2220. Special provisions control general ones (Lichauco & Co. vs. Apostol, 44 Phil. 138; Sancio vs. Lizarraga, 55 Phil. 601).

It thus appears that under the new Civil Code, in case of accident due to a carrier's negligence, the heirs of a deceased passenger may recover moral damages, even though a passenger who is injured, but manages to survive, is not entitled to them. There is, therefore, no conflict between our main decision in the instant case and that of Cachero vs. Manila Yellow Taxi Cab Co., 101 Phil., 523, where the passenger suffered injuries, but did not lose his life.

(3) In the Cachero case this Court disallowed attorneys fees to the injured plaintiff because the litigation arose out of his exaggerated and unreasonable demands for an indemnity that was out of proportion with the compensatory damages to which he was solely entitled. But in the present case, plaintiffs' original claims can not be deemed a *priori* wholly unreasonable, since they had a right to indemnity for moral damages besides compensatory ones, and moral damages are not determined by set and invariable bounds.

Neither does the fact that the contract between the passengers and their counsel was on a contingent basis affect the former's right to counsel fees. As pointed out for appellants, the Court's award is an indemnity to the party and not to counsel. A litigant who improvidently stipulates higher counsel fees than those to which he is lawfully entitled, does not for that reason earn the right to a larger indemnity; but, by parity of reasoning, he should not be deprived of counsel fees if by law he is entitled to recover them.

We find no reason to alter the main decision heretofore rendered. Ultimately, the position taken by this Court is that a common carrier's contract is not to be regarded as a game of chance wherein the passenger stakes his limb and life against the carrier's property and profits.

Wherefore, the motion for reconsideration is hereby denied. So ordered,

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia, and *Felix, JJ.,* concur.

Motion for reconsideration denied.

Date created: March 19, 2015