

[ G. R. No. L-9907. June 30, 1958 ]

**LOURDES J. LARA, ET AL., PLAINTIFFS AND APPELLANTS, VS. BRIGIDO R. VALENCIA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**BAUTISTA ANGELO, J.:**

This is an action for damages brought by plaintiffs against defendant in the Court of First Instance of Davao for the death of one Demetrio Lara, Sr. allegedly caused by the negligent act of defendant. Defendant denied the charge of negligence and set up certain affirmative defenses and a counterclaim.

The court after hearing rendered judgment ordering defendant to pay the plaintiffs the following amount: (a) P10,000 as moral damages; (b) P3,000 as exemplary damages; and (c) P1,000 as attorney's fees, in addition to the costs of action. Both parties appealed to this Court because the damages claimed in the complaint exceed the sum of P50,000.

In their appeal, plaintiffs claim that the court *a quo* erred in disregarding their claim of P41,400 as actual or compensatory damages and in awarding as attorneys' fees only the sum of P1,000 instead of P3,000 as agreed upon between plaintiffs and their counsel. Defendant, on the other hand, disputes the finding of the court *a quo* that the death of Demetrio Lara, Sr. was due to the negligence of defendant and the portion of the judgment which orders defendant to pay to plaintiffs moral and exemplary damages as well as attorneys' fees, said defendant contending that the court should have declared that the death of Lara was due to unavoidable accident.

The deceased was an inspector of the Bureau of Forestry stationed in Davao with an annual salary of P1,800. The defendant is engaged in the business of exporting logs from his lumber concession in Cotabato. Lara went to said concession upon instructions of his chief to classify the logs of defendant which were about to be loaded on a ship anchored in the port of Parang. The work of Lara lasted for six days during which he contracted malaria

fever. In the morning of January 9, 1954, Lara who then in a hurry to return to Davao asked defendant if he could take him in his pick-up as there was then no other means of transportation, to which defendant agreed, and in that same morning the pick-up left Parang bound for Davao taking along six passengers, including Lara.

The pick-up has a front seat where the driver and two passengers can be accommodated and the back has a steel flooring enclosed with a steel walling of 16 to 17 inches tall on the sides and with a 19 inches tall walling at the back. Before leaving Parang, the sitting arrangement was as follows: defendant was at the wheel and seated with him in the front seat were Mrs. Valencia and Nicanor Quinain; on the back of the pick-up were two improvised benches placed on each side, and seated on the right bench were Ricardo Alojipan and Antonio Lagahit, and on the left one Bernardo and Pastor Geronimo. A person by the name of Leoning was seated on a box located on the left side while in the middle Lara sat on a bag. Before leaving Parang, defendant invited Lara to sit with him on the front seat but Lara declined. It was their understanding that upon reaching barrio Samoay, Cotabato, the passengers were to alight and take a bus bound for Davao, but when they arrived at that place, only Bernardo alighted and the other passengers requested defendant to allow them to ride with him up to Davao because there was then no available bus that they could take in going to that place. Defendant again accommodated the passengers.

When they continued their trip, the sitting arrangement of the passengers remained the same, Lara being seated on a bag in the middle with his arms on a suitcase and his head covered by a jacket. Upon reaching Km. 96, barrio Catidtuan, Lara accidentally fell from the pick-up and as a result he suffered serious injuries. Valencia stopped the pick-up to see what happened to Lara. He sought the help of the residents of that place and applied water to Lara but to no avail. They brought Lara to the nearest place where they could find a doctor and not having found any they took him to St. Joseph's Clinic of Kidapawan. But when Lara arrived he was already dead. From there they proceeded to Davao City and immediately notified the local authorities. An investigation was made regarding the circumstances surrounding the death of Lara but no criminal action was taken against defendant.

It should be noted that the deceased went to the lumber concession of defendant in Parang, Cotabato upon instructions of his chief in order to classify the logs of defendant which were then ready to be exported and to be loaded on a ship anchored in the port of Parang. It took Lara six days to do his work during which he contracted malaria fever and for that reason he evinced a desire to return immediately to Davao. At that time, there was no available bus that could take him back to Davao and so he requested the defendant if he could take him in

his own pick-up. Defendant agreed and, together with Lara, other passengers tagged along, most of them were employees of the Government. Defendant merely accommodated them and did not charge them any fee for the service. It was also their understanding that upon reaching barrio Samoay, the passengers would alight and transfer to a bus that regularly makes the trip to Davao but unfortunately there was none available at the time and so the same passengers, including Lara, again requested the defendant to drive them to Davao. Defendant again accommodated them and upon reaching Km. 96, Lara accidentally fell suffering fatal injuries.

It therefore appears that the deceased, as well as his companions who rode in the pick-up of defendant, were merely accommodation passengers who paid nothing for the service and so they can be considered as invited guests within the meaning of the law. As accommodation passengers or invited guests, defendant as owner and driver of the pick-up owes to them merely the duty to exercise reasonable care so that they may be transported safely to their destination. Thus, "The rule is established by the weight of authority that the owner or operator of an automobile owes the duty to an *invited guest* to exercise reasonable care in its operation, and not unreasonably to expose him to danger and injury by increasing the hazard of travel. This rule, as frequently stated by the courts, is that an owner of an automobile owes a guest the duty to exercise ordinary or reasonable care to avoid injuring him. Since one riding in an automobile is no less a guest because he asked for the privilege of doing so, the same obligation of care is imposed upon the driver as in the case of one expressly invited to ride" (5 Am. Jur., 626-627). Defendant, therefore, is only required to observe ordinary care, and is not in duty bound to exercise extraordinary diligence as required of a common carrier by our law (Articles 1755 and 1756, new Civil Code).

The question that now arises is: Is there enough evidence to show that defendant failed to observe ordinary care or diligence in transporting the deceased from Parang to Davao on the date in question?

The trial court answered the question in the affirmative but in so doing it took into account only the following facts:

"No debe perderse de vista el hecho, que los negocios de ex-portacion de trozos del demandado tiene un volumen de P1,200. Lara era empleado de la Oficina de Montes, asalariado por el gobierno, no pagado por el demandado para classificar los trozos exportados; debido a los trabajos de classificacion que duro 6 dias, en

su ultimo dia Lara no durmio toda la noche, al dia siguiente, Lara fue atacado de malaria, tenia inflamada la cara y cuerpo, sufría dolores de cabeza con erupciones en la cara y cuerpo; que en la mañana del dia 2 de enero de 1954, fecha en que Lara salio de Davao para Parang, en aeroplano para clasificar los trozos del demandado, el automovil de este condujo a aquel al aerodromo de Davao.

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“El viaje de Cotabato a Davao no es menos de 8 horas, su carretera esta en malas condiciones, desnivelada, con piedras salientes y baches, que hacen del vehiculo no estable en su marcha. Lara estaba enfermo de cierta gravedad, tenia el cuerpo y cara inflamados, atacado de malaria, con dolores de cabeza y con erupciones en la cara y cuerpo.

“A la vista de estos hechos, el demandado debia de saber que era sumamente peligroso llevar 5 pasajeros en la parte trasera del pick-up; particularmente, para la salud de Lara; el permitirlo, el demandado no ha tornado las debidas precauciones, para evitar un posible accidente fatal. La negativa de Lara de ocupar el asiento delantero del pickup no constituye a juicio del Juzgado una defensa, pues el demandado conociendo el estado delicado de salud de Lara, no debio de haber permitido que aquel regrese a Davao en su pickup; si querria prestar a aquel un favor, debio de haber provisto a Lara de un automovil para su regrese a Davao, ya que el demandado es un millonario; si no podia prestar a aquel este favor, debio de haber dejado a Lara en Samuay para coger aquel un camion de pasajero de Cotabato a Davao.”

Even if we admit as true the facts found by the trial court, still we find that the same are not sufficient to show that defendant has failed to take the precaution necessary to conduct his passengers safely to their place of destination for there is nothing there to indicate that defendant has acted with negligence or without taking the precaution that an ordinary prudent man would have taken under similar circumstances. It should be noted that Lara went to the lumber concession of defendant in answer to a call of duty which he was bound to perform because of the requirement of his office and he contracted the malaria fever in the course of the performance of that duty. It should also be noted that defendant was not in duty bound to take the deceased in his own pick-up to Davao because from Parang to

Cotabato there was a line of transportation that regularly makes trips for the public, and if defendant agreed to take the deceased in his own car, it was only to accommodate him considering his feverish condition and his request that he be so accommodated. It should also be noted that the passengers who rode in the pick-up of defendant took their respective seats therein at their own choice and not upon indication of defendant with the particularity *that defendant invited the deceased to sit with him in the front seat but which invitation the deceased declined*. The reason for this can only be attributed to his desire to be at the back so that he could sit on a bag and travel in a, reclining position because such was more convenient for him due to his feverish condition. All the circumstances therefor clearly indicate that defendant had done what a reasonable prudent man would have done under the circumstances.

There is every reason to believe that the unfortunate happening was only due to an unforeseen accident caused by the fact that at the time the deceased was half asleep and must have fallen from the pick-up when it ran into some stones causing it to jerk considering that the road was then bumpy, rough and full of stones.

The finding of the trial court that the pick-up was running at more than 40 kilometers per hour is not supported by the evidence. This is a mere surmise made by the trial court considering the time the pick-up left barrio Samoay and the time the accident occurred in relation to the distance covered by the pick-up. And even if this is correct, still we say that such speed is not unreasonable considering that they were traveling on a national road and the traffic then was not heavy. We may rather attribute the incident to lack of care on the part of the deceased considering that the pick-up was open and he was then in a crouching position. Indeed, the law provides that "A passenger must observe the diligence of a good father of a family to avoid injury to himself" (Article 1761, new Civil Code), which means that if the injury to the passenger has been *proximately* caused by his own negligence, the carrier cannot be held liable.

All things considered, we are persuaded to conclude that the accident occurred not due to the negligence of defendant but to circumstances beyond his control and so he should be exempt from liability.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs.

*Paras, C. J., Bengzon, Reyes, A., Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

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