

**PHILIPPINE RABBIT BUS LINES, INC. AND NICASIO DE LOS REYES,
PETITIONERS, VS. PATROCINIO ESGUERRA, TRANSPORT
CONTRACTORS, INC. AND MODESTO JOAQUIN, RESPONDENTS.**

G.R. No. L-31420. October 23, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

In this petition for certiorari, petitioners pray that the portion of the decision of the Court of Appeals sentencing the Philippine Rabbit Bus Lines, Inc. to pay solidarily the sum of P5,000.00 as moral damages and sentencing both petitioners to pay respondent Patrocinio Esguerra the sum of P2,000.00 as attorney's fees, be revoked.

Records show that the Court of First Instance of Manila rendered a decision in Civil Case No. 53698, entitled: Patrocinio Esguerra versus Philippine Rabbit Bus Lines, Inc., Nicasio de los Reyes, Transport Contractors, Inc. and Modesto Joaquin, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered dismissing the complaint against defendants Transport Contractors, Inc. and Modesto Joaquin but sentencing defendants Nicasio de los Reyes and Philippine Rabbit Bus Lines, Inc., jointly and severally, to pay the plaintiff the sum of P25,085.40 as compensatory damages, P5,000.00 as moral damages, P2,000.00 as attorney's fees and the costs of suit. The cross-claim of defendants Philippine Rabbit Bus Lines, Inc. and Transport Contractors, Inc. against each other are hereby dismissed."

The Court of Appeals modified the decision of the lower court as follows:

"From the foregoing it would appear that all the defendants are solidarily liable; but plaintiffs not having appealed the judgment, no affirmative relief therefrom which absolved defendants Transport Contractors, Inc. and Modesto Joaquin from the complaint as to make them co-responsible with appellants Rabbit Bus and Nicasio de los Reyes. Hence, except the obviously erroneous addition of the items for compensatory damages which would be P20,085.40, not P25,085.40 as stated in the dispositive part of the appealed decision, the judgment appealed from is in accordance with law and the evidence.

"WHEREFORE, modified as indicated above, the judgment appealed from is affirmed in all other respects, with costs against all the defendants."

However, in a resolution, dated December 8, 1969, the Court of Appeals modified the dispositive portion of its decision promulgated on July 10, 1969 in the sense that:

"x x x the defendants-appellees Transport Contractors, Inc. and Modesto Joaquin are ordered to pay solidarily with the defendants-appellants Philippine Rabbit Bus Lines, Inc. and Nicasio de los Reyes sums awarded in the judgment, with costs in this instance against all the defendants."

Patrocinio Esguerra was a paying passenger of Bus No. 223 of Philippine Rabbit Bus Lines, Inc. He boarded the said bus at the Manila terminal about four o'clock in the afternoon of November 6, 1961, bound for San Fernando, Pampanga. He sat at the left-end of the fourth row behind the driver, close to the window. As the bus approached

barrio San Marcos, Calumpit, Bulacan, a freight truck owned and operated by the Transport Contractors, Inc. was coming from the opposite direction. The vehicles sideswiped each other. The window glass near the driver's seat of the Rabbit Bus was detached and the left side of its body was damaged. The left forearm of Patrocinio Esguerra was hit by a hard blunt object, breaking the bones into small fragments while the soft tissues of the muscles and the skin were mas-cerated. He was immediately brought to the Bulacan Provincial Hospital in Malolos, Bulacan for treatment. The left arm was amputated.

Plaintiff filed a case against the Philippine Rabbit Bus Lines, Inc. and the Transport Contractors, Inc., together with their respective drivers, praying that judgment be rendered in favor of the plaintiff and against the defendants requiring them to pay, jointly and severally damages, actual and compensa-tory, moral and exemplary, litigation expenses and costs.

The Court of Appeals found that the two drivers of the two vehicles were reckless in driving. The two vehicles sideswiped each other at the middle of the road.

"By and large, it is not denied that plaintiff's arm was so seriously injured as to need amputation as a result of the collision. It is neither denied that the Transcon truck hit the arm when it came in contact with the Rabbit Bus. It is immaterial which part of the truck hit it. The defendant carrier failed to exonerate itself from its presumed fault."

In this petition, Philippine Rabbit Bus Lines, Inc. and Nicasio de los Reyes contend that the award of P5,000.00 moral damages is contrary to law and violates the prevailing jurisprudence; that the award of P2,000.00 attorney's fees is bereft of legal and factual basis; that moral damages are not allowable against the carrier, if ex-contracto, except when the mishap results in death and where it is proved that the carrier was guilty of fraud or bad faith even if death did not result; that as passenger Esguerra did not die and no fraud or bad faith had been imputed, much less proved, against the carrier, they cannot be adjudged to pay moral damages. Further, petitioners claim that there is no evidence adduced by passenger Esguerra showing actual proof of expenses for attorney's fees.

The contention of petitioners with respect to the award of moral damages is meritorious. This Court has repeatedly held (*Cachero v. Manila Yellow Taxicab, Inc.*, G.R. No. L-8721, promulgated May 23, 1957; *Necesito v. Paras, et al.*, G.R. No. L-10605-10606, promulgated June 30, 1958; *Fores v. Miranda*, G.R. No. L-12163, promulgated March 4, 1959; *Tamayo v. Aquino, et al.*, G.R. No. L-12634, promulgated May 29, 1959) that moral damages are not recoverable in actions for damages predicated on a breach of the contract of transporation, as in the instant case, in view of the provisions of Articles 2219 and 2220 of the New Civil Code. The exceptions are (1) where the mishap results in the death of a passenger, and (2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result. (*Rex Taxicab Co., Inc. vs. Jose Bautista, et al.*, G. R. No. L-15392, Sept. 30, 1960).

The Court of Appeals found that the two vehicles sideswiped each other at the middle of the road. In other words, both vehicles were in their respective lanes and that they did not invade the lane of the other. It cannot be said therefore that there was fraud or bad faith on the part of the carrier's driver. This being the case, no moral damages are recoverable.

However, with respect to attorney's fee of P2,000.00, the same need not be proved as herein petitioners contended. The same is allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the trial. In this case, plaintiff was compelled to litigate and incur expenses in order to protect his interest.

ACCORDINGLY, this petition is granted with respect to that portion of the decision of the Court of Appeals sentencing herein petitioners to pay the sum of P5,000.00, as moral damages, which is hereby set aside. However,

that portion of the decision sentencing petitioners to pay respondent Patrocinio Esguerra the sum of P2,000.00, as attorney's fees, stays.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, and Gutierrez, Jr., JJ., concur.
Melencio-Herrera, J., took no part.

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