

DANIEL BULANTE, PETITIONER-APPELLANT, VS. CHU LIANTE, CAPITAL INSURANCE & SURETY CO., INC., ET AL., RESPONDENTS-APPELLEES.*G.R. Nos. L-21583 & L-21591-92. May 20, 1968*

Ponente: MAKALINTAL, J.

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Shortly before noon on April 19, 1955, a Visayan Transit passenger bus collided with a cargo truck in barrio Abango, Barugo, Leyte. The violent impact ripped the left front sides of both vehicles, killed ten (10) persons and injured seven (7) others.+ The owner of the cargo truck, Chu Liante, the injured passengers and the heirs of the deceased bus passengers subsequently filed separate actions in the Court of First Instance of Leyte (Branch VI) for damages and attorney's fees against the operator and registered owner of the bus, petitioner Daniel Bulante. Chu Liante's complaint (C.C.No. 237) was based on tort (*culpa aquiliana*) while the separate complaints for damages of the injured passengers and the heirs of the deceased passengers (C. C. Nos. 241 and 243 respectively) were for breach of contract of carriage (*culpa contractual*).

Later on, the Capital Insurance & Surety Co., Inc. was allowed to file a complaint in intervention in Civil Case No. 237. Claiming to have paid certain amounts to plaintiff Chu Liante by virtue of insurance contracts it had executed in his favor, the company sought the reimbursement thereof from Daniel Bulante, plus the other expenses it had incurred as a result of the accident.

In his answers to the respective complaints, defendant denied liability, claiming that it was Chu Liante's driver who was at fault, that at the time the collision occurred the bus was owned and operated by the Visayan Bus Transit Co., Inc. of which he was then the president and general manager, and that the bus was "registered in his name as such with the Motor Vehicles Office (now LTC) at Tacloban City." He also interposed a counterclaim against Chu Liante.

After a joint trial, the trial court, holding that the preponderance of evidence was in favor of Daniel Bulante, rendered judgment dismissing all the complaints and ordering Chu Liante to pay him P8,000.00 as moral damages and P2,000.00 as attorney's fees and costs. All the plaintiffs and the intervenor (now respondents) appealed to the Court of Appeals, which reversed the trial court and instead ordered Bulante to pay them various sums aggregating P100,771.50 by way of actual, compensatory and moral damages, plus costs. The case is now before us on Bulante's petition for review by certiorari.

There is marked disagreement in the respective versions of the parties as to how the collision actually came about. The trial court believed the petitioner's version while the Court of Appeals gave credence to that of the respondents.

According to the respondents, on the day of the collision the cargo truck loaded with sugar and bound for Tacloban City reached kilometer 48 at barrio Abango in Barugo, Leyte, shortly before noon. In front of the barrio school-house at the place was a narrow culvert, the road over which was only 4.28 meters wide and just enough

for one vehicle to pass through. Before reaching the culvert and some 50 meters from it the cargo truck met a speeding passenger bus (Vella). The truck reduced its speed and then proceeded to cross over the culvert. At this point the passenger bus (Visayan Transit) was still a good 90 meters away, approaching from the opposite direction. The bus, according to the respondents, was travel-ling very fast and occupying part of the lane reserved for the truck. Before the truck could negotiate a safe distance after crossing, at a spot some 10 meters from the culvert in the direction of Tacloban City, the collision occurred. The impact caused the truck to pivot almost 90 degrees to the left, thus swinging its hind part towards the right, where it fell into a ditch on that side. Meanwhile, the passenger bus continued to roll forward and stopped about 32 meters on the other side of the culvert, towards Carigara.

On the other hand, the version of the petitioner is that the passenger bus approached the culvert at a regular speed, having just picked up a passenger at barrio Baliri, where the Vella bus hereinbefore referred to had overtaken and passed it; that the Visayan Transit bus was the first to approach and cross the culvert, as evidenced by the fact that an oncoming bus, the Sta. Lucia, had to slow down and stop about 20 to 30 meters from the culvert and on the other side of it, which bus was running ahead of the cargo truck; but that after the Sta. Lucia bus had stopped, the cargo truck went ahead and at great speed sought to beat the petitioner's bus to the culvert crossing, colliding with it as a result. The petitioner also alleges that, contrary to the story of the respondents, his bus stopped 2 or 3 meters from the place of impact and that if it was later found parked farther away it was because it had been pushed forward some 15 to 20 meters to clear the way for the Sta. Lucia bus to cross the culvert so that it could take the injured persons to the hospital in Tacloban City.

In giving credence to the respondents' version and laying the sole blame for the accident on the deceased driver of the passenger bus, the Court of Appeals took into account a number of pertinent and significant details, thus:

"The sketch drawn by Tomas Dagalea, a corporal of the Carigara police force, shows that the collision took place at a point 10.25 meters from the culvert towards Tacloban City and within the lane of the truck. According to Dagalea, and as also indicated in the sketch, he found the bodies of Milagros Marquez and Pelagia Cabaltera and parts of the bus strewn near the point of impact and almost on the right edge of the road going to Tacloban City. This supports the claim of appellants' (now respondents) witnesses that the bus, immediately before the collision, was running at the middle of the road and that the cargo truck had already passed over the culvert and tried to swerve more to the right of its lane when it was bumped by the bus. In the sketch and in the pictures taken of the vehicle, it also appears that the truck was barely able to go some distance from the point of impact as it pivoted to almost 90 degrees to the left side of the road facing Tacloban. On the other hand, the bus stopped only after running 32 meters more from the place of collision. The truck was bigger than the bus and must have been heavier as it was then loaded with 65 sacks of sugar. Considering these factors, and the fact that it was also moving forward, a tremendous amount of force is necessary to have it turn 90 degrees. If, as appellee (now petitioner) claims, the bus was then running at less than 35 k.p.h., the force generated by it at that speed is certainly insufficient to overcome the force of the truck generated by its forward motion. How was it possible then that the truck was forced to pivot 90 degrees? Applying here the law of physics as regards collision between two objects, one bigger and heavier than the other, the bus must have been traveling at a high velocity so much so that it generated a force greater than that of the truck. Indeed, the un rebutted testimony of appellants' (now respondents) witnesses who were passengers of the bus is to the effect that it was racing with another (Vella) bus which it tried to overtake."

After evaluating the evidence and the testimony of petitioner's witnesses, the Court of Appeals further observed:

"The road over the culvert, as also shown in the sketch, was 4.28 meters wide and the road approaches to the culvert accordingly narrowed down to that measurement. Obviously, no two vehicles, particularly those of the sizes of the two vehicles involved in the accident, going in opposite directions, could simultaneously cross over the culvert. One has to give way to the other. And as it appears that the truck was first in approaching and

passing over the culvert, it was the duty of the driver of the bus to yield the right of way and bring the bus to a complete stop if necessary. This he obviously failed to do. Appellee (now petitioner), however, would like it to appear that the bus approached the culvert ahead of the truck but since the truck was running very fast, or faster than the bus, the truck was able to cross the culvert first. As regards the speed of the truck, we are more inclined to believe that it was running at a moderate or regular rate. It was carrying 65 sacks of sugar which was a heavy enough load to affect its speed. The road leading to the culvert coming from Carigara, from which direction the truck came, was curving, while that coming from Tacloban City, from where the bus approached the culvert, was straight as far as the eye can see. As a rule, drivers slow down at curves. Considering the physical facts revealed in the record together with the testimonial evidence offered by the parties, we do not hesitate to believe the version of appellants (now respondents). We are convinced, and so hold, that the driver of the bus was guilty of having recklessly driven it at an unreasonably high speed and when confronted with the emergency created by his own imprudence lost control or failed to control his vehicle."

From review of the record we do not think that the Court of Appeals overlooked any material fact or circumstance which, if properly considered, would render its conclusion untenable. The fact, found by the Court of Appeals, that before the fatal collision the petitioner's bus was racing to overtake the Vella bus and that the passengers' pleas to the driver to slow down went unheeded, shows the bus driver's negligence and callous disregard of his duty to look after their safety above all other considerations. In support of the petitioner's claim that his bus was the first to approach and cross the culvert he makes particular mention of the fact that another bus, the Sta. Lucia, had to stop and give way. This, however, is an allegation to sustain which no evidence is cited in the petitioner's brief, and hence cannot be relied upon to overthrow the findings of the Court of Appeals.

The decision appealed from is also assailed insofar as the award of damages is concerned. It is contended that the three injured passengers - Rufina Borerres, Juanita Marquez and Valentin Momo - are not entitled to moral damages. The contention must be upheld, since their cause of action against the petitioner is based on breach of contract, and in such a case moral damages may be recovered only where the defendant acted fraudulently or in bad faith. (Art. 2220, Civil Code). The jurisprudence on this point is well settled. The petitioner here is not sued vicariously but on his own account as a party to the contract of carriage, and neither fraud nor bad faith is alleged in the complaint or may be imputed to him merely by reason of his driver's gross negligence in the manner he was driving the bus when the accident took place. The award of moral damages to the aforesaid injured passengers must be eliminated.

The next item objected to refers to the damages awarded to the heirs of the deceased passengers for loss of earning capacity, separately from the indemnities by reason of death. The ground for the objection is that loss of earning capacity was not specifically pleaded or claimed in the complaints. This item, however, may be considered included in the prayer for "actual damages" and for other "just and equitable reliefs," especially if taken in the light of Article 2206, in connection with Article 1764, of the Civil Code, which allows, in addition to an indemnity of at least P3,000 by reason of death, recovery for loss of earning capacity on the part of the deceased, the same to be paid to his heirs "in every case...unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death."

With respect to the indemnity of P6,000 for each of the passengers who died, we do not think the same is excessive.

The argument that this amount is properly recoverable in case of intentional homicide but not where death is caused by negligence overlooks the fact that the concept of the indemnity in either situation is civil, not penal, and that the measure of reparation is not affected by the nature of the causative act, whether a crime or a mere violation of contract.

Chu Liente, the owner of the cargo truck, has been awarded damages in the sum of P6,991.50, itemized as follows:

Cost of truck, which was	
acquired in July 1954	P9,904.00
Deduct:	
Amount of	
Insurance...	P3,100.00
Price received	
at sale.....	2,800.00 5,900.00
Damages not	
covered.....	4,004.00
Add:	
Value of lost tools.....	200.00
Lost Cargo.....	287.50
Expenses for dead	
passengers.....	500.00
Amount paid to heirs of	
driver.....	2,000.00
T O T A L.....	P6,991.50

Petitioner first questions the amount paid to the heirs of the driver and the value of lost tools on the ground that they were not pleaded. This is not quite true, because the complaint contains a specific allegation concerning the loss of the tools valued at P200.00. With respect to the amount paid to the heirs of the driver, the evidence presented to prove it was admitted by the trial Court without objection on the part of petitioner, and the claim was properly adjudged under the general prayer for just and equitable relief.

Coming now to the damage to the truck itself, the award to Chu Liente in the sum of P4,004.00 consists of the acquisition cost of the truck in 1954 (P9,904.00) minus the amount of insurance (P3,100.00) and the price received when the truck was sold after the accident (P2,800.00). The acquisition cost should not have been made the basis of computation, considering the depreciation of the truck in the meantime. Allowing a depreciation of 25% up to the time of the accident in April 1955, the basis should be P7,426.00. Deducting therefrom the sums realized by the owner from the insurance and the sale of the truck, he should be entitled to P1,526.00 which, added to the other items allowed, make a total of P4,513.50.

WHEREFORE, with the foregoing modifications, namely, the elimination of the award of moral damages to Rufina Borerres, Juanita Marquez and Valentin Momo, and the reduction of the award to Chu Liente, the judgment of the Court of Appeals is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro and Angeles, JJ., concur.

+ Killed were the drivers of the vehicles, Jose Garcia and Emilio Mangel, a passenger of the truck, Emiliano Java, and 7 passengers of the bus namely: Bibiano Borerer, Pelagia Cabaltera, Flaviana Hembra, Milagros Marquez, Alberta Marquez, Maria Corton and Apolonia Reli. Injured were Rufina Borerer, Juanita Marquez, Valentin Momo, Francisco Sorima, Clarita Sorima and Hilaria Sorima, all passengers of the bus.

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