

**CONRADA VDA. DE ABETO, CARMELO ABETO, CECILIA ABETO,
CONCEPCION ABETO, MARIA ABETO, ESTELA ABETO, PERL A
ABETO, P ATRIA ABETO AND ALBERTO ABETO,
PLAINTIFFS-APPELLEES, VS. PHILIP...**

G.R. No. L-28692. July 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of Iloilo finding that defendant-appellant, "did not exercise extra-ordinary diligence or prudence as far as human foresight can provide . . . but on the contrary showed negligence and indifference for the safety of the passengers that it was bound to transport, ..." and for the death of Judge Quirico Abeto, defendant-appellant was ordered to pay plaintiffs, the heirs of Judge Abeto, the following:

"1st - For the death of Judge Quirico Abeto, the amount of P6.000.00;

"2nd - For the loss of his earning capacity, for 4.75 (4-3/4) years at the rate of P7,200.00 per annum in the amount of P34.200.00;

"3rd - For moral damages in favor of the plaintiffs in the sum of P10.000.00;

"4th - For actual damages in the sum of P2.000.00 minus P400.00 received under Voucher Exhibit 'H' the amount of P1,600.00;

"5th - For attorney's fees, the sum of P6.000.00 and/or the total sum of P57.800.00 and; To pay the costs of this proceedings."

Plaintiff's evidence shows that about 5:30 in the afternoon of November 23, 1960, Judge Quirico Abeto, with the necessary tickets, boarded the Philippine Air Lines' PI-C133 plane at the Mandurriao Airport, Iloilo City for Manila. He was listed as the No. 18 passenger in its Load Manifest (Exhibit A). The plane which would then take two hours from Iloilo to Manila did not reach its destination and the next day there was news that the plane was missing. After three weeks, it was ascertained that the plane crashed at Mt. Baco, Province of Mindoro. All the passengers, including Judge Abeto, must have been killed instantly and their remains were scattered all over the area. Among the articles recovered on the site of the crash was a leather bag with the name "Judge Quirico Abeto." (Exhibit C.)

Judge Abeto, prior to the plane crash, was a Technical Assistant in the Office of the President receiving an annual compensation of P7.200.00; and before that, had held the various positions in the government, namely: Municipal President of Iloilo; Provincial Fiscal of Antique, Negros Occidental and Cebu; Judge of the Court of First Instance of Manila, and Secretary of Justice. He was in good health before the incident even if he was already 79 years old at that time.

Plaintiff-appellee Conrada Vda. de Abeto was appointed administratrix of the estate of Judge Abeto. The other

plaintiffs-appellees are the children of the deceased. When they received the news of the plane crash, Mrs. Abeto was shocked and until it was ascertained that the plane had crashed three weeks after, she could not sleep and eat. She felt sick and was miserable after that. The members of the family also suffered.

Personal belongings which were lost amounted to P300.00. Burial expenses of the late judge was P1,700.00.

When defendant-appellant would not hear demands for settlement of damages, plaintiffs-appellees were compelled to hire counsel for the institution and prosecution of this case.

Defendant-appellant tried to prove that the plane crash at Mt. Baco was beyond the control of the pilot. The plane at the time of the crash was air-worthy for the purpose of conveying passengers across the country as shown by the certificate of airworthiness issued by the Civil Aeronautics Administration (CAA). There was navigational error but no negligence or malfeasance on the part of the pilot. The plane had undergone 1,822 pre-flight checks, 364 thorough checks, 957 terminating checks and 501 after-maintenance checks. These checks were part of the quality control operation of defendant airline. Further, deviation from its prescribed route was due to the bad weather conditions between Mt. Baco and Romblon and strong winds which caused the plane to drift to Mt. Baco. Under the circumstances, appellant argues that the crash was a fortuitous event and, therefore, defendant-appellant cannot be held liable under the provisions of Article 1174 of the New Civil Code. Besides, appellant tried to prove that it had exercised all the cares, skill and diligence required by law on that particular flight in question.

The trial court, finding for the plaintiffs, said:

"The Court after a thorough perusal of the evidences, testimonial and documentaries submitted by both parties has come into the conclusion that the evidence introduced by the plaintiffs have established the following significant facts which proved the negligence of the defendant's pilot of the Plane on that flight-in-question.

"1st - That the Pilot of the plane disobeyed instruction given in not following the route of Amber 1 prescribed by the CAA in Violation of Standard Regulation.

"Second - The defendant failed to perform the pre-flight test on plane PI-C133 before the same took off from Mandurriao Airport to Manila in order to find out a possible defect of the plane.

"Third - When the defendant allowed during the flight in question, student Officer Rodriguez on training as proved when his body was found on the plane's cockpit with its microphone hanging still on his left leg.

"Fourth - When the Pilot during the flight in question failed or did not report his position over or abeam Romblon which is a compulsory reporting point.

"These facts as established by the evidence of the plaintiff lead to the inevitable conclusion that the defendant did not exercise extraordinary diligence or prudence as far as human foresight can provide imposed upon by the Law, but on the contrary showed negligence and indifference for the safety of the passengers that it was bound to transport. By the very evidence of the defendant, as shown by the deposition of one Jose Abanilla, dated December 13, 1963, Section Chief of the Actuarial Department of the Insular Life Insurance Company regarding life expectancy through American experience, the late Judge Abeto at the age of 79 would still live or have a life expectancy of 4.75 years."

Appealing to this Court, defendant claimed that the trial court erred:

"I

". . .in finding, contrary to the evidence, that the appellant was negligent;

"II

". . . in not finding that the appellant, in the conduct and operation of PI-C133, exercised its statutory obligation over the passengers of PI-C133 of extraordinary diligence as far as human care and foresight can

provide, using the utmost diligence of a very cautious person with due regard for all the circumstances and in not finding that the crash of PI-C133 was caused by fortuitous events;

"III

"... in awarding damages to the appellees; and

"IV

". . . in not finding that appellant acted in good faith and exerted efforts to minimize damages."

The issue before Us in this appeal is whether or not the defendant is liable for violation of its contract of carriage.

The provisions of the Civil Code on this question of liability are clear and explicit. Article 1733 binds common carriers, "from the nature of their business and by reasons of public policy, . . . to observe extraordinary diligence in the vigilance . . . for the safety of the passengers transported by them according to all the circumstances of each case." Article 1755 establishes the standard of care required of a common carrier, which is, "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 the circumstances." Article 1756 fixes the burden of proof by providing that "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 extra-ordinary diligence as prescribed in Articles 1733 and 1755." Lastly, Article 1757 states that "the responsibility of a common carrier for the safety of passengers . . . cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise."

The prescribed airway of plane PI-C133 that afternoon of November 23, 1960, with Capt. de Mesa, as the pilot, was Iloilo-Romblon-Manila, denominated as airway "Amber I," and the prescribed elevation of the flight was 6,000 ft. The fact is, the plane did not take the designated route because it was some 30 miles to the west when it crashed at Mt. Baco. According to defendant's witness, Ramon A. Pedroza, Administrative Assistant of the Philippine Air Lines, Inc., this tragic crash would have not happened had the pilot continued on the route indicated. Hereunder is Mr. Pedroza's testimony on this point:

"Q

Had the pilot continued on the route indicated, Amber A-I, there would have been no crash, obviously?

A

Yes, Your Honor

ATTY. HILADO:

(To the witness)

Q

Because Mt. Baco is 30 miles from Amber I?

A

Yes, sir. (TSN, p. 75, Oct. 22, 1963 hearing)

* * * * *

And, Assistant Director Cesar Mijares of the Civil Aeronautics Administration testified that the pilot of said plane was "off course."

"Q

But the fact is that you found him out, that he was off course?

A

Yes, sir.

Q

And of course, you mean that he did not follow the route prescribed for him?

A

Yes, sir.

Q

And the route for him to follow was Amber A-1?

A

Yes, sir.

Q

And the route for Iloilo direct to Manila, is passing Romblon to Manila?

A

Yes, passing Romblon to Manila.

Q

And you found that he was not at all following the route to Romblon to Manila?

A

Yes, sir.

Q

You know Mr. Witness that a disregard or, violation, or disregard of instruction is punishable by law?

A

Yes, sir. (TSN, pp. 247-248, Dec. 20, 1963)

* * * * *

It is clear that the pilot did not follow the designated route for his flight between Romblon and Manila. The

weather was clear and he was supposed to cross airway "Amber I" over Romblon; instead, he made a straight flight to Manila in violation of air traffic rules.

At any rate, in the absence of a satisfactory explanation by appellant as to how the accident occurred, the presumption is, it is at fault.

"In an action based on a contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay the damages sought for by the passenger. By the contract of carriage, the carrier assumes the express obligation to transport the passenger to his destination safely and to observe extra-ordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier (Art. 1756, new Civil Code). This is an exception to the general rule that negligence must be proved." (Batangas Transportation Company vs. Caguimbal, 22 SCRA 171.)

The total of the different items which the lower court adjudged herein appellant to pay the plaintiffs is P57,800.00. The judgment of the court a quo is modified in the sense that the defendant is hereby ordered to pay the said amount to the plaintiffs, with legal interest thereon from the finality of this judgment. With costs against defendant-appellant.

SO ORDERED.

Teehankee (Chairman), Makasiar, Melencio-Herrera, Plana and Vasquez, JJ, concur.
Gutierrez, Jr., J., is on leave.

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