

**ZAMBOANGA TRANSPOR-TATION COMPANY, INC., AND
ZAMBOANGA RAPIDS COMPANY, INC., PETITIONERS, VS. THE COURT
OF APPEALS AND JOSE MARIO DAGA-MANUEL, REPRESENTED BY
PASCUALA JULIAN DE ...**

G.R. No. L-25292. November 29, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by certiorari from the decision of the Court of Appeals in CA-G.R. No. 28297-R, affirm-ing, with modifications, the decision of the Court of First Instance of Zamboanga City in its Civil Case No. 574 - for breach of contract of carriage - wherein herein petitioners-appellants, along with their driver named Valeriano Marcos,[1] were condemned to pay damages to herein private respondent minor Jose Mario Dagamanuel, for the deaths of his father and mother while on board a passenger bus owned (by purchase) and operated by petitioner-appellant Zamboanga Transpor-tation Co., Inc. but which, at the time of the mishap causing the deaths referred to, was still registered with the Public Service Commission in the name of peti-tioner-appellant Zamboanga Rapids Co., Inc.

The appeal being purely on question of law, We quote the antecedent facts, as set forth in the pertinent portions of the decision of the Court of Appeals appealed from, as follows:

"In the evening of August 13, 1955, the spouses Ramon and Josefina Daga-manuel boarded a bus at Manicahan, Zam-boanga City, to attend a benefit dance at the Bunguiao elementary school, also in Zamboanga City, where Josefina was a public school teacher. After the dance, the couple boarded the same bus to re-turn to Manicahan. At around 1 o'clock in the early morning of August 14, 1955, the bus, with plate 1955 TPU-11327, and driven by Valeriano Marcos, fell off the road and pinned to death the said spouses and several other passengers.

"The plaintiff, the only child of the deceased spouses, through his ma-ternal grandmother, as guardian ad-litem, instituted this action against the de-fendants Zamboanga Transportation Co., Inc. and the Zamboanga Rapids Co., Inc. (hereinafter referred to as Zamtranco and Zambraco, respectively) for breach of contract of carriage, alleging that the accident was due to the fault and negligence of the driver in operating the bus and due to the negligence of the defendant companies in their supervision of their driver. The plaintiff asks for actual or compensatory damages in the sum of P40,000, moral damages in the sum of P40,000, exemplary damages in the sum of P20,000, attorney's fees in the sum of P5,000 and costs.

"The Zamtranco filed a third-party complaint against the driver Marcos, admitting that 'it is the owner by purchase of Motor Vehicle with plate number 1955 TPU-11327 and employer' of said driver, but contending, among others, that the said driver had no authority to drive the bus, hence, the driver alone should be adjudged liable. In addition, the said defendant company alleged that with intent to place his property beyond the reach of the creditors, the driver sold his property to his brother, hence its additional prayer that the sale executed by the driver be declared null and void. The Zambraco also filed a third-party complaint a-against the driver, admitting that 'it is the registered owner of Motor Vehicle with plate number 1955 TPU--11327 and employer

of herein third-party defendant' (the driver), but also contending, among others, that the accident occurred due solely to the negligence of the driver for taking out the bus without authority from it. It also asked for the annulment of the deed of sale made by the driver of his property.

"Answering the complaint, the Zambranco alleges that it is engaged in land transportation business and that at the time of the accident it was the registered owner of the ill-fated vehicle. In exculpation, it denies that Marcos was authorized to operate the vehicle when it met with the accident. In its own answer, the Zamtranco admits that it is also engaged in land transportation business at the time of the accident, and like-wise claims that Marcos had no authority to operate the vehicle.

"Finding that (1) the Zamtranco and the Zambranco were under one management at the time of the accident, (2) the accident was due to the negligence of the driver who was under their employ; and (3) the sale made by Marcos of his property was done with intent to defraud his creditors, the trial court rendered judgment (1) sentencing the three, jointly and severally, to pay the plaintiff P16,000 for the death of the spouses, P4,000 as exemplary damages, P2,000 as attorney's fees, and costs; and (2) annulling the deed of sale executed by Marcos.

"All the three defendants appealed. Marcos' appeal was later dismissed; hence as to him the judgment is already final and executory.

"In their joint brief, the two appellant companies allege that the trial court erred in (1) 'deciding the case against the defendant Zamboanga Transportation Company, Inc., it being the wrong party'; (2) 'awarding damages based on an alleged contract of carriage'; (3) 'misquoting the very provision on which it based its decision, and consequently gave a substantively wrong interpretation of the same to the detriment of the appellants'; (4) 'awarding excessive compensatory damages to the plaintiffs'; and (5) 'awarding exemplary damages.'

x x x x x

"With respect to the contract of carriage, the testimony of the principal teacher Filoteo de los Reyes sufficiently establishes the existence of such contract. The appellants have not introduced evidence to dispute the fact that de los Reyes entered into a contract for the bus to make the trip to Bunguiao, and that he paid for it. Neither have they contradicted Marcos' affidavit (exh. C-28) to the effect that he was authorized by the manager of the Zamtranco to make the trip in question.

x x x x x

"This being a case of violation of a contract of carriage resulting in death to passengers, the presumption is that the appellants as carriers have been at fault or have acted negligently (art. 1756, new Civil Code; Sy vs. Malate Taxicab, L-8937, Nov. 29, 1957). This presumption can, however, be rebutted by (1) proof of extraordinary diligence or (2) proof that the accident was due to a fortuitous event.

"With respect to the first possible defense, the appellants have not even as much as hinted either at the trial or in this appeal that they had exercised the diligence required of them as carriers. All they did was to deny that the driver was authorized to operate the vehicle in question. As to the second, we note that only the driver has interposed fortuitous event below, but as we have already noted, his appeal has been dismissed, and as to him, the decision a quo had already become final and executory. Anent his second defense, the appellants have raised this belatedly, as they did it only on appeal. At all events, the occurrence of fortuitous event is belied by the report of investigation (exh. c) to the effect that the driver was under the influence of liquor, and that the bus was running at a fast clip in spite of the fact that the road was slippery.

x x x x x

"It is undisputed that Josefina was 32 years old at the time she died and a public school teacher receiving P120

a month or P1,440 a year, with the prospect of increase in salary. The probabilities that she would live until she reached the compulsory retirement age of 65 cannot be discounted for there is no evidence that she was suffering from any sickness. There is likewise no dispute that her husband Ramon was 27 years old at the time of his death, a farmer by calling and in good health. All these have been established, and the appellants have not presented rebuttal evidence (t.s.n. 60, id.) Allowing him a minimum income of P120 a month, he was earning at least P1,440 a year. The probabilities of advancement are also not remote as he was still young.

x x x x x

"x x x The manner with which the driver operated the vehicle as described in exh. C, and appellants' absolute lack of precaution in assigning the driver to this particularly dangerous night trip notwithstanding the driver's record of previous traffic violations (exh. C-47), are so reprehensible as to call for the imposition of large exemplary damages to serve as a deterrent to others. To us, the amount of P5,000 could serve the purpose.

"ACCORDINGLY, with the modification that the following damages are hereby awarded, to wit, (1) P12,000 for the death of the spouses Ramon and Josefina Dagamanuel, (2) P11,520 for the loss of earnings of both spouses, (3) P5,000 as moral damages, and (4) P5,000 as exemplary damages, the judgment a quo is affirmed in all other respects, at defendants-appellants' cost."

In due time petitioners-appellants moved for the reconsideration of the above-quoted judgment of the Court of Appeals, but the same was denied; hence, this appeal via the present petition for certiorari.

Petitioners now contend that the Court of Appeals committed the following errors:

"I. THE COURT OF APPEALS ERRED, AS A MATTER OF LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT, IN HOLDING PETITIONER ZAMTRANCO, THE UNREGISTERED OWNER OF THE ILL-FATED VEHICLE, JOINTLY AND SEVERALLY LIABLE WITH THE ZAMBRACO, THE REGISTERED OWNER, AND WITH THE DRIVER THEREOF.

"II. THE COURT OF APPEALS ERRED, AS A MATTER OF LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT IN (A) AWARDING EXCESSIVE DAMAGES FOR THE DEATH OF THE PARENTS OF RESPONDENT DAGAMANUEL; EXCESSIVE COMPENSATORY DAMAGES; AND EXCESSIVE MORAL DAMAGES TO RESPONDENT, WITHOUT THE LATTER APPEALING THE DECISION OF THE TRIAL COURT, AND (B) IN HOLDING PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH THE DRIVER BY WAY OF EXEMPLARY DAMAGES FOR THE LATTER'S WRONGFUL ACT."

That the Court of Appeals did not commit the first error assigned by appellants is obvious. While it is true that according to previous decisions of this Court, a transfer of a certificate of public convenience to operate a transportation service is not effective and binding insofar as the responsibility of the grantee under, the franchise in its relation to the public is concerned, without the approval of the transfer by the Public Service Commission required by the Public Service Act,[2] and that in contemplation of law, the transferor of such certificate continues to be the operator of the service as long as the transfer is not yet approved, and as such operator, he is the one responsible jointly and severally with his driver for damages incurred by passengers for third persons in consequence of injuries or deaths resulting from the operation of such service,[3] We do not find any need for applying these rulings to the present petitioners for the simple reason that in their respective third-party complaints, as noted by the Court of Appeals they both admitted separately that they are the owners of the bus involved in the incident in question and that Valeriano Marcos, the driver of said bus at the time of said incident, was in their employ. And there is nothing strange in this because, as found by said appellate court;

"There is abundant evidence that although the Zambraco appears to be the registered owner, Zamtranco was in

fact the operator. To start with, there is the testimony of Filoteo de los Reyes, principal teacher of Jose-fina, to the effect that for the trip to and from Bunguiao where the benefit dance was held, he contracted with Zamtranco at Tetuan (t.s.n. 13-14, Aug. 7, 1956, Cabato); that he saw in Bunguiao the bus sent by Zamtranco (t.s.n. 33, id.); and that he paid the fare to the driver of Zamtranco (t.s.n. 21 id.). This testimony was never contradicted by the appellants, either by documentary or testimonial evidence. x x x."

In their own brief in this instance, appellants make these significant admissions:

"The facts that TPU Bus No. 11327 which figured in the accident that caused the death of the spouses Ra-mon Dagamanuel and Josefina Punzalan was registered in the name of Zam-braco in the year 1955, is not dis-puted. At that time, the sale and merger of this Zambraco with the Zam-tranco was to be the subject of appli-cation with the Public Service Com-mission. Pending such approval, the ill-fated bus was again registered in the name of the Zambraco in the year 1956, according to the testimony given at the trial by Leonardo Gal-vez, then Acting Registrar of the Motor Vehicle Office in Zamboanga."

Indeed, under these circumstances, We cannot find any reason to disagree with Mr. Justice Fred Ruiz Castro who penned the appealed decision in his ruling to the effect that:

"We do not find any application of the ruling in the foregoing cases to the case at bar. There, the registered owners invariably sought to pass on liability to the actual ope-rators on the pretext that they had already sold or transferred their units to the latter, whereas in the present case, the registered owner, the Zambraco, admits whatever lia-bility it has and vigorously objects to any finding that the actual opera-tor, the Zamtranco, is also liable with it, claiming that as registered owner, it alone should be adjudged liable. We would not inquire into the motive of the Zambraco why in-stead of sharing whatever liability it has with the Zamtranco, it prefers to shoulder it alone. But the fact stands out in bold relief that al-though still the registered owner at the time of the accident, it had al-ready sold the vehicle to Zamtranco and the latter was actually operat-ing it.

"It is our view that it is for the better protection of the public that both the owner of record and the actual operator, as held by us in the past, should be adjudged jointly and severally liable with the driver (see *Dizon vs. Octavio, et al.*, 51 O.G. No. 8, 4059-4061; *Castanares vs. Pages*, CA-G.R. 21809-R, March 8, 1962; *Redado vs. Bautis-ta*, CA-G.R. 19295-R, Sept. 19, 1961; *Bering vs. Noeth*, CA-G.R. 28483-R, April 29, 1965)."

The second assignment of error refers to the dif-ferent items of damages awarded by the respondent court. Petitioners complain that the same are excessive if not without legal basis. To a certain extent, petitioners are right.

It may be recalled that the trial court's judgment regarding the matter of damages was as follows:

- "1) P8,000.00 for the death of Ramon Dagamanuel;
- 2) P8,000.00 for the death of Jose-fina Punzalan;
- 3) P4,000.00 as exemplary damages;
- 4) P2,000.00 as attorney's fees; and
- 5) Costs."

From this judgment, only petitioners appealed. Pri-ivate respondents did not appeal. Accordingly, petition-ers are correct in inviting Our attention thus:

"The respondent did not appeal any portion of the decision of the lower Court, thus indicating that he is fully satisfied with the same. On the other hand, the driver of the ill-fated bus failed to perfect his ap-peal and consequently, as against him, the decision of the lower Court is already final.

"The lower Court rendered a decision against the driver of the bus and the two petitioners herein for the death of the parents of the respondent in the sum of P16,000.00, together with P4,000.00 exemplary damages. But notwithstanding the automatic exclusion of the driver from the effects of the appealed decision, the Court of Appeals, while reducing the death award to P12,000.00 increased the exemplary damages to P5,000.00 adding thereto P11,520.00 compensatory damages and P5,000.00 moral damages. We humbly contend that to award damages when none was allowed by the lower Court, and to increase damages when the successful party did not appeal, is simply improper and amounts to pure abuse of discretion on the part of the respondent appellate Court, contrary to the doctrines laid down by the Honorable Supreme Court in the following cases, to wit:

'The discretion in fixing moral and exemplary damages primarily lay in the trial court and the same should be respected. (Coleongco vs. Claparols, No. L-18616, March 31, 1964; Emphasis ours).'

'It is well-settled rule in this jurisdiction that whenever an appeal is taken in a civil case, an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. An appellee, who is not appellant, may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such a case, he must appeal. HERE, THE RESPONDENT DID NOT APPEAL AND SO IT WAS ERROR FOR THE COURT OF APPEALS TO AWARD HIM A RELIEF NOT GRANTED BY THE LOWER COURT.'" (Dy, et al. vs. Kuison, L-16654 Nov. 30, 1961; Emphasis ours).'

"Furthermore, it is respectfully submitted, that a child 3-year old, as the respondent herein was when his parents died, cannot yet feel the mental anguish resulting from their death, as to warrant such excessive award of P5,000.00 moral damages. We venture to ask, therefore, what degree of mental torture could have been possibly endured by a boy of such tender age? We believe that the measure of moral damages, if any, must be commensurate with the mental anguish suffered by the heir. (Mercado, et al vs. Lira, et al., Nos. L-13328-29 and L-13358, Sept. 29, 1961.)"

True it is, the awards of P8,000 each for the death of the parents of respondent Jose Mario Dagamanuel may not be increased anymore, but We cannot say that they should be reduced. Quite, on the contrary, We consider the judgment of the Court of Appeals in respect to the matter of damages to be more in accordance with the facts, except perhaps, as to the item of moral damages, considering the tender age of the above-named respondent child, and We would have upheld the same had private respondent appealed from the decision of the trial court.[4] Indeed, the Court of Appeals properly interpreted the P16,000 awarded by the trial court as including not only damages for the death of the deceased couple but also the other items of recoverable damages, like compensatory or actual, etc. Thus viewed, the amounts awarded by the trial court cannot be considered excessive.

IN VIEW OF ALL THE FOREGOING, the judgment of the Court of Appeals is affirmed, with the modification that as to damages, petitioners are sentenced to pay jointly and severally no more than the amounts of damages adjudged by the trial court.

No costs in this instance.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Fernando, and Teehankee, JJ., concur.
Dizon and Castro, JJ., no part.

[1] Valeriano Marcos, driver of the ill-fated bus which figured in the mishap involved in this case, also interposed an appeal from the decision of the court a quo to the Court of Appeals, but his said appeal was dismissed for failure to pay the docket fee and costs of printing, hence, the decision of the Court of First Instance of Zamboanga City, as to him, is final.

[2] *Fores vs. Miranda*, 105 Phil. 266, 270.

[3] *Montoya vs. Ignacio*, 94 Phil. 182, 186; *Vda. de Medina et al. vs. Cresencia, et al.*, 99 Phil. 506, 509; *Erezo, et al. vs. Jepte*, 102 Phil. 103, 106; *Tamayo vs. Aquino*, 105 Phil. 949, 951-952; *Vargas vs. Langcay*, 6 SCRA 174, 177-178; *De Peralta vs. Mangusang*, 11 SCRA 598, 600.

[4] On the question of damages, this is what the Court of Appeals held:

"The trial court awarded P8,000 for the death of Ramon Dagamanuel and P8,000 for the death of his wife Josefina, and P4,000 as exemplary damages.

"Surely, in fixing P8,000 'for the death' of each of the spouses, the trial court could not have meant that the amount is not all-embracing as not to include actual or com-pensatory damages, moral damages and damages for loss of earning. To assume otherwise is to say that the trial court was not aware of the provisions of Articles 1764 and 2206 of the new Civil Code regarding damages. That in awarding P8,000 'for the death' of each of the spouses the trial court meant to include actual and moral damages and damages for loss of earning, is obvious, for the plaintiff has asked for the various items in his com-plaint separately and distinctly. Embracing as it does the three classes of damages enumerated above, the sum of P8,000 awarded by the trial court is unconscionable.

"The applicable provisions of the new Civil Code are hereunder quoted:

'ART. 1764. Damages in cases com-prised in this Section shall be awarded in accordance with Title VIII 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.'

x x x x x

'ART. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances in add-ition:

'(1) The defendant shall be liable for the loss of the earn-ing capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

'(2) If the deceased was ob-liged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inhe-ritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not ex-ceeding five years, the exact dura-tion to be fixed by the court.

'(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.'

"As the law itself provides, the amount of damages for death is 'at least three thousand pesos'. Uniform jurisprudence has increased it to P6,000 (*Corona vs. Pambusco*, CA-G.R. 16393-R, July 30, 1957; *Monserat, et al. vs. M. Ruiz Highway Transit*, CA-G.R. 17416--R, July 27, 1959 and cases therein cited; *Dailisan vs. Co Eng Go*, CA-G.R. 16021-R, Oct. 8, 1963). The plaintiff is therefore entitled for the death of his parents, to P6,000 each, or P12,000 for both. To this amount must be added two other items of damages, to wit, actual or compensatory (No. 1) and moral damages (No. 3) (see *Mercado vs. Lira*, L-13328-29, L-13358, Sept. 29, 1961).

"It is undisputed that Josefina was 32 years old at the time she died and a public school teacher receiving P120 a month or P1,440 a year, with the prospect of increases in salary. The probabilities that she would live until she

reached the compulsory retirement age of 65 cannot be discounted for there is no evidence that she was suffering from any sickness. There is likewise no dispute that her husband Ramon was 27 years old at the time of his death, a farmer by calling and in good health. All these have been established, and the appellants have not presented re-buttal evidence (t.s.n. 60, id.). Allow-ing him a minimum income of P120 a month, he was earning at least P1,440 a year. The probabilities of advancement are also not remote as he was still young.

"For compensatory damages, Josefina and Ramon should have earned within a pe-riod of four years, in accordance with settled jurisprudence (Alcantara vs. Curro, et al. 49 O. G. No. 7, 2769; Heirs of Tirso Cura vs. Meralco, CA-G.R. 18221-R, Feb. 14, 1958; Lira vs. Mercado, CA-G.R. 15422-R-23-R, July 11, 1957; Ybañez vs. North Negros Sugar Co., CA-G.R. 26608-R, Oct. 14, 1963), a minimum of P5,760 each, or a total of P11,520 for both.

"Another item recoverable by the plain-tiff is moral damages. Decidedly, under par. (3) of Article 2206, the plaintiff is entitled to a certain amount for his mental anguish. Considering that at the time his parents died and until the present, he is still a minor, the sum of P5,000 is reason-able (see Necessito vs. Paras, L-10605-06, resolution on motion for reconsideration, Sept. 11, 1958; Mercado vs. Lira, supra). The award of exemplary damages is justified under the circumstances. The manner with which the driver operated the vehicle as described in Exh. C, and appellants' ab-solute lack of precaution in assigning the driver to this particularly dangerous night trip notwithstanding the driver's record of previous traffic violations (Exh. C-47), are so reprehensible as to call for the im-position of large exemplary damages to serve as a deterrent to others. To us, the amount of P5,000.00 could serve the purpose."

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