

**GONZALO MERCADO, ET AL., PETITIONERS, VS. RAMON LIRA AND JUANA C. DE LIRA, RESPONDENTS. NITA LIRA, PETITIONER, VS. GONZALO MERCADO, ET AL., RESPONDENTS.**

*G.R. Nos. L-13328-29 & L-13358. September 29, 1961*

Ponente: PAREDES, J.

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**PAREDES, J.:**

Gonzalo Mercado and others were the owners and operators of the Laguna Transportation Company. In the afternoon of April 21, 1951, while its passenger bus No. 39 was making the trip from Batangas to Manila on the concrete highway at barrio Tulo, Calamba, Laguna, the left front tire of the bus blew out and sent it swerving gradually toward the left side of the road, over the shoulder and into a ravine some 270 meters away. From the wreckage, the bodies of the passengers, several dead, others injured, were recovered, and among the fatalities was Ramon Lira, Jr. (24), son of Mr. and Mrs. Ramon Lira, Sr. and injured Nita Lira. Two cases for recovery of damages were commenced against the owners and operators in the Court of First Instance of Batangas: No. 104 (now G.R. Nos. L-13328-29, in this Court) by the parents of deceased Ramon Lira, Jr. and No. 107-C now G. R. No. L-13358, in this Court by Nita Lira. After a joint trial, defendants, Mercado and others were sentenced to pay the following sums: In Civil Case No. 104:

For the death of Ramon Lira, Jr. including funeral

and church expenses

P10,000.00

For loss of earning capacity of Ramon Lira, Jr.

for ten (10) years at P1,800.00 per annum

18,000.00

Moral damages for mental anguish

4,000.00

For expenses of litigation and attorney's fees

4,000.00

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Total

P36,000.00

In Civil Case No. 107:

For hospitalization and medical treatment of Nita

Lira

P970.20

For the impairment of earning capacity

1,000.00

Moral damages for her physical and mental suf-

fering

2,000.00

For expenses of litigation and attorney's fees

1,000.00

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Total

P4,970.20

Defendants appealed in both cases and plaintiff Nita Lira appealed in No. 107, (being cases C.A. G.R. No. 15422 and C.A. G.R. No. 15423-R). The Court of Appeals rendered judgment as follows:

"As far as the other items are concerned, we find them to be reasonable and fully supported by the evidence.

Wherefore, the judgment appealed from is hereby modified by reducing the amount awarded for the death of Ramon Lira, Jr. including funeral and church services from P10,000.00 to P5,062.50; reducing the amount awarded for loss of earning capacity from P18,000.00 to P12,000.00 and increasing the amount awarded to

plaintiff-appellant Nita Lira for moral damages from P2,000.00 to P5,000.00. In Civil Case No. 104 (CA.G.R.No. 15422-R), therefore, defendant should pay a total of P25,032.56; and in civil case No. 107 (CA.G.R. No. 15423-R), they should pay a total of P7,970.20. In all other respects the said judgment is affirmed, without pronouncement as to costs this instance."

On December 19, 1957, and in pursuance of a motion for reconsideration, the Court of Appeals issued the following resolution:

"In view of the foregoing considerations, the judgment heretofore rendered is hereby modified by eliminating therefrom the award of P5,000.00 by way of moral damages to plaintiff Nita Lira in case CA-G.R.No. 15422-R, maintaining said judgment in all other respects."

In other words, in the case CA-G.R.No. 15422-R, involving the death of Ramon Lira, Jr., the Court of Appeals granted moral damages, and in the case of CA-G.R.No. 15423-R, involving physical injuries caused upon Nita Lira, moral damages of P5,000.00 awarded her, were eliminated.

Hence, a petition for certiorari to review the decision of the Court of Appeals was filed by Gonzalo Mercado, et al., petitioners, against Ramon Lira, et al., (G.R.No. L-13328-29), and another similar petition was filed by Nita Lira, petitioner vs. Gonzalo Mercado, et al., respondents (G.R.No. L-13358).

Counsel for the Mercados, defined their position as follows:

"Article 2206 of the Civil Code fixes the amount of damages for death at only P3,000.00. The heirs of the deceased may also claim for moral damages, although awarding it is not obligatory like the damages for loss of earning capacity. Paragraph 3 of Art. 2206 states that the heirs may demand for moral damages for mental anguish by reason of the death of the deceased. The amount of moral damages, therefore, should be made only nominal if the heirs have already been compensated very substantially for the death of the deceased, which in this case has been set by the Court of Appeals at P5,052.50 and loss of earning at P12,000.00 and the attorney's fees at P4,000.00 which already amount to P21,052.50. We respectfully submit, therefore, that even if granting that the respondents are entitled to moral damages, yet the same should not be fixed in such an amount as to kill the entire business of the respondents who are public service operators, by the enormous amounts they have to pay on account of the negligence of one driver. In this case, we respectfully submit that the amount of P500.00 is a reasonable moral damage considering that the other damages already awarded are excessive. In the same way that the attorney's fees should also be reduced to only P1,500.00."

and ended with a prayer that "the decision of the Court of Appeals be modified so that the respondents should pay only the sum of P500.00 as moral damages and P1,500.00 for attorney's fees."

The pertinent provisions of the new Civil Code state:—

"ART. 1764.—Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII 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.

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 addition: \* \* \*.

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

It is thus seen that Article 2206 of the new Civil Code expressly provides that the amount of damages for death shall be "at least three thousand pesos, even though there may have been mitigating circumstances." In other words, the amount of damages to be awarded for the death of a passenger may be more than P3,000.00. It is

argued that the award for moral damages for mental anguish caused by the death of a passenger is not obligatory, and that the amount should only be nominal if the heirs have already been compensated substantially for the death of the deceased. Article 2206 states further that "In addition" to the amount of at least P3,000.00 to be awarded for the death of a passenger, the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages as a consequence of the death of their deceased kin, which simply means that once the above-mentioned heirs of the deceased claim compensation for moral damages and are able to prove that they are entitled to such award, it becomes the duty of the court to award moral damages to the claimant in an amount commensurate with the mental anguish suffered by them. In the Civil Code, nominal damages are treated separately from moral damages. Any amount that should be awarded as nominal damages, should not be confused or interlinked with moral damages which, by itself, is a distinct class of damages. Of course, the amount of moral damages to be awarded, should be such as may be reasonable and just under the circumstances in a given case. Petitioners' claim that as the other damages awarded to said respondents are already excessive, the award for moral damages should be reduced to P500.00. But the Court of Appeals found the other damages not to be excessive, and as far as this factual finding is concerned, We are not authorized to rule otherwise. Moreover, petitioners never assailed in their motion for reconsideration of the decision of the Court of Appeals, dated July 11, 1957, as well as in their instant petition for certiorari, the reasonableness of the amount of the other damages awarded to herein respondents. In fact, the petition limits the issues only to the reasonableness of the P4,000.00 awarded by the Court of Appeals as moral damages and the other amount of P4,000.00 as attorney's fees. Considering the mental anguish and sorrow that must accompany and overwhelm the parents upon the tragic death of a son, and considering the nature and extent of the services rendered by counsel for respondents and other circumstances of the case, We believe the awards given by the Court of Appeals to respondents in the sum of P4,000.00 as moral damages for the death of Ramon Lira, Jr. and the amount of P 4,000.00 for attorney's fees and other expenses of litigation, fair and reasonable (par. 11, Art. 2208, N.C.C.).

With respect to G.R. No. L-13358, it is alleged that the respondent Court of Appeals erred in its resolution dated December 19, 1957, in not awarding moral damages to petitioner Nita Lira for physical injuries and mental suffering sustained by her, resulting from breach of the special contract of carriage caused by the negligence of the respondents, contending that her case is analogous to cases of "quasi delicts causing physical injuries" for which the new Civil Code authorizes indemnification for moral damages in favor of the injured party (par. 2, Art. 2219 N.C.C.).

Petitioner contends that in the case of Cachero vs. Manila Yellow Taxicab Co., (101 Phil, 523 54 Off. Gaz., No. 26, p 6599), this Court had not expressly declared or impliedly stated that the award of moral damages to a passenger who has sustained physical injuries is not an "analogous case." And Cachero in said case, did not invoke the analogous applicability of said provision of law, (par. 2, Art. 2219) to his case. Much space was allotted by petitioner in her brief, in support of her theme, stating that the issue raised by her was of first impression. Since the submission of her brief on February 21, 1958, however, several cases have reached this court raising the same question, among them is the case of Paz Fores vs. Irene Miranda, 105 Phil., 266; 57 Off. Gaz., (44) 7938—the facts of which are identical to those of the present one. This Court, speaking through Mr. Justice J. B. L. Reyes, said—

"\* \* \*. Anent the moral damages ordered to be paid to the respondent, the same must be discarded. We have repeatedly ruled (Cachero vs. Manila Yellow Taxicab Co. Inc., 101 Phil; 523; 54 Off. Gaz. [26] 6599; Necesito, et al. vs. Paras, 104 Phil., 75; 56 Off. Gaz. [23] 4023; that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code, which provide as follows:

'ART. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

\* \* \* \* \*

'ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.'

By contrasting the provisions of these two articles it immediately becomes apparent that:

(a) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (*dolus*), i.e., wanton, or deliberately injurious conduct, is essential to justify an award of moral damages; and

(b) That a breach of contract can not be considered included in the descriptive term 'analogous cases' used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by contractual; breach, but because the definition of quasi-delict in Art 2176 of the Code expressly excludes the cases where there is a 'pre-existing contractual relation between the parties.'

'Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.'

The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Art. 1764 makes the common carrier expressly subject to the rule of Art. 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to 'demand moral damages for mental anguish by reason of the death of the deceased' (*Necesito vs. Paras*, 104 Phil., 84. Resolution on motion to reconsider, Sept. 11, 1958). But the exceptional rule of Art. 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not per se constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by Act 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

The Court of Appeals has invoked our rulings in *Castro vs. Aero Taxicab Co.* 82 Phil., 359; 46 Off. Gaz., 2023 and *Layda vs. Court of Appeals* 90 Phil., 724; but these doctrines were predicted upon our former law of damages, before judicial discretion in fixing them became limited by the express provisions of the new Civil Code (previously quoted). Hence, the aforesaid rulings are now inapplicable.

Upon the other hand, the advantageous position of a party suing a carrier for breach of the contract of transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for the breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier or of his employees; and the burden is placed on the carrier to prove that it was due to an unforeseen event or to force majeure (*Cangco vs. Manila Railroad Co.*, 38 Phil., 768, 777). Moreover, the carrier, unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 1759, new Civ. Code; *Cangco vs. Manila Railroad Co.*, supra; *Prado vs. Manila Elec. Co.*, 51 Phil., 900).

The difference in conditions, defenses and proof, as well as the codal concept of quasi-delict as essentially extra-contractual negligence, compel us to differentiate between actions ex contractu, and actions quasi ex delicto, and prevent us from viewing the action for breach of contract as simultaneously embodying an action on tort. Neither can this action be taken as one to enforce on employer's liability under Art. 103 of the Revised Penal Code, since the responsibility is not alleged to be subsidiary, nor is there on record any averment or proof that the driver of appellant was insolvent. In fact, he is not even made a party to the suit.

It is also suggested that a carrier's violation of its engagement to safely transport the passenger involves a breach of the passenger's confidence, and therefore should be regarded as a breach of contract in bad faith, justifying recovery of moral damages under Art. 2220. This theory is untenable, for under it the carrier would always be deemed in bad faith, in every case its obligation to the passenger is infringed, and it would be never accountable for simple negligence; while under the law (Art. 1756), the presumption is that common carriers acted negligently (and not maliciously), and Art. 1702 speaks of negligence of the common carrier.

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'ART. 1756. 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 extraordinary diligence as prescribed in articles 1733 and 1755.'

'ART. 1762. The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced.'

The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored (Arts. 1170-1172); their consequences being clearly differentiated by the Code.

'ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.'

It is to be presumed, in the absence of statutory provision to the contrary, that this difference was in the mind of the lawmakers when in Art. 2220 they limited recovery of moral damages to breaches of contract in bad faith. It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees."

(See also *Tamayo vs. Aquino*, 105 Phil., 949; 56 Off. Gaz. No. 36, p. 5617; *Cariaga vs. L.T. Bus*, L-11037, Dec. 29, 1960; *Versoza vs. Baytan*, 107 Phil., 1010; *Rex Taxicab Inc. vs. Bautista*, 109 Phil., 712; 60 Off. Gaz., 8460.

We gleaned, therefore, from the above mentioned decisions, (1) that the case of a passenger of a carrier who suffered physical injuries "because of the carrier's negligence (culpa contractual), cannot be considered in the descriptive expression 'analogous cases', used in Art. 2219"; and (2) that in cases of breach of contract (including one of transportation) proof of bad faith or fraud (dolus) i.e., wanton or deliberate injurious conduct is essential to justify an award of moral damages. There being no evidence of fraud, malice or bad faith, contemplated by law, on the part of the respondents, because the cause of the accident was merely the bursting of a tire while the bus was over speeding, the cause of petitioner Nita Lira should fail, as far as moral damages is concerned. Moral

damages was, therefore, correctly eliminated by the Court of Appeals.

In view of the foregoing considerations, the decision of the Court of Appeals in G.R. Nos. L-13328-29 and L-13358 (Court of Appeals resolution dated December 19, 1957), hereby is affirmed, without costs in this instance.

Bengzon, C. J., Padilla, Labrador, Concepcion, and Reyes, J. B. L, JJ., concur.

Bautista Angelo, J., on leave, took no part.

De Leon, J., did not take part.

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