

SALVADOR E. IMPERIAL, PLAINTIFF-APPELLANT, VS. PHILIPPINE AIRLINES, INC., DEFENDANT-APPELLANT.

G.R. No. L-4923. January 10, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

SALVADOR E. IMPERIAL, PLAINTIFF-APPELLANT, VS. PHILIPPINE AIRLINES, INC., DEFENDANT-APPELLANT

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Plaintiff-appellant has filed a motion praying:

"x x x that the Decision of this Honorable Court, dated June 22, 1954, be reconsidered and set aside and that a new one be rendered, adjudicating in his favor a sum not less than P15,000 for moral damages sustained by the plaintiff-appellant on account of the accident herein."

upon the ground that it cannot be denied "that the appellant suffered moral shock, fright and mental anguish, as a direct consequence of the negligence and lack of skill on the part of the defendant-appellant's agent" and that moral damages may be recovered under the Civil Code of Spain, which was in force in the Philippines at the time of the occurrence of the events upon which plaintiff's complaint is based, as well as under the Civil Code of the Philippines.

Suffice it to say that there is no allegation in the pleadings, and there is no proof to the effect, that plaintiff-appellant has suffered "moral shock, fright and mental anguish." In fact, in his complaint, he did not seek to recover moral damages. As stated in said decision of this Court:

"x x x In this complaint, plaintiff alleges three causes of action: one for P16,836.20, allegedly spent for his treatment in the Philippines and in the John Hopkins Hospital in the United States, including transportation and his stay therein; another for P25,000.00, for unrealized profits; and, still, another for P125,000.00, for future income, which he would no longer receive."

In other words, the question whether or not he may recover moral damages was not put in issue either in the lower court or before this Court, prior to the rendition of its aforesaid decision. Obviously, therefore, it is improper, in the exercise of our appellate jurisdiction, even to entertain plaintiff's claim for moral damages, the same having been made, for the first time, after the promulgation of the aforementioned decision.

WHEREFORE, said motion for reconsideration of plaintiff-appellant is hereby denied.

Paras, C.J., Bengzon, Padilla, Jugo, and Labrador, JJ., concur.

Bautista Angelo, J., reiterates his concurring opinion.

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