EDENTOR T. CRUZ AND KATRINA ROSANNA M. CRUZ, REPRESENTED BY THEIR ATTORNEY-IN-FACT, ERNESTO M. ARZAGA, PLAINTIFFS-APPELLEES, VS. MARIA DE LEON TRANSPORTATION, INC., MARIA DE LEO...

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS IS ON THE APPEAL filed by defendants-appellants Maria De Leon Transportation, Inc. and Maria De Leon Dimaya (collectively, appellants) from the Decision[1] dated November 25, 2011 of the Regional Trial Court, Branch 204, Muntinlupa City (RTC), which found appellants liable in Civil Case No. 03-213 for Breach of Contract.

THE ANTECEDENTS

Plaintiffs-appellees Edentor T. Cruz and Katrina Rosanna M. Cruz were the husband and daughter, respectively, of Corazon M. Cruz (Corazon) who died on June 8, 2003.

On June 7, 2003, at around 8 o'clock in the evening, Corazon and her sister, Alma M. Arzaga (Alma), boarded a bus with plate no. AVV-571 (the bus) of appellant Maria De Leon Transportation, Inc. (appellant bus company) operated by appellant Maria De Leon Dimaya (appellant Maria) at San Nicolas, Ilocos Norte, going to Manila. They were seated on the third row from the front at the right side of the bus. Corazon sat by the window. Tickets were issued to them and they expected to reach Manila by 6 o'clock the morning of the following day.

At around 4:45 in the morning of June 8, 2003, while the bus was travelling along KM (kilometer) 12 of the North Luzon Expressway (NLEX) at Libis, Sta. Quiteria, Caloocan City, it tried to overtake a Fuzo Canter (Canter) by veering to the rightmost lane. However, a dump truck was on the same lane and, because of its speed, the bus driver could no longer apply the brake properly without hitting the dump truck. As the bus driver tried to steer the bus back to the middle lane where the Canter was, the front left side of the bus sideswiped the rear right portion of the Canter, causing the Canter to crash into the NLEX embankment. The right side of the bus hit the rear portion of the dump truck which was loaded with sand. As the bus hit the dump truck, the right siding of the bus was ripped off causing Corazon to be thrown out of the bus. Corazon and other injured passengers of the bus were brought to the hospital but she did not survive her injuries, and died at around 6:53 in the morning that fateful day of June 8, 2003, at the MCU Hospital, Caloocan City. Appellees sent two demand letters to appellants for payment of damages which went unheeded; thus, the complaint.[2]

The version of the appellees was testified to by Herminio Agustin Carranza (Herminio)[3], driver of the Canter, who narrated that at about 4:30 in the morning of June 8, 2003, he was driving the Canter along NLEX from Valenzuela via the Malinta Exit, going to Cavite, there to deliver eighty gas cylinders, each measuring five (5)

feet high. He was travelling at a speed of 60 kph (kilometers per hour) on the slow lane of the NLEX due to his load. The NLEX was well lighted and he saw the vehicles on his side and rear view mirrors.

While he was following a dump truck at a distance of about thirty to forty meters, he saw from his side mirror, a bus, running at a fast clip of more than 100 kph and trying to overtake at the shoulder lane of the NLEX. When the bus was about to overtake the Canter, the dump truck he was following was now at the shoulder lane and about to exit in the direction of a construction site. The bus tried to slow down to avoid a collision with the dump truck and swerved to the left as it was about to hit the dump truck. At that point, the bus hit the right back portion of the Canter and Herminio lost control of the Canter. He steered away to avoid hitting the dump truck and hit the concrete barrier at the right side. The Canter sustained damage at the right front portion, the transmission, chassis and engine.

He saw the bus ram the dump truck, causing the latter to hit the concrete barrier. Because of the speed the bus was going, it went past the dump truck, ripped off the right siding of the bus and ended about 100 meters in front of the dump truck.

Corazon was identified at the MCU morgue by her brother-in-law, Ernesto Mateo Arzaga (Ernesto)[4], whose wife, Alma, requested him to locate Corazon who was brought to the MCU with the other injured passengers. Ernesto paid the MCU Hospital to release Corazon's body. Alma and he also paid the Loyola Memorial chapel and other expenses for the wake and burial of Corazon. The latter's family arrived from the USA on June 14, 2003.

Appellants denied liability for the accident and, instead, blamed the dump truck driver[5].

Pedro Gapero (Pedro) testified[6] that he was the conductor of the bus at the time of the accident. He was sitting at the conductor's seat beside the driver, Roger Rasalan (Roger), and they were running at a speed of about 40 to 50 kph. They were occupying the rightmost, shoulder lane and was following a dump truck. Without warning, the dump truck suddenly applied its brakes as it was about to exit to the right. Roger tried to avoid the dump truck but the bus still hit the left side of the dump truck, ripping the right siding of the bus causing a passenger to be thrown off. Several passengers were also wounded. Roger pulled over the shoulder lane about 15 meters from where the accident happened.

Roger[7] denied liability for the accident. He stated that he took over driving the bus at San Fernando, La Union. They were occupying the slow lane and was running at a speed of about 80 to 100 kph. They were following a dump truck at a distance of about 10 meters. However, at some point, the dump truck applied the brake without signalling. Because of the suddenness of the dump truck's manuever, he was unable to stop the bus and hit the rear left portion of the dump truck.

Edgar Acosta (Edgar)[8], operations manager of the appellant bus company testified that prior to the hiring of bus drivers, the company requires the applicants to submit the necessary clearances. The applicants are also required to undergo road testing to check whether they drive carefully and know how to obey traffic rules and road safety. Roger joined the company in 2000. He had seven to eight years experience as a driver of the Philippine Rabbit Bus Company. During his employment, Roger has had no record of any road accident or violation of company rules.

Noel Punzalan (Noel)[9], third party defendant, owned the dump truck with plate no. PTW-951 driven by the other third party defendant, Jesus Ronquillo (Ronquillo)[10]. Ronquillo testified that on June 8, 2003, he drove a dump truck fully loaded with twenty cubic meters of base course sand. Because of his load, he was going at about 30 to 40 kph. He was with his co-driver Alvin Espinosa (Alvin). When they were about to make a turn toward the

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dump site, he flashed his signal to the right. As he was about to turn, he heard a noise and felt the hit to the dump truck. He switched on the hazard signal for emergency and stopped. When he alighted he saw the damage to the rear portion of his dump truck and he also saw two persons on the pavement. His testimony was corroborated by Alvin[11].

On November 25, 2011, the RTC issued the assailed Decision, disposing, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs (appellees). The defendant MARIA DE LEON TRANSPORTATION INC. (appellant bus company) is ordered to pay appellees-heirs of CORAZON M. CRUZ the following:

- The amount of Php 205,675.00 as actual damages;

- The amount of P300,000.00 as moral damages;

- The amoung of Php 50,000.00 as indemnity for the death of Corazon M. Cruz;

- The amount of Php 75,000.00 as and for attorney's fees; and

- The costs of suit;

> with interests thereon at 6% per annum from judicial demand on October 5, 2006 until fully paid.
>
> Appellant and Third Party Plaintiff MARIA DE LEON TRANSPORTATION, INC. is further ordered to pay third-party defendant NOEL PUNZALAN the amount of Php 15,000.00 as temperate damages for the repairs of the ISUZU TRUCK; the amount of Php 30,000.00 as and for attorney's fees; and the costs of the suit, all with interest thereon at 6% per annum from the date of judicial demand on July 16, 2004 until fully paid.
>
> The counterclaim and claim of Appellant/Third Party plaintiff MARIA DE LEON TRANSPORTATION INC are hereby DISMISSED.
>
> The claims against the substituted heirs of MARIA DE LEON DIMAYA are ordered DISMISSED for lack of merit.
>
> It is so ORDERED.[12]

Hence, the appeal.

Appellants assign[13] several errors to the RTC:

- THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY, BRANCH 204, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT RENDERED JUDGMENT AGAINST THE APPELLANTS WHICH WAS BASED MERELY ON SPECULATIONS AND CONJECTURES AND DESPITE THE GLARING AND MATERIAL INCONSISTENCIES OF APPELLEES' WITNESSES THAT CAST DOUBT ON THEIR TESTIMONIAL ACCOUNT OF THE ACCIDENT.

- THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY GRAVELY ERRED IN AWARDING:

2.A. MORAL DAMAGES TO THE PLAINTIFFS-APPELLEES;

2.B. COSTS OF THE ALLEGED REPAIR OF THE ISUZU DUMP TRUCK; AND

2.C. ATTORNEY'S FEES TO THE PLAINTIFFS-APPELLEES AND THIRD-PARTY DEFENDANTS-APPELLEES,

DESPITE THE FACT (THAT) THERE WERE NO EVIDENCES PRESENTED TO SUPPORT SUCH CLAIM FOR DAMAGES.

THE ISSUES

The issues in this case are: (1) Whether the RTC correctly found appellants liable for breach of contact; and (2) Whether damages were correctly awarded.

THE COURT'S RULING

The appeal is without merit.

It is settled that in breach of contract involving common carriers, only the existence of the contract and the fact that the common carrier failed to transport his passenger safely to his destination are the matters that need to be proved[14]. The rules governing common carriers are provided in Articles 1733[15], 1755[16]1756[17] of the Civil Code.

It is not disputed that Corazon and Alma rode the bus in Ilocos Norte headed for Manila. Corazon never reached her destination alive when the bus rammed into a dump truck along KM 12 of NLEX, ripping off its right siding in the process and causing Corazon to be thrown off the bus, all of which caused her death. Pursuant to Article 1756, appellants are presumed to have been at fault or have acted negligently. They can only be absolved if they can prove that they observed extraordinary diligence required under Articles 1733 and 1755. We agree with the RTC that they failed to do so when the bus, going at a fast speed, tried to overtake the Canter on the shoulder lane, and We quote:

> After carefully evaluating the evidence presented by the parties, the Court is of the view that the proximate cause of the vehicular accident which resulted in the death of Mrs. CRUZ was the negligence of (Roger) ROSALAN the driver of the BUS owned and operated by MDLT. Consider the following circumstances:

- The BUS and the ISUZU (dump truck) were on the other lane of the NLEX when the incident happened. The Court finds the declarations made by RONQUILLO and (Herminio) CARRANZA (driver of FUSO CANTER) that RONQUILLO was at the shoulder of the NLEX about to execute a right turn going to the dump site where his cargo consisting of 20 cubic meters of base course were to be delivered and that he was slowing down when he was trying to make the right turn, as more credible than the claim of (Roger) ROSALAN and his witness (Pedro) GAPERO (the conductor of the BUS), that RONQUILLO suddenly applied the brakes without any signal at all. This must be so, since RONQUILLO was already in the shoulder lane and was expecting to be travelling slowly which would put the other vehicles using the same lane to be wary of said circumstance i.e. the slow maneuvering of the ISUZU (dump truck) or of any vehicle for that matter. xxx

- The location of the damage of ISUZU (dump truck) was at the left rear portion which only shows that as stated

in the previous paragraph, the BUS had a clear view of the ISUZU (dump truck) when the collision happened. The damage of the BUS was located at the right side and particularly the major portion of the right side was ripped off which only shows that it was the right side of the BUS that hit the ISUZU (dump truck) and not vice versa. The whole right side of the BUS was totally slashed as shown in the pictures which would readily show that it was running very fast and the collision with the ISUZU (dump truck) did not stop it from running further forward that could have prevented more damage to the BUS.

- The final resting place of the BUS after the collision was some meters away from the initial place of impact. According to (Pedro) GAPERO, the driver of the BUS drove it further to its final position of fifteen (15) meters more while (Herminio) CARRANZA testified that it continued to run up to 100 meters more from the first impact. The field sketch of the Traffic Spot Report attached to the Police Report jives with the testimony of (Herminio) CARRANZA, that the BUS continued to run so many meters more. Clearly, it can be concluded that the BUS was extra-ordinarily running very fast at the time of the collision.

> The Court cannot rely on the testimony of (Pedro) GAPERO that (Roger) ROSALAN drove the bus to fifteen (15) meters more because an experienced driver such as (Roger) ROSALAN would not move his vehicle further from the point of impact during a collision as it could compromise a vehicle's involvement therein. Meaning, the driver would know that travelling further from the point of impact would create a presumption that his vehicle was running very fast which prevented it from stopping at once. (Citation of exhibits omitted)[18]

Aside from its failure to absolve itself from liability for the accident, appellant bus company also failed to prove that it exercised the due diligence of a good father of a family in the selection and supervision of its employees. The RTC found that during hearing, the operations manager of the bus company failed to present pertinent documents to prove its claim with regard to the exercise of the required diligence[19]. Claims that are not supported by evidence are considered self serving and cannot be considered by the Court.

The findings of the lower courts with respect to testimonies of witnesses are usually respected because of their chance to observe the demeanor of the witnesses at the witness stand[20]. We scrutinized the records of the case and found nothing to disturb the findings of the RTC with regard the testimonies of the witnesses in this case. Experience dictates that in collision cases, the vehicle which bumped another from the back is usually the one at fault. This is because vehicles are required to observe a safe distance from each other to allow safe stopping when circumstances require. Even without scrutinizing the testimonies of the witnesses, it can be gathered from on-the-spot report of the police that the bus was running at a fast pace. Roger admitted that he was driving the bus at the slow lane at a speed of 80 to 100 kph. Posted along the NLEX are notices that the maximum speed for buses on the fast lane is 80 kph.[21] This fact alone shows that Roger was driving recklessly at the time of the incident.

We affirm the damages awarded by the RTC. Article 1764 in relation to Article 2206 of the Civil Code, holds that common carriers breaching its contract of carriage and resulting in the death of a passenger, are liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity, and (3) moral damages.[22] The grant of P50,000.00 as indemnity for the death of Corazon is proper under existing jurisprudence. The actual damages granted by the RTC are well supported by the receipts submitted by the appellees. With regard moral damages and exemplary damages, We find the pronouncement of the Supreme Court in the case of Victory Liner, Inc. vs. Rosalito Gammad, April Rossan P. Gammad, Roi Rozano P. Gammad and Diana Frances P. Gammad[23], instructive, to wit:

> Anent the award of moral damages, the same cannot be lumped with exemplary damages because they are based on different jural foundations. These damages are different in nature and require separate determination.

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> In culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of contractual obligations and, as in this case, when the act of breach of contract itself constitutes the tort that results in physical injuries. By special rule in Article 1764 in relation to Article 2206 of the Civil Code, moral damages may also be awarded in case the death of a passenger results from a breach of carriage. On the other hand, exemplary damages, which are awarded by way of example or correction for the public good may be recovered in contractual obligations if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Based on the above ruling, We affirm the award of moral damages and exemplary damages by the RTC[24].

Furthermore, We find that appellants are liable to third party defendants based on the negligence of Roger Rosalan. Since Punzalan failed to present receipts for the works done on his Canter, then the award of temperate damages of P15,000.00 is proper. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proved with certainty[25].

With regard the grant of attorney's fees, We find the same in order, based as it is on Article 2208[26] of the Civil Code as they were forced to litigate because of appellant bus company's refusal and failure to satisfy their valid claims[27].

WHEREFORE, the appeal of defendants-appellants Maria De Leon Transportation, Inc. and Maria De Leon Dimaya is DISMISSED. The Decision dated November 25, 2011 of the Regional Trial Court, Branch 204, Muntinlupa City, in Civil Case No. 03-213, is AFFIRMED. Costs against defendants-appellants.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

DicDican, I.P., Chairperson and Elbinies, M.P., JJ., concur.

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[1] Records, pp. 897-920.

[2] Complaint, ibid., pp. 2-8.

[3] TSN, December 1, 2005 and February 21, 2006.

[4] TSN, March 4, 2006.

[5] Answer, ibid., pp. 51-7.

[6] TSN, May 22, 2007.

[7] TSN, September 4,. 2007 and November 20, 2007.

[8] TSN, November 18, 2008.

[9] Third Party Complaint, ibid., pp. 106-10.

[10] Ibid.

[11] TSN dated June 7, 2011.

[12] Ibid., p. 920.

[13] Appellant's Brief, rollo, pp. 72-3.

[14] William Tiu, doing business under the name and style of “D' Rough Riders,” and Virgilio Te Laspiñas vs. Pedro A. Arriesgado, Benjamin Condor, Sergio Pedrano and Philippines Phoenix Surety and Insurance, Inc., G.R. No. 138060, September 1, 2004.

[15] ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

[16] ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

[17] ARTICLE 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.

[18] RTC Decision, records, pp. 916-7.

[19] Ibid., p. 918.

[20] Pan American World Airways, Inc. vs. The Intermediate Appellate Court, Teofista P. Tinitigan, joined by her husband, Severino Tinitigan, G.R. No. 74442, August 31, 1987. People of the Philippines vs. Cesario Osianas, et al., G.R. No. 182548. September 30, 2008.

[21] The uniform speed limit for nationwide application is as provided under Sec. 35, Article I, Chapter IV of RA No. 4136 is at 50 km.

[22] Victory Liner, Inc. vs. Rosalito Gammad, April Rossan P. Gammad, Roi Rozano P. Gammad and Diana Frances P. Gammad, G.R. No. 159636, November 25, 2004.

[23] Ibid.

[24] RTC Decision, records, p. 919.

[25] Art. 2224, Civil Code.

[26] ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[27] RTC Decision, records, p. 920.

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