

**JUANA SOBERANO AND JOSE B. SOBERANO,
PLAINTIFFS-APPELLANTS, VS. THE MANILA RAILROAD COMPANY,
THROUGH THE ACTING GENERAL MANAGER, COL. SALVADOR T.
VILLA; THE BENGUET AUTO LINE, T...**

G. R. No. L-19407. November 23, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal, purely on questions of law, from a decision of the Court of First Instance of Baguio City, ordering the defendant Manila Railroad Company to pay the plaintiffs Juana Soberano and her husband Jose Soberano the sum of P5,070.60, with legal interest from June 6, 1956, the date of the filing of the complaint, and to pay the costs.

In the morning of March 8, 1955 in Cabugao, Ilocos Sur, Juana Soberano boarded bus no. 155, with plate no, TPU-5994, of the Benguet Auto Line (BAL), a subsidiary of the Manila Railroad Co. (MRR),^[1] driven by Santiago Caccam, bound for Baguio City. In that trip, Juana brought with her 3,024 chicken eggs to be sold in Baguio City, and some personal belongings which she needed in that trip. About three kilometers away from Baguio City, along the Naguilian road, the bus hit a stone embankment, causing it to fall into a 65-foot deep precipice, resulting in death to two of its passengers and serious physical injuries to Juana and loss and destruction of all her belongings.

From the scene of the accident, Juana was brought to the Baguio General Hospital. Radiologist Dr. Hector Lopez, after examining her injuries, certified that she sustained comminuted fracture in the left mandible near the articulation, cracked fracture in the right temporal bone, crushed fractures, both scapular, and fracture in the 2nd, 3rd and 4th ribs. She was confined in that hospital until April 14, 1955, when she was transferred to the National Orthopedic Hospital, whereat she stayed until June 6, 1955 when she was discharged. She was also treated by Dr. Luis Martinez of the V. Luna Hospital, and Dr. J.V.de los Santos, both orthopedists, and later by Dr. J.O. Floirendo, an EENT specialist, for "visual and other defects."

Santiago Caccam was thereafter charged in the Court of First Instance of Baguio City with the crime of double homicide and serious physical injuries thru reckless imprudence. He pleaded guilty to the crime of double homicide and serious physical injuries thru simple imprudence and was sentenced accordingly. Juana Soberano did not intervene in the criminal case because she filed a formal reservation to institute a separate civil action for damages and indemnity against the MRR and the BAL.

Because of the loss of the eggs and the destruction of the personal effects that Juana brought with her in that trip, Jose Soberano, her husband, demanded from the defendant companies the value thereof amounting to P370.66 (exh. C-3), of which sum the MRR paid P300 (exh. 2). The MRR also paid the daily expenses, allowances, subsistence, hospitalization, medical fees and medicines of Juana Soberano, as well as the service fees of her caretaker. The MRR has paid a total sum of P4,219 (exhs.3 & 4). Later the MRR offered to settle the case

extra-judicially, tendering to the Soberanos the additional sum of P5,000. The offer was rejected, and the Soberanos filed the present action against the defendant companies and Caccam, to recover from them damages in the total sum of P76,757.76.[2] The defendant companies in due time filed their answer to the complaint with counterclaim for damages by way of attorney's fees, and praying that the complaint against them be dismissed, or, in the alternative, that the court approve their offer of settlement. The Soberanos filed a reply to the counterclaim and prayed for its dismissal.

After due trial, the lower court rendered the decision appealed from, dismissing at the same time the complaint against Caccam. The Soberanos moved to have the decision reconsidered. The motion for reconsideration was denied; hence the present recourse.

The nine errors imputed by the Soberanos to the lower court actually pose only two basic issues, namely, whether the dismissal of the complaint against Caccam is proper, and whether the amount of damages awarded is adequate.

Upon the first issue it is the contention of the Soberanos that the lower court, instead of dismissing their complaint against Caccam, should have priorly declared him in default for failure to file an answer to the complaint. It is true that Caccam did not file any answer to the complaint; but it is also true that the plaintiffs did not move to declare him in default. And no default order may be issued against a defendant who fails to file a timely answer to a complaint except "upon motion of the plaintiff" (sec. 6, Rule 35, old Rules of Court, now sec. 1, Rule 18, Revised Rules of Court), and a court cannot issue a default order *motu proprio* (*Viacrucis, et al. vs. Estenzo, etc., et al.*, L-18457, June 30, 1962). In spite of the lack of a formal motion to secure a default order against Caccam, however, the Soberanos contend that at the hearing held on July 11, 1959, their counsel, Atty. Marcos Vega, before closing his evidence, manifested to the lower court that because Caccam failed to file an answer to the complaint, he should "be declared in default and that we be allowed to present evidence against him in accordance with our complaint." This manifestation would nevertheless not have precluded the dismissal of the complaint against Caccam. In resolving this manifestation, the lower court asked Vega upon what basis the complaint is predicated, whether on culpa contractual or culpa aquiliana. Vega at first said, "It can be taken as both." But when the lower court pointedly declared that it "cannot allow you or give you both remedies," said counsel then replied that the complaint is predicated upon culpa contractual. Because of this reply, the lower court ruled that the Soberanos cannot go against Caccam, because he cannot be held liable on culpa contractual. Vega was given another chance to make a choice, but he finally decided to proceed on the basis of "culpa contractual because we cannot get anything from Caccam", adding that "although we are ready to present evidence to sustain our allegations against Santiago Caccam, we will close because moral damages against him cannot be recovered just the same."

That the complaint is in fact predicated on culpa contractual can be seen from a perusal thereof. While it names three defendants, the MRR, the BAL, and Santiago Caccam, the prayer thereof shows that the action is directed against the first two only, "to declare the defendant companies Manila Railroad Company and Benguet Auto Line solidarity liable." And although paragraph 11 of the complaint recites that the incident was "due to the negligence and reckless imprudence of the defendant driver Santiago Caccam," it is significant that there is no prayer for declaration of liability against Caccam.

The complaint against Caccam was therefore properly dismissed. He was not a party to the contract; he was a mere employee of the BAL. The parties to that contract are Juana Soberano, the passenger, and the MRR and its subsidiary, the BAL, the bus owner and operator, respectively; and consequent to the inability of the defendant companies to carry Juana Soberano and her baggage and personal effects securely and safely to her destination as imposed by law (art. 1733, in relation to arts. 1736 and 1755, N.C.C.), their liability to her becomes direct and

immediate.

We now come to the question of damages.

The Soberanos initially contend that the lower court erred in disallowing their claim of P200, representing the expenses of Juana Soberano in attending as a witness in the criminal case and attorney's fees incurred in connection therewith. This claim was correctly denied by the lower court, because these expenses were properly taxable in the criminal case. It may be argued that the Soberanos could not have recovered this sum in the criminal case because Juana Soberano expressly filed a formal reservation to institute a separate civil action for damages, but such reservation did not preserve whatever rights they had against Caccam on the basis of the latter's imprudence. The reservation is ineffective as to Caccam as it did not include him among those against whom their rights had been reserved. And the Soberanos not having intervened in the criminal case, this claim must be considered as having been impliedly adjudicated in the criminal case, and cannot therefore be ventilated in the present action.

The Soberanos next contend that the lower court erred in denying their claim for moral damages in the sum of P15,000, for the physical suffering, mental anguish, serious anxiety and fright they suffered as a consequence of the mishap. The lower court denied this claim on the strength of the oft-reiterated ruling of this Court that moral damages cannot be recovered against an employer in actions based on a breach of contract of carriage in the absence of malice, fraud, or bad faith.

The lower court rightly denied the claim for moral damages as far as Jose Soberano is concerned. In case of physical injuries, moral damages are recoverable only by the party injured and not by his next of kin, unless there is express statutory provision to the contrary (*Strebel v. Figueras*, L-4722, Dec. 29, 1954; *Araneta et al. vs. Arreglado et al.*, L-11394, Sept. 9, 1958) In this case it was Juana Soberano, not her husband Jose, who sustained the bodily injuries.

With respect to the claim of Juana Soberano for moral damages, the rule is well-settled in this jurisdiction that in cases of breach of contract of carriage, moral damages are recoverable only "where the defendant has acted fraudulently or in bad faith" (art. 2220, N.C.C.), and the terms fraud and bad faith have reference to "wanton, reckless, oppressive, malevolent conduct", or, in the very least, to "negligence so gross as to amount to malice." (*Fores v. Miranda*, L-12163, March 4, 1959; *Necesito, etc. vs. Paras et al.*, L-10605-10606, June 30, 1958.)

To prove malice and bad faith on the part of the defendant companies, the Soberanos aver that the said defendants intentionally omitted the name of Juana as one of the offended parties in the information in criminal case 1086, and that her name was included therein only upon the intervention of the Soberanos themselves; that the defendant companies prevailed upon Caccam to plead guilty to the lesser crime of double homicide and serious physical injuries thru simple imprudence, purposely to prevent the introduction of evidence of gross negligence amounting to malice against the said companies; that the BAL physician, Dr. Nievera, disowned having been an attending physician of Juana Soberano, and, together with the MRR physician Dr. Salvador, suppressed the introduction of the X-ray plates taken of Juana as evidence to prove the extent of the injuries suffered by the latter; and that the defendant companies exerted undue influence upon Dr. Fernandez, who treated Juana's dental injuries, not to testify to such matters or identify a medical certificate issued by him describing the dental injuries suffered by Juana. These incidents, even if true, cannot be considered as acts committed fraudulently or in bad faith by the defendant companies in the operation of their transportation business which directly resulted in the mishap that caused the injuries to Juana. Moreover, the allegation in paragraph 11 of the complaint that the incident was "due to the negligence and reckless imprudence of the defendant driver Santiago Caccam", does not per se justify an inference of malice or bad faith on the part of the defendant companies (*Rex Taxicab Co. v.*

Bautista, et al., L-15392, Sept. 30, 1960; Cachero v. Manila Yellow Taxicab Co., Inc., L-S721, May 23, 1957), for fraud, malice, or bad faith must be proved to support a claim for moral damages if only physical injuries are sustained (Lira vs. Mercado, L-13358, Sept. 29, 1961).

The absence of fraud, malice, or bad faith on the part of the defendant companies justifies the denial of Juana Soberano's claim for moral damages as well as the denial of the claim for exemplary damages (art. 2232, N.C.C.).

The third claim - for attorney's fees - was also properly denied by the lower court. The Soberanos aver that they were obliged to file a separate civil action for damages against the defendant companies. This claim is predicated upon paragraphs (2) and (5) of article 2208 of the New Civil Code, which provide that attorney's fees and expenses of litigation may be recovered when the defendant's act or omission has compelled the plaintiff to litigate with third persons or incur expenses to protect his interest, or when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. It will be observed that the defendant companies offered to settle the case by offering to the Soberanos the additional sum of P5,000. The Soberanos, however, rejected the offer and proceeded to court to recover damages in the total sum of P76,757.76. It was not, therefore, the defendant companies that compelled the Soberanos to litigate, or to incur expenses in connection with the litigation instituted by them. The Soberanos went to court after rejecting the defendant companies' offer of settlement. The latter can not likewise be considered to have acted in gross and evident bad faith in not satisfying the claim of the Soberanos, because, as the lower court puts it, the Soberanos "have asked for too much", and the "defendant was justified in resisting this action." We are not without precedent on this point. In *Globe Assn. vs. Arcache*, L-12378, May 28, 1958, this Court observed that the refusal of the defendant therein to pay the amount claimed was due not to malice but to the fact that the plaintiff therein demanded more than it should, and consequently ruled that the defendant had the right to refuse it; and in the *Cachero* case, *supra*, this Court held that the plaintiff in that case cannot recover attorney's fees, because the litigation was caused not by the defendant's failure to pay but by the plaintiff's "exorbitant charge."

We now come to the claim for additional unpaid allowances of Juana Soberano while she was undergoing medical and dental treatment in Manila and Quezon City, in the total sum of P600. In our view, this claim has merit. The allowance of ten pesos for each day of stay in Quezon City of Juana Soberano was recommended for approval by the superintendent of the BAL, Mr. C. Rivera (exh. C-4) and by the MRR physician, Dr. Saigado, and appears to have been "OK" by the MRR administrative officer, Mr. F.C. Unson (exh. C-5). These exhibits C-4 and C-5 were admitted in evidence without objection from the Government Corporate Counsel who represented the defendant companies. The defendant companies have already paid to Jose Soberano the total sum of P600, covering Juana Soberano's stay for 60 days in a private house, from June 7 to July 5, 1955, and from July 7 to August 5, 1955 (exhs. 3-1 and 3-J). As to the balance of P600, it was error for the lower court to include this sum in the assessment of loss of earning capacity, because this amount represents expenses for board and lodging, short orders such as milk and fruit, laundry and transportation of Juana Soberano incurred during her stay in a private house in Quezon City, after her discharge from the National Orthopedic Hospital, which continued stay was upon the advice of her attending physician that she go to that hospital every other day for physical therapy (exh. C-3). It will be seen under exhibits C-4 and C-5 that the defendant companies agreed to pay the ' Soberanos the sum of P10.00 a day for her said stay beginning "June 7, 1955 not to exceed 60 days, depending upon the advice of the attending physician or other bone specialist." The deposition of, and a medical certificate issued by, Dr. Juan O. Floirendo, an EENT specialist who treated Juana Soberano for "visual and other defects", show that he treated her for more than sixty days, from September 10, 1955 to February 2, 1956 (exh. L). The balance of P600 should, therefore, be paid to Juana Soberano. We come finally to the claim for loss of earning capacity in the total sum of P50,000, based upon the expectancy that Juana Soberano, who was 37 years old at the time of the accident, would live for 20 more years and be able to earn an average annual income of P2,500. On this point, the lower court

found that "Juana Soberano suffered greatly and that her injuries left her permanently disfigured and partially disabled as she walks with a stiff neck and her arms have partly lost their full freedom." After finding, however, that she is not altogether a helpless woman and can still engage in business, the lower court awarded to her P5,000 to compensate loss of earnings as a result of her partial disability.

The appellants contend that the award is inadequate. We agree.

This Court, in three cases, allowed in one, and increased in the two others, the amount of compensatory damages. In *Borromeo vs. Manila Electric Railroad and Light Co.*, 44 Phil, 165 (1922), this Court awarded P2,000 in future damages to the plain-tiff therein, after finding that due to the accident, wherein Borromeo's left foot was passed over by the rear wheels of the electric car of the defendant company and had to be amputated, he had to use an artificial foot in order to be able to walk; that he could no longer be employed as a marine engineer which he had been for sixteen years; that at the time of the accident he was a chief engineer with a monthly salary of P375; and that because he knew of no other profession, his incapacity had put an end to his activities and had destroyed his principal source of professional earnings in the future. In *Cariaga et al. vs. Laguna Tayabas Bus Co., et al.*, L-11037, Dec. 29, 1960, this Court increased the award of compensatory damages from P10,490 to P25,000, after finding that Edgardo Cariaga's right forehead was fractured, necessitating the removal of practically all of the right frontal lobe of his brain; that he had become a misfit for any kind of work; that he could hardly walk around without someone helping him and he had to use a brace on his left leg and foot; that he was a virtual invalid, physically and mentally; that at the time of the accident he was already a fourth-year student in medicine in a reputable university; that his scholastic record is sufficient to justify the assumption that had he continued his studies, he would have finished the course and would have passed the board examinations; and that he could possibly have earned as a medical practitioner the minimum monthly income of P300. And in *Araneta et al. vs. Arreglado et al.*, L-11394, September 9, 1958, this Court increased the award of compensatory damages from P1,000 to P18,000, after finding that Benjamin Araneta sustained "permanent deformity and -- something like an inferiority complex" as well as a "pathological condition on the left side of the jaw" caused by the defendant Dario Arreglado who inflicted the injury upon him voluntarily; that to arrest the degenerative process taking place in the mandible and to restore the injured boy to a nearly normal condition, surgical intervention was needed; that a repair, however skillfully conducted, is never equivalent to the original state; and that because of the injury, the boy had suffered greatly.

In the case at bar, the nature and extent of the physical injuries suffered by Juana Soberano and their after-effects upon her life and activities, are attested by three reputable physicians: Dr. Hector Lopez, a radiologist of the Baguio General Hospital; Dr. Angel Poblete, an orthopedist of the National Orthopedic Hospital; and Dr. Juan O. Floirendo, an EENT specialist. Dr. Lopez declared that

Juana Soberano suffered comminuted fracture in the left mandible near the articulation, cracked fracture in the right temporal bone, crushed fractures both scapular, and fracture in the 2nd, 3rd and 4th ribs. As a result of these injuries, Dr. Poblete said that she suffered and would continue to suffer limitation of mouth opening, bad approximation of the jaw alignment which is drawn inside, limitation of neck and shoulder movements with numbness on the right side of the face and right and left side of the body, disturbance in vision, and poor mastication resulting in indigestion. Dr. Poblete further testified that she will be "abnormal and naturally she could not be expected to live a normal life." Dr. Floirendo declared that she suffers from pain along the cheeks on both sides of her face, double vision, and paralysis of the ocular muscles due to partial disequilibrium of the eye muscles. Juana Soberano herself categorically declared, and this was not contradicted, that prior to the accident, she had a complete and healthy set of teeth; that as a result of the accident she lost three of her teeth, and the remaining ones in the upper jaw had to be extracted because they were already loose and a denture had perforce to

be made for her; and that her face is permanently disfigured (exhs. K & K-1.).

There is absolutely no doubt that the resultant physical handicaps would entail for Juana Soberano a loss of positive economic values. In fact, they will greatly adversely affect her occupation as a peddling merchant which she has been since 1950 (exh. A), earning from 1950 to March 8, 1955, when the accident happened, an average annual net income of about P1,500 (exhs. B, B-1 to B-5, inclusive). It is to be assumed that had the interruption to her occupation through defendants' wrongful act not occurred, she would continue earning this average income.

Considering all the facts detailed above, this Court is of the opinion that the sum of P5,000 in compensatory damages awarded to her for loss of earning capacity is inadequate; the amount should be increased to P15,000.

She should also be awarded the sum of P45.35, representing unrealized profits from the 3,024 chicken eggs which she brought with her in the trip and which were destroyed. She brought those eggs to be sold in Baguio City. She bought them at nine centavos each, was to sell them in Baguio City to definite customers at an agreed price of ten and a half centavos each, or with a profit of one and a half centavos per egg.

Finally, all the awards to Juana Soberano should earn interest at the legal rate from the date the judgment a quo was rendered, on November 25, 1960, and not from the date of the filing of the complaint.

ACCORDINGLY, the judgment appealed from is modified to read as follows: "Judgment is therefore rendered ordering the Manila Railroad Company to pay to the plaintiffs (1) P600 representing the balance of the unpaid allowances due to Juana Soberano in connection with her stay in a private house in Quezon City during the period of her medical treatment; (2) P15,000 for loss of earning capacity; and (3) P45.36 for unrealized profits, all of these sums to earn interest at the legal rate from November 25, 1960". Costs against the defendants-appellees.

Concepcion, C.J., Reyes, J. B., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

[1] Now Philippine National Railways (PNR).

[2] Itemized in Annex "A" of the complaint.

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