

PHILIPPINE AIR LINES, INC., PETITIONER, VS. THE COURT OF APPEALS AND JESUS V. SAMSON, RESPONDENTS.

G.R. No. L-46558. July 31, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] dated April 18, 1977, affirming with modification the decision of the Court of First Instance of Albay in Civil Case No. 1279, entitled "Jesus V. Samson, plaintiff, vs. Philippine Air Lines, Inc., defendant," for damages.

The dispositive portion of the trial court's decision reads:

"WHEREFORE, for all the foregoing considerations, judgment is hereby rendered, in favor of the plaintiff and against the defendant ordering the defendant to pay the plaintiff, the following sums: P198,000.00 as unearned income or damages; P50,000.00 for moral damages; P20,000.00 as attorney's fees and P5,000.00 as expenses of litigation, or a total of P273,000.00. Costs against the defendant."

The appellate court modified the above decision, to wit:

"However, plaintiff-appellee, who has been deprived of his job since 1954, is entitled to the legal rate of interest on the P198,000.00 unearned income from the filing of the complaint (Sec. 8, Rule 51, Rules of Court).

WHEREFORE, with the modification indicated above, the judgment appealed from is affirmed, with costs against defendant-appellant."

The complaint filed on July 1, 1954 by plaintiff Jesus V. Samson, private respondent herein, averred that on January 8, 1951, he flew as co-pilot on a regular flight from Manila to Legaspi with stops at Daet, Camarines Norte and Pili, Camarines Sur, with Captain Delfin Bustamante as commanding pilot of a C-47 plane belonging to defendant Philippine Air Lines, Inc., now the herein petitioner; that on attempting to land the plane at Daet airport, Captain Delfin Bustamante due to his very slow reaction and poor judgment overshot the airfield and as a result, notwithstanding the diligent efforts of the plaintiff co-pilot to avert an accident, the airplane crash-landed beyond the runway; that the jolt caused the head of the plaintiff to hit and break through the thick front windshield of the airplane causing him severe brain concussion, wounds and abrasions on the forehead with intense pain and suffering (par. 6, complaint).

The complaint further alleged that instead of giving plaintiff expert and proper medical treatment called for by the nature and severity of his injuries, defendant simply referred him to a company physician, a general medical practitioner, who limited the treatment to the exterior injuries without examining the severe brain concussion of plaintiff (par. 7, complaint); that several days after the accident, defendant Philippine Air Lines called back the plaintiff to active duty as co-pilot, and inspite of the latter's repeated request for expert medical assistance, defendant had not given him any (par. 8, complaint); that as a consequence of the brain injury sustained by plaintiff from the crash, he had been having periodic dizzy spells and had been suffering from general debility and

nervousness (par. 9, complaint); that defendant airline company instead of submitting the plaintiff to expert medical treatment, discharged the latter from its employ on December 21, 1953 on grounds of physical disability, thereby causing plaintiff not only to lose his job but to become physically unfit to continue as aviator due to defendant's negligence in not giving him the proper medical attention (pars. 10-11, complaint). Plaintiff prayed for damages in the amount of P180,000.00 repre-senting his unearned income, P50,000.00 as moral damages, P20,000.00 as attorney's fees and P5,000.00 as expenses, or a total of P255,000.00.

In its answer filed on July 28, 1954, defendant PAL denied the substantial averments in the complaint, alleging among others, that the accident was due solely and exclusively to inevitable unforeseen circumstances whereby plaintiff sustained only superficial wounds and minor injuries which were promptly treated by defendant's medical personnel (par. 5, answer); that plaintiff did not sustain brain injury or cerebral concussion from the accident since he passed the annual physical and medical examination given thereafter on April 24, 1951; that the headaches and dizziness experienced by plaintiff were due to emotional disturbance over his inability to pass the required up-grading or promotional course given by defendant company (par. 6, answer), and that, as confirmed by an expert neuro-surgeon, plaintiff was suffering from neurosis and in view of this unfitness and disqualification from continuing as a pilot, defendant had to terminate plaintiff's employment (pars. 7, 9, answer).

Further, defendant alleged that by the very nature of its business as a common carrier, it is bound to employ only pilots who are proficient and in good mental, emotional and physical condition; that the pilot, Captain Delfin Bustamante, was a competent and proficient pilot, and although he was already afflicted with a tumor of the naso-pharynx even before the accident of January 8, 1951, the Civil Aeronautics Administration, in passing upon the fitness of pilots, gave Capt. Bustamante a waiver of physical standards to enable him to retain his first class airman certificate since the affliction had not in the least affected his proficiency (pars. 16-17, answer). By way of counterclaim, defendant prayed for P10,000.00 as expenses for the litigation.

On March 25, 1958, defendant filed a Motion to Dismiss on the ground that the complaint is essentially a Workmen's Compensation claim, stating a cause of action not cognizable within the general jurisdiction of the court. The Motion to Dismiss was denied in the order of April 14, 1958. After the reception of evidence, the trial court rendered on January 15, 1973 the decision, the dispositive portion of which has been earlier cited.

The defendant Philippine Air Lines, Inc. appealed the decision to the Court of Appeals as being contrary to law and unsupported by the evidence. It raised as errors of the trial court (a) the holding that the damages allegedly suffered by plaintiff are attributable to the accident of January 8, 1951 which was due to the negligence of defendant in having allowed Capt. Delfin Bustamante to continue flying despite his alleged slow reaction and poor judgment; (b) the finding that defendant was negligent in not having given plaintiff proper and adequate expert medical treatment and assistance for the injuries allegedly sustained in the accident of January 8, 1951; and (c) in ordering defendant to pay actual or compensatory damages, moral damages and attorney's fees to the plaintiff.

On April 18, 1977, the Court of Appeals rendered its decision affirming the judgment of the lower court but modified the award of damages by imposing legal rate of interest on the P198,000.00 unearned income from the filing of the complaint, citing Sec. 8. Rule 51 of the Rules of Court.

Its motion for reconsideration of the above judgment having been denied, Philippine Air Lines, Inc. filed this instant petition for certiorari on the ground that the decision is not in accord with law or with the applicable jurisprudence, aside from its being replete with findings in the nature of speculation, surmises and conjectures not borne out by the evidence on record thereby resulting to misapprehension of facts and amounting to a grave abuse of discretion (p. 7, Petition).

Petitioner raises the fundamental question in the case at bar as follows: Is there a causal connection between the injuries suffered by private respondent during the accident on 8 January 1951 and the subsequent "periodic dizzy spells, headache and general debility" of which private respondent complained every now and then, on the one hand, and such "periodic dizzy spells, headache and general debility" allegedly caused by the accident and private respondent's eventual discharge from employment, on the other? PAL submits that respondent court's award of damages to private respondent is anchored on findings in the nature of speculations, surmises and conjectures and not borne out by the evidence on record, thereby resulting in a misapprehension of facts and amounting to a grave abuse of discretion.

Petitioner's submission is without merit.

As found by the respondent court, the following are the essential facts of the case:

"It appears that plaintiff, a licensed aviator, was employed by defendant a few years prior to January 8, 1951 as a regular co-pilot on a guaranteed basic salary of P750.00 a month. He was assigned to and /or paired with pilot Delfin Bustamante.

Sometime in December 1950, he complained to defendant through its authorized official about the slow reaction and poor judgment of pilot Delfin Bustamante. Notwithstanding said complaint, defendant allowed the pilot to continue flying.

On January 8, 1951, the two manned the regular afternoon flight of defendant's plane from Manila to Legaspi, with stops at Daet, Camarines Norte, and Pili, Camarines Sur. Upon making a landing at Daet, the pilot, with his slow reaction and poor judgment, overshot the airfield and, as a result of and notwithstanding diligent efforts of plaintiff to avert an accident, the airplane crash-landed beyond the runway into a mangrove. The jolt and impact caused plaintiff to hit his head upon the front windshield of the plane thereby causing his brain concussions and wounds on the forehead, with concomittant intense pain.

Plaintiff was not given proper medical attention and treatment demanded by the nature and severity of his injuries. Defendant merely referred him to its clinic attended by general practitioners on his external injuries. His brain injury was never examined, much less treated. On top of that negligence, defendant recalled plaintiff to active duty as a co-pilot, completely ignoring his plea for expert medical assistance.

Suffering periodic dizzy spells, headache and general debility, plaintiff every now and then complained to defendant. To make matters worst for plaintiff, defendant discharged him from his employment on December 21, 1953. In consequence, plaintiff has been beset with additional worries, basically financial. He is now a liability instead of a provider, of his family.

On July 1, 1954, plaintiff filed a complaint for damages. Defendant vainly sought to dismiss the complaint after filing an answer. Then, the judgment and this appeal."

Continuing, the respondent Court of Appeals further held:

"There is no question about the employment of plaintiff by defendant, his age and salary, the overshooting by pilot Bustamante of the airfield and crash-landing in a mangrove, his hitting his head on the front windshield of the plane, his intermittent dizzy spells, headache and general debility for which he was discharged from his employment on December 21, 1953. As the lower court aptly stated:

'From the evidence adduced by the parties, the Court finds the following facts to be uncontroverted: That the plaintiff Jesus V. Samson, on January 8, 1951 and a few years prior thereto, December 21, 1953, was a duly licensed pilot employed as a regular co-pilot of the defendant with assignment in its domestic air service in the Philippines; that on January 8, 1951, the defendant's airplane met an accident in crashlanding at the Daet Airport, Camarines Norte by overshooting the runway and reaching the mangroves at the edge of the landing strip; that the

jolt caused plaintiff's head to hit the front windshield of the airplane causing him to suffer wounds and abrasion on the forehead; that the defendant, instead of giving the plaintiff expert and proper medical treatment called for by the nature and severity of the injuries of the plaintiff, simply referred him to the clinic of the defendant's physicians who are only a general medical practitioners and not brain specialists; that the defendant's physicians limited their treatment to the exterior injuries on the forehead of the plaintiff and made no examination of the severe concussion of the brain of the plaintiff; that the Medical Director and Flight Surgeon of the defendant were not able to definitely determine the cause of the complaint of the plaintiff as to the periodic attack of dizziness, spells and headache; that due to this laxity of the defendant's physician and the continuous suffering of the ailment of the plaintiff complained of, he demanded for expert medical assistance for his brain injury and to send him to the United States, which demand was turned down and in effect denied by the defendant; that instead the defendant referred the plaintiff to a neurologist, Dr. Victor Reyes; that from the time that said accident occurred on January 21, 1953, he was ordered grounded on several occasions because of his complaint of dizzy spells and headache; that instead of submitting the plaintiff to expert medical treatment as demanded by him and denied by the defendant, he was discharged from its employment on December 21, 1953 on the ground of physical disability, and that the plaintiff, at the time when the defendant's plane met the accident, up to the time he was discharged, was regularly employed as a co-pilot and receiving a basic salary of P750.00 a month plus extra pay for flying time, and bonuses amounting to P300.00 a month.'

Even defendant-appellant itself admits as not controverted the following facts which generally admit what have been stated above as not controverted.

"In the case at bar, the following facts are not the subject of controversy:

- '(1) First, that from July 1950 to 21 December 1953, plaintiff was employed with defendant company as a first officer or co-pilot and served in that capacity in defendant's domestic services.
- (2) Second, that on January 1951, plaintiff did fly on defendant's PI-C 94, as first officer or co-pilot, with the late Capt. Delfin Bustamante in command as pilot; that while making a landing at the Daet airport on that date, PI-C 94 did meet an accident as stated above.
- (3) Third, that at or about the time of the discharge from defendant company, plaintiff had complained of "spells of dizziness," "headaches" and "nervousness", by reason of which he was grounded from flight duty. In short, that at that time, or approximately from November 1953 up to the date of his discharge on 21 December 1953 plaintiff was actually physically unfit to discharge his duties as pilot.
- (4) Fourth, that plaintiff's unfitness for flight duty was properly established after a thorough medical examination by competent medical experts.' (pp. 11-12, appellant's brief)

hence, there can hardly be an issue, factual, legal or medical."

Taking exception from "the rest of the essential facts of the case as found by the respondent court" PAL claims said facts are not fully borne out by the evidence on record and insists that the injuries suffered by private respondent during the accident on January 8, 1951 were superficial in nature; that the "periodic spells, headache, and general debility" complaint of every now and then by private respondent subsequent to the Jan. 8, 1951 incident were due to emotional disturbances and that no negligence can be attributed to Capt. Delfin Bustamante much less to PAL for the occurrence on January 8, 1951, hence PAL cannot be held liable for damages.

Petitioner claims absence of any causal connection between private respondent's superficial injuries and his alleged subsequent "periodic spells, headache and general debility," pointing out that these subsequent ailments were found by competent physician, including an expert neuro-surgeon, to be due to emotional disturbances

insights the conclusions of Dr. Trajano V. Bernardo that respondent's complaints were "psychosomatic symptoms" on the basis of declarations made by respondent himself, which conclusions are supported by similar diagnosis made by Drs. Damaceno J. Ago and Villaraza stating that respondent Samson was suffering from neurosis as well as the report of Dr. Victor Reyes, a neurological specialist, indicating that the symptoms were probably, most probably due to psychogenic factors and have no organic basis.

In claiming that there is no factual basis for the finding of the respondent court that the crash-landing caused respondent's "brain concussion x x x, with concomittant intense pain, for on the contrary, testimonial evidence establish the superficiality of the injuries sustained by respondent during the accident of January 8, 1951," petitioner quotes portions of the testimony of Dr. Manuel S. Sayas, who declared that he removed the band-aid on the forehead of respondent and that he found out after removal that the latter had two contused superficial wounds over the supra orbiter regions or just above the eyes measuring one centimeter long and one millimeter deep. He examined and found his blood pressure normal, no discharges from the nose and ears. Dr. Trajano V. Bernardo also testified that when he examined respondent Samson three days after the accident, the wound was already healed and found nothing wrong with his ears, nose and throat so that he was declared fit for duty after the sixth day.

Petitioner goes further. It contends that there is no causal connection between respondent's superficial injuries sustained during the accident on January 8, 1951 and plaintiff's discharge from employment with PAL on December 21, 1953. According to PAL, it was the repeated recurrence of respondent's neurasthenic symptoms (dizzy spells, headache, nervousness) which prompted PAL's Flight Surgeon, Dr. Bernardo, to recommend that plaintiff be grounded permanently as respondent was "psychologically unfit to resume his duties as pilot". PAL concludes that respondent's eventual discharge from employment with PAL was effected for absolutely valid reasons, and only after he was thoroughly examined and found unfit to carry out his responsibilities and duties as a pilot.

We agree with the respondent court in finding that the dizzy spells, headache and general debility of private respondent Samson was an after-effect of the crash-landing and We find that such holding is supported by substantial evidence, which We quote from the court's decision, to wit:

"Defendant would imply that plaintiff suffered only superficial wounds which were treated, and not brain injury. It would, by the opinion of its company doctors, Dr. Bernardo and Dr. Reyes, attribute the dizzy spells and headache to organic or as psychosomatic, neurasthenic or psychogenic, which we find outlandishly exaggerated.

That plaintiff's condition as psychosomatic rather than organic in nature is allegedly confirmed by the fact that on six (6) separate occasions after the accident he passed the required CAA physical examination for airman's certificate. (Exhs. 78, 79, 80, 81, 83 and 92). We noticed, however, that there were other similar physical examinations conducted by the CAA on the person of plaintiff the report on which were not presented in evidence. Obviously, only those which suited defendant's cause were hand-picked and offered in evidence.

We hesitate to accept the opinion of the defendant's two physicians, considering that Dr. Bernardo admittedly referred to Dr. Reyes because he could not determine the cause of the dizzy spells and headache and the latter admitted that 'it is extremely hard to be certain of the cause of his dizzy spells,' and suggested a possibility that it 'was due to posttraumatic syndrome, evidently due to the injuries suffered by the plaintiff in hitting the forehead against the windshield of the plane during the accident.' Judgment are not based on possibilities.

The admitted difficulty of defendant's doctors in determining the cause of the dizzy spells and headache cannot be a sound basis for finding against the plaintiff and in favor of defendant. Whatever it might be, the fact is that such dizzy spells, headache and general debility was an after-effect of the crash-landing. Be it brain injury or

psychosomatic, neurasthenic or psychogenic, there is no gainsaying the fact that it was caused by the crash-landing. As an effect of the cause, not fabricated or concocted, plaintiff has to be indemnified. The fact is that such effect cause his discharge.

We are prone to believe the testimony of the plaintiff's doctors.

Dr. Morales, a surgeon, found that blood was coming from plaintiff's ears and nose. He testified that plaintiff was suffering from cerebral concussion as a result of traumatic injury to the brain caused by his hitting head on the windshield of the plane during the crash-landing (Exhibit "G").

Dr. Conrado Aramil, a neurologist and psychiatrist with experience in two hospitals abroad, found abnormality reflected by the electro-encephalogram examination in the frontal area on both sides of plaintiff's head (Exhibits "K", "K-1").

The opinion of these two specialist renders unnecessary that of plaintiff's wife who is a physician in her own right and because of her relation to the plaintiff, her testimony and opinion may not be discussed here, although her testimony is crystallized by the opinions of Dr. Ador Dionisio, Dr. Marquez, Dr. Jose O. Chan, Dr. Yambao and Dr. Sandico.

Even the doctors presented by defendant admit vital facts about plaintiff's brain injury. Dr. Bernardo admits that due to the incident, the plaintiff continuously complained of his fainting spells, dizziness and headache everytime he flew as a co-pilot and everytime he went to defendant's clinic no less than 25 times (Exhibits "15" to "36"), that he complained of the same to Dr. Reyes; that he promised to help send plaintiff to the United States for expert medical assistance provided that whatever finding thereat should not be attributed to the crash-landing incident to which plaintiff did not agree and that plaintiff was completely ignored by the defendant in his plea for expert medical assistance. They admitted that they could not determine definitely the cause of the fainting spells, dizziness and headache, which justifies the demand for expert medical assistance."

We also find the imputation of gross negligence by respondent court to PAL for having allowed Capt. Delfin Bustamante to fly on that fateful day of the accident on January 8, 1951 to be correct, and We affirm the same, duly supported as it is by substantial evidence, clearly established and cited in the decision of said court which states as follows:

"The pilot was sick. He admittedly had tumor of the nasopharynx (nose). He is now in the Great Beyond. The spot is very near the brain and the eyes. Tumor on the spot will affect the sinus, the breathing, the eyes which are very near it. No one will certify the fitness to fly a plane of one suffering from the disease.

" x x x. The fact First Pilot Bustamante has a long standing tumor of the Nasopharynx for which reason he was grounded since November 1947 is admitted in the letter (Exh. 69-A) of Dr. Bernardo to the Medical Director of the CAA requesting waiver of physical standards. The request for waiver of physical standards is itself a positive proof that the physical condition of Capt. Bustamante is short of the standard set by the CAA. The Deputy Administrator of the CAA granted the request relying on the representation and recommendation made by Dr. Bernardo (See Exh. 69). We noted, however, that the request (Exh. 69-A) says that 'it is believed that his continuing to fly as a co-pilot, does not involve any hazard.' Underscoring ours.) Flying as a First Officer entails a very different responsibility than flying as a mere co-pilot. Defendant requested the CAA to allow Capt. Bustamante to fly merely as a co-pilot and it is safe to conclude that the CAA approved the request thus allowing Bustamante to fly only as a co-pilot. For having allowed Bustamante to fly as a First Officer on January 8, 1951, defendant is guilty of gross negligence and therefore should be made liable for the resulting accident.

As established by the evidence, the pilot used to get treatments from Dr. Sycangco. He used to complain of pain in the face more particularly in the nose which caused him to have sleepless nights. Plaintiff's observation of the pilot was reported to the Chief Pilot who did nothing about it. Captain Carbonel of the defendant

corroborated plaintiff of this matter. The complaint against the slow reaction of the pilot at least proved the observation. The observation could not be disregarded. The fact that the complaint was not in writing does not detract anything from the seriousness thereof, considering that a miscalculation would not only cause the death of the crew but also of the passengers.

One month prior to the crash-landing, when the pilot was preparing to land in Daet, plaintiff warned him that they were not in the vicinity of Daet but above the town of Ligao. The plane hit outside the airstrip. In another instance, the pilot would hit the Mayon Volcano had not plaintiff warned him. These more than prove what plaintiff had complained of. Disregard thereof by defendant is condemnable.

To bolster the claim that Capt. Bustamante has not suffered from any kind of sickness which hampered his flying ability, appellant contends that for at least one or more years following the accident of January 8, 1951, Capt. Bustamante continued to fly for defendant company as a pilot, and did so with great skill and proficiency, and without any further accident or mishap, citing *tsn. pp. 756-765*, January 20, 1965. We have painstakingly perused the records, particularly the transcript of stenographic notes cited, but found nothing therein to substantiate appellant's contention. Instead, We discovered that the citation covers the testimony of Dr. Bernardo on the physical condition of Bustamante and nothing about his skills or proficiency to fly nor on the mishaps or accidents, matters which are beyond Dr. Bernardo's competence anyway.

Assuming that the pilot was not sick or that the tumor did not affect the pilot in managing the plane, the evidence shows that the overshooting of the runway and crash-landing at the mangrove was caused by the pilot for which acts the defendant must answer for damages caused thereby. And for this negligence of defendant's employee, it is liable (*Joaquin vs. Aniceto*, 12 SCRA 308). At least, the law presumes the employer negligent imposing upon it the burden of proving that it exercised the diligence of a good father of a family in the supervision of its employees.

Defendant would want to tie plaintiff to the report he signed about the crash-landing. The report was prepared by his pilot and because the latter pleaded that he had a family too and would have nowhere to go if he lost his job, plaintiff's compassion would not upturn the truth about the crash-landing. We are for the truth not logic of any argumentation.

At any rate, it is incorrect to say that the Accident Report (Exh. 12 & 12-A), signed by plaintiff, exculpated Capt. Bustamante from any fault. We observed that the Report does not categorically state that Capt. Bustamante was not at fault. It merely relates in chronological sequence what Capt. Bustamante and plaintiff did from the takeoff from Manila to the landing in Daet which resulted in an accident. On the contrary, We may infer the negligence of Bustamante from the following portion of the Report, to wit:

"x x x. I felt his brakes strong but as we neared the intersection of the NE-SW runway, the brakes were not as strong and I glanced at the system pressure which indicated 900 lbs. per sq. m."

It was during the above precise instance that Capt. Bustamante lost his bearing and disposition. Had he maintained the pressure on the brakes the plane would not have overshot the runway. Verily, Bustamante displayed slow reaction and poor judgment. (CA decision, pp. 8-12).

This Court is not impressed by, much less can We accept petitioner's invocation to calibrate once again the evidence testified to in detail and plucked from the voluminous transcript to support petitioner's own conclusion. It is not the task of this Court to discharge the functions of a trier of facts much less to enter into a calibration of the evidence, notwithstanding petitioner's wail that the judgment of the respondent court is based entirely on speculations, surmises and conjectures. We are convinced that respondent court's judgment is supported by strong, clear and substantial evidence.

Petitioner is a common carrier engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public, as defined in Art. 1732, New Civil

Code. The law is clear in requiring a common carrier to exercise the highest degree of care in the discharge of its duty and business of carriage and transportation under Arts. 1733, 1755 and 1756 of the New Civil Code. These Articles provide:

Art. 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, 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.

Art. 1755. A common carrier is bound to carry the passenger 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.

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.

The duty to exercise the utmost diligence on the part of common carriers is for the safety of passengers as well as for the members of the crew or the complement operating the carrier, the airplane in the case at bar. And this must be so for any omission, lapse or neglect thereof will certainly result to the damage, prejudice, nay injuries and even death to all aboard the plane, passengers and crew members alike.

Now to the damages. The Court of Appeals affirmed the award of damages made by the trial court, stating that "the damages awarded plaintiff by the lower court are in accordance with the facts, law and jurisprudence." The court further observed that "defendant-appellant is still fortunate, considering that the unearned income was reckoned with only up to 1968 and not up to the present as plaintiff-appellee is still living. Whatever mathematical error defendant-appellant could show by abstract argumentation, the same must be compensated by such deficiency of the damages awarded to plaintiff-appellee."

As awarded by the trial court, private respondent was entitled to P198,000.00 as unearned income or compensatory damages; P50,000.00 for moral damages, P20,000.00 as attorney's fees and P5,000.00 as expenses of litigation, or a total of P273,000.00.

The trial court arrived at the sum of P198,000.00 as unearned income or damages by considering that respondent Samson "could have continued to work as airline pilot for fifteen more years, he being only 38 years at the time the services are terminated by the defendant (PAL) and he would have earned P120,000.00 from 1954 to 1963 or a period of ten (10) years at the rate of one thousand per month P750.00 basic salary plus P300.00 extra pay for extra flying time and bonuses; and considering further that in 1964 the basic pay of defendant's pilot was increased to P12,000.00 annually, the plaintiff could have earned from 1964 to 1968 the sum of P60,000.00 in the form of salaries and another P18,000.00 as bonuses and extra pay for extra flying time at the same rate of P300 a month, or a grand total of P198,000.00 for the entire period. This claim of the plaintiff for loss or impairment of earning capacity is based on the provision of Article 2205 of the New Civil Code of the Philippines which provides that "damages may be recovered for loss or impairment of earning capacity in cases of temporary or permanent personal injury". This provision of law has been construed and interpreted in the case of Aureliano Ropato, et al. vs. La Mallorca General Partnership, 56 O.G., 7812, which rules that law allows the recovery of damages for loss or impairment of earning capacity in cases of temporary or permanent personal injury." (Decision, CFI, pp. 98-99, Record on Appeal)

The respondent appellate court modified the above award by ordering payment of legal interest on the

P198,000.00 unearned income from the filing of the claim, citing Sec. 8, Rule 51 of the Rules of Court.

Petitioner assails the award of the total sum of P198,000.00 as unearned income up to 1968 as being tenuous because firstly, the trial court's finding affirmed by the respondent court is allegedly based on pure speculation and conjecture and secondly, the award of P300.00 a month as extra pay for extra flying time from 1954 to 1968 is likewise speculative. PAL likewise rejects the award of moral damages in the amount of P50,000.00 on the ground that private respondent's action before the trial court does not fall under any of the cases enumerated in the law (Art. 2219 of the New Civil Code) for which moral damages are recoverable and that although respondent action gives the appearance that it is covered under quasi-delict as provided in Art. 21 of the New Civil Code, the definition of quasi-delict in Art. 2176 of the New Civil Code expressly excludes cases where there is a pre-existing contractual relation between the parties, as in the case under consideration, where an employer-employee relationship existed between PAL and private respondent. It is further argued that private respondent action cannot be deemed to be covered by Art. 21, inasmuch as there is no evidence on record to show that PAL "wilfully cause(d) loss or injury to (private respondent) in a manner that is contrary to morals, good customs or public policy x x." Nor can private respondent's action be considered "analogous" to either of the foregoing, for the reasons are obvious that it is not." (Memorandum of petitioner, pp. 418-421, Records)

Having affirmed the gross negligence of PAL in allowing Capt. Delfin Bustamante to fly the plane to Daet on January 8, 1951 whose slow reaction and poor judgment was the cause of the crash-landing of the plane which resulted in private respondent Samson hitting his head against the windshield and causing him injuries for which reason PAL terminated his services and employment as pilot after refusing to provide him with the necessary medical treatment of respondent's periodic spells, headache and general debility produced from said injuries, We must necessarily affirm likewise the award of damages or compensation under the provisions of Art. 1711 and Art. 1712 of the New Civil Code which provide:

Art. 1711. Owners of enterprises and other employers are obliged to pay compensation for the death or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of the employment. The employer is also liable for compensation if the employee contracts any illness or disease caused by such employment or as the result of the nature of the employment. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.

Art. 1712. If the death or injury is due to the negligence of a fellow-worker, the latter and the employer shall be solidarily liable for compensation. If a fellow-workers intentional or malicious act is the only cause of the death or injury, the employer shall not be answerable, unless it should be shown that the latter did not exercise due diligence in the selection or supervision of the plaintiff's fellow-worker.

The grant of compensatory damages to the private respondent made by the trial court and affirmed by the appellate court by computing his basic salary per annum at P750.00 a month as basic salary and P300.00 a month for extra pay for extra flying time including bonus given in December every year is justified. The correct computation however should be $P750 \text{ plus } P300 \times 12 \text{ months} = P12,600 \text{ per annum} \times 10 \text{ years} = P126,000.00$ (not P120,000.00 as computed by the court a quo). The further grant of increase in the basic pay of the pilots to P12,000 annually for 1964 to 1968 totalling P60,000.00 and another P18,000.00 as bonuses and extra pay for extra flying time at the same rate of P300.00 a month totals P78,000.00. Adding P126,000.00 (1964 to 1968 compensation) makes a grand total of P204,000.00 (not P198,000.00 as originally computed).

As to the grant of moral damages in the sum of P50,000.00 We also approve the same. We have noted and

considered the holding of the appellate court in the matter of bad faith on the part of PAL, stated hereunder, this wise:

"None of the essential facts material to the determination of the case have been seriously assailed: the overshooting of runway and crash-landing into the mangroves; the hitting of plaintiff's head to the front windshield of the plane; the oozing of blood out of his ears, nose and mouth; the intermittent dizzy spells, headaches and general debility thereafter for which he was discharged from his employment; the condition of not to attribute the cause of the ailment to the crash-landing imposed in bad faith for a demanded special medical service abroad; and the resultant brain injury which defendant's doctors could not understand nor diagnose."

x x x

"The act of defendant appellant in unjustly refusing plaintiff-appellee's demand for special medical service abroad for the reason that plaintiff-appellee's deteriorating physical condition was not due to the accident violates the provisions of Article 19 of the Civil Code on human relations "to act with justice, give everyone his due, and observe honesty and good faith." (CA Resolution, pp. 151-152, Records)

We reject the theory of petitioner that private respondent is not entitled to moral damages. Under the facts found by the trial court and affirmed by the appellate court and under the law and jurisprudence cited and applied, the grant of moral damages in the amount of P50,000.00 is proper and justified.

The fact that private respondent suffered physical injuries in the head when the plane crash-landed due to the negligence of Capt. Bustamante is undeniable. The negligence of the latter is clearly a quasi-delict and therefore Article 2219, (2) New Civil Code is applicable, justifying the recovery of moral damages.

Even from the standpoint of the petitioner that there is an employer-employee relationship between it and private respondent arising from the contract of employment, private respondent is still entitled to moral damages in view of the finding of bad faith or malice by the appellate court, which finding We hereby affirm, applying the provisions of Art. 2220, New Civil Code which provides that wilfull 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.

The justification in the award of moral damages under Art. 19 of the New Civil Code on Human Relations which requires that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith, as applied by respondent court is also well-taken and We hereby give Our affirmance thereto.

With respect to the award of attorney's fees in the sum of P20,000.00 the same is likewise correct. As pointed out in the decision of the Court of Appeals, "the plaintiff is entitled to attorney's fees because he was forced to litigate in order to enforce his valid claim (Ganaban vs. Bayle, 30 SCRA 365; De la Cruz vs. De la Cruz, 22 SCRA 33; and many others); defendant acted in bad faith in refusing plaintiff's valid claim (Filipino Pipe Foundry Corporation vs. Central Bank, 23 SCRA 1044); and plaintiff was dismissed and was forced to go to court to vindicate his right (Nadura vs. Benguet Consolidated, Inc., 5 SCRA 879)".

We also agree with the modification made by the appellate court in ordering payment of legal interest from the date judicial demand was made by Pilot Samson against PAL with the filing of the complaint in the lower court. We affirm the ruling of the respondent court which reads:

"Lastly, the defendant-appellant claims that the legal rate of interest on the unearned compensation should be computed from the date of the judgment in the lower court, not from the filing of the complaint, citing a case where the issue raised in the Supreme Court was limited to when the judgment was rendered in the lower court

or in the appellate court, which does not mean that it should not be computed from the filing of the complaint.

Articles 1169, 2209 and 2212 of the Civil Code govern when interest shall be computed. Thereunder interest begins to accrue upon demand, extrajudicial or judicial. A complaint is a judicial demand (*Cabarroguis vs. Vicente*, 107 Phil. 340). Under Article 2212 of the Civil Code, interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point." (CA Resolution, pp. 153-154, Records).

The correct amount of compensatory damages upon which legal interest shall accrue from the filing of the complaint is P204,000.00 as herein computed and not P198,000.00.

WHEREFORE, in view of all the foregoing, the judgment of the appellate court is hereby affirmed with slight modification in that the correct amount of compensatory damages is P204,000.00. With costs against petitioner.

SO ORDERED.

Makasiar and De Castro, JJ., concur.

Teehankee, (Chairman), and Melencio-Herrera, JJ., in the result.

[1] Eighth Division, Agcaoili, J., ponente; Pascual and Climaco, JJ., concurring.

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