

**SILVERIO MARCHAN AND PHILIPPINE RABBIT BUS CO., INC.,
PETITIONERS, VS. ARSENIO MENDOZA, LEONARDA ILAYA, AND
ZENAIDA MENDOZA, RESPONDENTS.***G.R. No. L-24471. August 30, 1968*

Ponente: FERNANDO, J.

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Petitioners, the driver of the passenger bus responsible for the injuries sustained by respondents for which he was duly prosecuted and thereafter convicted for serious, less serious, and slight physical injuries, and the bus firm, the Philippine Rabbit Bus Lines, seek the reversal of a Court of Appeals decision of December 14, 1964 and a resolution of March 31, 1965, holding them liable both for compensatory and exemplary damages as well as attorney's fees. It is the contention of petitioners that errors of law were committed when, in the aforesaid decision, it was held that there was an implied contract of carriage between the petitioner bus firm and respondents, the breach of which was the occasion for their liability for compensatory and exemplary damages as well as attorney's fees.

The facts as found by the Court of Appeals follow: "In the even-ing of February 22, 1954, between 9:00 and 9:30 o'clock, a passenger bus No. 141 of the Philippine Rabbit Bus Lines, bearing Plate No. TPU-708 which was then driven by Silverio Marchan fell into a ditch somewhere in barrio Malanday, Polo, Bulacan, while travelling on its way to Manila; as a result of which plaintiffs-appellees Arsenio Mendoza, his wife and child, [respondents in this proceeding], who were then inside the bus as passengers were thrown out to the ground resulting in their multiple injuries. Plaintiff Arsenio Mendoza suffered the most serious injuries which damaged his vertebrae causing the paralysis of his lower extremities which up to the time when this case was tried he continued to suffer. The physician who attended and treated plaintiff Arsenio Mendoza opined that he may never walk again. Consequently, the driver of said bus Silverio Marchan [now petitioner] was prosecuted for serious, less serious and slight physical injuries through reckless imprudence before the Justice of the Peace Court of Polo, Bulacan, and thereafter convicted as charged on June 29, 1956 * * *, which judgment of conviction was subsequently affirmed by the Court of First Instance of same province * * *. In this present action before us, plaintiffs-appellees Arsenio Mendoza, his wife and child sought to recover damages against the defendant-appellant Silverio Marchan, then the driver of bus No. 141 of the Philippine Rabbit Bus Lines, and from defendants-appellants Bienvenido P. Buan and Natividad Paras in their capacity as administrator and administratrix, respectively, of the estate of the late Florencio P. Buan, doing business under the style name of the Philippine Rabbit Bus Lines, predicated not only on a breach of contract of carriage for failure of defendants operator as well as the defendant driver to safely convey them to their desti-nation, but also on account of a criminal negligence on the part of defendant Silverio Marchan resulting to plaintiff-appellee's multiple physical injuries." [1]

The Court of Appeals in the decision under review found that there was a preponderance of evidence to the effect that while respondents Arsenio Mendoza, his wife, Leonarda Ilaya, and child, Zenaida Mendoza "were waiting for a passenger bus on January 22, 1954 at about 9:00 in the evening at Malanday, they boarded

defendants-appellants' bus bearing No. 141 of the Philippine. Rabbit Bus Lines with Plate No. TPU-708 bound for Manila. And they were treated as passengers thereto, for they paid their corresponding fares. As they travelled along the highway bound for Manila, said bus was traveling at a high rate of speed without due regard to the safety of the passengers. So much so that one of the passengers had to call the attention of Silverio Marchan who was then at the steering wheel of said bus to lessen the speed or to slow down, but then defendant Silverio Marchan did not heed the request of said passenger; neither did he slacken his speed. On the contrary, defendant Silverio Marchan even increased his speed while approaching a six-by-six truck which was then parked ahead, apparently for the purpose of passing the said parked truck and to avoid collision with the incoming vehicle from the opposite direction. But, when appellant Silverio Marchan veered his truck to resume position over the right lane, the rear tires of said truck skidded because of his high rate of speed, thereby causing said truck to fall into a ditch. Substantially, the happening of the accident resulting to the multiple injuries of plaintiffs-appellees, was explained by defendant Silverio Marchan who declared that while he was driving his bus from barrio Malanday bound towards Manila on a road test, he suddenly noticed an oncoming vehicle. He thus shifted his light from dim to bright. Just then, he noticed a six-by-six truck parked on the right lane of the road where he was driving. Confronted with such situation that if he would apply his brake he would bump his bus against the parked truck he then increased his speed with the view of passing the said parked truck, and thereafter he veered to negotiate for the proper position on the right lane, but in so doing he swerved to the right in order to avoid collision from the oncoming vehicle the rear portion of the bus skidded and fell into the ditch." [2]

Hence the finding of negligence in the decision under review. Thus: "From the facts as established preponderantly by the plaintiff and substantially corroborated by the defendant Silverio Marchan, it is clear that the cause of the accident was the gross negligence of the defendant Silverio Marchan who when driving his vehicle on the night in question was expected to have employed the highest degree of care; and should have been assiduously prudent in handling his vehicle to insure the safety of his passengers. There is no reason why he could not have stopped his vehicle when noticing a parked truck ahead of him if he was not driving at a high speed. His admission to the effect that if he would apply his brake he would bump or hit the parked truck ahead of him, since there was no time for him to stop the bus he was driving, is a patent indication that he was travelling at a high rate of speed without taking the necessary precaution under the circumstance, considering that it was then nighttime. It is our considered view that under the situation as pictured before us by the driver of said bus, he should not have increased his speed and by-passed the parked truck obviously with the view of preventing a collision with the incoming vehicle. Any prudent person placed under the situation of the appellant would not have assumed the risk as what appellant did. The most natural reaction that could be expected from one under the circumstance was for him to have slackened and reduced his speed. But this was not done simply because defendant-appellant could not possibly do so under the circumstance because he was then travelling at a high rate of speed. In fact, he had increased his speed in order to avoid ramming the parked truck without, however, taking the necessary precaution to insure the safety of his passengers." [3]

On the above facts, the Court of Appeals, in its decision of December 14, 1964, affirmed the amount of P40,000.00 awarded by the court below as compensatory damages modifying the appealed lower court decision by holding petitioners to pay the amount of P30,000.00 as exemplary damages and sustaining the award of attorney's fees in the amount of P5,000.00. Then came the resolution of March 31, 1965 by the Court of Appeals, where the motion for reconsideration of petitioners was denied for lack of merit.

In their brief as petitioners, the first error assigned is the alleged absence of an implied contract of carriage by the petitioner bus firm and respondents. On this point, it was the holding of the Court of Appeals: "Since it is undisputed by the evidence on record that appellant Silverio Marchan was then at the steering wheel of the vehicle of the defendant transportation company at that moment, the riding public is not expected to inquire from

time to time before they board the passenger bus whether or not the driver who is at the steering wheel of said bus was authorized to drive said vehicle or that said driver is acting within the scope of his authority and observing the existing rules and regulations required of him by the management. To hold other-wise would in effect render the aforequoted provision of law (Article 1759) ineffective." [4] It is clear from the above Civil Code provision that common carriers cannot escape liability "for the death of or injuries to passengers through the negligence and wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders * * *." [5] From *Vda. de Medina v. Cresencia*, [6] where this Court, through Justice J.B.L. Reyes, stressed the "direct and immediate" liability of the carrier under the above legal provision, "not merely subsidiary or secondary," to *Maranan v. Perez*, [7] a 1967 decision, the invariable holding has been the responsibility for breach of the contract of carriage on the part of the carrier. According to the facts as above disclosed, which this Court cannot disturb, the applicability of Article 1759 is indisputable. Hence, the total absence of merit of the first assignment of error.

The next two errors assigned would dispute the holding of the Court of Appeals in imposing liability in the respective amounts of P40,000.00 for compensatory damages and P30,000.00 for exemplary damages. Again, such assignments of error cannot be looked upon with favor. What the Court of Appeals did deserves not reprobation but approval by this Court.

As to why the amount in compensatory damages should be fixed in the sum of P40,000. 00 is explained in the appealed decision thus: "Likewise, it is our considered view that the amount of P40,000.00 awarded by the court below as compensatory damages is quite reasonable and fair, considering that plaintiff Arsenio Mendoza had suffered paralysis on the lower extremities, which will incapacitate him to engage in his customary occupation throughout the remaining years of his life, especially so if we take into account that plaintiff Arsenio Mendoza was only 26 years old when he met an accident on January 22, 1954; and taking the average span of life of a Filipino, he may be expected to live for 30 years more; and bearing in mind the earning capacity of Arsenio Mendoza who before the happening of this accident derived an income of almost P100.00 a month from the business of his father-in-law as Assistant Supervisor of the small [fairs] and his income of P100.00 a month which he derived as a professional boxer." [8] Considering that respondent Arsenio Mendoza was only in his middle twenties when, thru the negligence of petitioners, he lost the use of his limbs, being condemned for the remainder of his life to be a paralytic, in effect leading a maimed, well-nigh useless existence, the fixing of such liability in the amount of P40,000.00 as compensatory damages was well within the discretion of the Court of Appeals.

As to the finding of liability for exemplary damages, the Court of Appeals, in its resolution of March 31, 1965, stated the following: "We now come to the imposition of exemplary damages upon defendants-appellants' carrier. It is argued that this Court is without jurisdiction to adjudicate this exemplary damages since there was no allegation nor prayer, nor proof, nor counterclaim of error for the same by the appellees. It is to be observed, however, that in the complaint, plaintiffs 'prayed for such other and further relief as this Court may deem just and equitable.' Now, since the body of the complaint sought to recover damages against the defendant-carrier wherein plaintiffs prayed for indemnification for the damages they suffered as a result of the negligence of said Silverio Marchan who is appellant's employee; and since exemplary damages is intimately connected with general damages, plaintiffs may not be expected to single out by express term the kind of damages they are trying to recover against the defendant's carrier. Suffice it to state that when plaintiffs prayed in their complaint for such other relief and remedies that may be availed of under the premises, in effect, therefore, the court is called upon the exercise and use its discretion whether the imposition of punitive or exemplary damages even though not expressly prayed or pleaded in the plaintiffs' complaint." [9]

In support of the above view, *Singson v. Aragon* was cited by the Court of Appeals.[10] As was there held by this Court: "From the above legal provisions it appears that exemplary damages may be imposed by way of example or correction only in addition, among others, to compensatory damages, but that they cannot be recovered as a matter of right, their determination depending upon the discretion of the court. It further appears that the amount of exemplary damages need not be proved, because its determination depends upon the amount of compensatory damages that may be awarded to the claimant. If the amount of exemplary damages need not be proved, it need not also be alleged, and the reason is obvious because it is merely incidental or dependent upon what the court may award as compensatory damages. Unless and until this premise is determined and established, what may be claimed as exemplary damages would amount to a mere surmise or speculation. It follows as a necessary consequence that the amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be determined by the court if in the use of its discretion the same is warranted by the evidence, and this is just what appellee has done."

Such a principle has been repeatedly upheld.[11] In *Corpus v. Cuaderno*,[12] this Court, again through Justice J.B.L. Reyes, made clear that the amount "lies within the province of the court a quo, * * *." It must be admitted, of course, that where it could be shown that a tribunal acted "with vindictiveness or wantonness and not in the exercise of honest judgment," then there is room for the interposition of the corrective power of this Tribunal.

No such reproach can be hurled at the decision and resolution now under review. No such indictment would be justified. As noted earlier, both the second and the third assignments of error are devoid of merit.

Nor is there any occasion to consider further the fourth assigned error, petitioner being dissatisfied with the award of P5,000.00 as attorney's fees to respondents. On its face, such an assignment of an alleged error is conspicuously futile.

The judgment, however, must be modified in accordance with the ruling of this Court in *Soberano v. Manila Railroad Co.*[13] Respondents are entitled to interest for the amount of compensatory damages from the date of the decision of the lower court and legal interest on the exemplary damages from the date of the decision of the Court of Appeals.

WHEREFORE, as thus modified, the decision is affirmed, petitioners being liable for the sum of P40,000.00 in the concept of compensatory damages with interest at the legal rate from and after January 26, 1960, and the sum of P30,000.00 as exemplary damages with interest at the legal rate from and after December 14, 1964, as well as for the sum of P5,000.00 as attorney's fees, likewise earning a legal rate of interest from and after January 26, 1960. Costs against petitioners.

Concepcion, C.J., Dizon Makalintal, Zaldivar, Sanchez, Castro and Angeles, J.J., concur.
Reyes, J., did not take part.

[1] Annex A, Brief for the Petitioners, pp. 71 to 72.

[2] *Ibid*, pp. 73 to 74.

[3] *Ibid*, pp. 76 to 77.

[4] *Ibid*, p. 80.

[5] Article 1759, Civil Code of the Philippines.

[6] 99 Phil. 506 (1956).

[7] G.R. No. L-22272, June 26, 1967.

[8] Annex A, Brief for the Petitioners, p. 90.

[9] Ibid, pp. 103 to 104.

[10] 92 Phil, 514, 518 (1953).

[11] Ventanilla v. Centeno, G.R. No. L-14333, January 28, 1961; Goleongco v. Claparols, G.R. No. L-18616, March 31, 1964; Corpuz v. Cuaderno, G.R. No. L-23721, March 31, 1965; General Enterprises Inc. v. Llanga Bay Logging Co., G.R. No. L-18487, August 31, 1964; Wassmer v. Velez, G.R. No. L-20089, December 26, 1964; Lopez v. Pan American World Airways, G.R. No. L-22415, March 30, 1966; Air France v. Carrascoso, G.R. No. L-21438, September 28, 1966.

[12] G.R. No. L-23721, March 31, 1965.

[13] G.R. No. L-19407, November 23, 1966, 18 SACRA 733, 744, per Castro, J.

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