

ROSITO Z. BACARRO, WILLIAM SEVILLA, AND FELARIO MONTEFALCON, PETITIONERS, VS. GERUNDIO B. CASTAÑO, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-34597. November 05, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal taken by petitioners from a decision of the Court of Appeals, affirming that of the Court of First Instance of Misamis Occidental, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, ordering the defendants to jointly and severally pay to the plaintiff the sum of (1) P973.10 for medical treatment and hospitalization; (2) P840.20 for loss of salary during treatment; and (3) P2,000.00 for partial permanent deformity, with costs against the defendants."

The facts are set forth in the decision of the Court of Appeals, from which We quote:

"x x x In the afternoon of April 1, 1960, he (appellee) boarded the said jeep as a paying passenger at Oroquieta bound for Jimenez, Misamis Occidental. It was then filled to capacity, with twelve (12) passengers in all. 'The jeep was running quite fast and the jeep while approaching the (Sumasap) bridge there was a cargo truck which blew its horn for a right of way. The jeep gave way but did not change speed. x x x When the jeep gave way it turned to the right and continued running with the same speed. In so doing x x x the driver was not able to return the jeep to the proper place x x x instead, it ran obliquely towards the canal; that is why, we fell to the ditch. x x x When the jeep was running in the side of the road for few meters, naturally, the jeep was already inclined and two passengers beside me were the ones who pushed me. I was pushed by the two passengers beside me; that is why, when I was clinging, my leg and half of my body were outside the jeep when it reached the canal. x x x My right leg was sandwiched by the body of the jeep and the right side of the ditch. x x x My right leg was broken.' He was rushed to the Saint Mary's Hospital where he stayed for about two (2) months. 'My right leg is now shorter by one and one-half inches causing me to use specially made shoes. xxx could not squat for a long time; I could not kneel for a long time; and I could not even sit for a long time because I will suffer cramp. x x x With my three fingers I am still uneasy with my three fingers in my right hand. There is a feeling of numbness with my three fingers even right now.'

x x x x x x x x

"From appellee's version just set out, it appears that after he boarded the jeep in question at Oroquieta, it was driven by defendant Montefalcon at around forty (40) kilometers per hour bound for Jimenez; that while approaching Sumasap Bridge at the said speed, a cargo truck coming from behind blew its horn to signal its intention to overtake the jeep; that the latter, without changing its speed, gave way by swerving to the right, such that both vehicles ran side by side for a distance of around twenty (20) meters, and that thereafter as the jeep was left behind, its driver was unable to return it to its former lane and instead it obliquely or diagonally ran down an inclined terrain towards the right until it fell into a ditch pinning down and crushing appellee's right leg in the process.

"Throwing the blame for this accident on the driver of the cargo truck, appellants, in turn, state the facts to be as follows:

'In the afternoon of April 1, 1960, plaintiff Gerundio Castaño boarded the said jeepney at Oroquieta bound for Jimenez, Misamis Occidental. While said jeepney was negotiating the upgrade approach of the Sumasap Bridge at Jimenez, Misamis Occidental and at a distance of about 44 meters therefrom, a cargo truck, owned and operated by a certain Te Tiong alias Chinggim, then driven by Nicostrato Digal, a person not duly licensed to drive motor vehicles, overtook the jeepney so closely that in the process of overtaking side-swiped the jeepney, hitting the reserve tire placed at the left side of the jeepney with the hinge or bolt of the siding of the cargo truck, causing the jeepney to swerve from its course and after running 14 meters from the road it finally fell into the canal. The right side of the jeep fell on the right leg of the plaintiff-appellee, crushing said leg against the ditch resulting in the injury to plaintiff-appellee consisting of a broken right thigh.'

and take the following stand: 'The main defense of defendants-appellants is anchored on the fact that the jeepney was sideswiped by the overtaking cargo truck' (Appellants' Brief, pp. 3-4, 7).

"It must be admitted, out of candor, that there is evidence of the sideswiping relied upon by appellants. x x x"

This appeal by certiorari to review the decision of respondent Court of Appeals asserts that the latter decided questions of substance which are contrary to law and the approved decisions of this Court. Petitioners alleged that respondent Court of Appeals erred (1) in finding contributory negligence on the part of jeepney driver appellant Montefalcon for having raced with the overtaking cargo truck to the bridge instead of slackening its speed, when the person solely responsible for the sideswiping is the unlicensed driver of the overtaking cargo truck; (2) in finding the jeepney driver not to have exercised extraordinary diligence, human care, foresight and utmost diligence of very cautious persons, when the diligence required pursuant to Article 1763 of the New Civil Code is only that of a good father of a family since the injuries were caused by the negligence of a stranger; and (3) in not considering that appellants were freed from any liability since the accident was due to fortuitous event - the sideswiping of the jeepney by the overtaking cargo truck.

We are not persuaded. The fact is, petitioner-driver Montefalcon did not slacken his speed but instead continued to run the jeep at about forty (40) kilometers per hour even at the time the overtaking cargo truck was running side by side for about twenty (20) meters and at which time he even shouted to the driver of the truck. Hereunder is the testimony of private respondent Gerundio B. Castaño on this point:

"Q At that time when you rode that jeep on your way to Jimenez, you said that the jeep was running quite fast for a jeep, is that correct?

A Yes, sir.

x x x x x x x x

Q When you said that it is quite fast for a jeep, do you mean to tell this Court that the speed of that jeep could not be made by that particular jeepney?

A It can be made but it will not be very safe for that kind of transportation to run that kind of speed.

Q What was the speed of that jeep in terms of miles or kilometers per hour?

A About 40 kilometers or about that time during that trip per hour.

Q And you said also that there was a cargo truck that was behind the jeep, is that correct, while you were already approaching the Sumasap bridge?

A Yes.

x x x x x x x x

Q How about the speed of that truck as the jeep you were riding was approaching the Sumasap bridge? What was the speed of that truck, fast or not fast?

A Naturally, the truck when it asks for a clearance that he will over-take it will run fast.

x x x x x x x x

Q Now comparing the speed that you mentioned that the jeep was nego-tiating in that place and the cargo truck, which ran faster - the jeep or the cargo truck?

x x x x x x x x

A Naturally, the truck was a little bit faster because he was able to overtake.

x x x x x x x x

Q Now, how far more or less was the jeep from the bridge when the truck was about to or in the process of overtaking the jeep you were riding?

A When the truck was asking for a clearance it was yet about less than 100 meters from the bridge when he was asking for a clearance to overtake.

x x x x x x x x

Q Do you remember the distance when the truck and the jeep were already side by side as they approach the bridge in relation to the bridge?

x x x x x x x x

A They were about fifty meters ... from fifty to thirty meters when they were side by side from the bridge.

x x x x x x x x

Q x x x You said before that the jeep and the truck were running side by side for a few meters, is that correct?

A Yes, sir.

Q I am asking you now, how long were they running side by side - the jeep and the cargo truck?

A About 20 meters, they were running side by side.

Q And after running side by side for 20 meters, the jeep and its passengers went to the canal?

A Yes.

Q You said on direct examination that when the jeep (should be truck) was blowing its horn and asking for a way, you said that the jeep gave way and turned to the right and did not recover its position and the jeep fell into the ditch, is that what you said before?

A The jeep did not recover. It was not able to return to the center of the road. It was running outside until it reached the canal, running diagonally.

Q When the jeep gave way to the cargo truck, the jeep was at the right side of the road?

A Already on the right side of the road.

Q And this jeep was running steadily at the right side of the road?

A Yes, sir.

x x x x x x x x

Q When the jeep gave way to the cargo truck and it kept its path to the right, it was still able to maintain that path to the right for about twenty meters and while the jeep and the cargo truck were running side by side?

A Yes.

Q When the truck and the jeep were already running side by side and after having run twenty meters side by side, do you know why the jeep careened to the ditch or to the canal?

A I do not know why but I know it slowly got to the canal but I do not know why it goes there.

x x x x x x x x

Q You said when the jeep was about to be lodged in the canal, you stated that the jeep was running upright, is that a fact?

A Yes.

Q So that the terrain was more or less level because the jeep was already running upright, is that not correct?

A The jeep was running on its wheels but it is running on the side, the side was inclining until it reached the ditch.

Q You mean to tell the Court that from the entire of the fifteen meters distance from the side of the road up to the place where the jeep was finally lodged that place is inclining towards the right?

A When the jeep left the road it was already inclining because it was running part side of the road which is inclining." (Transcript of March 25 and 26, 1963).

Thus, had Montefalcon slackened the speed of the jeep at the time the truck was overtaking it, instead of running side by side with the cargo truck, there would have been no contact and accident. He should have foreseen that at the speed he was running, the vehicles were getting nearer the bridge and as the road was getting narrower the truck would be too close to the jeep and would eventually sideswiped it. Otherwise stated, he should have slackened his jeep when he swerved it to the right to give way to the truck because the two vehicles could not cross the bridge at the same time.

The second assigned error is centered on the alleged failure on the part of the jeepney driver to exercise extraordinary diligence, human care, foresight and utmost diligence of a very cautious person, when the diligence required pursuant to Article 1763 of the Civil Code is only that of a good father of a family. Petitioners contend that the proximate cause of the accident was the negligence of the driver of the truck. However, the fact is, there was a contract of carriage between the private respondent and the herein petitioners in which case the Court of Appeals correctly applied Articles 1733, 1755 and 1766 of the Civil Code which require the exercise of extraordinary diligence on the part of petitioner Montefalcon.

"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.

"Art. 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.

"Art. 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be

governed by the Code of Commerce and by special laws."

Indeed, the hazards of modern transportation demand extraordinary diligence. A common carrier is vested with public interest. Under the new Civil Code, instead of being required to exercise mere ordinary diligence a common carrier is exhorted to carry the passengers safely as far as human care and foresight can provide "using the utmost diligence of very cautious persons." (Article 1755). Once a passenger in the course of travel is injured, or does not reach his destination safely, the carrier and driver are presumed to be at fault.

The third assigned error of the petitioners would find fault upon respondent court in not freeing petitioners from any liability, since the accident was due to a fortuitous event. But, We repeat that the alleged fortuitous event in this case - the sideswiping of the jeepney by the cargo truck, was something which could have been avoided considering the narrowness of the Sumasap Bridge which was not wide enough to admit two vehicles. As found by the Court of Appeals, Montefalcon contributed to the occurrence of the mishap.

WHEREFORE , the decision of the respondent Court of Appeals, dated September 30, 1971, is hereby AFFIRMED. With costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), on official leave.

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