

LAGUNA TAYABAS BUS COMPANY, PETITIONER, VS. JULIETA CORNISTA, THRU HER PARENTS, GIL CORNISTA AND MANUELA BELSONTA CORNISTA RESPONDENTS.

G.R. No. L-22193. May 29, 1964

Ponente: DIZON, J.

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DIZON, J.:

Julieta Cornista, through her parents, sued petitioner in the Court of First Instance of Leyte (Civil Case No. 2298) for damages arising from breach of contract of carriage, her claim being that, while a passenger of one of petitioner's buses, she sustained physical injuries through the negligence of petitioner and its driver. Petitioner's principal defense was that Julieta's own negligence was the proximate cause of her injuries. After trial, the Court rendered judgment for the plaintiff awarding her the amount of P6,000 as moral damages, plus the amount of P300, for medical attendance, and P1,000 as attorney's fees, with costs. On appeal, the Court of Appeals reduced the moral damages to P3,000, and affirmed the appealed decision in all other respects.

Petitioner now seeks a review of the last mentioned decision for the purpose of having it set aside, or to have the award of moral damages eliminated.

The principal facts, as found by the trial Court, are as follows:

"The court, in considering the evidence presented in support of the main issue, is satisfied that the proximate cause of the injuries suffered by plaintiff Julieta Cornista, as shown by Exhibit 'A' was the negligence of both the defendant and its driver of bus No. 284 who, at the time of the incident at bar, unmindful of the warning given him by his passengers, recklessly operated and drove said bus at high speed even on sharp curves of the road. A look at Exhs. '7' and '7-A' will readily show that bus No. 284, wherein on November 9, 1957, plaintiff Julieta Cornista was a passenger and from where she fell when said bus was running at a high speed on a curve, the right side of said bus is not covered nor protected by any bar to safeguard passengers Sitting at the extreme ends of the seats on the right side from falling therefrom."

Upon the above facts—which must be deemed final-petitioner's liability for damages cannot be doubted. The decision in *Lara vs. Valencia*, 55 Off. Gaz., 4438, does not apply to the present for the reason that, as found by the trial Court, Julieta Cornista was not guilty of negligence. While the Court of Appeals found her chargeable with contributory negligence because, instead of holding the hand of her friend Myrna Cruz, who was seated beside her, she should have held tenaciously on to the bus itself, We believe with said Court that while such circumstance justifies the reduction of the moral damages awarded by the Court of origin, it does not justify the exemption from liability of petitioner herein.

Regarding petitioner's contention that no award of moral damages should have been made in favor of the injured passenger, it must be borne in mind that the Court of origin not only found petitioner's driver guilty of reckless driving, but also found petitioner itself guilty of negligence because "the right side of said bus is not covered nor protected by any bar to safeguard passengers sitting at the extreme ends of the seats on the right side from falling

therefrom."

Under the provisions of Art. 2220 of the New Civil Code, in cases of breach of contract (including one of transportation or carriage), either fraud or bad faith, that is, wanton and deliberately injurious conduct on the part of the carrier is necessary to justify an award of moral damages. Petitioner's negligence consisting in its failure to cover the right side of the bus in question with a bar or some other contrivance to safeguard or protect passengers falls within this category of misconduct.

Wherefore, petition under consideration is dismissed for lack of merit.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredes, and Makalintal, JJ., concur.

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