

**M. RUIZ HIGHWAY TRANSIT, INC. AND MARTIN BUENA,
PETITIONERS, VS. COURT OF APPEALS, GUILLERMO MONSERRAT,
AND MARTA CONSIGNADO, RESPONDENTS.**

G.R. No. L-16086. May 29, 1964

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Appeal by certiorari from a decision of the Court of Appeals.

In the Laguna court of first instance, the spouses Guillermo Monserrat and Marta Consignado sued M. Ruiz Highway Transit, Inc., and Martin Buena to recover damages for the death of their four-year old daughter Victoria.

In the morning of May 22, 1954, said child and her parents were paying passengers in a bus of defendant transportation company driven by co-defendant Buena, bound for Antipolo, Rizal. In Sta. Rosa, Laguna, while the bus was running, a rear tire exploded, blasting a hole in the very place where Victoria was standing in front of her mother. As a result, the child fell through the hole, and died that same morning from injuries sustained in the fall.

The court of first instance dismissed the complaint on this ground that (1) the accident was not due to negligence of the carrier, but was an act of God; and (2) even if negligence was attributable to defendants, their liability had been discharged, as evidenced by Exhibits 2 and 3 quoted in the footnote.[a] On appeal by plaintiffs, the Court of Appeals reversed the judgment, upon the finding that (1.) defendants failed to prove extraordinary diligence required of carriers; and (2) Exhibits 2 and 3 did not effect a waiver of plaintiffs' right to damages. Said appellate court, therefore, required defendants to pay plaintiffs P6,000.00 as indemnity for the child's death, P2,000.00 as moral damages and P500.00 as attorney's fees, with interest from the date of its decision, (minus the P150.00 that had been given to plaintiff Guillermo Monserrat, thru Exhibit 3).

In their petition for review by certiorari, the carrier and the driver raise the following issues: (1) whether in a contract of carriage breached by the passenger's death, his parents may be granted moral damages; and (2) whether the sum of P6,000.00 may be awarded as death indemnity for a child passenger. In their brief, they pose the following questions in addition to the above issues: (3) was there a contract of carriage between the deceased child and petitioner transportation company; (4) have petitioners rebutted the presumption that they have been negligent; (5) was the bus crowded; (6) was the bus running fast when the tire exploded; (7) what caused the bursting of the tire; (8) was the bus floor weak; (9) was the blow-out of the tire caso fortuito; and (10) was petitioners' liability cancelled by Exhibits 2 and 3?

The alleged lack of a contract of carriage between the deceased child and petitioner transportation company, if true, is a complete defense against claimants' cause of action. However, the issue is now inarguable, it being partly factual, on which the appellate court made its finding.

Respondents and the child were paying passengers in the bus; petitioners were duty bound to transport them,

using the utmost diligence of very cautious persons (Art. 1755, New Civil Code). Therein they failed. The child died because the floor of the bus gave way; this reinforces the presumption that petitioners had neglected to provide a safe conveyance (Art. 1756, New Civil Code). Evidence of the required extraordinary diligence was not introduced to rebut the presumption.

On the contrary, the appellate court found that the bus was overcrowded and overspeeding, and the floor thereof was weak - persuasive indications of negligence; and reasoned out that the tire exploded due to one or a combination of the following: "The tire was not strong and safe; the air pressure was not properly checked; the load was heavy; the excessive speed of the bus must have overstrained the tire; and the high velocity generated heat in the tire which could have expanded the already compressed air therein." [b] Petitioners venture to guess that it was due either to accidental puncture by a sharp instrument, as a nail, or to latent defect in the tire. Evidence should have been - but was not - presented to establish such defense.

Even conceding that the tire blow-out was accidental, we could still hold the carrier liable for failure to provide a safe floor in the bus.

Exhibits 2 and 3 are not proof that petitioners have discharged their legal liability to claimants. What is expressed there is the latter's belief - clearly erroneous - that petitioners are not liable to them, and acknowledgment of the voluntary help extended by petitioner transportation company. The belief is baseless. That respondents entertained such an ill-founded impression is not to be wondered at. They are ignorant, illiterate, indigent, and, at the time they signed Exhibit 2 and 3, thoroughly confused and distracted by the death of their child.

The minimum death indemnity is P3,000[c], although this Court has in various instances granted P6,000.00. As for moral damages, the carrier is liable therefor to the parents of a child who meets death while a passenger in any of the carrier's vehicles (Art. 2206 and 1764, New Civil Code). Since respondents are indigents, and have litigated as paupers, they should be allowed attorney's fees of P500.00.

For these reasons, the appealed decision is affirmed, with costs.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala, and Makalintal. JJ., concur.

[a] Exhibits 2 and 3, executed on the same morning the child died, say:

xxx

"We, spouses Guillermo Monserrat and Maria Consignado hereby say that on the 22nd day of the month of May, 1954, we were riding in the truck of M. Ruiz Highway Transit, No. 102, driven by Martin Buena. That due to unforeseen events, the left rear tire directly where we were sitting burst and destroyed the floor of the truck which caused the death of our child. Because what happened could not be attributed to anybody's fault and could be considered as an act of God, we cannot claim and likewise do not claim anything before any court of justice. Our only request is that the management of the truck give us a little help they may be willing to extend to us.

"Party of the Second Part:

"In view of the statement of the Party of the First Part, we are agreeable to their request to the amount within our means. x x x"

(Signatures omitted)

"KNOW ALL MEN BY THESE PRESENTS:

"I, Guillermo Monserrat, certify that today, Saturday, May 22, 1954, I received from Mrs. Maria Ruiz, owner of the M. Ruiz Transportation the amount of One Hundred Fifty Pesos (P150.00).

"I also certify that I am the father of the child Victoria Monserrat, who died in the Truck No. 102 of M. Ruiz Transportation, this day, Saturday, May 22, 1954, in Sta. Rosa, Laguna.

"To my entire satisfaction on account of the help given to me by the owner of the transportation, I sign my name herein below, in this town of Sta. Cruz, Laguna, this 22nd of May, 1954, in the presence of these witnesses."

(Signatures omitted)

[b] These factual findings cannot be reviewed by this Court. *Stanvac vs. Tan*, L-13048, Feb. 27, 1960; *Natividad vs. Court of Appeals*, L-14887, Jan. 31, 1961; *Pornellosa vs. Land Tenure Administration*, L-14040, Jan. 31, 1961; *Lota vs. Court of Appeals*, L-14803, June 30, 1961; *Galang vs. Court of Appeals*, L-17248, Jan. 28, 1962.

[c] Art. 2206 and 1764, New Civil Code.

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