

**PEDRO R. DAVILA AND PRECIOSA C. TIROL,
PLAINTIFFS-APPELLANTS, VS. PHILIPPINE AIR LINES,
DEFENDANT-APPELLANT.**

G.R. No. L-28512. February 28, 1973

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c9c55162a013/>

MAKALINTAL, J.:

In Civil Case No. 5728 of the Court of First Instance of Iloilo (Pedro R. Davila and Preciosa C. Tirol, plaintiffs, vs. Philippine Air Lines, Inc., defendant) judgment was rendered ordering the defendant to pay the plaintiffs various sums of money, as follows:

"(1)

For the death of Pedro T. Davila, Jr. the amount of P6,000.00;

(2)

For the loss of the earning capacity of the deceased at the rate of P12,000.00 per annum for five (5) years in the amount of Sixty Thousand Pesos (P60,000.00);

(3)

For moral damages in favor of the plaintiffs Ten Thousand Pesos (P10,000.00);

(4)

For exemplary damages in the amount of Ten Thousand Pesos (P10,000.00);

(5)

For actual damages the amount of Five Thousand Pesos (P5,000.00) broken down to as follows: A rolex watch valued at P600.00; a pistol worth P300.00; burial expenses P600.00; for the lot and the mausoleum P3,500.00;

(6)

For Attorney's fees the amount of Ten Thousand Pesos (P10,000.00) or a total amount of One Hundred and One Thousand Pesos (P101,000.00)

To pay the costs of this proceedings."

Both parties appealed directly to this Court in view of the aggregate of the amounts awarded, the judgment having been rendered before the effectivity of Rep. Act No. 5440. In this appeal the plaintiffs seek an increase in said amounts, and the defendant, complete exoneration from, or at least mitigation of, liability.

The case arose from the tragic crash of a passenger plane of the defendant which took the lives of all its crew and passengers. The plane, identified as PI-C133, was a DC-3 type of aircraft, manufactured in 1942 and acquired by the defendant in 1948. It had flown almost 18,000 hours at the time of its ill-fated flight. Despite its age, however, it had been certified as airworthy by the Civil Aeronautics Administration. On November 23, 1960, at 5:30 in the afternoon, it took off from the Manduriao Airport, Iloilo, on its way to Manila, with 33 people on board, including the plane's complement. It did not reach its destination, but crashed at Mt. Baco, Mindoro, one hour and fifteen minutes after take-off. A massive search was undertaken by the defendant and by other parties as soon as it was realized that the plane's arrival in Manila was overdue. The plain-tiffs, parents of Pedro T. Davila, Jr., who was one of the passengers, had no definite news of what had happened to their son, getting what information they could only from conflicting newspaper reports, until they received, on December 19, 1960, a letter of condolence from the defendant's president Andres Soriano, informing them that their son had died in the crash. And it was only on December 29 that his body was recovered and taken back to Iloilo.

The issues before the trial court, and now before Us in this appeal, are whether or not the defendant is liable for violation of its contract of carriage and if so, for how much. The provisions of the Civil Code on this sub-stantive question of liability are clear and explicit. Article 1733 binds common carriers, "from the nature of their business and by reasons of public policy, . . . to observe extraordinary diligence in the vigilance . . . for the safety of the passengers transported by them according to all the circumstances of each case." Article 1755 establishes the standard of care required of a common carrier, which is, "to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances." Article 1756 fixes the burden of proof by providing that "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." Lastly, Article 1757 states that "the responsibility of a common carrier for the safety of passengers, . . . cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise."

The route prescribed by the Civil Aeronautics Adminis-tration for the flight of plane PI-C133 in the afternoon of November 23, 1960 was Iloilo-Romblon-Manila, the latter stage, denominated as airway "Amber I," being a straight lane from Romblon to Manila. The prescribed elevation of the flight was 6,000 ft. The plane reported its position after take-off and again when it was abeam the Roxas homer. However, it did not intercept airway "Amber I" over Romblon as it was supposed to do, and the pilot did not give his position then although Romblon was a compulsory checking point. The fact was that the plane had deviated from the prescribed route by 32 miles to the west when it crashed at Mt. Baco. The reading of the altimeter of the plane when its wreckage was found was 6,800 ft.

There is a suggestion that in the course of the flight between Romblon and Mindoro the aircraft was drifted west-ward by the cross-winds then blowing in the region. The defendant, however, has not given a definite explanation as to why, if such was the case, the pilot failed to make the necessary correction in his flight to compensate for the drift. According to the defendant's witness, Maj. Mijares, Chief of the Aviation Safety Division of the Civil Aero-nautics Administration and Chairman of the CAA Investigating Committee, there was a navigational error, to which several factors contributed: "the weather observation at that time from the Weather Bureau was not so good between Mt. Baco and Romblon and the wind aloft was quite strong, which would be

also one of the causes for the drifting of the aircraft; and the other strong probability, I would say, would be the mal-function of the aircraft's navigational instrument." He further explained that "a cross-wind can drift the plane if the pilot will not make the necessary correction, if his navigational instrument is malfunctioning and the visual reference outside the aircraft could not make the necessary corrections."

There is nothing in the testimony of Maj. Mijares to show just how strong the cross-winds were in the region at the time, although in the investigation of the accident by the Senate Committee on transportation there was testimony that the cross-winds had a velocity of either 20 to 25 knots or 25 to 35 knots an hour. Considering the relatively short distance from Romblon to Mt. Baco and the brief span of time it would take to fly that distance, cross-winds with the velocity stated could not have possibly deviated the plane by as much as 32 miles.

The defendant points out that the navigational instrument on board the plane consisted of two (2) sets of automatic direction finders (ADF) which, when found after the crash, showed a reading that the aircraft was heading north, which was the proper flight direction. This point, however, is of no vital significance in this case since it does not explain why the aircraft was 32 miles off its prescribed route in the first place. It is suggested that the pilot did not notice the drift of his plane because of poor visibility due to thick clouds, which prevented him from making the corresponding correction on the basis of visual references to the terrain outside. But according to Maj. Mijares himself the report from the Weather Bureau at the time showed that visibility was 15 miles between Romblon and Mt. Baco and that the clouds from 2,700 to 7,000 ft. elevation were "scattered". And the profile of the probable weather cross-section along airway "Amber I" during the flight (Exh. 33-A) shows that at 6,000 ft. the airplane was clear and free of clouds. The suggestion therefore that the pilot was practically flying blind and consequently failed to notice the drift of the aircraft is not justified by the evidence. Indeed even the investigating team of the defendant under the chairmanship of Capt. Jaime Manzano concluded in its report that "based on the limited evidences available, the board is of the opinion that the probable cause was the inability of the pilot to intersect airway 'Amber I' over Romblon and to maintain track within its designated airway lane for reasons unknown."

What is undisputed therefore is that the pilot did not follow the route prescribed for his flight, at least between Romblon and Manila. Since up to that point over Romblon, where he was supposed to intersect airway "Amber I," the weather was clear, the most reasonable conclusion is that his failure to do so was intentional, and that he probably wanted to fly on a straight line to Manila. It was a violation of air-traffic rules to which, under the circumstances, the accident may be directly attributable.

In any case, absent a satisfactory explanation on the part of the defendant as to how and why the accident occurred, the presumption is that it was at fault, under Article 1756 of the Civil Code.

The next question relates to the amount of damages that should be awarded to the plaintiffs, parents of the deceased. The trial court fixed the indemnity for his death in the amount of P6,000.00. Pursuant to current jurisprudence on the point it should be increased to P12,000.00[1].

The deceased was employed as manager of a radio station[2], from which he was earning P8,400.00 a year, consisting of a monthly salary of P600.00 and allowance of P100.00. As a lawyer and junior partner of his father in the law office, he had an annual income of P3,600.00. From farming he was getting an average of P3,000.00. All in all therefore the deceased had gross earnings of P15,000.00 a year.

According to Article 2206, paragraph (1), of the Civil Code, "the defendant shall be liable for the loss of the earning capacity of the deceased and indemnity shall be paid to the heirs of the latter." This Article, while referring to "damages for death caused by crime or quasi-delict," is expressly made applicable by Article 1764 "to the death of a passenger caused by the breach of contract by a common carrier."

The deceased, Pedro Davila, Jr., was single and 30 years of age when he died. At that age one's normal life expectancy is 33-1/3 years, according to the formula $(2/3 \times [80 - 30])$ adopted by this Court in the case of *Villa Rey Transit, Inc. vs. Court of Appeals*[3] on the basis of the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. However, although the deceased was in relatively good health, his medical history shows that he had complained of and been treated for such ailments as backaches, chest pains and occasional feelings of tiredness. It is reasonable to make an allowance for these circumstances and consider, for purposes of this case, a reduction of his life expectancy to 25 years.

In the same case of *Villa Rey Transit* this Court stated: ". . . earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, less the necessary expense for his own living. Stated otherwise, the amount recoverable is not loss of the entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earnings, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses."

Considering the fact that the deceased was getting his income from three (3) different sources, namely, from managing a radio station, from law practice and from farming, the expenses incidental to the generation of such income were necessarily more than if he had only one source. Together with his living expenses, a deduction of P600.00 a month, or P7,200.00 a year, seems to us reasonable, leaving a net yearly income of P7,800.00. This amount, multiplied by 25 years, or P195,000.00, is the amount which should be awarded to the plaintiffs in this particular respect.

Actual losses sustained consist of the following, as found by the trial court: "Rolex Watch – P600.00; pistol – P300.00; Burial Expenses – P600.00; and cost of cemetery lot and mausoleum – P3,500.00."

Under Article 2206, in relation to Article 1764, of the Civil Code, the parents of the deceased are entitled to moral damages for their mental anguish. The trial court awarded P10,000.00 in this concept, and we find no justification to change the award, considering the long period of uncertainty and suffering the plaintiffs underwent from November 23, when the plane crash occurred, to December 19, when they received a letter from the defendant's president confirming the death of their son, and again to the following December 29, when his body was finally recovered and taken back to them.

With respect to the award of P10,000.00 as exemplary damages, it is our opinion that the same should be eliminated. According to Article 2232 of the Civil Code, in contracts and quasi-contracts the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The failure of the defendant here to exercise extraordinary diligence, as required by law, does not amount to anyone of the circumstances contemplated in the said provision.

The trial court has awarded attorney's fees of P10,000.00. We do not find this award groundless or the amount thereof unreasonable.

The total of the different items above enumerated is P232,000.00. The judgment of the court a quo is therefore modified accordingly and the defendant is ordered to pay the said amount to the plaintiffs, with legal interest thereon from the finality of this judgment. With costs against the defendant.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] *Peo. v. Pantoja*, G.R. No. L-18793, 11 Oct. 1968, 25 SCRA 468; *Peo. v. Empeño*, G.R. No. L-27610, 28 May

1969, 33 SCRA 40

[2] Chronicle Broadcasting Network, Iloilo City

[3] 31 SCRA 511, 515

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.