

**ANTONIO V. ROQUE, PETITIONER, VS. BIENVENIDO BUAN, ET AL.,
RESPONDENTS.***G.R. No. L-22459. October 31, 1967*

Ponente: ANGELES, J.

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An appeal by certiorari from a decision of the Court of Appeals, reversing in toto the decision of the Court of First Instance of Pampanga, which sentenced the defendants "to pay the plaintiff (Antonio V. Roque) the sums of P515.70 (hospital bill) and P840.00 (six months salary), or a total of P1,355.70, with legal interest from February 12, 1955, plus the sum of P500.00 as attorney's fees and an equivalent amount of P500.00 as moral damages, and the costs."

Upon the record, it appears that on 7 June 1955, Antonio V. Roque filed this suit for damages against Bienvenido P. Buan and Natividad Paras, co-administrators of the Estate of the deceased spouses Florencio P. Buan and Rizalina Paras, in the Court of First Instance of Pampanga, for alleged breach of contract of carriage, resulting from a traffic accident which occurred at Sulipan Bridge in Apalit, Pampanga.

The circumstances surrounding the occurrence of the unfortunate accident has been narrated in court during the trial by the plaintiff himself, whose testimony was corroborated by a passenger of the bus. The defense did not summon any other passenger of the bus to testify. Neither was the conductor of the bus pre-sented in court. It relied solely on the testimony of the driver Celestino Soliman.

The evidence of the plaintiff, substantiated by his testimony and that of a passenger in the bus, demonstrate that Florencio P. Buan, in his lifetime, was an operator of land transportation for passengers, under the name of "Philippine Rabbit Bus Lines", with a certificate of Public Convenience issued by the Public Service Commission. The defendants co-administrators, sued herein in their legal capacity as such, have been duly authorized by the court to continue the operation of the bus transportation for passengers.

On February 12, 1955, at about 2:00 o'clock in the afternoon, the plaintiff Antonio V. Roque, was a paying passenger in bus No. 397, operated by the defendants. The bus left Manila for Angeles City, Pampanga, driven by Celestino Soliman, an employee of the operator. All along the way, the speed of the bus was about 60 kms. per hour. When the bus was over the Sulipan bridge at Apalit, Pampanga, it met a cargo truck coming from the opposite direction. To avoid colliding with the truck, the driver swerved the bus to the right, which, however, sideswiped the railing of the bridge. So violent was the impact that the two iron grills of a window of the bus were detached, dangling thereat, and the rear right portion of the bus was dented inward. The plaintiff was seated by the side of the window where the iron grills were detached with his right arm resting on the sill of the frame of the window. The injuries suffered by him as a result of the impact are: "1. Abrasion multiple, upper extreme right; 2. fracture - simple complete; 3. Wound lacerated, exposing elbow point right." (Exhibit A.)

For the defendants, the driver of the bus declared that the rate of speed of his bus all the way from Manila, was between 40 to 50 kms. per hour. As the bus was approaching the Sulipan bridge, he reduced the speed to 10 kms.

per hour, which he maintained while passing over the bridge. When the bus was over the bridge, a freight truck came along from the opposite direction, and to avoid colliding with the truck, he swerved the bus to the right, and as he did so, he suddenly heard the conductor of the bus shout "para" (stop). Asking why, the conductor replied: "This arm which was protruding hit the bridge." Addressing the passenger indicated by the conductor, who happened to be the plaintiff, the driver asked: "Why did you put out your arm?" The passenger replied: "I fell asleep."

In avoidance of liability, the thesis of the defense is that plaintiff's arm was injured because he extended it outside the window, and struck it against the railing of the bridge. To sustain the contention, four witnesses were summoned to the witness-stand who declared in substance that the bus suffered no damage at all. However, the trial court's finding shows that the bus suffered substantial damage. Thus:

"To establish that the bus was not damaged, not even a scratch, the defendants introduced the mechanic, the carpenter and the administrative officer, all of the Rabbit, and the police lieutenant of Apalit, who said, he saw the bus parked in front of the San Fernando municipal building. All of these witnesses declared that they found no dent nor a single scratch on the right rear side of the bus and that the grills of the window, by which the plaintiff was seated, were in their places.

"On the other hand, the plain-tiff testified that before reaching the bridge, the bus was running at about 60 kilometers per hour and that it did not slacken until it hit the railing of the bridge after it had passed the cargo truck (Exhibit C-1), thereby causing the injuries to his elbow and arm.

"As to the bus, he declared that the rear right portion was dented, the top of the window was damaged, and the grills were detached and dangling from the window.

x x x x x

"From the evidence of the plaintiff and that of his witness, a co-passenger whom he met for the first time on that fatal occasion, we have valid grounds to believe and to hold that the driver, upon seeing the oncoming truck which he said was big and which was occupying all the space up to the center of the line, and motivated undoubtedly by the fear that it might collide with the left side of his bus, maneuvered his vehicle to the right, but because he could not see the cargo truck as the windows were closed, he went very near, too close so that his bus hit the railing of the bridge after it had passed the freight truck. In arriving at this finding and conclusion, we have taken into consideration the fact, as admitted by Celestino Soliman that he had driven the bus for only two weeks before the accident, and notwithstanding the testimony of the administrative officers regarding seminars and the like, we believe that the delver had not yet sufficiently familiarized himself with the behavior of his bus so as to put it completely at all times under his control. In this, we believe there was a lack of diligence in his selection to drive the Rabbit bus No. 397.

"In regard to the injuries we are inclined to believe the plaintiff that he rested his arms on the sill, but within the frame of the window, and that, as denied in rebuttal, he was not asleep. This fact is borne out by the circumstances that he was able to determine the rate of speed of the bus. If, indeed, it were true that he extended out his arm, the injuries would have certainly been more serious and fatal. That no other passenger was harmed, this can be attributed to the fact that the impact was concentrated at the point precisely where the victim was unfortunately seated. The contact was localized.

"Upon the foregoing facts, we are firmly convinced that the plaintiff was not at fault and that the operator, through its driver and employee, failed to exercise that extraordinary diligence which would have exempted it from civil liability."

On the same matter, the Court of Appeals said:

"Inasmuch as plaintiff was injured, and as no scratch was found on the rear right side of the bus, and as the

only damage to the bus as found by the trial court, consisted of the following: "The rear right portion was dented, the grills were detached and dangling from the window, and the top of the window was damaged", the only conclusion we can think of as to why plaintiff was injured is that he must have extended his right elbow beyond or outside the grills of the window of the bus, as some passengers are wont to do unconsciously, and when the bus moved towards the right of the bridge as it passed the big freight truck going in the opposite direction, the railing of the bridge must have caught plaintiff's elbow, and the impact was so violent that the two grills of the window of the bus were thereby "detached and dangling from the window" which must have been the cause of the dent on the right portion of the bus." (Underscoring Ours.)

Analyzing the findings made by the trial court, on whether or not the bus suffered damage, We observe that the court's findings in the affirmative are factually based on the testimony of the plaintiff and of the corroborating witness, whose demeanor while testifying, was within the observation of the trial court which, after appreciating their testimonies, found no reason not to accord them credit. The decision of the Court of Appeals on the same point, does not disagree with the findings of the trial court. It upheld the finding of the trial court that the damage to the bus were - "The rear right portion was dented, the grills were detached and dangling from the window, and the top of the window was damaged, x x x the impact was so violent that the two grills of the window which must have been the cause of the dent on the right portion of the bus." Upon these established facts, the Court of Appeals concluded, however, that the plaintiff's arm was injured because - "he must have extended his right elbow beyond or outside the grills of the window of the bus."

If the decision of the Court of Appeals on the controversial matter suffers, as it does, from some ambiguity, the doubt should be resolved to sustain the trial court in the light of the familiar and accepted rule that "the judge who tries a case in the court below, has vastly superior advantages for the ascertainment of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye, the cold words of the witness as transcribed upon the re-cord, knowing at the same time, from actual experience, that more or less, of what the witness actually did say, is always lost in the process of transcribing. But the main difficulty does not lie here. There is an inherent impossibility of determining with any de-gree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there was no doubt as to the identity of the words." (Moran, Comments on the Rules of Court.)

We are not prepared to agree with the Court of Appeals' conclusion as to the reason why the plaintiff's arm was injured - that "he must have extended his right elbow beyond or outside the grills of the window of the bus." The conclusion is; firstly, contrary to the established fact; secondly, it is an inference based on mere assumption; thirdly, it is contrary to the *res ipsa loquitur* rule; and fourthly, it is not in conformity with the physical law of nature. With the undisputed fact on record that the bus was damaged to the extent hereinabove described, and taking account of the fact that the human hand is tender and fragile, to say that the violent contact of the hand with the railing, the bus running at a high rate of speed, without the vehicle colliding with the railing, caused the iron grills to be destroyed and detached from the frame of the window where they were imbedded; is to tax one's credulity. The physical fact that the bus suffered damage to the extent as shown by plaintiff's evidence, is demonstrative proof that that portion of the bus came into violent contact with some protruding hard object on the railing capable of pro-ducing such damage. We are persuaded to believe, as found by the trial court, that the violent contact of the bus with the railing was what caused the damage to the bus.

Contrary to the testimony of the driver that the speed of the bus was only 10 kms. per hour when it crossed the bridge, we are inclined to accord more credence to the evidence of the plaintiff, that the bus was running at an unreasonable speed when it approached and crossed the bridge. Judicial notice can be taken of the fact that Apalit bridge is part of the main thoroughfare for all kinds of vehicles, including big trucks and buses, cruising along that national highway, wide enough to permit the simultaneous passage through the bridge of two trucks or buses. If it

is true that the speed of the bus was only 10 kms. per hour when it was crossing the bridge, sideswiping the railing of the bridge at such a low speed, would not have produced the extent of damage that the bus suffered. At most, the physical contact would not have resulted in more than a scratch on the bus.

The testimony of the driver, regarding the ex-change of questions and answers between him and his conductor, and between him and plaintiff, is self-impeached by his statement given before the Chief of Police of Apalit. We quote from the decision of the Court of Appeals:

"However, in his (driver's) 'declaration' taken in the office of the Chief of Police of Apalit, Pampanga, on February 13, 1955, in the Pampango dialect, subscribed and sworn to by him before the Municipal Mayor, the said bus driver declared pertinently:

'x x x upon reaching the bridge of Sulipan here in Apalit, Pampanga, I slowed down because there was a cargo truck coming from the opposite direction. At the same time, there was a jeep following me. The speed of my truck was more or less 10 kms. per hour because the bridge was narrow and there was a truck coming from the opposite direction. After meeting the said truck on the bridge, my passengers said that there was a passenger on board my truck who was injured. In view of the advice of the other passengers to bring the injured passenger to the nearest drug store, what I did in order to have him treated, was to bring him to the Ocampo Clinic in San Fernando x x x'"

The sworn statement of the driver belie his testimony in court; firstly, that it was the conductor who called his attention about the injured passenger; and secondly, that Roque admitted that he had put his arm out of the window and told him that he (Roque) was "asleep", for if, Roque really gave these replies, the driver would have so stated in his sworn statement to the Chief of Police. Such a significant fact, still fresh in the mind of the driver when he gave his statement to the police, could not have been forgotten by him.

Negligence on the part of the common carrier is presumed where, as in the present case, the passenger suffers injuries.

"In case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they proved that they observed extraordinary diligence as prescribed in Articles 1733 and 1755." (Art. 1756, New Civil Code.)

"When the action is based on a contract of carriage and not of tort, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to any damages sought for by the plaintiff. For the carrier by accepting the passenger assumes express obligation to transport him to his destination safely, and to observe extraordinary diligence with due regard for all the circumstances, and any injury that may be suffered by the passenger is right away attributable to the fault or negligence of the carrier. (Art. 1776, New Civil Code) This is an exception to the general rule that negligence must be proved and it is incumbent upon the carrier to prove that it exercised extraordinary diligence as prescribed in Arts. 1733 and 1755 of the Civil Code." (Dy Sy vs. Malate Taxicab etc., 102 Phil. 482.)

The negligence of the defendants in the case at bar, rests on something more solid than a legal presumption. We are persuaded, that the accident occurred because of want of care and prudence on the part of the bus driver. As the defendants failed to prove their observance of extraordinary diligence in discharging their obligation unto plaintiff, their liability as public utility operator is beyond question. Hence, the decision of the Court of Appeals should be reversed. In arriving at this conclusion, we have not lost sight of the rule that generally, the findings of fact by the Court of Appeals are deemed accepted as the basis for review of the appellate's decision; but, the rule is not without exception. It is settled that the findings of fact made by the Court of Appeals may be set aside: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures;[1] (2) when the inference made is manifestly mistaken, absurd or impossible;[2] (3) where there is a grave abuse of discretion;[3]

(4) when the judgment is based on a misapprehension of facts;^[4] and (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admission of both appellant and appellee.^[5]

But, while we must sustain the trial court's award of actual or compensatory damages, and attorney's fees, the grant of moral damages cannot be upheld. The action herein is based on a breach of contract of carriage. Unless it be proved that the common carrier, in violating his contract to carry the passenger safely to his destination, acted fraudulently or in bad faith, which proof is wanting, no moral damages can be awarded where the breach did not result in death, but in mere physical injuries. (Art. 2220 in relation to Arts. 1764 and 2206 of the Civil Code.)

WHEREFORE, the decision of the Court of Appeals is hereby set aside. With the modification that the award of moral damages is discarded, the decision of the trial court is hereby affirmed with costs against the defendants-respondents.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

[1] *Joaquin v. Navarro*, 93 Phil. 257.

[2] *Luna v. Lindok*, 74 Phil. 15.

[3] *Buyco v. People*, 51 O. G. 2927.

[4] *Cruz v. Sozing*, L-4875, Nov. 27, 1953.

[5] *Evangelista v. Alto Surety & Ins. Co.*, L-11139, April 23, 1958.

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