

**SPOUSES MARCELO LANDINGIN AND RACQUEL BOCASAS,
PLAINTIFFS-APPELLEES, VS. PANGASINAN TRANSPORTATION CO.
AND MARCELO OLIGAN, DEFENDANTS-APPELLANTS. SPOUSES
PEDRO GARCIA AND EUFRAC...**

G.R. Nos. L-28014-15. May 29, 1970

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Direct appeal on a question of law from the portion of the judgment of the Court of First Instance of Manila ordering the defendants Pangasinan Transportation Co. (PANTRANCO) and Marcelo Oligan to pay the plaintiffs in Civil Case No. D-1468 (L-28014) the sum of P6,500.00, and the plaintiffs in Civil Case No. 1470 (L-28015) the sum of P3,500.00.

The complaints in said Civil Cases Nos. D-1468 and D-1470 were filed by the spouses Marcelo Landingin and Racquel Bocasas, and the spouses Pedro Garcia and Eufracia Landingin, respectively, for damages allegedly suffered by them in connection with the death of their respective daughters, Leonila Landingin and Estrella Garcia, due to the alleged negligence of the defendants and/or breach of contract of carriage. In their complaints, plaintiffs averred, among others, that in the morning of April 20, 1963, their above-mentioned daughters were among the passengers in the bus driven by defendant Marcelo Oligan and owned and operated by defendant PANTRANCO on an excursion trip from Dagupan City to Baguio City and back, that the bus was open on one side and enclosed on the other, in gross violation of the rules of the Public Service Commission; that defendant PANTRANCO acted with negligence, fraud and bad faith in pretending to have previously secured a special permit for the trip when in truth it had not done so; that upon reaching an uphill point at Camp 8, Kennon Road, Baguio City, on the onward trip, defendant driver, through utter lack of foresight, experience and driving knowledge, caused the bus to stall and stop for a few moments; that through the said defendant's fault and mishandling, the motor ceased to function, causing the bus to slide back unchecked; that when the said defendant suddenly swerved and steered the bus toward the mountainside, Leonila and Estrella, together with several other passengers, were thrown out of the bus through its open side unto the road, suffering serious injuries as a result of which Leonila and Estrella died at the hospital on the same day; and that in connection with the incident, defendant driver had been charged with and convicted of multiple homicide and multiple slight physical injuries on account of the death of Leonila and Estrella and of the injuries suffered by four others, although it may be said, by way of parenthesis, that this case is now pending appeal in a higher court. The plaintiffs prayed for awards of moral, actual and exemplary damages in the total sum of P40,000.00 in Civil Case No. D-1468, and in the total sum of P25,000.00 in Civil Case No. D-1470 as well as attorney's fees in the amounts of P5,000.00 and P4,000.00 respectively.

Defendants filed a joint answer to each of the two complaints alleging, among others, that at the time of the accident, defendant driver was driving the bus at the slow speed of about 10 kilometers per hour; that while the said defendant was steering his bus toward the mountainside after hearing a sound coming from under the rear end

of the bus, Leonila and Estrella recklessly, and in disobedience to his shouted warnings and advice, jumped out of the bus causing their heads to hit the road or pavement; that the bus was then being driven with ex-traordinary care, prudence and diligence; that defendant PANTRANCO observed the care and diligence of a good father of a family to prevent the accident as well as in the selection and supervision of its employees, particularly of defendant driver; and that the decision con-victing the said defendant was not yet final, the same having been appealed to the Court of Appeals where it was still pending.

By agreement of the parties, the two cases were tried jointly. On October 17, 1966, the court a quo rendered its decision therein in which it made the following findings: that upon reaching the fatal spot at Camp 8, a sudden snapping or breaking of metal below the floor of the bus was heard, and the bus abruptly stopped, rolling back a few moments later; that as a result, some of the passengers jumped out of the bus, while others stepped down; that defendant driver ma-neuvered the bus safely to and against the side of the mountain where its rear end was made to rest, ensuring the safety of the many passengers still inside the bus; that while defendant driver was steering the bus towards the mountainside, he advised the passengers not to jump, but to remain seated; that Leonila and Estrella were not thrown out of the bus, but that they panicked and jumped out; that the malfunctioning of the motor resulted from the breakage of the cross-joint; that there was no negligence on the part of either of the defend-ants; that only the day before, the said cross-joint was duly inspected and found to be in order; and that defendant PANTRANCO had exercised the requisite care in the selection and supervision of its employees, including the defendant driver. The court concluded that "the accident was caused by a fortuitous event or an act of God brought about by some extra-ordinary circumstances independent of the will of the Pantanco or its employees."

One would wonder why in the face of such factual findings and conclusion of the trial court, the defend-ants, instead of the plaintiffs, should come to this Court on appeal. The answer lies in the dispositive portion of the decision, to wit:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment: (a) Absolv-ing the defendants from any liability on account of negligence on their part and therefore dismissing the complaints in these two cases; (b) However, as stated above, the Court hereby orders the defendant Pantranco to pay to the plaintiffs spouses Marcelo Landingin and Racquel Bocasas in Civil Case No. D-1468 the amount of P6,500.00; and the amount of P3,500.00 to the spouses Pedro Garcia and Eufracia Landingin in Civil Case No. D-1470, not in payment of liability because of any negligence on the part of the defendants but as an expression of sympathy and goodwill." (Understanding supplied).

As to what impelled the court below to include item (b) in the dispositive portion of its decision, can be gathered from the penultimate paragraph of the decision, which reads:

"However, there is evidence to the effect that an offer of P8500.00 in the instant cases without any admission of fault or negligence had been made by the defendant Pantranco and that actually in Civil Case No. D-1469 for the death of Pacita Descalso, the other deceased passenger of the bus in question, the heirs of the deceased received P3,000.00 in addi-tion to hospital and medical bills and the coffin of the d ceased for the dismissal of the said case without Pantranco accepting liability. There was as a matter of fact during the pre-trial of these two cases a continuing offer of settlement on the part of the defendant Pantranco without accepting any liability for such damages, and the Court un-derstood that the Pantranco would be willing still to pay said amounts even if these cases were to be tried on the merits. It is well-known that the defendant Pantranco is zealous in the preservation of its public relations. In the spirit therefore of the offer of the defendant Pantranco aforesaid, to assuage the feelings of the herein plaintiffs an award of P6,500.00 for the spouses Marcelo Landingin and Racquel Bocasas in Civil Case No.D-1468 whose daughter Leonila was, when she died, a third-year Commerce student at the Far Eas-tern University, and P3,500.00 for the spou-ses Pedro Garcia and Eufracia Landingin in Civil Case No. D-1470 whose daughter Estre-lla was in the fourth year High at the

Dagu-pan Colleges when she died, is hereby made in their favor. This award is in addition to what Pantranco might have spent to help the parents of both deceased after the acci-dent."

Defendants-appellants complain that having found them to be absolutely free from fault or negligence, and having in fact dismissed the complaints against them, the court should not have ordered them to assume any pecuniary liability. There would be merit in this argument but for the fact that defendant-appellant PANTRANCO was guilty of breach of contracts of carriage. It will be noted that in each of the two complaints it is averred that two buses, including the one in which the two deceased girls were riding, were hired to transport the excursionists-passengers from Dagupan City to Baguio City, and return, and that the said two passen-gers did not reach their destination safely.

As a common carrier, defendant-appellant PANTRANCO was duty bound to carry its passengers "safely as far as human care and foresight can provide, using the ut-most diligence of very cautious persons, with a due regard for all the circumstances." (Article 1755, Civil Code.) Did defendant-appellant PANTRANCO measure up to the degree of care and foresight required of it under the circumstances? We think not. The court below found that the cross-joint of the bus in which the de-ceased were riding broke, which caused the malfunction-ing of the motor, which in turn resulted in panic among some of the passengers. This is a finding of fact which this Court may not disturb. We are of the opinion, how-ever, that the lower court's conclusion drawn from that fact, i.e., that "the accident was cause by a fortui-tous event or an act of God brought about by some extra-ordinary circumstances independent of the will of the Pantranco or its employees," is in large measure conjectural and speculative and was arrived at without due regard to all the circumstances, as required by Article 1755. In *Lasam vs. Smith* (5 Phil., 660), this Court held that an accident caused by defects in the automobile is not a caso fortuito. The rationale of the carrier's liability is the fact that "the passenger has neither the choice nor control over the carrier in the selection and use of the equipment and appliances in use by the carrier." (*Neces-sito, et al. vs. Paras, et al.*, 104 Phil., 75.)

When a passenger dies or is injured, the presumption is that the common carrier's is at fault or that it acted negligently (Article 1756). This presumption is only re-butted by proof on t e carrier's part that it observed the "extraordinary diligence" required in Article 1733 and the "utmost diligence of very cautious persons" required in Article 1755 (Article 1756). In the instant case it appears that the court below considered the presumption re-butted on the strength of defendants-appellants' evidence that only the day before the incident, the cross-joint in question was duly inspected and found to be in order. It does not appear, however, that the carrier gave due re-gard for all the circumstances in connection with the said inspection. The bus in which the deceased were riding was heavily laden with passengers, and it would be traversing mountainous, circuitous and ascending roads. Thus the en-tire bus, including its mechanical parts, would naturally be taxed more heavily than it would be under ordinary cir-cumstances. The mere fact that the bus was inspected only recently and found to be in order would not exempt the carrier from liability unless it is shown that the particular circum-stances under which the bus would travel were also considered.

In the premises, it was error for the trial court to dismiss the complaints. The awards made by the court should be considered in the concept of damages for breach of con-tracts of carriage.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the judgment appealed from is modified as indicated above, and defendant-appellant PANTRANCO is ordered to pay to plaintiffs-appellees the amounts stated in the judgment appealed from, as damages for breach of contracts, with interest thereon at the legal rate from the date of the filing of the complaints. Costs against defend t-appellant PANTRANCO.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and Barredo, JJ., concur.
Castro, J., on official leave.

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