

**EDGARDO CARIAGA, ET AL., PLAINTIFFS AND APPELLANTS VS.
LAGUNA TAYABAS BUS COMPANY, DEFENDANT AND APPELLANT.
MANILA RAILROAD COMPANY, DEFENDANT AND APPELLEE.**

G.R. No. L-11037. December 29, 1960

Ponente: DIZON, J.

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DIZON, J.:

At about 1:00 p.m. on June 18, 1952, Bus No. 133 of the Laguna Tayabas Bus Company—hereinafter referred to as the LTB—driven by Alfredo Moncada, left its station at Azcarraga St., Manila, for Lilio, Laguna, with Edgardo Cariaga, a fourth-year medical student of the University of Santos Tomas, as one of its passengers. At about 3:00 p.m., as the bus reached that part of the poblacion of Bay, Laguna, where the national highway crossed a railroad track, it bumped against the engine of a train then passing by with such terrific force that the first six wheels of the latter were derailed, the engine and front part of the body of the bus were wrecked, the driver of the bus died instantly, while many of its passengers, Edgardo among them, were severely injured. Edgardo was first confined at the San Pablo City Hospital from 5:00 p.m., June 18, 1952, to 8:25 a.m., June 20 of the same year when he was taken to the De los Santos Clinic, Quezon City. He left that clinic on October 14 to be transferred to the University of Santo Tomas Hospital where he stayed up to November 15. On this last date he was taken back to the De los Santos Clinic where he stayed until January 15, 1953. He was unconscious during the first 35 days after the accident; at the De los Santos Clinic Dr. Gustilo removed the fractured bones which lacerated the right frontal lobe of his brain and at the University of Santo Tomas Hospital Dr. Gustilo performed another operation to cover a big hole on the right frontal part of the head with, a tantalum plate.

The LTB paid the sum of P16,964.45 for all the hospital, medical and miscellaneous expenses incurred from June 18, 1952 to April 1953. From January 15, 1953 up to April of the same year Edgardo stayed in a private house in Quezon City, the LTB having agreed to give him a subsistence allowance of P10.00 daily during his convalescence, having spent in this connection the total sum of P775.30 in addition to the amount already referred to.

On April 24, 1953 the present action was filed to recover for Edgardo Cariaga, from the LTB and the MER Co., the total sum of P312,000.00 as actual, compensatory, moral and exemplary damages, and for his parents, the sum of P18,000.00 in the same concepts. The LTB disclaimed liability claiming that the accident was due to the negligence of its co-defendant, the Manila Railroad Company, for not providing a crossing bar at the point where the national highway crossed the railway track, and for this reason filed the corresponding cross-claim against the latter company to recover the total sum of P18,194.75 representing the expenses paid to Edgardo Cariaga. The Manila Railroad Company, in turn, denied liability upon the complaint and cross-claim, alleging that it was the reckless negligence of the bus driver that caused the accident.

The lower court held that it was the negligence of the bus driver that caused the accident and, as a result, rendered judgment sentencing the LTB to pay Edgardo Cariaga the sum of P10,490.00 as compensatory damages, with

interest at the legal rate from the filing of the complaint, and dismissing the cross-claim against the Manila Railroad Company. From this decision the Cariagas and the LTB appealed.

The Cariagas claim that the trial court erred: in awarding only P10,490.00 as compensatory damages to Edgardo; in not awarding them actual and moral damages, and in not sentencing appellant LTB to pay attorney's fees.

On the other hand, the LTB's principal contention in this appeal is that the trial court should have held that the collision was due to the fault of both the locomotive driver and the bus driver and erred, as a consequence, in not holding the Manila Railroad Company liable upon the cross-claim filed against it.

We shall first dispose of the appeal of the bus company. Its first contention is that the driver of the train locomotive, like the bus driver, violated the law, first, in sounding the whistle only when the collision was about to take place instead of at a distance at least 300 meters from the crossing, and second, in not ringing the locomotive bell at all. Both contentions are without merits.

After considering the evidence presented by both parties, the lower court expressly found:

"* * * While the train was approximately 300 meters from the crossing, the engineer sounded two long and two short whistles and upon reaching a point about 100 meters from the highway, he sounded a long whistle which lasted up to the time the train was about to cross it. The bus proceeded on its way without slackening its speed and it bumped against the train engine, causing the first six wheels of the latter to be derailed."

* * * * *

"* * * that the train whistle had been sounded several times before it reached the crossing. All witnesses for the plaintiffs and the defendants are uniform in stating that they heard the train whistle sometime before the impact and considering that some of them were in the bus at the time, the driver thereof must have heard it because he was seated on the left front part of the bus and it was his duty and concern to observe such fact in connection with the safe operation the vehicle. The other L.T.B. bus which arrived ahead at the crossing, heeded the warning by stopping and allowing the train to pass and so nothing happened to said vehicle. On the other hand, the driver of the bus No. 133 totally ignored the whistle and "noise produced by the approaching train and instead he tried to make the bus pass the crossing before the train by not stopping a few meters from the railway track and in proceeding ahead."

The above findings of the lower court are predicated mainly upon the testimony of Gregorio Ilusondo, a witness for the Manila Railroad Company. Notwithstanding the efforts exerted by the LTB to assail his credibility, we do not find in the record any fact or circumstance sufficient to discredit his testimony. We have, therefore, no other alternative but to accept the findings of the trial court to the effect, firstly, that the whistle of the locomotive was sounded four times—two long and two short—"as the train was approximately 300 meters from the crossing"; secondly, that another LTB bus which arrived at the crossing ahead of the one where Edgardo Cariaga was a passenger, paid heed to the warning and stopped before the "crossing", while—as the LTB itself now admits (Brief p. 5)—the driver of the bus in question totally disregarded the warning.

But to charge the MRR Co. with contributory negligence, the LTB claims that the engineer of the locomotive failed to ring the bell altogether, in violation of section 91 of Article 1459, incorporated in the charter of the said MRR Co. This contention—as is obvious—is the very foundation of the cross-claim interposed by the LTB against its co-defendant. The former, therefore, had the burden of proving it affirmatively because a violation of law is never presumed. The record discloses that this burden has not been satisfactorily discharged.

The Cariagas, as appellants, claim that the award of P10,000.00 compensatory damages to Edgardo is inadequate considering the nature and the after effects of the physical injuries suffered by him. After a careful consideration of the evidence on this point we find their contention to be well founded.

From the deposition of Dr. Romeo Gustilo, a neurosurgeon, it appears that, as a result of the injuries suffered by Edgardo, his right forehead was fractured necessitating the removal of practically all of the right frontal lobe of his brain. From the testimony of Dr. Jose A. Fernandez, a psychiatrist, it may be gathered that, because of the physical injuries suffered by Edgardo, his mentality has been so reduced that he can no longer finish his studies as a medical student; that he has become completely misfit for any kind of work; that he can hardly walk around without someone helping him, and has to use a brace on his left leg and feet.

Upon the whole evidence on the matter, the lower court found that the removal of the right frontal lobe of the brain of Edgardo reduced his intelligence by about 50% ; that due to the replacement of the right frontal bone of his head with a tantalum plate Edgardo has to lead a quite and retired life because "if the tantalum plate is pressed in or dented it would cause his death."

The impression one gathers from this evidence is that, as a result of the physical injuries suffered by Edgardo Cariaga, he is now in a helpless condition, virtually an invalid, both physically and mentally.

Appellant LTB admits that under Art. 2201 of the Civil Code the damages for which the obligor, guilty of a breach of contract but who acted in good faith, is liable shall be those that are the natural and probable consequences of the breach and which the parties had foreseen or could have reasonably foreseen at the time the obligation was constituted, provided such damages, according to Art. 2199 of the same Code, have been duly proved. Upon this premise it claims that only the actual damages suffered by Edgardo Cariaga consisting of medical; hospital and other expenses in the total sum of P17,719.75 are within this category. We are of the opinion, however, that the income which Edgardo Cariaga could earn if he should finish the medical course and pass the corresponding board examinations must be deemed to be within the same category because they could have reasonably been foreseen by the parties at the time he boarded the bus No. 133 owned and operated by the LTB. At that time he was already a fourth-year student in medicine in a reputable university. While his scholastic record may not be first rate (Exhibits 4, 4-A to 4-C), it is, nevertheless, sufficient to justify the assumption that he could have finished the course and would have passed the board test in due time. As regards the income that he could possibly earn as a medical practitioner, it appears that, according to Dr. Amado Doria, a witness for the LTB, the amount of P300.00 could easily be expected as the minimum monthly income of Edgardo had he finished his studies.

Upon consideration of all the facts mentioned heretofore, this Court is of the opinion, and so holds, that the compensatory damages awarded to Edgardo Cariaga should be increased to P25,000.00.

Edgardo Cariaga's claim for moral damages and attorney's fees was denied by the trial court, the pertinent portion of its decision reading as follows:

"Plaintiffs' claim for moral damages cannot also be granted. Article 2219 of the Civil Code enumerates the instances when moral damages may be covered and the case under consideration does not fall under any one of them. The present action cannot come under paragraph 2 of said article because it is not one of quasi-delict and cannot be considered as such because of the pre-existing contractual relation between the Laguna Tayabas Bus Company and Edgardo Cariaga. Neither could defendant Laguna Tayabas Bus Company be held liable to pay moral damages to Edgardo Cariaga under Article 2220 of the Civil Code on account of breach of its contract of carriage because said defendant did not act fraudulently or in bad faith in connection therewith. Defendant Laguna Tayabas Bus Company had exercised due diligence in the selection and supervision of its employees like the drivers of its buses in connection with the discharge of their duties and so it must be considered an obligor in good faith.

"The plaintiff Edgardo Cariaga is also not entitled to recover for attorney's fees, because this case does not fall under any of the instances enumerated in Article 2208 of the Civil Code."

We agree with the trial court and, to the reasons given above, we add those given by this Court in *Cachero vs. Manila Yellow Taxicab Co., Inc'* (101 Phil., 523, 530, 533) :

"A mere perusal of plaintiff's complaint will show that his action against the defendant is predicated on an alleged breach of contract of carriage, "i.e., the failure of the defendant to bring him 'safely and without mishaps' to his destination, and it is to be noted that the chauffeur of defendant's taxicab that plaintiff used when he received the injuries involved herein, Gregorio Mira, has not even been made a party defendant to this case.

"Considering, therefore, the nature of plaintiff's action in this case, is he entitled to compensation for moral damages? Article 2219 of the Civil Code says the following:

'Art. 2219. Moral damages may be recovered in the following and analogous cases:

- A criminal offense resulting in physical injuries;
- Quasi-delicts causing physical injuries;
- Seduction, abduction, rape, or other lascivious acts;
- Adultery or concubinage;
- Illegal or arbitrary detention or arrest;
- Illegal search;
- Libel, slander or any other form of defamation;
- Malicious prosecution;
- Acts mentioned in Article 309;
- Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

* * * * *

"Of the cases enumerated in the just quoted Article 2219 only the first two may have any bearing on the case at bar. We find, however, with regard to the first that the defendant herein has not committed in connection with this case any 'criminal offense resulting in physical injuries'. The one that committed the offense against the plaintiff is Gregorio Mira, and that is why he has been already prosecuted and punished therefor. Altho (a) owners and Managers of an establishment or enterprise are responsible for damages caused by their employees in the service of the branches which the latter are employed or on the occasion of their functions; (b) employers are likewise liable for damages caused by their employees and household helpers acting within the scope of their assigned task (Article 218 of the Civil Code); and (c) employers and corporations engaged in any kind of industry are subsidiary civilly liable for felonies committed by their employees in the discharge of their duties (Art. 103, Revised Penal Code), plaintiff herein does not maintain this action under the provisions of any of the articles of the codes just mentioned and against all the persons who might be liable for the damages caused, but as a result of an admitted breach of contract of carriage and against the defendant employer alone. We, therefore, hold that the case at bar does not come within the exception of paragraph 1, Article 2219 of the Civil Code.

"The present complaint is not based either on a 'quasi-delict causing physical injuries' (Art. 2219, par. 2, of the Civil Code). From the report of the Code Commission on the new Civil Code

We copy the following:

'A question of nomenclature confronted the Commission. After a careful deliberation, it was agreed to use the

term 'quasi-delict' for those obligations which do not arise from law, contracts, quasi-contracts, or criminal offenses. They are known in Spanish legal treatises as 'culpa aquiliana', culpa-extra-contractual' or 'cuasi-delitos'. The phrase 'culpa-extra-contractual' or its translation 'extra-contractual-fault' was eliminated because it did not exclude quasi-contractual or penal obligations. 'Aquilian fault' might have been selected, but it was thought inadvisable to refer to so ancient a law as the 'Lex Aquilia'. So 'quasi-delict' was chosen, which more nearly corresponds to the Roman Law classification of obligations, and is in harmony with the nature of this kind of liability.'

'The Commission also thought of the possibility of adopting the word "tort" from Anglo-American law. But "tort" under that system is much broader than the Spanish-Philippine concept of obligations arising from non-contractual negligence. "Tort" in Anglo-American jurisprudence includes not only negligence, but also intentional criminal act, such as assault and battery, false imprisonment and deceit. In the general plan of the Philippine legal system, intentional and malicious acts are governed by the Penal Code, although certain exceptions are made in the Project.' (Report of the Code Commission, pp. 161-162)

"In the case of *Cangco, vs. Manila Railroad*, 38 Phil. 768, We established the distinction between obligation derived from negligence and obligation as a result of a breach of contract. Thus, we said:

'It is important to note that the foundation of the legal liability of the defendant is the contract of carriage, and that the obligation to respond for the damage which plaintiff has suffered arises, if at all, from the breach of that contract by reason of the failure of defendant to exercise due care in its performance. That is to say, its liability, is direct and immediate, differing essentially in the legal viewpoint from that presumptive responsibility for the negligence of its servants, imposed by Article 1903 of the Civil Code (Art. 2180 of the new), which can be rebutted by proof of the exercise of due care in their selection of supervision. Article 1903 is not applicable to obligations arising EX CONTRACTU, but only to extra-contractual obligations—or to use the technical form of expression, that article relates only to CULPA AQUILIANA.' and not CULPA CONTRACTUAL.'

"The decisions in the cases of *Castro vs. Acro Taxicab Co.*, (82 Phil., 359; 46 Off. Gaz., No. 5, p. 2023) ; *Lilius et al. vs. Manila Eailroad*, 59 Phil., 7B8) and others, wherein moral damages were awarded to the plaintiffs, are not applicable to the case at bar because said decisions were rendered before the effectivity of the new Civil Code (August 30, 1950) and for the further reason that the complaints filed therein were based on different causes of action.

"In view of the foregoing the sum of P2,000 awarded as moral damages by the trial court has to be eliminated, for under the law it is not a compensation awardable in a case like the one at bar."

What has been said heretofore relative to the moral damages claimed by Edgardo Cariaga obviously applies with greater force to a similar claim (4th assignment of error) made by his parents.

The claim made by said spouses for actual and compensatory damages is likewise without merits. As held by the trial court, in so far as the LTB is concerned, the present action is based upon a breach of contract of carriage to which said spouses were not a party, and neither can they premise their claim upon the negligence or quasi-delict of the LTB for the simple reason that they were not themselves injured as a result of the collision between the LTB bus and the train owned by the Manila Railroad Company.

Wherefore, modified as above indicated, the appealed judgment is hereby affirmed in all other respects, with costs against appellant LTB.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed with modification.

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