

MANILA RAILROAD COMPANY, PETITIONER, VS. MACARIA BALLESTEROS, TIMOTEO CAMAYO, JOSE REYES AND JULIAN MAIMBAN, JR., RESPONDENTS.

G.R. No. L-19161. April 29, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In civil case No. 45968 of the Court of First Instance of Manila (Macaria Ballesteros, Timoteo Camayo, Jose Reyes and Julian Maimban, Jr. vs. Manila Railroad Company) the defendant was adjudged to pay damages in the following amounts: P2,400 to Macaria Ballesteros; P4,000 to Timoteo Camayo; P3,000 to Jose Reyes; and P2,000, plus P1,000 as attorneys fees, to Julian Maimban, Jr.

The defendant appealed from the judgment, but upon motion by the plaintiffs the trial court, by order dated October 14, 1961, dismissed the appeal on the ground that it was "manifestly and palpably frivolous and interposed ostensibly to delay the settlement of the just and reasonable claims of the herein plaintiffs, which have been pending since 1958," The defendant moved to reconsider, and upon denial of its motion instituted in this Court the instant petition for mandamus to set aside the order of dismissal and to order respondent court to give due course to the appeal.

In filing the petition directly with this Court, petitioner evidently intended to raise only questions of law in the appeal contemplated, since under Rule 41, section 15, "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court;" and under section 17(6) of the Judiciary Act this Court may review on appeal only questions of law in civil cases decided by inferior courts unless the value in controversy exceeds P200,000.

The fact that an appeal is frivolous and interposed only for purposes of delay has been recognized as a valid ground to deny issuance of the writ of mandamus to compel the trial court to approve and certify the appeal. In *De la Cruz vs. Blanco and Quevedo*, 73 Phil. 596, We held:

"And where as in the instant case, the dismissal has been ordered by the trial court, it would not be disturbed in the Appellate Court if the latter finds the appeal to have been interposed ostensibly for delay. It has been held that a frivolous appeal is one presenting no justiciable question or one so readily cognizable as devoid of merit on the face of the record that there is little, if any, prospect that it can ever succeed. The instant case is one such instance in which the appeal is evidently without merit, taken manifestly for delay."

And in *Paner vs. Yatco*, 87 Phil. 271, We denied the writ prayed for and held that "while strictly and legally speaking the petition may be granted, we may, before acting thereon, inquire into the facts involved in order to determine whether once the writ is granted and the case is brought up here on appeal the appellant has any chance, even possibility, of having the basic decision of the trial court set aside or modified; for if the appellant has not that prospect or likelihood then the granting of the writ and the consequent appeal would be futile and would mean only a waste of time to the parties and to this Court."

The material facts, as found by respondent court in its decision, are as follows: Private respondents here, plaintiffs below, were passengers on petitioner's bus, the driver of which was Jose Anastacio. In Bayombong, Nueva Vizcaya, Anastacio stopped the bus and got off to replace a defective spark plug. While he was thus engaged, one Dionisio Abello, an auditor assigned to defendant company by the General Auditing Office, took the wheel and told the driver to sit somewhere else. With Abello driving, the bus proceeded on its way, from time to time stopping to pick up passengers. Anastacio tried twice to take the wheel back but Abello would not relinquish it. Then, in the language of the trial court, "while the bus was negotiating between Km. posts 328 and 329 (in Isabela) a freight truck . . . driven by Marcial Nocum . . . bound for Manila, was also negotiating the same place; when these two vehicles were about to meet at the bend of the road Marcial Nocum, in trying to evade several holes on the right lane, where his truck was running, swerved his truck towards the middle part of the road and in so doing, the left front fender and left side of the freight truck smashed the left side of the bus resulting in extensive damages to the body of the bus and injuries to seventeen of its passengers, . . . including the plaintiffs herein."

In rejecting petitioner's contention that the negligence of Marcial Nocum could not be imputed to it and relieved it from liability, the trial court found that Dionisio Abello "was likewise reckless when he was driving the bus at the rate of from 40 to 50 kilometers per hour on a bumpy road at the moment of the collision."

Another defense put up by petitioner is that since Abello was not its employee it should not be held responsible for his acts. This defense was correctly overruled by the trial court, considering the provisions of Article 1763 of the Civil Code and section 48(b) of the Motor Vehicle Law, which respectively provide as follows:

ART. 1763. A common carrier is responsible for injuries suffered by a passenger on account of the willful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission.

SEC. 48(b). No professional chauffeur shall permit any unlicensed person to drive the motor vehicle under his control, or permit a person, sitting beside him or in any other part of the car, to interfere with him in the operation of the motor vehicle, by allowing said person to take hold of the steering wheel, or in any other manner take part in the manipulation or control of the car.

It appears further, and so the trial court found, that there were negotiations between the parties to compromise the case, as a result of which respondents herein, plaintiffs below, considerably reduced their claims to the amounts subsequently awarded in the judgment; that petitioner had in fact settled the claims of the other passengers who were also injured in the same accident and even the claim for damages filed in another action by the owner of the freight truck; and that the Government Corporate Counsel himself, who represents herein petitioner, rendered two separate opinions (Op. No. 86, May 19, 1960; and Op. No. 99, series of 1961) wherein, after analyzing the facts and the law applicable, he reached the conclusion that the acts of the bus personnel, particularly "in allowing Mr. Abello to drive despite two occasions when the bus stopped and the regular driver could have taken over, constitute reckless imprudence and wanton injurious conduct on the part of the MRR employees," On the basis of those opinions the Government Corporate Counsel advised petitioner that the offer of the claimants was reasonable and should be accepted. His advice, however, was not favorably acted upon, petitioner obviously preferring to litigate.

The issues proposed to be taken up on appeal, as set forth in the petition, are whether or not Dionisio Abello acted with reckless negligence while driving petitioner's bus at the time of the accident, and whether or not petitioner may be held liable on account of such negligence, considering that he was not its employee. These are no longer justiciable questions which would justify our issuing the peremptory writ prayed for. The first is a question of fact on which the affirmative finding of respondent court is not reviewable by Us; and the second is one as to which

there can be no possible doubt in view of the Provisions of the Civil Code and of the Motor Vehicle Law hereinbefore cited. There would be no point in giving the appeal due course.

The writ prayed for is denied, with costs against petitioner.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., and Sanchez, JJ., concur.

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