

CORNELIA A. DE GILLACO, ET AL., PLAINTIFFS AND APPELLEES, VS. MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.

G.R. No. L-8034. November 18, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Manila Railroad Company has appealed from a judgment of the Court of First Instance of Laguna sentencing it to pay P4,000 damages to the appellees herein, the widow and children of the late Tomas Gillaco, shot by an employee of the Company in April, 1946.

The judgment was rendered upon the following stipulation of facts:

"That at about 7:30 a.m., on the morning of April 1, 1946, Lieut. Tomas Gillaco, husband of the plaintiff, was a passenger in the early morning train of the Manila Railroad Company from Calamba, Laguna to Manila;

That when the train reached the Paco Railroad station, Emilio Devesa, a train guard of the Manila Railroad Company assigned in the Manila-San Fernando, La Union Line, happened to be in said station waiting for the same train which would take him to Tutuban Station, where he was going to report for duty;

That Devesa's tour of duty on that day was from 9:00 a.m., until the train to which he was assigned reached La Union at 7:00 p.m. of the same day;

That Emilio Devesa had a long standing personal grudge against Tomas Gillaco, same dating back during the Japanese occupation;

That because of this personal grudge, Devesa shot Gillaco with the carbine furnished to him by the Manila Railroad Company for his use as such train guard, upon seeing him inside the train coach;

That Tomas Gillaco died as a result of the wound which he sustained from the shot fired by Devesa."

It is also undisputed that Devesa was convicted of homicide by final judgment of the Court of Appeals.

Appellant's contention is that, on the foregoing facts, no liability attaches to it as employer of the killer, Emilio Devesa; that it is not responsible subsidiary *ex delicto*, under Art. 103 of the Revised Penal Code, because the crime was not committed while the slayer was in the actual performance of his ordinary duties and service; nor is it responsible *ex contractu*, since the complaint did not aver sufficient facts to establish such liability, and no negligence on appellant's part was shown. The Court below held the Railroad company responsible on the ground that a contract of transportation implies protection of the passengers against acts of personal violence by the agents or employees of the carrier.

There can be no quarrel with the principle that a passenger is entitled to protection from personal violence by the carrier or its agents or employees, since the contract of transportation obligates the carrier to transport a passenger safely to his destination. But under the law of the case, this responsibility extends only to those that the carrier could foresee or avoid through the exercise of the degree of care and diligence required of it.

Discussing the basis of a carrier's liability under the old Civil Code of 1889 (which was in force in 1946, when Gillaco was shot), this Court said in *Lasam vs. Smith* (45 Phil., 657) :

"In our opinion, the conclusions of the court below are entirely correct. That upon the facts stated the defendant's liability, if any, is contractual, is well settled by previous decisions of the court, beginning with the case of *Rakes vs. Atlantic, Gulf & Pacific Co.* (7 Phil., 359), and the distinction between extra-contractual liability and contractual liability has been so ably and exhaustively discussed in various other cases, that nothing further need here be said upon that subject. (See *Cangco vs. Manila Railroad Co.*, 38 Phil., 768; *Manila Railroad vs. Compañia Transatlantica and Atlantic, Gulf & Pacific Co.*, 38 Phil., 875; *De Guia vs. Manila Electric Railroad & Light Co.*, 40 Phil., 706). It is sufficient to reiterate that the source of the defendant's legal liability is the contract of carriage; that by entering into that contract he bound himself to carry the plaintiff safely and securely to their destination; and that having failed to do so he is liable in damages unless he shows that the failure to fulfill his obligation was due to causes mentioned in article 1105 of the Civil Code, which reads as follows:

" 'No one shall be liable for events which could not be foreseen or which, even if foreseen, were inevitable, with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes such liability.'"

The act of guard Devesa in shooting passenger Gillaco (because of a personal grudge nurtured against the latter since the Japanese occupation) was entirely unforeseeable by the Manila Railroad Co. The latter had no means to ascertain or anticipate that the two would meet, nor could it reasonably foresee every personal rancor that might exist between each one of its many employees and any one of the thousands of eventual passengers riding in its trains. The shooting in question was therefore "caso fortuito" within the definition of article 1105 of the old Civil Code, being both unforeseeable and inevitable under the given circumstances; and pursuant to established doctrine, the resulting breach of appellant's contract of safe carriage with the late Tomas Gillaco was excused thereby.

No doubt that a common carrier is held to a very high degree of care and diligence in the protection of its passengers; but, considering the vast and complex activities of modern rail transportation, to require of appellant that it should guard against all possible misunderstanding between each and every one of its employees and every passenger that might chance to ride in its conveyances at any time, strikes us as demanding diligence beyond what human care and foresight can provide.

The lower Court and the appellees both relied on the American authorities that particularly hold carriers to be insurers of the safety of their passengers against willful assault and intentional illtreatment on the part of their servants, it being immaterial that the act should be one of private retribution on the part of the servant, impelled by personal malice toward the passenger (10 Am. Jur. 108; Ed. Note to *Gassenheimer vs. Wester R. Co.* 40 LRA (NS), p. 999, et seq.). But as can be inferred from the previous jurisprudence of this Court, the Civil Code of 1889 did not impose such absolute liability (*Lasam vs. Smith*, supra). The liability of a carrier as an insurer was not recognized in this jurisdiction (*Government vs. Inchausti & Co.*, 40 Phil., 219; *Oriental Comm. Co. vs. Naviera Filipina*, 38 Off. Gaz., 1020).

Another very important consideration that must be borne in mind is that, when the crime took place, the guard Devesa had no duties to discharge in connection with the transportation of the deceased from Calamba to Manila. The stipulation of facts is clear that when Devesa shot and killed Gillaco, Devesa was assigned to guard the Manila-San Fernando (La Union) trains, and he was at Paco Station awaiting transportation to Tutuban, the starting point of the train that he was engaged to guard. In fact, his tour of duty was to start at 9:00 a.m., two hours after the commission of the crime. Devesa was therefore under no obligation to safeguard the passengers of the Calamba-Manila train, where the deceased was riding; and the killing of Gillaco was not done in line of duty. The

position of Devesa at the time was that of another would be passenger, a stranger also awaiting transportation, and not that of an employee assigned to discharge any of the duties that the Railroad had assumed by its contract with the deceased. As a result, Devesa's assault cannot be deemed in law a breach of Gillaco's contract of transportation by a servant or employee of the carrier. We agree with the position taken by the Supreme Court of Texas in a similar case, where it held:

"The only good reason for making the carrier responsible for the misconduct of the servant perpetrated in his own interest, and not in that of his employer, or otherwise within the scope of his employment, is that the servant is clothed with the delegated authority, and charged with the duty by the carrier, to execute his undertaking with the passenger. And it cannot be said, we think, that there is any such delegation to the employees at a station with reference to passengers embarking at another or traveling on the train. Of course, we are speaking only of the principle which holds a carrier responsible for wrongs done to passengers by servants acting in their own interest, and not in that of the employer. That principle is not the ordinary rule, respondent superior, by which the employer is held responsible only for acts or omissions of the employee in the scope of his employment; but the only reason in our opinion for a broader liability arises from the fact that the servant, in mistreating the passenger wholly for some private purpose of his own, in the very act, violates the contractual obligation of the employer for the performance of which he has put the employee in his place. That reason does not exist where the employee who committed the assault was never in a position in which it became his duty to his employer to represent him in discharging any duty of the latter towards the passenger. The proposition that the carrier clothes every employee engaged in the transportation business with the comprehensive duty of protecting every passenger with whom he may in any way come in contact, and thereby makes himself liable for every assault committed by such servant, without regard to the inquiry whether or not the passenger has come within the sphere of duty of that servant as indicated by the employment, is regarded as not only not sustained by the authorities, but as being unsound and oppressive both to the employer and the employee. (Houston & T. C. R. Co. vs. Bush, 32 LRA (NS), p. 1205.)

Wherefore, the judgment appealed from is reversed and the complaint ordered dismissed, without costs. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.

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