

**FELICIDAD AGUILAR, PLAINTIFF-APPELLEE, VS. ERLINDA Q. CHAN,
ET AL., ISABEL Q. JUECO AND FORTUNATO JUECO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-29688. October 09, 1986

Ponente: PARAS, J.

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PARAS, J.:

It appears that a complaint Civil Case No. 5611 for the recovery of actual, moral and exemplary damages by reason of a vehicular accident, was filed by herein plaintiff-appellee Felicidad Aguilar against four (4) defendants: (1) Erlinda Q. Chan, owner of International Truck bearing Plate No. TPU 9916 '59; (2) Isabel Q. Jueco, operator of the "Forisa" buses; (3) Fortunato Jueco,[1] husband of Isabel Q. Jueco and manager of the "Forisa" buses and transportation business of Erlinda Q. Chan; and (4) Melanio Queyangco, driver of Said Truck No. TPU 9916, 1959. The first three defendants have appealed the default judgment rendered against them and are now referred to herein as defendants-appellants. The driver, Melanio Queyangco was never served summons, and he is not an appellant herein.

After the three defendants-appellants had filed their answers, the case was set for pre-trial and notices thereof were sent to the defendants-appellants and their counsel at their addresses on record.

At this scheduled pre-trial, however, no defendants-appellants or counsel appeared. Pursuant to Sec. 2, Rule 20 of the Rules of Court the defendants-appellants were declared as in default and plaintiff-appellant was allowed to present her evidence ex-parte.

The lower court eventually rendered a default judgment in favor of plaintiff-appellee, the dispositive portion of which reads -

"In view of all the foregoing, decision is hereby rendered in favor of the plaintiff and against all the defendants ordering defendants Erlinda Q. Chan, Isabel Q. Jueco, Fortunato Jueco and Melanio Queyangco, jointly and severally, to pay unto the plaintiff Felicidad Aguilar the sum of Five Thousand (P5,000.00) by way of moral and exemplary damages and the sum of Seven Hundred Fifty (P750.00) by way of attorney's fees and to pay the costs."

"Petitions for relief" were then filed by the defendants-appellants with the trial court eventually denying them.

Plaintiff filed her Answer to the petitions for relief, and ended the same with a prayer for the denial of the petitions and the issuance of a writ of execution against the defendants.

On appeal to the Court of Appeals, said body certified to Us the case on the ground that only questions of law were involved.

Although the Court of Appeals certified the instant appeal to this Court on the theory that it was an appeal from the order of the lower court denying defendants-appellants' petitions for relief from judgment under Rule 38 of the

Revised Rules of Court, in reality what defendants-appellants filed with the lower court were timely motions for new trial on the ground of excusable negligence. The record on appeal shows that counsel for defendant-appellant Erlinda Chan was not served a copy of the judgment by default against his client and that he only learned about the decision through defendant-appellant Fortunato Jueco. On the other hand, counsel for defendants-appellants Isabel Q. Jueco and Fortunato Jueco received a copy of the aforesaid decision only ten days before he filed a petition for relief. In fact, even the counsel for plaintiff-appellee, in his answer to the petitions for relief from judgment, states that he received a copy of said decision after the filing of the petitions for relief.

Inasmuch as the judgment by default had not yet become final and executory when the petitions for relief were filed, it is clear that said petitions for relief were in reality motions for new trial. Consequently, upon the denial of said petitions, defendants-appellants had the right to appeal, as in fact they appealed, from the judgment by default in accordance with Section 2, Rule 41 of the Revised Rules of Court.

After reviewing the allegations in the verified petitions for relief as well as the allegations in the verified answer thereto, We find no sufficient ground to set aside the order of the lower court denying the same.

We shall proceed to review the evidence presented and the propriety of the award of damages made by the lower court.

The evidence on record discloses that plaintiff-appellee boarded a bus with the mark 'Forisa', owned by defendant-appellant Erlinda Chan. She was bound for San Andres Subdivision. The bus overturned and burned at Vermont and Singalong streets. As a result, plaintiff suffered physical injuries as shown in the medical certificate, Exh. "A" as follows:

'Fracture, distal radius and ulna,
right, Laceration, ear, right'

which injuries required performance of a surgical operation at the Phil. General Hospital. Plaintiff-appellee suffered physical pains and mental agony caused by the fracture of her right forearm. The fracture caused her permanent disability. She would not be able to use her right forearm as before unless she submitted to further surgical operations. She could not continue her usual work as piece contractor at P6.00 a day in a shirt factory in Ongpin St., Manila. She could not receive work in her house sewing shirts out of which task, she used to earn an additional amount of P10.00 daily.

In her complaint, plaintiff made a general prayer that the defendants, jointly and severally, be ordered to pay her actual or compensatory, moral and exemplary damages and attorney's fees in the lump sum of P10,000.00.

The actual damages suffered by plaintiff-appellee exceeded the amount of Five Thousand Seven Hundred Fifty (P5,750.00) Pesos awarded her by the lower court. However, since plaintiff-appellee did not appeal, We cannot award her more than the amount awarded by the lower court (Go vs. Court of Appeals, 100 SCRA 549).

As already stated, the record further discloses that defendant Melanio Queyangco had not been served with summons. Jurisdiction therefore was never acquired over his person.

WHEREFORE, with the modification that the award is for actual damages suffered by plaintiff-appellee as well as attorney's fees and that defendant Melanio Queyangco is excluded therefrom, the judgment appealed from is **AFFIRMED**, without costs.

SO ORDERED.

Feria, Acting C.J., (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

[1] Isabel and Fortunato Jueco were included as defendants because as owners they were operating the bus involved in their own franchise line.

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