

LOURDES MUNSAYAC, PETITIONER, VS. BENEDICTA DE LARA AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-21151. June 26, 1968*

Ponente: MAKALINTAL, J.

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As a result of injuries suffered by the plaintiff-appellee while riding as a passenger on a jeepney owned and operated by the defendant-appellant, this action for recovery of damages was filed in the Court of First Instance of Rizal (Pasig Branch). The trial Judge found the driver recklessly negligent: he drove at an excessive speed, unmindful of the fact that the road was under repair and heedless of the passengers' pleas that he go more slowly. Besides the award of compensatory damages for actual expenses incurred and loss of income, the defendant was ordered to pay P1,000.00 as exemplary damages and P500.00 as attorney's fees. On these last two items the defendant appealed to the Court of Appeals, which rendered a judgment of affirmance, quoting the trial Court's justification for the award as follows:

"The defendant's admission that the accident happened and the plaintiff's extensive injuries as a result thereof, despite which the defendant failed, or even refused, to placate the sufferings of plaintiff, necessitating the filing of this action, entitled plaintiff to exemplary damages - to set an example to others - and attorney's fees."

The case is now before us on review by certiorari.

The Civil Code provides that "exemplary or corrective damages are imposed, by way of example or correction for the public good" (Art. 2229); and that in contracts "the Court may award exemplary damages if the defendant acted in wanton, fraudulent, reckless, oppressive or malevolent manner" (Art. 2232).

Appellant points out that the act referred to in Article 2232 must be one which is coetaneous with and characterizes the breach of the contract on which the suit is based, and not one which is subsequent to such breach and therefore has no causal relation thereto, such as the herein defendant's failure to placate the sufferings of the plaintiff."

Appellant relies on the case of *Rotea vs. Halili*, G. R. No. L-12030, September 30, 1960, where this Court held.

"According to the rule adopted by many courts, a principal or master can be held liable for exemplary or punitive damages based upon the wrongful act of his agent or servant only where he participated in the doing of such wrongful act or has previously authorized or subsequently ratified it with full knowledge of the facts. Reasons given for this rule are that since damages are penal in character, the motive authorizing their infliction will not be imputed by presumption to the principal when the act is committed by an agent or servant, and that since they are awarded not by way of compensation, but as a warning to others, they can only be awarded against one who has participated in the offense, and the principal therefore cannot be held liable for them merely by reason of wanton, oppressive or malicious intent on the part of the agent' (15 Am. Jur. 730)."

We believe the point of the appellant is well-taken. It is difficult to conceive how the defendant in a breach of contract case could be held to have acted in a wanton, fraudulent, reckless, oppressive or malevolent manner

with-in the meaning of Article 2232 for something he did or did not do after the breach, which had no causal connection therewith. The law does not contemplate a vicarious liability on his part: the breach is his as party to the contract, and so if he is to be held liable at all for exemplary damages by reason of the wrongful act of his agent, it must be shown that he had previously authorized or knowingly ratified it thereafter, in effect making him a co-participant. From the decision under review, however, there is nothing to show previous authority or subsequent ratification by appellant insofar as the recklessness of the driver was concerned. The mere statement that the defendant failed, even refused, to placate the suffering of the plaintiff, necessitating the filing of the action, is too tenuous a basis to warrant the conclusion that the defendant approved of the wrongful act of his servant with full knowledge of the facts.

It is not enough to say that an example should be made, or corrective measures employed, for the public good, especially in accident cases where public carriers are involved. For the causative negligence in such cases is personal to the employees actually in charge of the vehicles, and it is they who should be made to pay this kind of damages by way of example or correction, unless by the demonstrated tolerance or approval of the owners they themselves can be held at fault and their fault is of the character described in Article 2232 of the Civil Code. Otherwise there would be practically no difference between their liability for exemplary damages and their liability for compensatory damages, which needs no proof of their negligence since the suit is predicated on breach of contract and due diligence on their part does not constitute a defense.

In view of the foregoing, the judgment appealed from is modified by eliminating the award for exemplary damages and affirmed with respect to the attorney's fees. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Angeles and Fernando, JJ., concur.

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