

SOLEDAD A. VERZOSA, PETITIONER, VS. AUGUSTO BAYTAN, ARMANDO ZACARIAS, ROSALIO RETENER, HORACIO CUSTODIO, ADORACION CUSTODIO, FELIX ANGELES, ALEJANDRO BELLEZA, SIMEON JACINTO, PA...

G.R. No. L-14092. April 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for review by certiorari of a decision of the Court of Appeals. The main facts are set forth in said decision from which we quote:

"In 1953, Soledad A. Verzosa was a duly authorized public service operator and possessor of a certificate of public convenience issued by the Public Service Commission. She was maintaining and operating passenger buses plying the public highways and roads of Zambales, Bataan, Bulacan, City of Manila and suburbs; and was doing her transportation business under the name and style of Try-V-Tran. On September 4, 1953, Augusto Baytan, Armando Zacarias, Rosalio Retcner, Horacio Custodio, Adoracion Custodio, Felix Angeles, Alejandro Belleza, Simeon Jaointo, Paula Jacmto, and Dominador Magbanua, boarded in Olongapo, Zambales, one of Verzosa's buses, bearing plate number TPU-505 s/53 (Zambales), then being driven by Silvino Mangliemot and bound for Manila. Upon reaching sitio Longos, Malolos, Bulacan, the said bus collided with a freight truck which was coming from the opposite direction, and as a result thereof, the above named passengers suffered injuries. They were immediately taken to the Malolos Provincial Hospital for emergency treatment, and later some of them were brought to the National Orthopedic Hospital for further treatment. All the injured passengers were employed by the U. S. Navy, "with the exception of Adoracion Custodio, who was a dressmaker, Simeon Jacinto and Paula Jacinto, who were school teachers. Aside from being rendered unable to report for work for the duration of their treatment, they also lost some belongings as a consequence of the collision, which likewise destroyed two carretelas and injured the rig drivers and the horses. Driver Manglicmot was charged with the crime of 'damages to property with multiple physical injuries and abortion thru reckless imprudence' in the Court of First Instance of Bulacan, where the case was docketed as criminal case numbered 2050. Meanwhile, the above named passengers filed a complaint with the Court of First Instance of Manila against Soledad A. Verzosa and Silvino Manglicmot, praying that defendants be condemned to pay, jointly and severally, each and every one of the plaintiffs:

'(a) Under the first cause of action, the sum of P250.00 (or a total of P2,500.00), for medical attendance and drugs, plus whatever amount may accrue thenceforth until the time of their complete recovery.

'(b) Under the second cause of action, the sum of P3,896.68, representing lost of income incurred by plaintiffs up to the date of this complaint as follows:

August Baytan.....

P317.44

Abelardo Zacarias.....

P273.92

Rosalio Retener.....

P396.80

Horacio Custodio.....

P317.44

Adoracion Custodio.....

P160.00

Felix Angeles

P396.80

Alejandro Belleza.....

P199.68

Simeon Jacinto.....

P270.00

Paula Jacinto

P270.00

Dominador Magbanua

P417.28

'(c) Under the third cause of action, the sum of P1,091.00 representing lost personal belongings of the plaintiffs, as follows:

Augusto Baytan—

1 wrist watch (Lord Elgin)

P180.00

Abelardo Zacarias—

1 wrist watch (Lord Elgin).....

P180.00

Rosalio Ketener—

1 bag of clothes.....

P 30.00

commissary goods

P 30.00

Horacio Custodio—

cash

P 66.00

1 wrist watch (Gruen)

P120.00

1 bag of clothes.....

P 50.00

Adoracion Custodio—

5 dresses

P 20.00

Felix Angeles—

1 bag of clothes

P100.00

Alejandro Belleza—

1 wrist watch (Lord Elgin)

P180.00

1 eyeglass

P 50.00

Simeon Jacinto—

1 wrist watch (Bulova).....

P140.00

1 eyeglass

P 45.00

cash

P175.00

1 bag of clothes.....

P 45.00

Paula Jacinto—

1 wrist watch (Lady Elgin)

P175.00

1 eyeglass.....

P 45.00

Dominador Magbanua—

cash

P 61.00

1 bag of clothes.....

P 50.00

commissary goods

P 20.00

Total

P 1,691.00

'(d) Under the fourth cause of action, the sum of P15,000.00, each (or a total of P150,000.00), for moral damages for distress in body and mind, mental anguish and physical deformities.

'(e) Under the fifth cause of action, the sum of P1,800.00, (or a total of P18,000.00), for attorney's fees.

'(f) The sum of P2,500.00 (or a total of P5,000.00), as exemplary damages; and

'(g) To pay the costs of suit.

"Plaintiffs pray for any other and further relief to which they may be entitled under the premises. (pp. 1.0-13, record on appeal)

"Only defendant Verzosa registered an answer alleging that the driver of her passenger bus exercised all the diligence of a good father of a family, and that the collision was due to the negligence of Leon Macabulos, who was then driving cargo truck bearing plate number T-700 s/53 (Pampanga), belonging to Pablo Narciso, both of whom are the ones responsible for the damages sustained by plaintiffs. Verzosa consequently prayed for the dismissal of this case. Upon plaintiffs' motion, defendant Manglicmot was declared in default on January 25, 1954.

"The issues thus joined, several hearings were held, after which the Court below rendered judgment ordering defendants:

'(a) To pay the herein plaintiffs the sum of P2,500.00 for medical attendance and drugs spent by them for their complete recovery; (b) the sum of P3,896.68 representing the lost income on which the herein plaintiffs have failed to receive from the time of the accident to the date of the filing of this complaint; (c) the sum of P1,691.00 which was the value of the personal belongings of the herein plaintiffs which were lost and had disappeared by reason of this accident; (d) the sum of P30,000.00 for moral damages for mental and bodily distress, as well as mental anguish and physical deformities; (e) the sum of P5,000.00 for attorney's fees and to

pay the costs of this suit.' (p. 23, record on appeal.)"

On appeal, this decision was affirmed by the Court of Appeals, except as to the amount of the moral damages, which was reduced altogether to P10,000. Hence, Soledad A. Verzosa filed this petition to review, upon the ground that the moral damages and attorney's fees awarded in the decision appealed from are not in accordance with law, particularly Articles 2219 and 2220 of the Civil Code of the Philippines, and the doctrine laid down in *Cachero vs. Itanila Yellow Taxicab*, 101 Phil., 523; 54 Off. Gaz. (26) 6599.

Said Article 2219 reads:

"Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 84, and 35.

"The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

"The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this Article, in the order named."

Petitioner maintains that the present action does not fall under said provision and is not analogous to any of the cases therein enumerated. Upon the other hand, respondents assert the contrary, upon the authority of Articles 21 and 1170 of said Code, which provide:

"Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

"Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages."

There is, however, no merit in respondents' pretense, for petitioner has been sued by respondents herein and was sentenced by the Court of First Instance and the Court of Appeals, not by reason of any act which is contrary to morals, good customs or public policy, but, merely on account of the fact that she is liable for the negligence of her agent or driver, which gave occasion for the injuries and damages sustained by respondents (Articles 1755, 1756, 1757 and 1759, Civil Code of the Philippines). With respect to said Article 1170, suffice it to say that the same merely sets forth a general principle on damages, and that, as regards moral damages, Article 2219 is controlling, it being a specific provision thereon, and, as such, it prevails over Article 1170.

At any rate, the decision of the Court of Appeals correctly held that the liability of petitioner herein arises from a breach of her contract of carriage with respondents herein, and, in such event, "moral damages are recoverable only when the defendant acted fraudulently or in bad faith" in the language of Article 2220 of our Civil Code. In the case at bar, there is neither allegation nor proof that petitioner herein is guilty, either of fraud, or of bad faith.

In *Fores vs. Miranda* (105 Phil., 266; 57 Off. Gaz. [44] 7938), this Court, speaking through Mr. Justice Reyes

(J.B.L.), had the following to say:

"Anent the moral damages ordered to be paid to the respondent, the same must be discarded. "We have repeatedly ruled (*Cachero vs. Manila Yellow Taxicab Co. Inc.*, 101 Phil., 523; 54 Off. Gaz. 6599; *Necesito, et al. vs. Parais*, 104 Phil., 75; 56 Off. Gaz. [23] 4023) that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code, which provide as follows:

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

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

* * * * *

'Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.'

"By contrasting the provisions of these two articles it immediately becomes apparent that:

(a) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (*dolus*), i. e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages; and

(b) That a breach of contract can not be considered included in the descriptive term 'analogous cases' used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code expressly excludes the cases where there is a 'pre-existing contractual relation between the parties.'

'Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.'

The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Art. 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to 'demand moral damages for mental anguish by reason of the death of the deceased' (*Necesito vs. Paras*, 104 Phil., 75; 56 Off. Gaz. [23] 4023, Eesolution on motion to reconsider, September 11, 1958). But the exceptional rule of Art. 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not per se constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by Art. 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

"The Court of Appeals has invoked our rulings in *Castro vs. Aero Taxicub Co.* G. R. No. 49155, December 14, 1948 and *Layda vs. Court of Appeals*, 90 Phil., 724; but these doctrines were predicated upon our former law of damages, before judicial discretion in fixing them became limited by the express provisions of the new Civil Code (previously quoted). Hence, the aforesaid rulings are now inapplicable.

"Upon the other hand, the advantageous position of a party suing a carrier for breach of the contract of

transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to force majeure (*Cangco vs. Manila Railroad Co.*, 38 Phil., 768, 777). Moreover, the carrier, unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 1759, new Civil Code; *Cangco vs. Manila Railroad Co.*, supra; *Prado vs. Manila Electric Co.*, 51 Phil., 900).

"The difference in conditions, defenses and proof, as well as the codal concept of quasi-delict as essentially extra-contractual negligence, compel us to differentiate between actions *ex contractu*, and actions *quasi ex delictio*, and prevent us from viewing the action for breach of contract as simultaneously embodying an action on tort. Neither can this action be taken as one to enforce on employer's liability under Art. 103 of the Revised Penal Code, since the responsibility is not alleged to be subsidiary, nor is there on record any averment or proof that the driver of appellant was insolvent. In fact, he is not even made a party to the suit.

"It is also suggested that a carrier's violation of its engagement to safely transport the passenger involves a breach of the passenger's confidence and therefore should be regarded as a breach of contract in bad faith, justifying recovery of moral damages under Art. 2220. This theory is untenable, in every case its obligation to the passenger is infringed; while under the law (Art. 1756), the presumption is that common carriers acted negligently (and not maliciously), and Art. 1762 speaks of negligence of the common carrier.

'ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.'

'ART. 1762. The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier but the amount of damages shall be equitably reduced.'

"The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored (Arts. 1170-1172); their consequences being clearly differentiated by the Code.

'ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

'In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.'

"It is to be presumed, in the absence of statutory provision to the contrary, that this difference was in the mind of the lawmakers when in Art. 2220 they limited recovery of moral damages to breaches of contract in bad faith. It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees.

"In view of the foregoing considerations the decision of the Court of Appeals is modified by eliminating the award of P5,000.00 by way of moral damages (Court of Appeals Resolution of May 3, 1957)."

It is thus clear, therefore, that respondents herein are not entitled to moral damages.

As regards the attorney's fees, Article 2208 of the afore-mentioned Code ordains:

"In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

"In all cases, the attorney's fees and expenses of litigation must be reasonable."

It is urged by petitioner herein that paragraphs 2 and 4 of this provision, which are the only ones having a bearing on the present case, are inapplicable thereto for, by setting up an aggregate claim of approximately P200,000, which is manifestly excessive, respondents have, in fact, compelled the petitioner to reject it. It appears, however, that in their letter of demand to petitioner herein, respondents did not specify any sum of money. What is more, they explicitly stated:

"Extra-judicial settlement of their cases, may still be possible, should you be willing to pay them the reasonable damages just and proper for each and every one of them to receive."

Again, in the reply thereto, made by the former counsel of petitioner herein, the liability of the latter was denied, upon the ground that the injury and damages sustained by respondents were due to the negligence, not of petitioner's driver, but of the driver of the freight truck which collided with petitioner's bus.

Considering, however, that the aggregate amount of the actual and compensatory damages awarded to respondents herein is a little over P8,000.00, and that, as provided in the above-quoted Article 2208, "in all cases the attorney's fees and expenses of litigation must be reasonable", this Court is of the opinion that the attorney's fees in the present case should be reduced from P5,000.00 to P1,000.00.

With the elimination of the award of moral damages and the reduction of the attorney's fees to P1,000.00, the decision of the Court of Appeals is hereby affirmed, therefore, in all other respects, without special pronouncement as to costs in this instance. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

Reyes, J.B.L., J., took no part.

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