

**BATANGAS TRANSPORTATION COMPANY, PETITIONER, VS.
GREGORIO CAGUIMBAL, PANCRACIO CAGUIMBAL, MARIA
MARANAN DE CAGUIMBAL, BIÑAN TRANSPORTATION COMPANY
AND MARCIANO ILAGAN, RESPONDENTS.**

G.R. No. L-22985. January 24, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari from a decision of the Court of Appeals.

The main facts are set forth in said decision from which we quote:

"There is no dispute at all that the deceased Pedro Caguimbal, Barrio Lieutenant of Barrio Calansayan, San Jose, Batangas, was a paying passenger of BTCO bus, with plate TPU-507, going south on its regular route from Calamba, Laguna, to Batangas, Batangas, driven by Tomas Perez, its regular driver, at about 5:30 o'clock on the early morning of April 25, 1954. The deceased's destination was his residence at Calansayan, San Jose, Batangas. The bus of the Biñan Transportation Company, bearing plate TPU-820, driven by Marciano Ilagan, was coming from the opposite direction (north-bound). Along the national highway at Barrio Daraza, Tanauan, Batangas, on the date and hour above indicated, a horse-driven rig (calesa) managed by Benito Makahiya, which was then ahead of the Biñan bus, was also coming from the opposite direction, meaning proceeding towards the north. As to what transpired thereafter, the lower court chose to give more credence to defendant Batangas Transportation Company's version which, in the words of the Court a quo, is as follows: 'As the BTCO bus was nearing a house, a passenger requested the conductor to stop as he was going to alight, and when he heard the signal of the conductor, the driver Tomas Perez slowed down his bus swerving it farther to the right in order to stop; at this juncture, a calesa then driven by Benito Makahiya was at a distance of several meters facing the BTCO bus coming from the opposite direction; that at the same time, the Biñan bus was about 100 meters away likewise going northward and following the direction of the calesa; that upon seeing the Biñan bus, the driver of the BTCO bus dimmed his light as established by Magno Ilaw, the very conductor of the Biñan bus at the time of the accident; that as the calesa and the BTCO bus were passing each other from the opposite directions, the Biñan bus following the calesa swerved to its left in an attempt to pass between the BTCO bus and the calesa; that without diminishing its speed of about seventy (70) kilometers an hour, the Biñan bus passed through the space between the BTCO bus and the calesa hitting first the left side of the BTCO bus with the left front corner of its body and then bumped and struck the calesa which was completely wrecked; that the driver was seriously injured and the horse was killed; that the second and all other posts supporting the top of the left side of the BTCO bus were completely smashed and half of the back wall to the left was ripped open (Exhibits 1 and 2). The BTCO bus suffered damages for the repair of its damaged portion."

As a consequence of this occurrence, two (2) passengers of BTCO died, namely, Pedro Caguimbal and Guillermo Tolentino, apart from others who were injured. The widow and children of Caguimbal instituted the present action, which was tried jointly with a similar action of the Tolentinos, to recover damages from the Batangas

Transportation Company, hereinafter referred to as BTCO. The latter, in turn, filed a third-party complaint against the Biñan Transportation Company — hereinafter referred to as Biñan — and its driver, Marciano Ilagan. Subsequently, the Caguimbals amended their complaint, to include therein, as defendants, said Biñan and Ilagan.

After appropriate proceedings, the Court of First Instance of Batangas rendered a decision dismissing the complaint insofar as the BTCO is concerned, without prejudice to plaintiffs' right to sue Biñan — which had stopped participating in the proceedings herein, owing, apparently, to a case in the Court of First Instance of Laguna for the insolvency of said enterprise — and Ilagan, and without pronouncement as to costs.

On appeal taken by the Caguimbals, the Court of Appeals reversed said decision and rendered judgment for them, sentencing the BTCO, Biñan and Ilagan to, jointly and severally, pay to the plaintiffs the aggregate sum of P10,500.00[1] and costs in both instances. Hence, this appeal by BTCO, upon the ground that the Court of Appeals erred: 1) in finding said appellant liable for damages; and 2) in awarding attorney's fees.

In connection with the first assignment of error, we note that the recklessness of defendant Ilagan was, manifestly, a major factor in the occurrence of the accident which resulted, inter alia, in the death of Pedro Caguimbal. Indeed, as driver of the Biñan bus, he overtook Benito Makahiya's horse-driven rig of calesa and passed between the same and the BTCO bus despite the fact that the space available was not big enough therefor, in view of which the Biñan bus hit the left side of the BTCO bus and then the calesa. This notwithstanding, the Court of Appeals rendered judgment against the BTCO, upon the ground that its driver, Tomas Perez, had failed to exercise the "extraordinary diligence," required in Article 1733 of the new Civil Code, "in the vigilance for the safety" of his passengers.[2]

The record shows that, in order to permit one of them to disembark, Perez drove his BTCO bus partly to the right shoulder of the road and partly on the asphalted portion thereof. Yet, he could have and should have seen to it — had he exercised "extraordinary diligence" — that his bus was completely outside the asphalted portion of the road, and fully within the shoulder thereof, the width of which being more than sufficient to accommodate the bus. He could have and should have done this, because, when the aforementioned passenger expressed his wish to alight from the bus, Ilagan had seen the aforementioned "calesa", driven by Makahiya, a few meters away, coming from the opposite direction, with the Biñan bus about 100 meters behind the rig, cruising at a good speed.[3] When Perez slowed down his BTCO bus to permit said passenger to disembark, he must have known, therefore, that the Biñan bus would overtake the "calesa", at about the time when the latter and BTCO bus would probably be on the same line, on opposite of the asphalted portions of the road, and that the space between the BTCO bus and the "calesa" would not be enough to allow the Biñan bus to go through. It is true that the driver of the Biñan bus should have slowed down or stopped, and, hence, was reek less in not doing so; but, he had no especial obligations toward the passengers of the BTCO, unlike Perez whose duty was to exercise "utmost" or "extraordinary" diligence for their safety. Perez was thus under obligation to avoid a situation which would be hazardous for his passengers, and make their safety dependent upon the diligence of the Biñan driver. Such obligation becomes more patent when we consider the fact — of which the Court may take judicial cognizance — that our motor vehicle drivers, particularly those of public utilities, have not distinguished themselves for their concern over the safety, the comfort or the convenience of others. Besides, as correctly stated in the syllabus to *Brito Sy vs. Malate Taxicab & Garage, Inc.*,[4]

"In an action based on a contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay the damages sought for by the passenger. By the contract of carriage, the carrier assumes the express obligation to transport the passenger to his destination safely and to observe extraordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the

carrier (Article 1756, new Civil Code). This is an exception to the general rule that negligence must be proved, and it is therefore incumbent upon the carrier to prove that it has exercised extraordinary diligence as prescribed in Article 1733 and 1755 of the new Civil Code. "

In the case at bar, BTCO has not proven the exercise of extraordinary diligence on its part. For this reason, the case of Isaac vs. A. L. Ammen Trans. Co., Inc.,^[5] relied upon by BTCO, is not in point, for, in said case, the public utility driver had done "everything he could to avoid" the accident, and could not have possibly avoided it, for he "swerved the bus to the very extreme right of the road, which the driver, in the present case, had failed to do.

As regards the second assignment of error, appellant argues that the award of attorney's fees is not authorized by law, because, of the eleven (11) cases specified in Article 1208 of the new Civil Code, only the fifth and the last are relevant to the one under consideration; but the fifth case requires bad faith, which does not exist in the case at bar. As regards the last case, which permits the award, "where the court deems it just and equitable that attorney's fees x x x should be recovered," it is urged that the evidence on record does not show the existence of such just and equitable grounds.

We, however, believe otherwise, for: (1) the accident in question took place on April 25, 1954, and the Caguimbals have been constrained to litigate for over thirteen (13) years to vindicate their rights; and (2) it is high time to impress effectively upon public utility operators the nature and extent of their responsibility in respect of the safety of their passengers and their duty to exercise greater care in the selection of drivers and conductors and in supervising the performance of their duties, in accordance, not only with Article 1733 of the Civil Code of the Philippines, but, also, with Articles 1755 and 1756 thereof^[6] and the spirit of these provisions, as disclosed by the letter thereof, and, elucidated by the Commission that drafted the same.^[7]

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with the costs of this instance against appellant Batangas Transportation Company.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Bengzon, J.P., J., did not take part.

[1] For funeral expenses - P 1,000

For the death of Pedro Caguimbal - 6,000

For moral damages - 2,000

For attorney's fees - 1,500

P10,500

[2] "ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."

[3] 70 km. p.h.

[4] 102 Phil., 482.

[5] 101 Phil., 1046.

[6] "ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can

provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances."

"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."

[7] "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all circumstances. This extraordinary diligence required of common carriers is calculated to protect the passengers from the tragic mishaps that frequently occur in connection with rapid modern transportation. This high standard of care is imperatively demanded by the preciousness of human life and by the consideration that every person must in every way be safeguarded against all injury." (Report of the Code Commission, pp. 35-36.)

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