

**MR. & MRS. ENGRACIO FABRE, JR. AND PORFIRIO CABIL,
PETITIONERS, VS. COURT OF APPEALS, THE WORD FOR THE WORLD
CHRISTIAN FELLOWSHIP, INC., AMYLINE ANTONIO, JOHN
RICHARDS, GONZALO ...**

G.R. No. 111127. July 26, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] in CA-GR No. 28245, dated September 30, 1992, which affirmed with modification the decision of the Regional Trial Court of Makati, Branch 58, ordering petitioners jointly and severally to pay damages to private respondent Amyline Antonio, and its resolution which denied petitioners' motion for reconsideration for lack of merit.

Petitioners Engracio Fabre, Jr. and his wife were owners of a 1982 model Mazda minibus. They used the bus principally in connection with a bus service for school children which they operated in Manila. The couple had a driver, Porfirio J. Cabil, whom they hired in 1981, after trying him out for two weeks. His job was to take school children to and from the St. Scholastica's College in Malate, Manila.

On November 2, 1984 private respondent Word for the World Christian Fellowship Inc. (WWCF) arranged with petitioners for the transportation of 33 members of its Young Adults Ministry from Manila to La Union and back in consideration of which private respondent paid petitioners the amount of P3,000.00.

The group was scheduled to leave on November 2, 1984, at 5:00 o'clock in the afternoon. However, as several members of the party were late, the bus did not leave the Tropical Hut at the corner of Ortigas Avenue and EDSA until 8:00 o'clock in the evening. Petitioner Porfirio Cabil drove the minibus.

The usual route to Caba, La Union was through Carmen, Pangasinan. However, the bridge at Carmen was under repair, so that petitioner Cabil, who was unfamiliar with the area (it being his first trip to La Union), was forced to take a detour through the town of Ba-ay in Lingayen, Pangasinan. At 11:30 that night, petitioner Cabil came upon a sharp curve on the highway, running on a south to east direction, which he described as "siete." The road was slippery because it was raining, causing the bus, which was running at the speed of 50 kilometers per hour, to skid to the left road shoulder. The bus hit the left traffic steel brace and sign along the road and rammed the fence of one Jesus Escano, then turned over and landed on its left side, coming to a full stop only after a series of impacts. The bus came to rest off the road. A coconut tree which it had hit fell on it and smashed its front portion.

Several passengers were injured. Private respondent Amyline Antonio was thrown on the floor of the bus and pinned down by a wooden seat which came off after being unscrewed. It took three persons to safely remove her from this position. She was in great pain and could not move.

The driver, petitioner Cabil, claimed he did not see the curve until it was too late. He said he was not familiar with the area and he could not have seen the curve despite the care he took in driving the bus, because it was dark and

there was no sign on the road. He said that he saw the curve when he was already within 15 to 30 meters of it. He allegedly slowed down to 30 kilometers per hour, but it was too late.

The Lingayen police investigated the incident the next day, November 3, 1984. On the basis of their finding they filed a criminal complaint against the driver, Porfirio Cabil. The case was later filed with the Lingayen Regional Trial Court. Petitioners Fabre paid Jesus Escano P1,500.00 for the damage to the latter's fence. On the basis of Escano's affidavit of desistance the case against petitioners Fabre was dismissed.

Amyline Antonio, who was seriously injured, brought this case in the RTC of Makati, Metro Manila. As a result of the accident, she is now suffering from paraplegia and is permanently paralyzed from the waist down. During the trial she described the operations she underwent and adduced evidence regarding the cost of her treatment and therapy. Immediately after the accident, she was taken to the Nazareth Hospital in Ba-ay, Lingayen. As this hospital was not adequately equipped, she was transferred to the Sto. Niño Hospital, also in the town of Ba-ay, where she was given sedatives. An x-ray was taken and the damage to her spine was determined to be too severe to be treated there. She was therefore brought to Manila, first to the Philippine General Hospital and later to the Makati Medical Center where she underwent an operation to correct the dislocation of her spine.

In its decision dated April 17, 1989, the trial court found that:

No convincing evidence was shown that the minibus was properly checked for travel to a long distance trip and that the driver was properly screened and tested before being admitted for employment. Indeed, all the evidence presented have shown the negligent act of the defendants which ultimately resulted to the accident subject of this case.

Accordingly, it gave judgment for private respondents holding:

Considering that plaintiffs Word for the World Christian Fellowship, Inc. and Ms. Amyline Antonio were the only ones who adduced evidence in support of their claim for damages, the Court is therefore not in a position to award damages to the other plaintiffs.

WHEREFORE, premises considered, the Court hereby renders judgment against defendants Mr. & Mrs. Engracio Fabre, Jr. and Porfirio Cabil y Jamil pursuant to articles 2176 and 2180 of the Civil Code of the Philippines and said defendants are ordered to pay jointly and severally to the plaintiffs the following amount:

- 1) P93,657.11 as compensatory and actual damages;
- 2) P500,000.00 as the reasonable amount of loss of earning capacity of plaintiff Amyline Antonio;
- 3) P20,000.00 as moral damages;
- 4) P20,000.00 as exemplary damages; and
- 5) 25% of the recoverable amount as attorney's fees;
- 6) Costs of suit.

SO ORDERED.

The Court of Appeals affirmed the decision of the trial court with respect to Amyline Antonio but dismissed it with respect to the other plaintiffs on the ground that they failed to prove their respective claims. The Court of Appeals modified the award of damages as follows:

- 1) P93,657.11 as actual damages;
- 2) P600,000.00 as compensatory damages;

- 3) P50,000.00 as moral damages;
- 4) P20,000.00 as exemplary damages;
- 5) P10,000.00 as attorney's fees; and
- 6) Costs of suit.

The Court of Appeals sustained the trial court's finding that petitioner Cabil failed to exercise due care and precaution in the operation of his vehicle considering the time and the place of the accident. The Court of Appeals held that the Fabres were themselves presumptively negligent. Hence, this petition. Petitioners raise the following issues:

I. WHETHER OR NOT PETITIONERS WERE NEGLIGENT.

II. WHETHER OR NOT PETITIONERS WERE LIABLE FOR THE INJURIES SUFFERED BY PRIVATE RESPONDENTS.

III. WHETHER OR NOT DAMAGES CAN BE AWARDED AND IN THE POSITIVE, UP TO WHAT EXTENT.

Petitioners challenge the propriety of the award of compensatory damages in the amount of P600,000.00. It is insisted that, on the assumption that petitioners are liable, an award of P600,000.00 is unconscionable and highly speculative. Amyline Antonio testified that she was a casual employee of a company called "Suaco," earning P1,650.00 a month, and a dealer of Avon products, earning an average of P1,000.00 monthly. Petitioners contend that as casual employees do not have security of tenure, the award of P600,000.00, considering Amyline Antonio's earnings, is without factual basis as there is no assurance that she would be regularly earning these amounts.

With the exception of the award of damages, the petition is devoid of merit.

First, it is unnecessary for our purpose to determine whether to decide this case on the theory that petitioners are liable for breach of contract of carriage or culpa contractual or on the theory of quasi delict or culpa aquiliana as both the Regional Trial Court and the Court of Appeals held, for although the relation of passenger and carrier is "contractual both in origin and nature," nevertheless "the act that breaks the contract may be also a tort." [2] In either case, the question is whether the bus driver, petitioner Porfirio Cabil, was negligent.

The finding that Cabil drove his bus negligently, while his employer, the Fabres, who owned the bus, failed to exercise the diligence of a good father of the family in the selection and supervision of their employee is fully supported by the evidence on record. These factual findings of the two courts we regard as final and conclusive, supported as they are by the evidence. Indeed, it was admitted by Cabil that on the night in question, it was raining, and, as a consequence, the road was slippery, and it was dark. He averred these facts to justify his failure to see that there lay a sharp curve ahead. However, it is undisputed that Cabil drove his bus at the speed of 50 kilometers per hour and only slowed down when he noticed the curve some 15 to 30 meters ahead. [3] By then it was too late for him to avoid falling off the road. Given the conditions of the road and considering that the trip was Cabil's first one outside of Manila, Cabil should have driven his vehicle at a moderate speed. There is testimony [4] that the vehicles passing on that portion of the road should only be running 20 kilometers per hour, so that at 50 kilometers per hour, Cabil was running at a very high speed.

Considering the foregoing -- the fact that it was raining and the road was slippery, that it was dark, that he drove his bus at 50 kilometers an hour when even on a good day the normal speed was only 20 kilometers an hour, and that he was unfamiliar with the terrain, Cabil was grossly negligent and should be held liable for the injuries

suffered by private respondent Amyline Antonio.

Pursuant to Arts. 2176 and 2180 of the Civil Code his negligence gave rise to the presumption that his employers, the Fabres, were themselves negligent in the selection and supervision of their employee.

Due diligence in selection of employees is not satisfied by finding that the applicant possessed a professional driver's license. The employer should also examine the applicant for his qualifications, experience and record of service.[5] Due diligence in supervision, on the other hand, requires the formulation of rules and regulations for the guidance of employees and the issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules.[6]

In the case at bar, the Fabres, in allowing Cabil to drive the bus to La Union, apparently did not consider the fact that Cabil had been driving for school children only, from their homes to the St. Scholastica's College in Metro Manila.[7] They had hired him only after a two-week apprenticeship. They had tested him for certain matters, such as whether he could remember the names of the children he would be taking to school, which were irrelevant to his qualification to drive on a long distance travel, especially considering that the trip to La Union was his first. The existence of hiring procedures and supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of an employer.[8]

Petitioners argue that they are not liable because (1) an earlier departure (made impossible by the congregation's delayed meeting) could have averted the mishap and (2) under the contract, the WWCF was directly responsible for the conduct of the trip. Neither of these contentions hold water. The hour of departure had not been fixed. Even if it had been, the delay did not bear directly on the cause of the accident. With respect to the second contention, it was held in an early case that:

[A] person who hires a public automobile and gives the driver directions as to the place to which he wishes to be conveyed, but exercises no other control over the conduct of the driver, is not responsible for acts of negligence of the latter or prevented from recovering for injuries suffered from a collision between the automobile and a train, caused by the negligence either of the locomotive engineer or the automobile driver.[9]

As already stated, this case actually involves a contract of carriage. Petitioners, the Fabres, did not have to be engaged in the business of public transportation for the provisions of the Civil Code on common carriers to apply to them. As this Court has held:[10]

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as "a sideline"). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1732 deliberately refrained from making such distinctions.

As common carriers, the Fabres were bound to exercise "extraordinary diligence" for the safe transportation of the passengers to their destination. This duty of care is not excused by proof that they exercised the diligence of a good father of the family in the selection and supervision of their employee. As Art. 1759 of the Code provides:

Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of

the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

The same circumstances detailed above, supporting the finding of the trial court and of the appellate court that petitioners are liable under Arts. 2176 and 2180 for quasi delict, fully justify finding them guilty of breach of contract of carriage under Arts. 1733, 1755 and 1759 of the Civil Code.

Secondly, we sustain the award of damages in favor of Amyline Antonio. However, we think the Court of Appeals erred in increasing the amount of compensatory damages because private respondents did not question this award as inadequate.[11] To the contrary, the award of P500,000.00 for compensatory damages which the Regional Trial Court made is reasonable considering the contingent nature of her income as a casual employee of a company and as distributor of beauty products and the fact that the possibility that she might be able to work again has not been foreclosed. In fact she testified that one of her previous employers had expressed willingness to employ her again.

With respect to the other awards, while the decisions of the trial court and the Court of Appeals do not sufficiently indicate the factual and legal basis for them, we find that they are nevertheless supported by evidence in the records of this case. Viewed as an action for quasi delict, this case falls squarely within the purview of Art. 2219(2) providing for the payment of moral damages in cases of quasi delict. On the theory that petitioners are liable for breach of contract of carriage, the award of moral damages is authorized by Art. 1764, in relation to Art. 2220, since Cabil's gross negligence amounted to bad faith.[12] Amyline Antonio's testimony, as well as the testimonies of her father and co-passengers, fully establish the physical suffering and mental anguish she endured as a result of the injuries caused by petitioners' negligence.

The award of exemplary damages and attorney's fees was also properly made. However, for the same reason that it was error for the appellate court to increase the award of compensatory damages, we hold that it was also error for it to increase the award of moral damages and reduce the award of attorney's fees, inasmuch as private respondents, in whose favor the awards were made, have not appealed.[13]

As above stated, the decision of the Court of Appeals can be sustained either on the theory of quasi delict or on that of breach of contract. The question is whether, as the two courts below held, petitioners, who are the owners and driver of the bus, may be made to respond jointly and severally to private respondent. We hold that they may be. In *Dangwa Trans. Co. Inc. v. Court of Appeals*, [14] on facts similar to those in this case, this Court held the bus company and the driver jointly and severally liable for damages for injuries suffered by a passenger. Again, in *Bachelor Express, Inc. v. Court of Appeals* [15] a driver found negligent in failing to stop the bus in order to let off passengers when a fellow passenger ran amuck, as a result of which the passengers jumped out of the speeding bus and suffered injuries, was held also jointly and severally liable with the bus company to the injured passengers.

The same rule of liability was applied in situations where the negligence of the driver of the bus on which plaintiff was riding concurred with the negligence of a third party who was the driver of another vehicle, thus causing an accident. In *Anuran v. Buño*, [16] *Batangas Laguna Tayabas Bus Co. v. Intermediate Appellate Court*, [17] and *Metro Manila Transit Corporation v. Court of Appeals*, [18] the bus company, its driver, the operator of the other vehicle and the driver of the vehicle were jointly and severally held liable to the injured passenger or the latter's heirs. The basis of this allocation of liability was explained in *Viluan v. Court of Appeals*, [19] thus:

Nor should it make any difference that the liability of petitioner [bus owner] springs from contract while that of

respondents [owner and driver of other vehicle] arises from quasi-delict. As early as 1913, we already ruled in *Gutierrez vs. Gutierrez*, 56 Phil. 177, that in case of injury to a passenger due to the negligence of the driver of the bus on which he was riding and of the driver of another vehicle, the drivers as well as the owners of the two vehicles are jointly and severally liable for damages. Some members of the Court, though, are of the view that under the circumstances they are liable on quasi-delict.[20]

It is true that in *Philippine Rabbit Bus Lines, Inc. v. Court of Appeals*[21] this Court exonerated the jeepney driver from liability to the injured passengers and their families while holding the owners of the jeepney jointly and severally liable, but that is because that case was expressly tried and decided exclusively on the theory of culpa contractual. As this Court there explained:

The trial court was therefore right in finding that Manalo [the driver] and spouses Mangune and Carreon [the jeepney owners] were negligent. However, its ruling that spouses Mangune and Carreon are jointly and severally liable with Manalo is erroneous. The driver cannot be held jointly and severally liable with the carrier in case of breach of the contract of carriage. The rationale behind this is readily discernible. Firstly, the contract of carriage is between the carrier and the passenger, and in the event of contractual liability, the carrier is exclusively responsible therefore to the passenger, even if such breach be due to the negligence of his driver (see *Viluan v. The Court of Appeals, et al.*, G.R. Nos. L-21477-81, April 29, 1966, 16 SCRA 742) . . .[22]

As in the case of BLTB, private respondents in this case and her co-plaintiffs did not stake out their claim against the carrier and the driver exclusively on one theory, much less on that of breach of contract alone. After all, it was permitted for them to allege alternative causes of action and join as many parties as may be liable on such causes of action[23] so long as private respondent and her co-plaintiffs do not recover twice for the same injury. What is clear from the cases is the intent of the plaintiff there to recover from both the carrier and the driver, thus justifying the holding that the carrier and the driver were jointly and severally liable because their separate and distinct acts concurred to produce the same injury.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION** as to the award of damages. Petitioners are **ORDERED** to **PAY** jointly and severally the private respondent Amyline Antonio the following amounts:

- 1) P93,657.11 as actual damages;
- 2) P500,000.00 as the reasonable amount of loss of earning capacity of plaintiff Amyline Antonio;
- 3) P20,000.00 as moral damages;
- 4) P20,000.00 as exemplary damages;
- 5) 25% of the recoverable amount as attorney's fees; and
- 6) costs of suit.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[* *] The name of petitioner Engracio Fabre, Jr.'s wife cannot be ascertained from the record. Hence she is unnamed.*

[1] Per Justice Jainal D. Rasul and concurred in by Justices Emeterio C. Cui and Segundino G. Chua.

[2] *Air France v. Carrascoso*, 18 SCRA 155, 168 (1966). Accord, *Singson v. Bank of the Philippine Islands*, 23 SCRA 1117, 1119 (1968).

- [3] Testimony of Porfirio Cabil, TSN, p. 14, Oct. 26, 1987.
- [4] Testimony of Pat. Chito Esmenda, TSN, pp. 37-38, Sept. 12, 1985.
- [5] Metro Manila Transit Corp. v. Court of Appeals, 223 SCRA 521 (1993); Campo v. Camarote, 100 Phil. 459 (1956).
- [6] Filamer Christian Institute v. Intermediate Appellate Court, 212 SCRA 637 (1992).
- [7] Testimony of Porfirio Cabil, TSN, p. 7, Oct. 26, 1987.
- [8] Supra note 5.
- [9] Yamada v. Manila Railroad Co., 33 Phil. 8, 14 (1915).
- [10] De Guzman v. Court of Appeals, 168 SCRA 612, 618 (1988); Bascos v. Court of Appeals, 221 SCRA 318 (1993).
- [11] Philippine Airlines v. Court of Appeals, 226 SCRA 423 (1993).
- [12] Gatchalian v. Delim, 203 SCRA 126 (1991); Prudenciado v. Alliance Transport System, Inc., 148 SCRA 440 (1987).
- [13] La Mallorca v. Court of Appeals, 175 SCRA 739 (1989).

[14] 202 SCRA 574 (1991).

[15] 188 SCRA 216 (1990).

[16] 17 SCRA 224 (1966).

[17] 167 SCRA 379 (1988).

[18] 223 SCRA 521 (1993).

[19] 16 SCRA 742 (1966).

[20] Id., at 747.

[21] 189 SCRA 158 (1988).

[22] Id., at 172-173.

[23] La Mallorca v. Court of Appeals, 17 SCRA 739 (1966).

Rule 8, §2 provides: "Alternative causes of action or defenses. ¾ A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements."

Rule 3, §6 provides: "Permissive joinder of parties. - All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs or be joined as

defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest."

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