

SULPICIO LINES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND TITO DURAN TABUQUILDE AND ANGELINA DE PAZ TABUQUILDE, RESPONDENTS.

G.R. No. 113578. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA-G.R. CV No. 32864, which affirmed the decision of the Regional Trial Court, Branch 85, Quezon City in Civil Case No. Q-89-3048.

I

The Court of Appeals found:

"On October 23, 1988, plaintiff Tito Duran Tabuquilde (hereinafter, `Tito') and his three-year old daughter Jennifer Anne boarded the M/V Dona Marilyn at North Harbor, Manila, bringing with them several pieces of luggage.

"In the morning of October 24, 1988, the M/V Dona Marilyn, while in transit, encountered inclement weather which caused huge waves due to Typhoon Unsang.

"Notwithstanding the fact that Storm Signal No. 2 had been raised by the PAG-ASA authorities over Leyte as early as 5:30 P.M. of October 23, 1988 and which signal was raised to Signal No. 3 by 10 P.M. of the same day, the ship captain ordered the vessel to proceed to Tacloban when prudence dictated that he should have taken it to the nearest port for shelter, thus violating his duty to exercise extraordinary diligence in the carrying of passengers safely to their destination.

"At about the same time, plaintiff-appellee Angelina Tabuquilde (hereinafter, `Angelina') mother of Jennifer Anne, contacted the Sulpicio Office to verify radio reports that the vessel M/V Dona Marilyn was missing. Employees of said Sulpicio Lines assured her that the ship was merely "hiding" thereby assuaging her anxiety.

"At around 2:00 P.M. of October 24, 1988, said vessel capsized, throwing plaintiff-appellee Tito and Jennifer Anne, along with hundreds of passengers, into the tumultuous sea.

"Tito tried to keep himself and his daughter afloat but to no avail as the waves got stronger and he was subsequently separated from his daughter despite his efforts.

"He found himself on Almagro Island in Samar the next day at round (sic) 11:00 A.M. and immediately searched for his daughter among the survivors in the island, but the search proved fruitless.

"In the meantime, Angelina tried to seek the assistance of the Sulpicio Lines in Manila to no avail, the latter refusing to entertain her and hundreds of relatives of the other passengers who waited long hours outside the Manila Office. Angelina spent sleepless nights worrying about her husband Tito and daughter Jennifer Anne in

view of the refusal of Sulpicio Lines to release a verification of the sinking of the ship.

"On October 26, 1988, Tito and other survivors in the Almagro Island were fetched and were brought to Tacloban Medical Center for treatment.

"On October 31, 1988, Tito reported the loss of his daughter, was informed that the corpse of a child with his daughter's description had been found. Subsequently, Tito wrote a letter to his wife, reporting the sad fact that Jennifer Anne was dead. Angelina suffered from shock and severe grief upon receipt of the news.

"On November 3, 1988, the coffin bearing the corpse of Jennifer Anne was buried in Tanauan, Leyte.

"On November 24, 1988, a claim for damages was filed by Tito with the defendant Sulpicio Lines in connection with the death of the plaintiff-appellee's daughter and the loss of Tito's belongings worth P27,580.00. (Appellees' Brief, pp. 2-4)" (Rollo, pp. 52-54).

On January 3, 1991, the trial court rendered a decision in Civil Case No. Q-89-3048 in favor of the plaintiffs Tito Duran Tabuquilde and Angelina de Paz Tabuquilde (private respondents herein) and against defendant Sulpicio Lines, Inc. (petitioner herein) ordering defendant to pay P27,580.00 as actual damages, P30,000.00 for the death of Jennifer Tabuquilde, P100,000.00 as moral damages, P50,000.00 as exemplary damages, and P50,000.00 as attorney's fees, and costs.

Petitioner appealed to the Court of Appeals which affirmed the decision of the trial court. Petitioner then filed a motion for reconsideration which was denied. Hence, this petition.

II

Generally, the findings of fact of the trial court are entitled to great weight and not disturbed except for cogent reasons (*Gatmaitan v. Court of Appeals*, 200 SCRA 37 [1991]). One of the accepted reasons is when the findings of fact are not supported by the evidence (*Sandoval Shipyard, Inc. v. Clave*, 94 SCRA 472 [1979]). Corollary to this is the rule that actual or compensatory damages, to be recovered, must be proved; otherwise, if the proof is flimsy, no damages will be awarded (*Dichoso v. Court of Appeals*, 192 SCRA 169 [1990]).

In the case at bench, the trial court merely mentioned the fact of the loss and the value of the contents of the pieces of baggage without stating the evidence on which it based its findings. There is no showing that the value of the contents of the lost pieces of baggage was based on the bill of lading or was previously declared by respondent Tito D. Tabuquilde before he boarded the ship. Hence, there can be no basis to award actual damages in the amount of P27,850.00.

The Court of Appeals was correct in confirming the award of damages for the death of the daughter of private respondents, a passenger on board the stricken vessel of petitioner. It is true that under Article 2206 of the Civil Code of the Philippines, only deaths caused by a crime as quasi delict are entitled to actual and compensatory damages without the need of proof of the said damages. Said Article provides:

"The amount of damages for death caused by a crime or quasi delict shall be at least Three Thousand Pesos, even though there may have been mitigating circumstances. x x x."

Deducing alone from said provision, one can conclude that damages arising from culpa contractual are not compensable without proof of special damages sustained by the heirs of the victim.

However, the Civil Code, in Article 1764 thereof, expressly makes Article 2206 applicable "to the death of a passenger caused by the breach of contract by a common carrier." Accordingly, a common carrier is liable for actual or compensatory damages under Article 2206 in relation to Article 1764 of the Civil Code for deaths of its

passengers caused by the breach of the contract of transportation.

The trial court awarded an indemnity of P30,000.00 for the death of the daughter of private respondents. The award of damages under Article 2206 has been increased to P50,000.00 (*People v. Flores*, 237 SCRA 653 [1994]).

With respect to the award of moral damages, the general rule is that said damages are not recoverable in culpa contractual except when the presence of bad faith was proven (*Trans World Air Lines v. Court of Appeals*, 165 SCRA 143 [1988]). However, in breach of contract of carriage, moral damages may be recovered when it results in the death of a passenger (*Philippine Rabbit Bus Lines, Inc. v. Esguerra*, 117 SCRA 741 [1982]; *Vasquez v. Court of Appeals*, 138 SCRA 553 [1985]).

With respect to the award of exemplary damages, Article 2232 of the Civil Code of the Philippines gives the Court the discretion to grant said damages in breach of contract when the defendant acted in a wanton, fraudulent and reckless manner (*Air France v. Carrascoso*, 18 SCRA 155 [1966]).

Furthermore, in the case of *Mecenas v. Court of Appeals*, 180 SCRA 83 (1989), we ruled that:

"xxx. The Court will take judicial notice of the dreadful regularity with which grievous maritime disasters occur in our waters with massive loss of life. The bulk of our population is too poor to afford domestic air transportation. So it is that notwithstanding the frequent sinking of passenger vessels in our waters, crowds of people continue to travel by sea. This Court is prepared to use the instruments given to it by the law for securing the ends of law and public policy. One of those instruments is the institution of exemplary damages; one of those ends, of special importance in an archipelagic state like the Philippines, is the safe and reliable carriage of people and goods by sea. xxx" (at p. 100).

A common carrier is obliged to transport its passengers to their destinations with the utmost diligence of a very cautious person (*Laguna Tayabas Bus Co. v. Tiongson*, 16 SCRA 940 [1966]). The trial court found that petitioner failed to exercise the extraordinary diligence required of a common carrier, which resulted in the sinking of the M/V *Dona Marilyn*.

The trial court correctly concluded that the sinking of M/V *Dona Marilyn* was due to gross negligence, thus:

"xxx [i]t is undisputed that Typhoon Unsang entered the Philippine Area of Responsibility on October 21, 1988. The rain in Metro Manila started after lunch of October 23, 1988, and at about 5:00 p.m. Public Storm Signal No. 1 was hoisted over Metro Manila, Signal No. 2 in Leyte and Signal No. 3 in Samar. But at 10:00 o'clock (sic) in the morning of October 23, 1988, Public Storm Signal No. 1 was already hoisted over the province of Leyte, which is the destination of M/V *Dona Marilyn*. This was raised to Signal No. 2 at 4:00 p.m. and Signal No. 3 at 10:00 p.m. on the same date. The following day, October 24, 1988, at 4:00 a.m. and 10:00 a.m., Storm Signal No. 3 remained hoisted in Leyte but was reduced to Storm Signal No. 2 (Exh. G). Signal No. 1 has maximum winds at 60 kph within 36 hours; Signal No. 2 has maximum winds of from 60 kph to 100 kph within a period of 24 hours; and Signal No. 3 has maximum winds of 100 kph and above within a period of 12 hours.

"Warnings of the storm signal are issued by PAG-ASA thru DZZA, Office of Civil Defense, Philippine Navy, Coast Guard, Radio Stations, and other offices, every six (6) hours as soon as a cyclone enters the Philippine Area of Responsibility.

"At 10:30 a.m. on October 24, 1988, the vessel was estimated to be between Mindoro and Masbate, and the center of the typhoon then was around 130 degrees longitude with maximum winds of 65 kph (Exh. G-3), with a `radius of rough to phenomenal sea at that time of 450 kms. North and 350 kms. elsewhere; 350 kms. North center and all throughout the rest' (p. 12, TSN, Lumalda, Feb. 19, 1990).

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"In the same manner, (referring to the negligence of the crew of the ship that sank in *Vasquez v. Court of Appeals*, 138 SCRA 553 [1985]) the crew of the vessel M/V *Dona Marilyn* took a calculated risk when it proceeded despite the typhoon brewing somewhere in the general direction to which the vessel was going. The crew assumed a greater risk when, instead of dropping anchor in or at the periphery of the Port of Calapan, or returning to the port of Manila which is nearer, proceeded on its voyage on the assumption that it will be able to beat and race with the typhoon and reach its destination before it (Unsang) passes" (Rollo, pp. 45-47).

The award of attorney's fees by the trial court to respondents is also assailed by petitioner, citing *Mirasol v. De la Cruz*, 84 SCRA 337 (1978). In this case, the petitioner filed before the Municipal Court an action for forcible entry against the private respondent. The said court dismissed the complaint. On appeal, the Court of First Instance of Camarines Sur sustained the decision of the lower court, dismissed the appeal and awarded attorney's fees in the sum of not less than P500.00 in favor of private respondent. Upon appeal to us, we deleted the award of attorney's fees because the text of the appealed decision was bereft of any findings of fact and law to justify such an award. Moreover, there was no proof, other than the bare allegation of harassment that the adverse party had acted in bad faith. The aforementioned decision is inapposite to the instant case where the decision clearly mentions the facts and the law upon which the award of attorney's fees were based.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with the **MODIFICATION** that the award of P27,580.00 as actual damages for the loss of the contents of the pieces of baggage is deleted and that the award of P30,000.00 under Article 2206 in relation Article 1764 is increased to P50,000.00.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.
Bellosillo, J., on leave.

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