

**BALIWAG TRANSIT, INC., PETITIONER, VS. COURT OF APPEALS,
SPOUSES ANTONIO GARCIA & LETICIA GARCIA, A & J
TRADING, AND JULIO RECONTIQUE, RESPONDENTS.**

G.R. No. 116110. May 15, 1996

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari to review the Decision[1] of the Court of Appeals in CA-G.R. CV-31246 awarding damages in favor of the spouses Antonio and Leticia Garcia for breach of contract of carriage.[2] filed by the spouses Garcia questioning the same Court of Appeals' Decision which reduced their award of damages. On November 13, 1995, we denied their petition for review.

The records show that on July 31, 1980, Leticia Garcia, and her five-year old son, Allan Garcia, boarded Baliwag Transit Bus No. 2036 bound for Cabanatuan City driven by Jaime Santiago. They took the seat behind the driver.

At about 7:30 in the evening, in Malimba, Gapan, Nueva Ecija, the bus passengers saw a cargo truck parked at the shoulder of the national highway. Its left rear portion jutted to the outer lane, the shoulder of the road was too narrow to accommodate the whole truck. A kerosene lamp appeared at the edge of the road obviously to serve as a warning device. The truck driver, Julio Recontique, and his helper, Arturo Escala, were then replacing a flat tire. The truck is owned by respondent A & J Trading.

Bus driver Santiago was driving at an inordinately fast speed and failed to notice the truck and the kerosene lamp at the edge of the road. Santiago's passengers urged him to slow down but he paid them no heed. Santiago even carried animated conversations with his co-employees while driving. When the danger of collision became imminent, the bus passengers shouted "Babangga tayo!". Santiago stepped on the brake, but it was too late. His bus rammed into the stalled cargo truck. It caused the instant death of Santiago and Escala, and injury to several others. Leticia and Allan Garcia were among the injured passengers.

Leticia suffered a fracture in her pelvis and right leg. They rushed her to the provincial hospital in Cabanatuan City where she was given emergency treatment. After three days, she was transferred to the National Orthopedic Hospital where she was confined for more than a month.[3] She underwent an operation for partial hip prosthesis.[4]

Allan, on the other hand, broke a leg. He was also given emergency treatment at the provincial hospital.

Spouses Antonio and Leticia Garcia sued Baliwag Transit, Inc., A & J Trading and Julio Recontique for damages in the Regional Trial Court of Bulacan.[5] Leticia sued as an injured passenger of Baliwag and as mother of Allan. At the time of the complaint, Allan was a minor, hence, the suit initiated by his parents in his favor.

Baliwag, A & J Trading and Recontique disclaimed responsibility for the mishap. Baliwag alleged that the accident was caused solely by the fault and negligence of A & J Trading and its driver, Recontique. Baliwag charged that Recontique failed to place an early warning device at the corner of the disabled cargo truck to warn

oncoming vehicles.[6] On the other hand, A & J Trading and Recontique alleged that the accident was the result of the negligence and reckless driving of Santiago, bus driver of Baliwag.[7]

After hearing, the trial court found all the defendants liable, thus:

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"In view thereof, the Court holds that both defendants should be held liable; the defendant Baliwag Transit, Inc. for having failed to deliver the plaintiff and her son to their point of destination safely in violation of plaintiff's and defendant Baliwag Transit's contractual relation.

The defendant A & J and Julio Recontique for failure to provide its cargo truck with an early warning device in violation of the Motor Vehicle Law."[8]

The trial court ordered Baliwag, A & J Trading and Recontique to pay jointly and severally the Garcia spouses the following: (1) P25,000.00 hospitalization and medication fee, (2) P450,000.00 loss of earnings in eight (8) years, (3) P2,000.00 for the hospitalization of their son Allan Garcia, (4) P50,000.00 moral damages, and (5) P30,000.00 attorney's fee.[9]

On appeal, the Court of Appeals modified the trial court's Decision by absolving A & J Trading from liability and by reducing the award of attorney's fees to P10,000.00 and loss of earnings to P300,000.00, respectively.[10]

Baliwag filed the present petition for review raising the following issues:

"1. Did the Court of Appeals err in absolving A & J Trading from liability and holding Baliwag solely liable for the injuries suffered by Leticia and Allan Garcia in the accident?

2. Is the amount of damages awarded by the Court of Appeals to the Garcia spouses correct?"

We affirm the factual findings of the Court of Appeals.

I

As a common carrier, Baliwag breached its contract of carriage when it failed to deliver its passengers, Leticia and Allan Garcia to their destination safe and sound. A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances.[11] In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted, the court need not even make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence as prescribed in Articles 1733 and 1755 of the Civil Code.[12]

The records are bereft of any proof to show that Baliwag exercised extraordinary diligence. On the contrary, the evidence demonstrates its driver's recklessness. Leticia Garcia testified that the bus was running at a very high speed despite the drizzle and the darkness of the highway. The passengers pleaded for its driver to slow down, but their plea was ignored.[13] Leticia also revealed that the driver was smelling of liquor.[14] She could smell him as she was seated right behind the driver. Another passenger, Felix Cruz testified that immediately before the collision, the bus driver was conversing with a co-employee.[15] All these prove the bus driver's wanton disregard for the physical safety of his passengers, which makes Baliwag as a common carrier liable for damages under Article 1759 of the Civil Code:

"Art. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or willfull 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 do not cease upon proof that they exercised all the diligence of a good father of a family in the selection or supervision of their employees."

Baliwag cannot evade its liability by insisting that the accident was caused solely by the negligence of A & J Trading and Julio Recontique. It harps on their alleged non use of an early warning device as testified to by Col. Demetrio dela Cruz, the station commander of Gapan, Nueva Ecija who investigated the incident, and Francisco Romano, the bus conductor.

The records do not bear out Baliwag's contention. Col. dela Cruz and Romano testified that they did not see any early warning device at the scene of the accident.[16] They were referring to the triangular reflectorized plates in red and yellow issued by the Land Transportation Office. However, the evidence shows that Recontique and Ecala placed a kerosene lamp or torch at the edge of the road, near the rear portion of the truck to serve as an early warning device.[17] This substantially complies with Section 34 (g) of the Land Transportation and Traffic Code, to wit:

"(g) Lights and reflector when parked or disabled. " Appropriate parking lights or flares visible one hundred meters away shall be displayed at the corner of the vehicle whenever such vehicle is parked on highways or in places that are not well-lighted or, is placed in such manner as to endanger passing traffic. Furthermore, every motor vehicle shall be provided at all times with built-in reflectors or other similar warning devices either pasted, painted or attached at its front and back which shall likewise be visible at night at least one hundred meters away. No vehicle not provided with any of the requirements mentioned in this subsection shall be registered. (Italics supplied)"

Baliwag's argument that the kerosene lamp or torch does not substantially comply with the law is untenable. The aforequoted law clearly allows the use not only of an early warning device of the triangular reflectorized plates variety but also parking lights or flares visible one hundred meters away. Indeed, Col. dela Cruz himself admitted that a kerosene lamp is an acceptable substitute for the reflectorized plates.[18] No negligence, therefore, may be imputed to A & J Trading and its driver, Recontique.

Anent this factual issue, the analysis of evidence made by the Court of Appeals deserves our concurrence, viz:

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"In the case at bar, both the injured passengers of the Baliwag involved in the accident testified that they saw some sort of kerosene or a torch on the rear portion of the truck before the accident. Baliwag Transit's conductor attempted to defeat such testimony by declaring that he noticed no early warning device in front of the truck.

Among the testimonies offered by the witnesses who were present at the scene of the accident, we rule to uphold the affirmative testimonies given by the two injured passengers and give less credence to the testimony of the bus conductor who solely testified that no such early warning device exists.

The testimonies of injured passengers who may well be considered as disinterested witness appear to be natural and more probable than the testimony given by Francisco Romano who is undoubtedly interested in the outcome of the case, being the conductor of the defendant-appellant Baliwag Transit Inc.

It must be borne in mind that the situation then prevailing at the time of the accident was admittedly drizzly and all dark. This being so, it would be improbable and perhaps impossible on the part of the truck helper without the torch nor the kerosene to remove the flat tires of the truck. Moreover, witness including the bus conductor himself admitted that the passengers shouted, that they are going to bump before the collision which consequently caused the bus driver to apply the brake 3 to 4 meters away from the truck. Again, without the kerosene nor the torch in front of the truck, it would be improbable for the driver, more so the passengers to

notice the truck to be bumped by the bus considering the darkness of the place at the time of the accident.

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While it is true that the investigating officer testified that he found no early warning device at the time of his investigation, We rule to give less credence to such testimony insofar as he himself admitted on cross examination that he did not notice the presence of any kerosene lamp at the back of the truck because when he arrived at the scene of the accident, there were already many people surrounding the place (TSN, Aug, 22, 1989, p. 13). He further admitted that there exists a probability that the lights of the truck may have been smashed by the bus at the time of the accident considering the location of the truck where its rear portion was connected with the front portion of the bus (TSN, March 29, 1985, pp. 11-13). Investigator's testimony therefore did not confirm nor deny the existence of such warning device, making his testimony of little probative value."[19]

II

We now review the amount of damages awarded to the Garcia spouses.

First, the propriety of the amount awarded as hospitalization and medical fees. The award of P25,000.00 is not supported by the evidence on record. The Garcias presented receipts marked as Exhibits "B-1" to "B "42" but their total amounted only to P5,017.74. To be sure, Leticia testified as to the extra amount spent for her medical needs but without more reliable evidence, her lone testimony cannot justify the award of P25,000.00. To prove actual damages, the best evidence available to the injured party must be presented. The court cannot rely on uncorroborated testimony whose truth is suspect, but must depend upon competent proof that damages have been actually suffered[20] Thus, we reduce the actual damages for medical and hospitalization expenses to P5,017.74.

Second, we find as reasonable the award of P300,000.00 representing Leticia's lost earnings. Before the accident, Leticia was engaged in embroidery, earning P5,000.00 per month.[21] Her injuries forced her to stop working. Considering the nature and extent of her injuries and the length of time it would take her to recover,[22] we find it proper that Baliwag should compensate her lost income for five (5) years.[23]

Third, the award of moral damages is in accord with law. In a breach of contract of carriage, moral damages are recoverable if the carrier, through its agent, acted fraudulently or in bad faith.[24] The evidence shows the gross negligence of the driver of Baliwag bus which amounted to bad faith. Without doubt, Leticia and Allan experienced physical suffering, mental anguish and serious anxiety by reason of the accident. Leticia underwent an operation to replace her broken hip bone with a metal plate. She was confined at the National Orthopedic Hospital for 45 days. The young Allan was also confined in the hospital for his foot injury. Contrary to the contention of Baliwag, the decision of the trial court as affirmed by the Court of Appeals awarded moral damages to Antonio and Leticia Garcia not in their capacity as parents of Allan. Leticia was given moral damages as an injured party. Allan was also granted moral damages as an injured party but because of his minority, the award in his favor has to be given to his father who represented him in the suit.

Finally, we find the award of attorney's fees justified. The complaint for damages was instituted by the Garcia spouses on December 15, 1982, following the unjustified refusal of Baliwag to settle their claim. The Decision was promulgated by the trial court only on January 29, 1991 or about nine years later. Numerous pleadings were filed before the trial court, the appellate court and to this Court. Given the complexity of the case and the amount of damages involved,[25] the award of attorney's fee for P10,000.00 is just and reasonable.

IN VIEW WHEREOF, the Decision of the respondent Court of Appeals in CA-G.R. CV-31246 is AFFIRMED with the MODIFICATION reducing the actual damages for hospitalization and medical fees to P5,017.74. No costs.

SO ORDERED.

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

[1] Penned by Associate Justice Corona Ibay-Somera, with Associate Justices Fidel P. Purisima and Asaali S. Isnani concurring.

[2] The case at bar is related with GR No. 11715 filed by the spouses Garcia questioning the same Court of Appeals' Decision which reduced their award of damages. On November 13, 1995, we denied their position for review.

[3] From August 2, 1980 to September 15, 1980.

[4] Exhibit "A", Records, p. 116.

[5] Annex "A" of the Petition, Rollo, pp.23-25.

[6] Records, p. 43.

[7] Records, pp. 17-18.

[8] Decision of Regional Trial Court of Malolos, Bulacan, Branch 14, Rollo, pp. 47-48.

[9] Decision of Regional Trial Court of Malolos, Bulacan, Branch 14, Rollo, p. 48.

[10] Decision of the Court of Appeals, Rollo, p. 62.

[11] Article 1755, Civil Code.

[12] Article 1756, Civil Code; Philippine Rabbit Bus Lines, Inc. vs. Intermediate Appellate Court, 189 SCRA 158 (1990).

[13] TSN, February 9, 1989, p. 4.

[14] TSN, February 9, 1989, p. 10.

[15] Exhibit "6" (A & J Trading), Records, p. 206.

[16] TSN, August 22, 1989, p. 5; Exhibit "5" (Baliwag), Records, pp. 196-197.

[17] TSN, February 9, 1989, p. 18; Exhibit "6" (A & J Trading), Records, p. 207.

[18] TSN, August 22, 1989, p. 12.

[19] Decision of the Court of Appeals, Rollo, pp. 55-57.

[20] Development Bank of the Philippines vs. Court of Appeals, et al. , G.R. No. 110053, October 15, 1995; Alejandro Fuentes, Jr. vs. Court of Appeals and People, G.R. No. 111692, February 9, 1996.

[21] TSN, February 9, 1989, p. 13.

[22] The Medical Report issued by the attending physician, Dr. Jaime Tamayo, indicates that Leticia Garcia suffered partial permanent disability (Annex "A", Records, p. 116).

[23] See Manuel vs. Court of Appeals, 227 SCRA 29, (1993).

[24] Philippine National Railways vs. Intermediate Appellate Court, 217 SCRA 401 (1994); Metro Manila Transit Corp. vs. Court of Appeals, 223 SCRA 521 (1994).

[25] See *Del Rosario vs. Court of Appeals*, 237 SCRA 39 (1994).

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