

**FORTUNE EXPRESS, INC., PETITIONER, VS. COURT OF APPEALS,
PAULIE U. CAORONG, AND MINOR CHILDREN YASSER KING
CAORONG, ROSE HEINNI AND PRINCE ALEXANDER, ALL SURNAMED
CAORONG, AND R...**

G.R. No. 119756. March 18, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal by petition for review on certiorari of the decision, dated July 29, 1994, of the Court of Appeals, which reversed the decision of the Regional Trial Court, Branch VI, Iligan City. The aforesaid decision of the trial court dismissed the complaint of private respondents against petitioner for damages for breach of contract of carriage filed on the ground that petitioner had not exercised the required degree of diligence in the operation of one of its buses. Atty. Talib Caorong, whose heirs are private respondents herein, was a passenger of the bus and was killed in the ambush involving said bus.

The facts of the instant case are as follows:

Petitioner is a bus company in northern Mindanao. Private respondent Paulie Caorong is the widow of Atty. Caorong, while private respondents Yasser King, Rose Heinni, and Prince Alexander are their minor children.

On November 18, 1989, a bus of petitioner figured in an accident with a jeepney in Kauswagan, Lanao del Norte, resulting in the death of several passengers of the jeepney, including two Maranaos. Crisanto Generalao, a volunteer field agent of the Constabulary Regional Security Unit No. X, conducted an investigation of the accident. He found that the owner of the jeepney was a Maranao residing in Delabayan, Lanao del Norte and that certain Maranaos were planning to take revenge on the petitioner by burning some of its buses. Generalao rendered a report on his findings to Sgt. Reynaldo Bastasa of the Philippine Constabulary Regional Headquarters at Cagayan de Oro. Upon the instruction of Sgt. Bastasa, he went to see Diosdado Bravo, operations manager of petitioner, at its main office in Cagayan de Oro City. Bravo assured him that the necessary precautions to insure the safety of lives and property would be taken.[1]

At about 6:45 P.M. on November 22, 1989, three armed Maranaos who pretended to be passengers, seized a bus of petitioner at Linamon, Lanao del Norte while on its way to Iligan City. Among the passengers of the bus was Atty. Caorong. The leader of the Maranaos, identified as one Bashier Mananggolo, ordered the driver, Godofredo Cabatuan, to stop the bus on the side of the highway. Mananggolo then shot Cabatuan on the arm, which caused him to slump on the steering wheel. Then one of the companions of Mananggolo started pouring gasoline inside the bus, as the other held the passengers at bay with a handgun. Mananggolo then ordered the passengers to get off the bus. The passengers, including Atty. Caorong, stepped out of the bus and went behind the bushes in a field some distance from the highway.[2]

However, Atty. Caorong returned to the bus to retrieve something from the overhead rack. At that time, one of the

armed men was pouring gasoline on the head of the driver. Cabatuan, who had meantime regained consciousness, heard Atty. Caorong pleading with the armed men to spare the driver as he was innocent of any wrong doing and was only trying to make a living. The armed men were, however, adamant as they repeated their warning that they were going to burn the bus along with its driver. During this exchange between Atty. Caorong and the assailants, Cabatuan climbed out of the left window of the bus and crawled to the canal on the opposite side of the highway. He heard shots from inside the bus. Larry de la Cruz, one of the passengers, saw that Atty. Caorong was hit. Then the bus was set on fire. Some of the passengers were able to pull Atty. Caorong out of the burning bus and rush him to the Mercy Community Hospital in Iligan City, but he died while undergoing operation.[3]

The private respondents brought this suit for breach of contract of carriage in the Regional Trial Court, Branch VI, Iligan City. In his decision, dated December 28, 1990, the trial court dismissed the complaint, holding as follows:

The fact that defendant, through Operations Manager Diosdado Bravo, was informed of the "rumors" that the Moslems intended to take revenge by burning five buses of defendant is established since the latter also utilized Crisanto Generalaos as a witness. Yet despite this information, the plaintiffs charge, defendant did not take proper precautions. . . . Consequently, plaintiffs now fault the defendant for ignoring the report. Their position is that the defendant should have provided its buses with security guards. Does the law require common carriers to install security guards in its buses for the protection and safety of its passengers? Is the failure to post guards an omission of the duty to "exercise the diligence of a good father of the family" which could have prevented the killing of Atty. Caorong? To our mind, the diligence demanded by law does not include the posting of security guards in buses. It is an obligation that properly belongs to the State. Besides, will the presence of one or two security guards suffice to deter a determined assault of the lawless and thus prevent the injury complained of? Maybe so, but again, perhaps not. In other words, the presence of a security guard is not a guarantee that the killing of Atty. Caorong would have been definitely avoided.

....

Accordingly, the failure of defendant to accord faith and credit to the report of Mr. Generalao and the fact that it did not provide security to its buses cannot, in the light of the circumstances, be characterized as negligence.

Finally, the evidence clearly shows that the assailants did not have the least intention of harming any of the passengers. They ordered all the passengers to alight and set fire on the bus only after all the passengers were out of danger. The death of Atty. Caorong was an unexpected and unforeseen occurrence over which defendant had no control. Atty. Caorong performed an act of charity and heroism in coming to the succor of the driver even in the face of danger. He deserves the undying gratitude of the driver whose life he saved. No one should blame him for an act of extraordinary charity and altruism which cost his life. But neither should any blame be laid on the doorstep of defendant. His death was solely due to the willful acts of the lawless which defendant could neither prevent nor stop.

....

WHEREFORE, in view of the foregoing, the complaint is hereby dismissed. For lack of merit, the counter-claim is likewise dismissed. No cost.[4]

On appeal, however, the Court of Appeals reversed. It held:

In the case at bench, how did defendant-appellee react to the tip or information that certain Maranao hotheads were planning to burn five of its buses out of revenge for the deaths of two Maranaos in an earlier collision involving appellee's bus? Except for the remarks of appellee's operations manager that "we will have our action and I'll be the one to settle it personally," nothing concrete whatsoever was taken by appellee or its employees to prevent the execution of the threat. Defendant-appellee never adopted even a single safety measure for the protection of its paying passengers. Were there available safeguards? Of course, there were:

one was frisking passengers particularly those en route to the area where the threats were likely to be carried out such as where the earlier accident occurred or the place of influence of the victims or their locality. If frisking was resorted to, even temporarily, . . . appellee might be legally excused from liability. Frisking of passengers picked up along the route could have been implemented by the bus conductor; for those boarding at the bus terminal, frisking could have been conducted by him and perhaps by additional personnel of defendant-appellee. On hindsight, the handguns and especially the gallon of gasoline used by the felons all of which were brought inside the bus would have been discovered, thus preventing the burning of the bus and the fatal shooting of the victim.

Appellee's argument that there is no law requiring it to provide guards on its buses and that the safety of citizens is the duty of the government, is not well taken. To be sure, appellee is not expected to assign security guards on all of its buses; if at all, it has the duty to post guards only on its buses plying predominantly Maranao areas. As discussed in the next preceding paragraph, the least appellee could have done in response to the report was to adopt a system of verification such as frisking of passengers boarding its buses. Nothing, and to repeat, nothing at all, was done by defendant-appellee to protect its innocent passengers from the danger arising from the "Maranao threats." It must be observed that frisking is not a novelty as a safety measure in our society. Sensitive places - in fact, nearly all important places - have applied this method of security enhancement. Gadgets and devices are available in the market for this purpose. It would not have weighed much against the budget of the bus company if such items were made available to its personnel to cope up with situations such as the "Maranao threats."

In view of the constitutional right to personal privacy, our pronouncement in this decision should not be construed as an advocacy of mandatory frisking in all public conveyances. What we are saying is that given the circumstances obtaining in the case at bench that: (a) two Maranaos died because of a vehicular collision involving one of appellee's vehicles; (b) appellee received a written report from a member of the Regional Security Unit, Constabulary Security Group, that the tribal/ethnic group of the two deceased were planning to burn five buses of appellee out of revenge; and (c) appellee did nothing - absolutely nothing - for the safety of its passengers travelling in the area of influence of the victims, appellee has failed to exercise the degree of diligence required of common carriers. Hence, appellee must be adjudged liable.

....

WHEREFORE, the decision appealed from is hereby REVERSED and another rendered ordering defendant-appellee to pay plaintiffs-appellants the following:

- 1) P3,399,649.20 as death indemnity;
 - 2) P50,000.00 and P500.00 per appearance as attorney's fees; and
- Costs against defendant-appellee.[5]

Hence, this appeal. Petitioner contends:

(A)

THAT PUBLIC RESPONDENT ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT DATED DECEMBER 28, 1990 DISMISSING THE COMPLAINT AS WELL AS THE COUNTERCLAIM, AND FINDING FOR PRIVATE RESPONDENTS BY ORDERING PETITIONER TO PAY THE GARGANTUAN SUM OF P3,449,649.20 PLUS P500.00 PER APPEARANCE AS ATTORNEY'S FEES, AS WELL AS DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND THE SUPPLEMENT TO SAID MOTION, WHILE HOLDING, AMONG OTHERS, THAT PETITIONER BREACHED THE CONTRACT OF CARIAGE BY ITS FAILURE TO EXERCISE THE REQUIRED DEGREE OF DILIGENCE;

(B)

THAT THE ACTS OF THE MARANAO OUTLAWS WERE SO GRAVE, IRRESISTIBLE, VIOLENT, AND FORCEFUL, AS TO BE REGARDED AS CASO FORTUITO; AND

(C)

THAT PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER COULD HAVE PROVIDED ADEQUATE SECURITY IN PREDOMINANTLY MUSLIM AREAS AS PART OF ITS DUTY TO OBSERVE EXTRA-ORDINARY DILIGENCE AS A COMMON CARRIER.

The instant petition has no merit.

First. Petitioner's Breach of the Contract of Carriage

Art. 1763 of the Civil Code provides that a common carrier is responsible for injuries suffered by a passenger on account of the wilful acts of other passengers, if the employees of the common carrier could have prevented the act the exercise of the diligence of a good father of a family. In the present case, it is clear that because of the negligence of petitioner's employees, the seizure of the bus by Mananggolo and his men was made possible.

Despite warning by the Philippine Constabulary at Cagayan de Oro that the Maranaos were planning to take revenge on the petitioner by burning some of its buses and the assurance of petitioner's operation manager, Diosdado Bravo, that the necessary precautions would be taken, petitioner did nothing to protect the safety of its passengers.

Had petitioner and its employees been vigilant they would not have failed to see that the malefactors had a large quantity of gasoline with them. Under the circumstances, simple precautionary measures to protect the safety of passengers, such as frisking passengers and inspecting their baggages, preferably with non-intrusive gadgets such as metal detectors, before allowing them on board could have been employed without violating the passenger's constitutional rights. As this Court intimated in *Gacal v. Philippine Air Lines, Inc.*,^[6] a common carrier can be held liable for failing to prevent a hijacking by frisking passengers and inspecting their baggages.

From the foregoing, it is evident that petitioner's employees failed to prevent the attack on one of petitioner's buses because they did not exercise the diligence of a good father of a family. Hence, petitioner should be held liable for the death of Atty. Caorong.

Second. Seizure of Petitioner's Bus not a Case of Force Majeure

The petitioner contends that the seizure of its bus by the armed assailants was a fortuitous event for which it could not be held liable.

Art. 1174 of the Civil Code defines a fortuitous even as an occurrence which could not be foreseen or which though foreseen, is inevitable. In *Yobido v. Court of Appeals*,^[7] we held that to be considered as force majeure, it is necessary that: (1) the cause of the breach of the obligation must be independent of the human will; (2) the event must be either unforeseeable or unavoidable; (3) the occurrence must be such as to render it impossible for the debtor to fulfill the obligation in a normal manner; and (4) the obligor must be free of participation in, or aggravation of, the injury to the creditor. The absence of any of the requisites mentioned above would prevent the obligor from being excused from liability.

Thus, in *Vasquez v. Court of Appeals*,^[8] it was held that the common carrier was liable for its failure to take the

necessary precautions against an approaching typhoon, of which it was warned, resulting in the loss of the lives of several passengers. The event was foreseeable, and, thus, the second requisite mentioned above was not fulfilled. This ruling applies by analogy to the present case. Despite the report of PC agent Generalao that the Maranaos were going to attack its buses, petitioner took no steps to safeguard the lives and properties of its passengers. The seizure of the bus of the petitioner was foreseeable and, therefore, was not a fortuitous event which would exempt petitioner from liability.

Petitioner invokes the ruling in *Pilapil v. Court of Appeals*[9] and *De Guzman v. Court of Appeals*[10] in support of its contention that the seizure of its bus by the assailants constitutes force majeure. In *Pilapil v. Court of Appeals*,[11] it was held that a common carrier is not liable for failing to install window grills on its buses to protect passengers from injuries caused by rocks hurled at the bus by lawless elements. On the other hand, in *De Guzman v. Court of Appeals*,[12] it was ruled that a common carrier is not responsible for goods lost as a result of a robbery which is attended by grave or irresistible threat, violence, or force.

It is clear that the cases of *Pilapil* and *De Guzman* do not apply to the present case. Art. 1755 of the Civil Code provides that "a common carrier is bound to carry the passengers as far as human care and foresight can provide, using the utmost diligence of very cautious person, with due regard for all the circumstances." Thus, we held in *Pilapil* and *De Guzman* that the respondents therein were not negligent in failing to take special precautions against threats to the safety of passengers which could not be foreseen, such as tortious or criminal acts of third persons. In the present case, this factor of unforeseeability (the second requisite for an event to be considered force majeure) is lacking. As already stated, despite the report of PC agent Generalao that the Maranaos were planning to burn some of petitioner's buses and the assurance of petitioner's operations manager (Diosdado Bravo) that the necessary precautions would be taken, nothing was really done by petitioner to protect the safety of passengers.

Third. Deceased not Guilty of Contributory Negligence

The petitioner contends that Atty. Caorong was guilty of contributory negligence in returning to the bus to retrieve something. But Atty. Caorong did not act recklessly. It should be pointed out that the intended targets of the violence were petitioner and its employees, not its passengers. The assailant's motive was to retaliate for the loss of life of two Maranaos as a result of the collision between petitioner's bus and the jeepney in which the two Maranaos were riding. Mananggolo, the leader of the group which had hijacked the bus, ordered the passengers to get off the bus as they intended to burn it and its driver. The armed men actually allowed Atty. Caorong to retrieve something from the bus. What apparently angered them was his attempt to help the driver of the bus by pleading for his life. He was playing the role of the good Samaritan. Certainly, this act cannot be considered an act of negligence, let alone recklessness.

Fourth. Petitioner Liable to Private Respondents for Damages

We now consider the question of damages that the heirs of Atty. Caorong, private respondents herein, are entitled to recover from the petitioner.

Indemnity for Death. Art. 1764 of the Civil Code, in relation to Art. 2206 thereof, provides for the payment of indemnity for the death of passengers caused by the breach of contract of carriage by a common carrier. Initially fixed in Art. 2206 at P3,000.00, the amount of the said indemnity for death has through the years been gradually increased in view of the declining value of the peso. It is presently fixed at P50,000.00.[13] Private respondents are entitled to this amount.

Actual damages. Art. 2199 provides that "Except as provided by law or by stipulation, one is entitled to an

adequate compensation only for such pecuniary loss suffered by him as he has duly proved." The trial court found that the private respondents spent P30,000.00 for the wake and burial of Atty. Caorong.[14] Since petitioner does not question this finding of the trial court, it is liable to private respondents in the said amount as actual damages.

Moral Damages. Under Art. 2206, the "spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased." The trial court found that private respondent Paulie Caorong suffered pain from the death of her husband and worry on how to provide support for their minor children, private respondents Yasser King, Rose Heinni, and Prince Alexander.[15] The petitioner likewise does not question this finding of the trial court. Thus, in accordance with recent decisions of this Court,[16] we hold that the petitioner is liable to the private respondents in the amount of P100,000.00 as moral damages for the death of Atty. Caorong.

Exemplary Damages. Art. 2232 provides that "in contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner." In the present case, the petitioner acted in a wanton and reckless manner. Despite warning that the Maranaos were planning to take revenge against the petitioner by burning some of its buses, and contrary to the assurance made by its operations manager that the necessary precautions would be taken, the petitioner and its employees did nothing to protect the safety of passengers. Under the circumstances, we deem it reasonable to award private respondents exemplary damages in the amount of P100,000.00.[17]

Attorney's Fees. Pursuant to Art. 2208, attorney's fees may be recovered when, as in the instant case, exemplary damages are awarded. In the recent case of *Sulpicio Lines, Inc. v. Court of Appeals*,[18] we held an award of P50,000.00 as attorney's fees to be reasonable. Hence, the private respondents are entitled to attorney's fees in that amount.

Compensation for Loss of Earning Capacity. Art. 1764 of the Civil Code, in relation to Art. 2206 thereof, provides that in addition to the indemnity for death arising from the breach of contract of carriage by a common carrier, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter." The formula established in decided cases for computing net earning capacity is as follows:[19]

Gross Necessary

Net earning

=

Life x Annual

-

Living

Capacity

Expectancy Income

Expenses

Life expectancy is equivalent to two thirds (2/3) multiplied by the difference of eighty (80) and the age of the deceased.[20] Since Atty. Caorong was 37 years old at the time of his death,[21] he had a life expectancy of 28 2/3 more years.[22] His projected gross annual income, computed based on his monthly salary of P11,385.00[23] as a lawyer in the Department of Agrarian Reform at the time of his death, was P148,005.00.[24] allowing for

necessary living expenses of fifty percent (50%)[25]of his projected gross annual income, his total earning capacity amounts to P2,121,404.90.[26] Hence, the petitioner is liable to the private respondents in the said amount as compensation for loss of earning capacity.

WHEREFORE, the decision, dated July 29, 1994, of the Court of Appeals is hereby **AFFIRMED** with the **MODIFICATION** that petitioner Fortune Express, Inc. is ordered to pay the following amounts to private respondents Paulie, Yasser King, Rose Heinni, and Prince Alexander Caorong:

- death indemnity in the amount of fifty thousand pesos (P50,000.00);
- actual damages in the amount of thirty thousand pesos (P30,000.00);
- moral damages in the amount of one hundred thousand pesos(P100,000.00);
- exemplary damages in the amount of one hundred thousand pesos (P100,000.00);
- attorney's fees in the amount of fifty thousand pesos (P50,000.00);
- compensation for loss of earning capacity in the amount of two million one hundred twenty-one thousand four hundred four pesos and ninety centavos (P2,121,404.90); and
- costs of suits.

SO ORDERED.

Bellosillo, (Chairman), Puno, and Buena, JJ., concur.
Quisumbing, J., on official business abroad.

[1]Petition, Rollo, pp. 5-6.

[2] Petition, Rollo, pp. 6-7.

[3] Id., p. 7.

[4] Petition, Annex B, Rollo, pp. 52-54.

[5] Petition, Annex A, Rollo, pp. 41-43.

[6] 183 SCRA 189, 195-196 (1990).

[7] 281 SCRA 1, 9 (1997).

[8] 138 SCRA 553, 557-559 (1985).

[9] 180 SCRA 546 (1989).

[10] 168 SCRA 612 (1988).

[11] Supra note 10, at pp. 553-554.

[12] Supra note 11, at pp. 619-622.

[13] E.g., *Philtranco Service Enterprises, Inc. v. Court of Appeals*, 273 SCRA 562 (1997).

[14] Petition, Annex B, Rollo, p. 50.

[15] Petition, Annex B, Rollo, p. 50.

[16] E.G., *Negros Navigation Co., Inc. v. Court of Appeals*, 281 SCRA 534 (1997).

[17] *Id.*

[18] 246 SCRA 376 (1995).

[19] E.g., *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 116617, Nov. 16, 1998.

[20] *Villa Rey Transit, Inc. v. Court of Appeals*, 31 SCRA 511 (1970).

[21] Petition, Annex B, Rollo, p. 50.

[22] $\frac{2}{3} \times (80-37) = 28 \frac{2}{3}$.

[23] Petition, Annex B, Rollo, p. 50.

[24] P11,385.00

x 13

P148,005.00 gross annual income

To account for the thirteenth month pay, the monthly salary of the deceased is multiplied by thirteen.

[25] *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 116617, Nov. 16, 1998.

[26] P148,005.00 P74,002.50

x .50 x $28 \frac{2}{3}$

P74,002.50 net annual income P2,121,404.90 net earning capacity

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