

FIVE STAR BUS CO., INC. AND CARLOS SALONGA, PETITIONERS, VS. COURT OF APPEALS, REGIONAL TRIAL COURT, KALOOKAN CITY, BR. 129 AND PEDRO AND LYDIA SANTOS, RESPONDENTS.

G.R. No. 120496. July 17, 1996

Ponente: PUNO, J.

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PUNO, J.:

This petition for review on certiorari seeks to set aside the decision of the Court of Appeals[1] in CA-G.R. CV No. 40969 awarding to private respondents Pedro and Lydia Santos damages in the total amount of P122,000.00 for the death of their son in a vehicular accident; or, in the alternative, to modify said decision by deleting the award of moral damages of P50,000.00.

This case arose from Civil Case No. C-15500 for breach of contract of carriage and damages filed by private respondents on July 15, 1992 before the Regional Trial Court, Branch 129, Kalookan City against petitioners Five Star Bus Co., Inc. and Carlos Salonga.[2] The Santos spouses sought indemnification for the death of their twenty-two year old son, Joey Santos, who died on April 27, 1992 aboard a passenger bus owned and operated by petitioner Five Star and driven by petitioner Salonga. They alleged that their son rode the bus from Pangasinan to Manila when due to the "gross and wanton negligence, recklessness and imprudence" of the bus driver, it hit an oncoming trailer truck along the Urdaneta, Pangasinan Highway; that the impact resulted in the death of two bus passengers, one of whom was Joey Santos; and that petitioner refused to pay them damages as heirs of the deceased. Respondents prayed for P50,000.00 for the death of their son, P50,000.00 for moral damages, P20,000.00 for funeral expenses and P20,000.00 for attorney's fees.

On September 16, 1992, petitioners answered the complaint alleging that it was the negligence of the driver of the trailer truck which encroached on the oncoming bus' lane that caused the mishap resulting in Joey's death.

On September 22, 1992, the trial court set the pre-trial of the case on October 15, 1992 and instructed counsels for both parties to notify their respective clients and to file their pre-trial briefs. The pre-trial notice reads as follows:

"ORDER

(Pre-Trial Notice)

Issues in this case being joined, the pre-trial conference under Section 1, Rule 20 of the Rules Of Court, in relation to Circular 1-89 of the Supreme Court, is set for October 15, 1992 at 8:30 A. M.

Counsels are instructed to notify their respective clients. Counsels are also reminded of the mandatory filing of pre-trial briefs at least 3 days before the pre-trial date.

SO ORDERED.

Given this 22nd day of September 1992 at the City of Kalookan, Metro Manila.

(Signed)

BAYANI S. RIVERA

Judge"[3]

Copies of the pre-trial notice were sent to Atty. Emerico Lomibao, counsel for respondents and Atty. Arnel Naidas, counsel for petitioners.

On October 15, 1992, the day of the pre-trial, petitioners and their counsel failed to appear. Neither did they file a pre-trial brief. On motion by private respondents' counsel, the trial court declared petitioners as in default and scheduled the reception of their evidence on October 30, 1992, thus;

"ORDER

When this case was called for pre-trial conference this morning, neither defendants nor their counsel appeared in Court, despite previous notice.

Counsel for the plaintiffs moved that the defendants be declared as in default for failure to appear today despite notice.

The motion is well-taken. Not only did defendants fail to appear despite previous notice. They have likewise failed to file a pre-trial brief, pursuant to Circular No. 1-89 of the Supreme Court.

WHEREFORE, premises considered, defendants are declared as in default. Accordingly, plaintiffs shall present evidence ex-parte on October 30, 1992 at 8:30 A.M.

Counsel for plaintiffs is notified in open court.

Send a copy of this order to counsel for defendants.

SO ORDERED.

Given in open hearing this 15th day of October 1992 at the City of Kalookan, Metro Manila.

(Signed)

BAYANI S. RIVERA

Judge"[4]

As scheduled, on October 30, 1992, respondent Lydia Santos testified together with Roger Santos, a co-passenger of the deceased. Documents in support of their testimonies were also presented.

On November 4, 1992, the trial court rendered a decision in favor of respondents, awarding them as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant Five Star Bus Co. Inc, as follows:

1. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs compensatory damages in the sum of P50,000.00;
2. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs actual damages (funeral expenses) in the amount of P12,000.00;
3. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs' lawyer (Atty. Emerico B. Lomibao) the sum of P10,000.00 as attorney's fees; and
4. Ordering defendant Five Star Bus Co., Inc. to pay the costs of the suit.

SO ORDERED.

Given this 4th day of November 1992 at the City of Kalookan, Metro Manila.

(Signed)

BAYANI S. RIVERA

Judge"[5]

It appears that on the day of promulgation of the trial court's decision, the law firm of Vivar, Lopez and Associates entered its appearance as counsel for petitioners.

On November 10, 1992, a motion to set aside the order of default of October 15, 1992 was filed by Atty. Romulo Lopez of Vivar, Lopez and Associates. He alleged that Atty. Arnel Naidas, former counsel of petitioners to whom pre-trial notice was sent, resigned as petitioner Five Star's house counsel on September 30, 1992, and that their law firm's services were engaged by petitioner much later and the records of the case were delivered to them only on October 28, 1992, or days after the pre-trial conference.

On November 18, 1991, petitioners also filed a motion for reconsideration of the court's decision.

In an order dated December 10, 1992, the trial court denied both motions to set aside the order of default and for reconsideration.[6]

Petitioners appealed to the Court of Appeals.

On April 28, 1995, the Court of Appeals affirmed the decision of the trial court but added thereto an award of P50,000.00 for moral damages, as follows:

"WHEREFORE, except as to the additional award of P50,000.00 as and for moral damages, the Decision of November 4, 1992 of the RTC-Kalookan City, Branch 129 in Civil Case No. C- 15500, is hereby AFFIRMED. Costs against defendants Five Star Bus Co., Inc. and Carlos Salonga."[7]

Before us, petitioners raise the following errors:

"I

THE LOWER COURT ERRED IN DECLARING DEFENDANTS-APPELLANTS (PETITIONERS) HEREIN AS IN DEFAULT, ALLOWING EX-PARTE PRESENTATION OF EVIDENCE AND ORDERING PETITIONER TO PAY PLAINTIFFS (RESPONDENTS) COMPENSATORY DAMAGES IN THE SUM OF FIFTY THOUSAND PESOS (P50,000.00), ACTUAL DAMAGES (FUNERAL EXPENSES) IN THE AMOUNT OF TWELVE THOUSAND PESOS (P12,000.00) AND TO PAY PRIVATE RESPONDENTS' LAWYER THE SUM OF TEN THOUSAND PESOS (P10,000.00) AS ATTORNEY'S FEES, ARE ALL NULL AND VOID, BEING CONTRARY TO AND INCONSISTENT WITH THE RULES OF COURT, EXISTING JURISPRUDENCE ON THE MATTER, AND CONSTITUTIONAL PROVISION ON DUE PROCESS.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT, KALOOKAN CITY, BRANCH 129 AND GRANTING ADDITIONAL AWARD OF FIFTY THOUSAND PESOS (P50,000.00) AS AND FOR MORAL DAMAGES."[8]

We find the petition partly meritorious.

We reject petitioners' claim that the trial court erred in declaring them as in default for failure to appear at the pre-trial conference when they, as parties, were never notified thereof.

We have ingrained the rule that when the court schedules a case for pre-trial, notices must be served on the party separately from his counsel which may be made directly to both party and counsel. It is preferred, however, that service of such notice on a party be made through or care of his counsel at counsel's address "with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of pre-trial

conference." "[9] It is the duty of counsel upon whom a pre-trial notice is served to see to it that his client receives such notice and attends the pre-trial, otherwise, he will be liable for grave administrative disciplinary action.[10]

In the instant case, the notice of pre-trial was sent to the counsels of both parties with the express instruction that they notify their respective clients of the conference. Atty. Naidas received the notice on September 28, 1992,[11] i.e., seventeen (17) days before the scheduled conference and two (2) days before his resignation as house counsel of petitioner Five Star. He had ample time to notify petitioners of the pre-trial conference.

Atty. Naidas may have already resigned on the day of the pre-trial, but as far as the trial court was concerned, he continued to be petitioners' counsel of record since no withdrawal of appearance had been filed by him. Having duly notified them of the pre-trial, the trial court did not err in declaring petitioners as in default. They were bound by the negligence of their counsel.

We also hold that after declaring a party as in default or non-suited, the trial court is not duty-bound to receive evidence ex-parte on the very same day it issued the default or non-suit order. The hearing that petitioners failed to attend was a pre-trial; pre-trial and trial on the merits are usually held on separate days to enable the parties to prepare for trial.[12] To be sure, petitioners have no cause to complain for it was to their advantage that the trial court scheduled the reception of respondents' evidence fifteen (15) days after its pre-trial date. The time gap gave them the opportunity to move for reconsideration of the default order before presentation of respondents' evidence.

We also reject petitioners' argument that the trial court decided the case with undue haste simply because it promulgated its decision four (4) days after receiving respondents' evidence. The records show that the issues of the case were simple and the basic evidence consisted of the testimonies of two witnesses which were relatively short.

We agree, however, with petitioners' contention that the additional award of moral damages should not have been granted by the Court of Appeals because private respondents did not appeal the decision of the trial court.

Fairness dictates that a party who has not appealed from a judgment of the trial court is bound by the terms of the judgment. We reiterate the rule that an appellee, who is not an appellant, may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, in which case he must appeal.[13]

IN VIEW WHEREOF, the decision of the Court of Appeals in CA-G.R. CV No. 40969 is affirmed with the modification that the award of P50,000.00 for moral damages is deleted.

No cost.

SO ORDERED.

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

[1] Eight Division.

[2] Presided by Judge Bayani S. Rivera.

[3] Rollo, p. 28.

[4] Rollo, p. 29.

[5] Rollo, p. 32.

[6] Rollo, pp. 46-48.

[7] Rollo, p. 75.

[8] Petition, p. 7; Rollo, p. 17.

[9] *Ng v. Alfaro*, 238 SCRA 486 [1994]; *Agravante v. Patriarca*, 183 SCRA 113, 119 [1990]; *Service Specialists, Inc. v. Sheriff of Manila*, 145 SCRA 139, 150 [1986]; *Taroma v. Sayo*, 67 SCRA 508 [1975]; *Lim v. Animas*, 63 SCRA 408, 411 [1975].

[10] *Ng v. Alfaro*, *supra*, at 491; *Taroma v. Sayo*, *supra*, at 513.

[11] Court of Appeals' Decision, p. 2, Rollo, p. 66.

[12] *Heirs of Jose Fuentes v. Macandog*, *supra*, at 667.

[13] *Heirs of Juan Oclarit v. Court of Appeals*, 233 SCRA 239 [1994]; *Santos v. Court of Appeals*, 221 SCRA 42 [1992]; *Nessia v. Fermin*, 220 SCRA 615 [1992]; *Alba v. Santander*, 160 SCRA 8 [1988].

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