

VICENTE CALALAS, PETITIONER, VS. COURT OF APPEALS, ELIZA JUJEURCHE SUNGA AND FRANCISCO SALVA, RESPONDENTS.*G.R. No. 122039. May 31, 2000*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated March 31, 1991, reversing the contrary decision of the Regional Trial Court, Branch 36, Dumaguete City, and awarding damages instead to private respondent Eliza Jujeurche Sunga as plaintiff in an action for breach of contract of carriage.

The facts, as found by the Court of Appeals, are as follows:

At 10 o'clock in the morning of August 23, 1989, private respondent Eliza Jujeurche G. Sunga, then a college freshman majoring in Physical Education at the Siliman University, took a passenger jeepney owned and operated by petitioner Vicente Calalas. As the jeepney was filled to capacity of about 24 passengers, Sunga was given by the conductor an "extension seat," a wooden stool at the back of the door at the rear end of the vehicle.

On the way to Poblacion Sibulan, Negros Occidental, the jeepney stopped to let a passenger off. As she was seated at the rear of the vehicle, Sunga gave way to the outgoing passenger. Just as she was doing so, an Isuzu truck driven by Iglecerio Verena and owned by Francisco Salva bumped the left rear portion of the jeepney. As a result, Sunga was injured. She sustained a fracture of the "distal third of the left tibia-fibula with severe necrosis of the underlying skin." Closed reduction of the fracture, long leg circular casting, and case wedging were done under sedation. Her confinement in the hospital lasted from August 23 to September 7, 1989. Her attending physician, Dr. Danilo V. Oligario, an orthopedic surgeon, certified she would remain on a cast for a period of three months and would have to ambulate in crutches during said period.

On October 9, 1989, Sunga filed a complaint for damages against Calalas, alleging violation of the contract of carriage by the former in failing to exercise the diligence required of him as a common carrier. Calalas, on the other hand, filed a third-party complaint against Francisco Salva, the owner of the Isuzu truck.

The lower court rendered judgment against Salva as third-party defendant and absolved Calalas of liability, holding that it was the driver of the Isuzu truck who was responsible for the accident. It took cognizance of another case (Civil Case No. 3490), filed by Calalas against Salva and Verena, for quasi-delict, in which Branch 37 of the same court held Salva and his driver Verena jointly liable to Calalas for the damage to his jeepney.

On appeal to the Court of Appeals, the ruling of the lower court was reversed on the ground that Sunga's cause of action was based on a contract of carriage, not quasi-delict, and that the common carrier failed to exercise the diligence required under the Civil Code. The appellate court dismissed the third-party complaint against Salva and adjudged Calalas liable for damages to Sunga. The dispositive portion of its decision reads:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE, and another one is entered ordering defendant-appellee Vicente Calalas to pay plaintiff-appellant:

- (1) P50,000.00 as actual and compensatory damages;
- (2) P50,000.00 as moral damages;
- (3) P10,000.00 as attorney's fees; and
- (4) P1,000.00 as expenses of litigation; and
- (5) to pay the costs.

SO ORDERED.

Hence, this petition. Petitioner contends that the ruling in Civil Case No. 3490 that the negligence of Verena was the proximate cause of the accident negates his liability and that to rule otherwise would be to make the common carrier an insurer of the safety of its passengers. He contends that the bumping of the jeepney by the truck owned by Salva was a *caso fortuito*. Petitioner further assails the award of moral damages to Sunga on the ground that it is not supported by evidence.

The petition has no merit.

The argument that Sunga is bound by the ruling in Civil Case No. 3490 finding the driver and the owner of the truck liable for quasi-delict ignores the fact that she was never a party to that case and, therefore, the principle of *res judicata* does not apply.

Nor are the issues in Civil Case No. 3490 and in the present case the same. The issue in Civil Case No. 3490 was whether Salva and his driver Verena were liable for quasi-delict for the damage caused to petitioner's jeepney. On the other hand, the issue in this case is whether petitioner is liable on his contract of carriage. The first, quasi-delict, also known as *culpa aquiliana* or *culpa extra contractual*, has as its source the negligence of the tortfeasor. The second, breach of contract or *culpa contractual*, is premised upon the negligence in the performance of a contractual obligation.

Consequently, in quasi-delict, the negligence or fault should be clearly established because it is the basis of the action, whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the obligor, in this case the common carrier, failed to transport his passenger safely to his destination.[2] In case of death or injuries to passengers, Art. 1756 of the Civil Code provides that common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as defined in Arts. 1733 and 1755 of the Code. This provision necessarily shifts to the common carrier the burden of proof.

There is, thus, no basis for the contention that the ruling in Civil Case No. 3490, finding Salva and his driver Verena liable for the damage to petitioner's jeepney, should be binding on Sunga. It is immaterial that the proximate cause of the collision between the jeepney and the truck was the negligence of the truck driver. The doctrine of proximate cause is applicable only in actions for quasi-delict, not in actions involving breach of contract. The doctrine is a device for imputing liability to a person where there is no relation between him and another party. In such a case, the obligation is created by law itself. But, where there is a pre-existing contractual relation between the parties, it is the parties themselves who create the obligation, and the function of the law is merely to regulate the relation thus created. Insofar as contracts of carriage are concerned, some aspects regulated by the Civil Code are those respecting the diligence required of common carriers with regard to the safety of passengers as well as the presumption of negligence in cases of death or injury to passengers. It provides:

Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to

observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1746, Nos. 5,6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

Art. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

Art. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed by articles 1733 and 1755.

In the case at bar, upon the happening of the accident, the presumption of negligence at once arose, and it became the duty of petitioner to prove that he had to observe extraordinary diligence in the care of his passengers.

Now, did the driver of jeepney carry Sunga "safely as far as human care and foresight could provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances" as required by Art. 1755? We do not think so. Several factors militate against petitioner's contention.

First, as found by the Court of Appeals, the jeepney was not properly parked, its rear portion being exposed about two meters from the broad shoulders of the highway, and facing the middle of the highway in a diagonal angle. This is a violation of the R.A. No. 4136, as amended, or the Land Transportation and Traffic Code, which provides:

Sec. 54. Obstruction of Traffic. - No person shall drive his motor vehicle in such a manner as to obstruct or impede the passage of any vehicle, nor, while discharging or taking on passengers or loading or unloading freight, obstruct the free passage of other vehicles on the highway.

Second, it is undisputed that petitioner's driver took in more passengers than the allowed seating capacity of the jeepney, a violation of §32(a) of the same law. It provides:

Exceeding registered capacity. - No person operating any motor vehicle shall allow more passengers or more freight or cargo in his vehicle than its registered capacity.

The fact that Sunga was seated in an "extension seat" placed her in a peril greater than that to which the other passengers were exposed. Therefore, not only was petitioner unable to overcome the presumption of negligence imposed on him for the injury sustained by Sunga, but also, the evidence shows he was actually negligent in transporting passengers.

We find it hard to give serious thought to petitioner's contention that Sunga's taking an "extension seat" amounted to an implied assumption of risk. It is akin to arguing that the injuries to the many victims of the tragedies in our seas should not be compensated merely because those passengers assumed a greater risk of drowning by boarding an overloaded ferry. This is also true of petitioner's contention that the jeepney being bumped while it was improperly parked constitutes *caso fortuito*. A *caso fortuito* is an event which could not be foreseen, or which, though foreseen, was inevitable.[3] This requires that the following requirements be present: (a) the cause of the breach is independent of the debtor's will; (b) the event is unforeseeable or unavoidable; (c) the event is such as to render it impossible for the debtor to fulfill his obligation in a normal manner, and (d) the debtor did not take part in causing the injury to the creditor.[4] Petitioner should have foreseen the danger of parking his jeepney with its body protruding two meters into the highway.

Finally, petitioner challenges the award of moral damages alleging that it is excessive and without basis in law. We find this contention well taken.

In awarding moral damages, the Court of Appeals stated:

Plaintiff-appellant at the time of the accident was a first-year college student in that school year 1989-1990 at the Silliman University, majoring in Physical Education. Because of the injury, she was not able to enroll in the second semester of that school year. She testified that she had no more intention of continuing with her schooling, because she could not walk and decided not to pursue her degree, major in Physical Education "because of my leg which has a defect already."

Plaintiff-appellant likewise testified that even while she was under confinement, she cried in pain because of her injured left foot. As a result of her injury, the Orthopedic Surgeon also certified that she has "residual bowing of the fracture side." She likewise decided not to further pursue Physical Education as her major subject, because "my left leg x x x has a defect already."

Those are her physical pains and moral sufferings, the inevitable bedfellows of the injuries that she suffered. Under Article 2219 of the Civil Code, she is entitled to recover moral damages in the sum of P50,000.00, which is fair, just and reasonable.

As a general rule, moral damages are not recoverable in actions for damages predicated on a breach of contract for it is not one of the items enumerated under Art. 2219 of the Civil Code.[5] As an exception, such damages are recoverable: (1) in cases in which the mishap results in the death of a passenger, as provided in Art. 1764, in relation to Art. 2206(3) of the Civil Code; and (2) in the cases in which the carrier is guilty of fraud or bad faith, as provided in Art. 2220.[6]

In this case, there is no legal basis for awarding moral damages since there was no factual finding by the appellate court that petitioner acted in bad faith in the performance of the contract of carriage. Sunga's contention that petitioner's admission in open court that the driver of the jeepney failed to assist her in going to a nearby hospital cannot be construed as an admission of bad faith. The fact that it was the driver of the Isuzu truck who took her to the hospital does not imply that petitioner was utterly indifferent to the plight of his injured passenger. If at all, it is merely implied recognition by Verena that he was the one at fault for the accident.

WHEREFORE, the decision of the Court of Appeals, dated March 31, 1995, and its resolution, dated September 11, 1995, are AFFIRMED, with the MODIFICATION that the award of moral damages is DELETED.

SO ORDERED.

Bellosillo, (Chairman), and Buena, JJ., concur.

Quisumbing, and De Leon, Jr., JJ., on leave.

[1] Per Justice Artemon D. Luna and concurred in by Justices Hector L. Hofilena and B.A. Adefuin-dela Cruz.

[2] See B. Balderrama, *The Philippine Law on Torts And Damages* 20 (1953).

[3] CIVIL CODE, Art. 1174.

[4] *Juan F. Nakpil & Sons v. Court of Appeals*, 144 SCRA 596 (1986); *Vasquez v. Court of Appeals*, 138 SCRA 553 (1985); *Republic v. Luzon Stevedoring Corp.*, 128 Phil. 313 (1967).

[5] *Fores v. Miranda*, 67 105 Phil. 267 (1959); *Mercado v. Lira*, 3 SCRA 124 (1961).

[6] *Philippine Rabbit Bus Lines, Inc. v. Esguerra*, 117 SCRA 741 (1982); *Sabena Belgian World Airlines v. Court of Appeals*, 171 SCRA 620 (1989); *China Airlines, Ltd. v. Intermediate Appellate Court*, 169 SCRA 226 (1989).

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