

JOSE BARITUA AND JB LINE, PETITIONERS, VS. NIMFA DIVINA MERCADER IN HER CAPACITY AND AS GUARDIAN OF DARWIN, GIOVANNI, RODEL AND DENNIS, ALL SURNAMED MERCADER; LEONIDA VDA. DE ME...

G.R. No. 136048. January 23, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Manchester ruling requiring the payment of docket and other fees as a condition for the acquisition of jurisdiction has no retroactive effect and applies only to cases filed after its finality.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the April 17, 1998 Decision[1] and the October 28, 1998 Resolution[2] of the Court of Appeals (CA) in CA-GR CV No. 40772. The decretal portion of said Decision reads as follows:

"WHEREFORE, upon all the foregoing premises considered, the DECISION appealed from is AFFIRMED with the MODIFICATION that the loss of earnings of the late Dominador Mercader is reduced to P798,000.00."[3]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Court of Appeals sustained the Decision of the Regional Trial Court (RTC) of Laoang, Northern Samar (Branch 21). Except for the modification of the loss of earnings, it affirmed all the monetary damages granted by the trial court to respondents. The decretal portion of the assailed RTC Decision reads as follows:[4]

"WHEREFORE, on preponderance of evidence, judgment is for [herein respondents] and against [herein petitioners], ordering the latter to pay the former:

- (a) As compensatory damages for the death of Dominador Mercader -- P50,000.00;
- (b) For the loss of earnings of the late Dominador Mercader -- P1,660,000.00, more or less, based on the average life span of 75 years from the time of his death who earned a net income of P5,000.00 monthly out of his business;
- (c) Actual damages of P30,000.00 receipted purchases of goods in Manila; P5,750.00 for the first class coffin and a 15-day wake services evidenced by a receipt marked Exh. `D'; [P]850.00 for the 50 x 60 headstone, receipt marked Exh. `E' and P1,590.00 -- Deed of Absolute Sale of a burial lot, marked Exh. `F';
- (d) 25% of whatever amount is collected by [respondents] from [petitioners] but no less than P50,000.00 plus P1,000.00 per hearing by way of attorney's fees;
- (e) As moral damages -- P50,000.00;

(f) As exemplary damages -- P30,000.00; and

(g) To pay the costs."

The Facts

The antecedents of the case are succinctly summarized by the Court of Appeals in this wise:

"The original complaint was filed against JB Lines, Inc. [Petitioner JB Lines, Inc.] filed a motion to dismiss complaint, to strike out false-impertinent matters therefrom, and/or for bill of particulars on the primary grounds that [respondents] failed to implead Jose Baritua as an indispensable party and that the cause of action is a suit against a wrong and non-existent party. [Respondents] filed an opposition to the said motion and an amended complaint.

"In an Order dated December 11, 1984 the trial court denied the aforesaid motion and admitted the amended complaint of [respondents] impleading Jose Baritua and alleged the following:

`(10) The late Dominador Mercader is a [b]usinessman mainly engaged in the buy and sell of dry goods in Laoang, N. Samar. He buys his goods from Manila and bring[s] them to Laoang, Northern Samar for sale at his store located in the said locality;

(11) Sometime on March 16, 1983, the late Dominador Mercader boarded [petitioners'] bus No. 142 with Plate No. 484 EU at [petitioners'] Manila Station/terminal, bound for Brgy. Rawis, Laoang Northern Samar as a paying passenger;

(12) At that time, Dominador Mercader had with him as his baggage, assorted goods (i.e. long pants, short pants, dusters, etc.) which he likewise loaded in [petitioners'] bus;

(13) The late Dominador Mercader was not able to reach his destination considering that on March 17, 1983 at Beily (Bugco) Bridge, Barangay Roxas, Mondragon, Northern Samar, while he was on board [petitioners'] bus no. 142 with Plate No. 484 EU, the said bus fell into the river as a result of which the late Dominador Mercader died. x x x.

(14) The accident happened because [petitioners'] driver negligently and recklessly operated the bus at a fast speed in wanton disregard of traffic rules and regulations and the prevailing conditions then existing that caused [the] bus to fall into the river.'

"[Respondents] then filed a motion to declare [petitioners] in default which motion was opposed by [petitioners]. [Respondents] withdrew the said motion prompting the trial court to cancel the scheduled hearing of the said motion to declare [petitioners] in default in an Order dated January 23, 1985.

"In its answer, [petitioners] denied specifically all the material allegations in the complaint and alleged the following:

`2.

The alleged person of Dominador Mercader did not board bus 142 at [petitioners'] Manila station/terminal x x x as a (supposed paying passenger). There is even no statement in the complaint that Dominador Mercader (if it were true that he was a passenger of bus 142 `at the [petitioners'] Manila station/terminal') was issued any passenger-freight ticket conformably with law and practice. It is a fact of public knowledge that, in compliance with existing rules and laws, [Petitioner] Baritua, as a public utility operator, issues, thru his conductors, in appropriate situations, to a true passenger, the familiar and known passenger and freight ticket which reads in part:

`NOTICE

Baggage carried at owner's risk x x x liability on prepaid freight otherwise declared.

x x x x x x x x x

Whole Fare Paid P _____

Declared value _____ x x x.

Description of Freight

Signature of Owner.'

3.

It is also a fact of public knowledge that [Petitioner] Baritua does not have any `Manila station/terminal,' because what he has is a Pasay city station.

4.

[Petitioner] Baritua had no prior knowledge that, on or about March 17, 1983, and/or previous thereto, the Bugko Bailey Bridge (across Catarman-Laoang road) in Barangay Roxas, Mondragon, Northern Samar, was in virtual dilapida[ted] and dangerous condition, in a state of decay and disrepair, thus calling for the concerned government and public officials' performance of their coordinative and joint duties and responsibilities, to repair, improve and maintain that bridge, in good and reasonably safe condition, but, far from performing or complying with said subject duties and responsibilities, the adverted officials concerned, without just cause, not only failed and neglected to cause such needed repair, improvement and maintenance of the Bugko Bailey Bridge, on or prior to March 17, 1983, but also failed, and neglected to either close the Bugko Bridge to public use and travel, and/or to put appropriate warning and cautionary signs, for repair, improvement, maintenance, and safety purposes. So that, as a proximate and direct consequence of the aggregate officials' nonfeasance, bad faith, negligence, serious inefficiency, and callous indifference to public safety, that Bugko Bridge collapsed inward and caved in ruin, on that March 17, 1983, while Baritua's bus 142 was cautiously and prudently passing and travelling across the said bridge, as a result of which the bus fell into the river and sea waters, despite the exercise and compliance by Baritua and his driver of their duties in the matter of their requisite degree of diligence, caution and prudence, Baritua also exercised and complied with the requisite duty of diligence, care, and prudence in the selection and supervision over his driver, contrary to the baseless imputation in paragraphs 14 and 20 of the original and amended complaints. Moreover, Baritua and his driver did not violate any traffic rule and regulation, contrary to plaintiffs' insinuation.

5.

Furthermore, [Petitioner] Baritua and his driver have no causative connection with the alleged death of Dominador Mercader who, according to a reliable source, was already seriously suffering from a lingering illness even prior to his alleged demise. Baritua also learned lately, and so it is herein alleged that Dominador Mercader contributed considerably, to, and/or provided the proximate and direct cause of his own death, hence, he himself is to be blamed for whatever may have happened to him or for whatever may have been sustained by his supposed heirs, vis-à-vis the suit against the wrong party.

6.

Baritua and his driver, as earlier stated, did not commit any actionable breach of contract with the alleged Dominador Mercader or the latter's supposed heirs.

7. There is no factual nor any legal basis for plaintiffs' proffered claims for damages.

II. AFFIRMATIVE DEFENSES

8.

Based on the preceding averments, plaintiffs have neither a cause nor a right of action against [Petitioner] Baritua and his driver.

8.1.

The allegation that supposedly the `x x x [p]laintiffs are the compulsory heirs of the late DOMINADOR MERCADER x x x` (par. 8, complaint) is too vague and too broad, as the subject allegation is a bare and pure conclusionary averment unaccompanied by the requisite statement of ultimate facts constitutive of a cause or right of action.

8.2.

Even assuming arguendo, without however conceding, plaintiff's statement of a cause of action, the complaint is nonetheless replete with false and impertinent matters which fit the rule on striking out pleadings or parts thereof. To mention only a glaring few:

8.2.a.

The allegation on exemplary damages x x x is impertinent and immaterial in the complaint against a supposed employer. For, even theoretically assuming, without however admitting a negligent act-omission on the part of a driver, nevertheless, in such a hypothetical situation, the causative negligence, if any there was, is personal to the wrongdoer, i.e., the employee-driver, to the exclusion of the employer.

8.2.b.

The allegation on supposed `minimum life of 75 years' and on `he expects to earn no less than P1,680,000.00 x x x is false, a pure hyperbole, and bereft of factual and legal basis. Besides, what jurisprudential rule refers to is only net earning. The law abhors a claim, akin to plaintiffs' allegation, which is manifestly speculative, as it may not exist at all. Furthermore, the questioned allegation in the plaintiff's original and amended complaints is not preceded by the requisite statement of definitive facts, nor of any specific fact, which could possibly afford a rational basis for a reasonable expectation of supposed earning that could be lost, or impaired.

8.2.c.

Likewise, the allegations that allegedly `x x x the late Dominador Mercader boarded x x x Bus No. 142 x x x and that supposedly the latter had a baggage x x x containing drygoods x x x in which case [petitioners have] to pay the value thereof in such amount as may be proven by [respondents] in court during the trial x x x, apart from being false, are offensive to the rule on concise statement of ultimate facts. The assailed allegations also contravene Interim Rule 11, `(i)f any demand is for damages in a civil action the amount thereof must be specifically alleged.' In consequence of this averment, [respondents] have not yet paid the correct docket fee, for which reason, [respondents'] case may be dismissed on that ground alone.

8.3. In violation also of the same Interim Rule 11, regarding the requisite definitive amount of claim, the allegation on the supposed funeral expense x x x does not also indicate any specific amount. So with the averment

on supposed moral damage which may not be warranted because of absence of allegation of fraud or bad faith, if any, there was, apart from want of causative connection with the defendant.

8.4.

The allegation in paragraph 15 of the original and amended complaint is also a pure conclusionary averment, without a factual premise.

9.

[Petitioner] JB LINE, impleaded in the amended complaint, is merely a business name and sole proprietorship of defendant Baritua. As such, JB Line is not a juridical person, nor an entity authorized by law to sue and be sued, hence, it cannot legally be a party to any action. With this averment, correlated with that in paragraphs 4-5 hereof, [respondents'] amended complaint is essentially a suit against a wrong party."[5]

The RTC, after due trial, rendered the aforesaid assailed Decision.

Ruling of the Court of Appeals

As earlier stated, the Court of Appeals affirmed the trial court's award of monetary damages in favor of respondents, except the amount of Dominador Mercader's lost earnings, which it reduced to P798,000. It held that petitioners failed to rebut the presumption that in the event a passenger died or was injured, the carrier had acted negligently. Petitioners, it added, presented no sufficient proof that they had exercised extraordinary diligence.

Hence, this Petition.[6]

The Issues

In their Memorandum, petitioners submit the following issues for our consideration:

"I

Did the honorable Court of Appeals (CA) gravely abuse its discretion when it allowed to pass sub silencio the trial court's failure to rule frontally on petitioners' plea for a bill of particulars, and ignored the nature of respondents' prayer in the complaint pleading for an award of --

- `a) P12,000.00 -- representing the death compensation;
- b) An amount to be proven in court, representing actual damages;
- c) P1,660,000.00 or more as may be proven during the trial, by way of loss of earnings;
- d) An amount to be proven in court as and by way of funeral expenses;
- e) An amount to be proven during the trial, representing moral damages;
- f) An amount to be determined by this Honorable Court, representing exemplary damages;
- g) An amount equivalent to 25% of whatever amount the plaintiffs would be able to collect from the defendant but in no case less than P50,000.00 plus an additional amount of P1,000.00 per hearing as and by way of Attorney's fees;'

"II

Did the CA also ignore the fact that the trial court was not paid the correct amount of the docket and other lawful fees; hence, without jurisdiction over the original and amended complaints or over the subject matter of the case;

"III

Did the CA likewise arbitrarily disregard petitioners' constitutional right to procedural due process and fairness when it ignored and thrust aside their right to present evidence and to expect that their evidence will be duly considered and appreciated; and

"IV

In awarding excessive and extravagant damages, did the CA and the trial court adhere to the rule that their assailed decision must state clearly and distinctly the facts and the laws on which they are based?"[7]

Distilling the alleged errors cited above, petitioners raise two main issues for our consideration: (1) whether the CA erred in holding that the RTC had jurisdiction over the subject matter of the case, and (2) whether the CA disregarded petitioners' procedural rights.

The Court's Ruling

The Petition is devoid of merit.

First Issue:

Jurisdiction

Petitioners contend that since the correct amounts of docket and other lawful fees were not paid by respondents, then the trial court did not acquire jurisdiction over the subject matter of the case.

The Court, in *Manchester Development Corporation v. CA*,^[8] held that "[t]he court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the court, much less the payment of the docket fee based on the amounts sought in the amended pleading. x x x."

Generally, the jurisdiction of a court is determined by the statute in force at the commencement of the action,^[9] unless such statute provides for its retroactive application.^[10] Once the jurisdiction of a court attaches, it continues until the case is finally terminated.^[11] The trial court cannot be ousted therefrom by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance.^[12]

The Manchester ruling, which became final in 1987, has no retroactive application and cannot be invoked in the subject Complaint filed in 1984. The Court explicitly declared:

"To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record."^[13] (emphasis supplied)

Second Issue:

Petitioners' Procedural Rights

Motion for a Bill of Particulars

Petitioners argue that the Court of Appeals erred when it passed sub silencio on the trial court's failure to rule frontally on their plea for a bill of particulars.

We are not impressed. It must be noted that petitioners' counsel manifested in open court his desire to file a motion for a bill of particulars. The RTC gave him ten days from March 12, 1985 within which to do so.^[14] He, however, filed the aforesaid motion only on April 2, 1985 or eleven days past the deadline set by the trial court.^[15] Moreover, such motion was already moot and academic because, prior to its filing, petitioners had already filed their answer and several other pleadings to the amended Complaint. Section 1, Rule 12 of the Rules

of Court, provides:

"Section 1. When applied for; purpose. -- Before responding to a pleading, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired." [16] (emphasis supplied)

Petitioners' Right to Adduce Evidence

Petitioners also argue that their right to present evidence was violated by the CA, because it did not consider their contention that the trial judges who heard the case were biased and impartial. Petitioners contend, as they did before the CA, that Judge Tomas B. Noytay based his Decision "on certain chosen partial testimonies of [respondents'] witnesses x x x." They further maintain that Judge Fortunato Operario, who initially handled the case, questioned some witnesses in an overzealous manner and "assum[ed] the dual role of magistrate and advocate." [17]

These arguments are not meritorious. First, judges cannot be expected to rely on the testimonies of every witness. In ascertaining the facts, they determine who are credible and who are not. In doing so, they consider all the evidence before them. In other words, the mere fact that Judge Noytay based his decision on the testimonies of respondents' witnesses does not necessarily mean that he did not consider those of petitioners. Second, we find no sufficient showing that Judge Operario was overzealous in questioning the witnesses. His questions merely sought to clarify their testimonies. In all, we reject petitioners' contention that their right to adduce evidence was violated.

Alleged Failure to State Clearly the Facts and the Law

We are not convinced by petitioners' contention, either, that both the trial and the appellate courts failed to state clearly and distinctly the facts and the law involved in the case. As can be gleaned from their Decisions, both courts clearly laid down their bases for awarding monetary damages to respondents.

Both the RTC and the CA found that a contract of carriage existed between petitioners and Dominador Mercader when he boarded Bus No. 142 in Pasay City on March 16, 1983. Petitioners failed to transport him to his destination, because the bus fell into a river while traversing the Bugko Bailey Bridge. Although he survived the fall, he later died of asphyxia secondary to drowning.

We agree with the findings of both courts that petitioners failed to observe extraordinary diligence [18] that fateful morning. It must be noted that a common carrier, by the nature of its business and for reasons of public policy, is bound to carry passengers safely as far as human care and foresight can provide. It is supposed to do so by using the utmost diligence of very cautious persons, with due regard for all the circumstances. [19] In case of death or injuries to passengers, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence as prescribed in Articles 1733 and 1755 [20] of the Civil Code.

We sustain the ruling of the CA that petitioners failed to prove that they had observed extraordinary diligence.

First, petitioners did not present evidence on the skill or expertise of the driver of Bus No. 142 or the condition of that vehicle at the time of the incident.

Second, the bus was overloaded at the time. In fact, several individuals were standing when the incident occurred. [21]

Third, the bus was overspeeding. Its conductor testified that it had overtaken several buses before it reached the Bugko Bailey Bridge.[22] Moreover, prior to crossing the bridge, it had accelerated and maintained its speed towards the bridge.[23]

We therefore believe that there is no reason to overturn the assailed CA Decision, which affirmed that of the RTC. It is a well-settled rule that the trial court's factual findings, when affirmed by the appellate court, are conclusive and binding, if they are not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence.[24] As clearly discussed above, petitioners have not presented sufficient ground to warrant a deviation from this rule.

Finally, we cannot fault the appellate court in its computation of the damages and lost earnings, since it effectively computed only net earnings in accordance with existing jurisprudence.[25]

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 40-54. It was penned by Justice Quirino D. Abad Santos Jr. (Division chairman), with the concurrence of Justices Ruben T. Reyes and Hilarion L. Aquino (members).

[2] Rollo, p. 71.

[3] CA Decision, p. 15; rollo, p. 54.

[4] RTC Decision, p. 31; penned by Judge Tomas B. Noynay.

[5] CA Decision, pp. 2-7; rollo, pp. 41-46.

[6] The case was deemed submitted for decision upon the Court's receipt of respondents' Memorandum on November 3, 1999. The Memorandum was signed by Atty. Lipata Mercader representing Mercader and Associates Law Offices. Petitioners' Memorandum, signed by Atty. Domingo Lucenario, had been received by the Court on October 28, 1999.

[7] Petitioners' Memorandum, p. 54; rollo, pp. 312-313.

[8] 149 SCRA 562, 569, May 7, 1987, per Gancayco, J.

[9] Lee v. Presiding Judge, 145 SCRA 408, November 10, 1986; People v. Paderna, 22 SCRA 273, January 29, 1968.

[10] Atlas Fertilizer Corp. v. Navarro, 149 SCRA 432, April 30, 1987.

[11] Tinitigan v. Tinitigan Sr., 100 SCRA 619, October 30, 1980; citing Republic v. Central Surety and Insurance Co., 25 SCRA 641, October 26, 1968.

[12] Ramos v. Central Bank, 41 SCRA 565, October 4, 1971; Dioquino v. Cruz Jr., 116 SCRA 451, September 9, 1982.

[13] Manchester Development Corporation v. CA, supra, p. 569.

[14] Order dated March 12, 1985; records, p. 168.

[15] Records, p. 171.

[16] The old Rules of Court prior to the 1997 Rules on Civil Procedure contained a substantially identical provision.

[17] Petitioners' Memorandum, pp. 59-60; rollo, pp. 318-319.

[18] Articles 1733, 1755 and 1756 of the Civil Code provide that common carriers must observe extraordinary diligence. Specifically, these articles respectively read:

"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.

x x x x x x x x

"ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight of very cautious persons, with a 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 in articles 1733 and 1755."

[19] Article 1733, Civil Code.

[20] Article 1756, Civil Code.

[21] TSN, January 9, 1989, p. 22; TSN, October 2, 1985, p. 74.

[22] TSN, September 13, 1990, p. 49.

[23] TSN, October 2, 1985, p. 76.

[24] Rizal Surety & Insurance Co. v. CA, GR No. 112360, July 18, 2000.

[25] Metropolitan Transit Corporation v. CA, 298 SCRA 495, November 16, 1998.

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