

CONSTRUCTION DEVELOPMENT CORPORATION OF THE PHILIPPINES, VS. REBECCA G. ESTRELLA, RACHEL E. FLETCHER, PHILIPPINE PHOENIX SURETY & INSURANCE INC., BATANGAS LAGUNA TAYABAS BUS CO....

G.R. NO. 147791. September 08, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review assails the March 29, 2001 Decision[1] of the Court of Appeals in CA-G.R. CV No. 46896, which affirmed with modification the February 9, 1993 Decision[2] of the Regional Trial Court of Manila, Branch 13, in Civil Case No. R-82-2137, finding Batangas Laguna Tayabas Bus Co. (BLTB) and Construction Development Corporation of the Philippines (CDCP) liable for damages.

The antecedent facts are as follows:

On December 29, 1978, respondents Rebecca G. Estrella and her granddaughter, Rachel E. Fletcher, boarded in San Pablo City, a BLTB bus bound for Pasay City. However, they never reached their destination because their bus was rammed from behind by a tractor-truck of CDCP in the South Expressway. The strong impact pushed forward their seats and pinned their knees to the seats in front of them. They regained consciousness only when rescuers created a hole in the bus and extricated their legs from under the seats. They were brought to the Makati Medical Center where the doctors diagnosed their injuries to be as follows:

Medical Certificate of Rebecca Estrella

Fracture, left tibia mid 3rd

Lacerated wound, chin

Contusions with abrasions, left lower leg

Fracture, 6th and 7th ribs, right[3]

Medical Certificate of Rachel Fletcher

Extensive lacerated wounds, right leg posterior aspect popliteal area and antero-lateral aspect mid lower leg with severance of muscles.

Partial amputation BK left leg with severance of gastro-soleus and antero-lateral compartment of lower leg.

Fracture, open comminuted, both tibial[4]

Thereafter, respondents filed a Complaint[5] for damages against CDCP, BLTB, Espiridion Payunan, Jr. and Wilfredo Danguino before the Regional Trial Court of Manila, Branch 13. They alleged (1) that Payunan, Jr. and Danguino, who were the drivers of CDCP and BLTB buses, respectively, were negligent and did not obey traffic laws; (2) that BLTB and CDCP did not exercise the diligence of a good father of a family in the selection and supervision of their employees; (3) that BLTB allowed its bus to operate knowing that it lacked proper

maintenance thus exposing its passengers to grave danger; (4) that they suffered actual damages amounting to P250,000.00 for Estrella and P300,000.00 for Fletcher; (5) that they suffered physical discomfort, serious anxiety, fright and mental anguish, besmirched reputation and wounded feelings, moral shock, and lifelong social humiliation; (6) that defendants failed to act with justice, give respondents their due, observe honesty and good faith which entitles them to claim for exemplary damage; and (7) that they are entitled to a reasonable amount of attorney's fees and litigation expenses.

CDCP filed its Answer[6] which was later amended to include a third-party complaint against Philippine Phoenix Surety and Insurance, Inc. (Phoenix).[7]

On February 9, 1993, the trial court rendered a decision finding CDCP and BLTB and their employees liable for damages, the dispositive portion of which, states:

WHEREFORE, judgment is rendered:

In the Complaint -

1. In favor of the plaintiffs and against the defendants BLTB, Wilfredo Datinguino, Construction and Development Corporation of the Philippines (now PNCC) and Espiridion Payunan, Jr., ordering said defendants, jointly and severally to pay the plaintiffs the sum of P79,254.43 as actual damages and to pay the sum of P10,000.00 as attorney's fees or a total of P89,254.43;

2. In addition, defendant Construction and Development Corporation of the Philippines and defendant Espiridion Payunan, Jr., shall pay the plaintiffs the amount of Fifty Thousand (P50,000.00) Pesos to plaintiff Rachel Fletcher and Twenty Five Thousand (P25,000.00) Pesos to plaintiff Rebecca Estrella;

3. On the counterclaim of BLTB Co. and Wilfredo Datinguino -

Dismissing the counterclaim;

4. On the crossclaim against Construction and Development Corporation of the Philippines (now PNCC) and Espiridion Payunan, Jr. -

Dismissing the crossclaim;

5. On the counterclaim of Construction and Development Corporation of the Philippines (now PNCC) -
Dismissing the counterclaim;

6. On the crossclaim against BLTB -
Dismissing the crossclaim;

7. On the Third Party Complaint by Construction and Development Corporation of the Philippines against Philippine Phoenix Surety and Insurance, Incorporated -
Dismissing the Third Party Complaint.

SO ORDERED.[8]

The trial court held that BLTB, as a common carrier, was bound to observe extraordinary diligence in the vigilance over the safety of its passengers. It must carry the passengers safely as far as human care and foresight provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances. Thus, where a passenger dies or is injured, the carrier is presumed to have been at fault or has acted negligently. BLTB's inability to carry respondents to their destination gave rise to an action for breach of contract of carriage while its failure to rebut the presumption of negligence made it liable to respondents for the breach.[9]

Regarding CDCP, the trial court found that the tractor-truck it owned bumped the BLTB bus from behind.

Evidence showed that CDCP's driver was reckless and driving very fast at the time of the incident. The gross negligence of its driver raised the presumption that CDCP was negligent either in the selection or in the supervision of its employees which it failed to rebut thus making it and its driver liable to respondents.[10]

Unsatisfied with the award of damages and attorney's fees by the trial court, respondents moved that the decision be reconsidered but was denied. Respondents elevated the case[11] to the Court of Appeals which affirmed the decision of the trial court but modified the amount of damages, the dispositive portion of which provides:

WHEREFORE, the assailed decision dated October 7, 1993 of the Regional Trial Court, Branch 13, Manila is hereby AFFIRMED with the following MODIFICATION:

- The interest of six (6) percent per annum on the actual damages of P79,354.43 should commence to run from the time the judicial demand was made or from the filing of the complaint on February 4, 1980;
- Thirty (30) percent of the total amount recovered is hereby awarded as attorney's fees;
- Defendants-appellants Construction and Development Corporation of the Philippines (now PNCC) and Espiridion Payunan, Jr. are ordered to pay plaintiff-appellants Rebecca Estrella and Rachel Fletcher the amount of Twenty Thousand (P20,000.00) each as exemplary damages and P80,000.00 by way of moral damages to Rachel Fletcher.

SO ORDERED.[12]

The Court of Appeals held that the actual or compensatory damage sought by respondents for the injuries they sustained in the form of hospital bills were already liquidated and were ascertained. Accordingly, the 6% interest per annum should commence to run from the time the judicial demand was made or from the filing of the complaint and not from the date of judgment. The Court of Appeals also awarded attorney's fees equivalent to 30% of the total amount recovered based on the retainer agreement of the parties. The appellate court also held that respondents are entitled to exemplary and moral damages. Finally, it affirmed the ruling of the trial court that the claim of CDCP against Phoenix had already prescribed.

Hence, this petition raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING RESPONDENTS BLTB AND/OR ITS DRIVER WILFREDO DATINGUINO SOLELY LIABLE FOR THE DAMAGES SUSTAINED BY HEREIN RESPONDENTS FLETCHER AND ESTRELLA.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AWARDING EXCESSIVE OR UNFOUNDED DAMAGES, ATTORNEY'S FEES AND LEGAL INTEREST TO RESPONDENTS FLETCHER AND ESTRELLA.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING RESPONDENT PHOENIX LIABLE UNDER ITS INSURANCE POLICY ON THE GROUND OF PRESCRIPTION.

The issues for resolution are as follows: (1) whether BLTB and its driver Wilfredo Datinguino are solely liable for the damages sustained by respondents; (2) whether the damages, attorney's fees and legal interest awarded by the CA are excessive and unfounded; (3) whether CDCP can recover under its insurance policy from Phoenix.

Petitioner contends that since it was made solidarily liable with BLTB for actual damages and attorney's fees in paragraph 1 of the trial court's decision, then it should no longer be held liable to pay the amounts stated in

paragraph 2 of the same decision. Petitioner claims that the liability for actual damages and attorney's fees is based on culpa contractual, thus, only BLTB should be held liable. As regards paragraph 2 of the trial court's decision, petitioner claims that it is ambiguous and arbitrary because the dispositive portion did not state the basis and nature of such award.

Respondents, on the other hand, argue that petitioner is also at fault, hence, it was properly joined as a party. There may be an action arising out of one incident where questions of fact are common to all. Thus, the cause of action based on culpa aquiliana in the civil suit they filed against it was valid.

The petition lacks merit.

The case filed by respondents against petitioner is an action for culpa aquiliana or quasi-delict under Article 2176 of the Civil Code.[13] In this regard, Article 2180 provides that the obligation imposed by Article 2176 is demandable for the acts or omissions of those persons for whom one is responsible. Consequently, an action based on quasi-delict may be instituted against the employer for an employee's act or omission. The liability for the negligent conduct of the subordinate is direct and primary, but is subject to the defense of due diligence in the selection and supervision of the employee.[14] In the instant case, the trial court found that petitioner failed to prove that it exercised the diligence of a good father of a family in the selection and supervision of Payunan, Jr.

The trial court and the Court of Appeals found petitioner solidarily liable with BLTB for the actual damages suffered by respondents because of the injuries they sustained. It was established that Payunan, Jr. was driving recklessly because of the skid marks as shown in the sketch of the police investigator.

It is well-settled in *Fabre, Jr. v. Court of Appeals*, [15] that the owner of the other vehicle which collided with a common carrier is solidarily liable to the injured passenger of the same. We held, thus:

The same rule of liability was applied in situations where the negligence of the driver of the bus on which plaintiff was riding concurred with the negligence of a third party who was the driver of another vehicle, thus causing an accident. In *Anuran v. Buño, Batangas Laguna Tayabas Bus Co. v. Intermediate Appellate Court*, and *Metro Manila Transit Corporation v. Court of Appeals*, the bus company, its driver, the operator of the other vehicle and the driver of the vehicle were jointly and severally held liable to the injured passenger or the latter's heirs. The basis of this allocation of liability was explained in *Viluan v. Court of Appeals*, thus:

Nor should it make any difference that the liability of petitioner [bus owner] springs from contract while that of respondents [owner and driver of other vehicle] arises from quasi-delict. As early as 1913, we already ruled in *Gutierrez vs. Gutierrez*, 56 Phil. 177, that in case of injury to a passenger due to the negligence of the driver of the bus on which he was riding and of the driver of another vehicle, the drivers as well as the owners of the two vehicles are jointly and severally liable for damages. x x x

x x x x

As in the case of BLTB, private respondents in this case and her co-plaintiffs did not stake out their claim against the carrier and the driver exclusively on one theory, much less on that of breach of contract alone. After all, it was permitted for them to allege alternative causes of action and join as many parties as may be liable on such causes of action so long as private respondent and her co-plaintiffs do not recover twice for the same injury. What is clear from the cases is the intent of the plaintiff there to recover from both the carrier and the driver, thus justifying the holding that the carrier and the driver were jointly and severally liable because their separate and distinct acts concurred to produce the same injury.[16] (Emphasis supplied)

In a "joint" obligation, each obligor answers only for a part of the whole liability; in a "solidary" or "joint and several" obligation, the relationship between the active and the passive subjects is so close that each of them must comply with or demand the fulfillment of the whole obligation. In *Lafarge Cement v. Continental Cement*

Corporation,[17] we reiterated that joint tort feors are jointly and severally liable for the tort which they commit. Citing *Worcester v. Ocampo*,[18] we held that:

x x x The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action is tort. They fail to recognize the universal doctrine that each joint tort feor is not only individually liable for the tort in which he participates, but is also jointly liable with his tort feors. x x x

It may be stated as a general rule that joint tort feors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. x x x

Joint tort feors are jointly and severally liable for the tort which they commit. The persons injured may sue all of them or any number less than all. Each is liable for the whole damages caused by all, and all together are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared to that of the others. x x x

Joint tort feors are not liable pro rata. The damages can not be apportioned among them, except among themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount. x x x

A payment in full for the damage done, by one of the joint tort feors, of course satisfies any claim which might exist against the others. There can be but satisfaction. The release of one of the joint tort feors by agreement generally operates to discharge all. x x x

Of course the court during trial may find that some of the alleged tort feors are liable and that others are not liable. The courts may release some for lack of evidence while condemning others of the alleged tort feors. And this is true even though they are charged jointly and severally.[19]

Petitioner's claim that paragraph 2 of the dispositive portion of the trial court's decision is ambiguous and arbitrary and also entitles respondents to recover twice is without basis. In the body of the trial court's decision, it was clearly stated that petitioner and its driver Payunan, Jr., are jointly and solidarily liable for moral damages in the amount of P50,000.00 to respondent Fletcher and P25,000.00 to respondent Estrella.[20] Moreover, there could be no double recovery because the award in paragraph 2 is for moral damages while the award in paragraph 1 is for actual damages and attorney's fees.

Petitioner next claims that the damages, attorney's fees, and legal interest awarded by the Court of Appeals are excessive.

Moral damages may be recovered in quasi-delicts causing physical injuries.[21] The award of moral damages in favor of Fletcher and Estrella in the amount of P80,000.00 must be reduced since prevailing jurisprudence fixed the same at P50,000.00.[22] While moral damages are not intended to enrich the plaintiff at the expense of the defendant, the award should nonetheless be commensurate to the suffering inflicted.[23]

The Court of Appeals correctly awarded respondents exemplary damages in the amount of P20,000.00 each. Exemplary damages may be awarded in addition to moral and compensatory damages.[24] Article 2231 of the Civil Code also states that in quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[25] In this case, petitioner's driver was driving recklessly at the time its truck rammed the BLTB bus. Petitioner, who has direct and primary liability for the negligent conduct of its subordinates, was also found negligent in the selection and supervision of its employees. In *Del Rosario v. Court of Appeals*,[26] we held, thus:

ART. 2229 of the Civil Code also provides that such damages may be imposed, by way of example or

correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. Exemplary Damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

Regarding attorney's fees, we held in *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*,^[27] that:

There are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client.

In its extraordinary concept, an attorney's fee is an indemnity for damages ordered by the court to be paid by the losing party in a litigation. The basis of this is any of the cases provided by law where such award can be made, such as those authorized in Article 2208, Civil Code, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.^[28] (Emphasis supplied)

In the instant case, the Court of Appeals correctly awarded attorney's fees and other expenses of litigation as they may be recovered as actual or compensatory damages when exemplary damages are awarded; when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid, just and demandable claim; and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.^[29]

Regarding the imposition of legal interest at the rate of 6% from the time of the filing of the complaint, we held in *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[30] that when an obligation, regardless of its source, i.e., law, contracts, quasi- contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for payment of interest in the concept of actual and compensatory damages,^[31] subject to the following rules, to wit -

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.^[32] (Emphasis supplied)

Accordingly, the legal interest of 6% shall begin to run on February 9, 1993 when the trial court rendered judgment and not on February 4, 1980 when the complaint was filed. This is because at the time of the filing of the complaint, the amount of the damages to which plaintiffs may be entitled remains unliquidated and unknown, until it is definitely ascertained, assessed and determined by the court and only upon presentation of proof thereon.[33] From the time the judgment becomes final and executory, the interest rate shall be 12% until its satisfaction.

Anent the last issue of whether petitioner can recover under its insurance policy from Phoenix, we affirm the findings of both the trial court and the Court of Appeals, thus:

As regards the liability of Phoenix, the court a quo correctly ruled that defendant-appellant CDCP's claim against Phoenix already prescribed pursuant to Section 384 of P.D. 612, as amended, which provides:

Any person having any claim upon the policy issued pursuant to this chapter shall, without any unnecessary delay, present to the insurance company concerned a written notice of claim setting forth the nature, extent and duration of the injuries sustained as certified by a duly licensed physician. Notice of claim must be filed within six months from date of the accident, otherwise, the claim shall be deemed waived. Action or suit for recovery of damage due to loss or injury must be brought in proper cases, with the Commissioner or Courts within one year from denial of the claim, otherwise, the claimant's right of action shall prescribe. (As amended by PD 1814, BP 874.)[34]

The law is clear and leaves no room for interpretation. A written notice of claim must be filed within six months from the date of the accident. Since petitioner never made any claim within six months from the date of the accident, its claim has already prescribed.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 46896 dated March 29, 2001, which modified the Decision of the Regional Trial Court of Manila, Branch 13, in Civil Case No. R-82-2137, is AFFIRMED with the MODIFICATIONS that petitioner is held jointly and severally liable to pay (1) actual damages in the amount of P79,354.43; (2) moral damages in the amount of P50,000.00 each for Rachel Fletcher and Rebecca Estrella; (3) exemplary damages in the amount of P20,000.00 each for Rebecca Estrella and Rachel Fletcher; and (4) thirty percent (30%) of the total amount recovered as attorney's fees. The total amount adjudged shall earn interest at the rate of 6% per annum from the date of judgment of the trial court until finality of this judgment. From the time this Decision becomes final and executory and the judgment amount remains unsatisfied, the same shall earn interest at the rate of 12% per annum until its satisfaction.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Romeo A. Brawner and Rebecca De Guia-Salvador; rollo, pp. 30-47.

[2] CA rollo, pp. 89-116. Penned by Judge Cecilio F. Balagot.

[3] Records, p. 538.

[4] Id. at 540.

[5] Id. at 3-10.

[6] Id. at 30-34.

[7] Id. at 70-75.

[8] CA rollo, pp. 115-116.

[9] Id. at 106-107.

[10] Id. at 108-109.

[11] Id. at 60-88.

[12] Rollo, pp. 46-47.

[13] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi- delict and is governed by the provisions of this Chapter.

[14] Equitable Leasing Corporation v. Suyom, 437 Phil. 244, 253 (2002).

[15] Fabre, Jr. v. Court of Appeals, 328 Phil. 774 (1996).

[16] Id. at 791-793.

[17] Lafarge Cement Philippines, Inc. v. Continental Cement Corporation, G.R. No. 155173, November 23, 2004, 443 SCRA 522.

[18] 22 Phil. 42 (1912).

[19] Supra note 17 at 544-545.

[20] CA rollo, pp. 114-115.

[21] CIVIL CODE, Art. 2219.

[22] Macalinao v. Ong, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 759.

[23] Valenzuela v. Court of Appeals, 323 Phil. 374, 399 (1996).

[24] ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[25] Metro Manila Transit Corporation v. Court of Appeals, 359 Phil. 18, 38 (1998).

[26] G.R. No. 118325, January 29, 1997, 267 SCRA 158, 173.

[27] 336 Phil. 705 (1997).

[28] Id. at 712.

[29] Vital-Gozon v. Court of Appeals, 354 Phil. 128, 153 (1998).

[30] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[31] Victory Liner, Inc. v. Gammad, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 371-372.

[32] Supra note 30 at 95-96.

[33] Philippine Airlines, Inc. v. Court of Appeals, 341 Phil. 624, 634 (1997); Lim v. Court of Appeals, 424 Phil. 457, 467 (2002).

[34] Rollo, pp. 45-46.

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