

SULPICIO LINES, INC., PETITIONER, VS. DOMINGO E. CORSO, LUCIA E. CORSO, MELECIO E. CORSO, SEGUNDO E. CORSO, VIRGILIO E. CORSO, DIOSDADA E. CORSO, AND CECILIA E. CORSO, RESPONDENTS.

G.R. No. 157009. March 17, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Are the surviving brothers and sisters of a passenger of a vessel that sinks during a voyage entitled to recover moral damages from the vessel owner as common carrier?

This is the question presented in the appeal taken by the common carrier from the reversal by the Court of Appeals (CA) of the decision of the Regional Trial Court (RTC) dismissing the complaint for various damages filed by the surviving brothers and sisters of the late Dr. Cenon E. Curso upon a finding that force majeure had caused the sinking. The CA awarded moral and other damages to the surviving brothers and sisters.

Antecedents

On October 23, 1988, Dr. Curso boarded at the port of Manila the MV Doña Marilyn, an inter-island vessel owned and operated by petitioner Sulpicio Lines, Inc., bound for Tacloban City. Unfortunately, the MV Doña Marilyn sank in the afternoon of October 24, 1988 while at sea due to the inclement sea and weather conditions brought about by Typhoon Unsang. The body of Dr. Curso was not recovered, along with hundreds of other passengers of the ill-fated vessel. At the time of his death, Dr. Curso was 48 years old, and employed as a resident physician at the Naval District Hospital in Naval, Biliran. He had a basic monthly salary of P3,940.00, and would have retired from government service by December 20, 2004 at the age of 65.

On January 21, 1993, the respondents, allegedly the surviving brothers and sisters of Dr. Curso, sued the petitioner in the RTC in Naval, Biliran to claim damages based on breach of contract of carriage by sea, averring that the petitioner had acted negligently in transporting Dr. Curso and the other passengers. They stated, among others, that their parents had predeceased Dr. Curso, who died single and without issue; and that, as such, they were Dr. Curso's surviving heirs and successors in interest entitled to recover moral and other damages.[1] They prayed for judgment, as follows: (a) compensatory damages of P1,924,809.00; (b) moral damages of P100,000.00; (c) exemplary or corrective damages in the amount deemed proper and just; (d) expenses of litigation of at least P50,000.00; (e) attorney's fees of P50,000.00; and (f) costs of suit.

The petitioner denied liability, insisting that the sinking of the vessel was due to force majeure (i.e., Typhoon Unsang), which exempted a common carrier from liability. It averred that the MV Doña Marilyn was seaworthy in all respects, and was in fact cleared by the Philippine Coast Guard for the voyage; and that after the accident it conducted intensive search and rescue operations and extended assistance and aid to the victims and their families.

Ruling of the RTC

On July 28, 1995, the RTC dismissed the complaint upon its finding that the sinking of the vessel was due to force majeure. The RTC concluded that the officers of the MV Doña Marilyn had acted with the diligence required of a common carrier; that the sinking of the vessel and the death of its passengers, including Dr. Curso, could not have been avoided; that there was no basis to consider the MV Doña Marilyn not seaworthy at the time of the voyage; that the findings of the Special Board of Marine Inquiry (SBMI) constituted to investigate the disaster absolved the petitioner, its officers, and crew of any negligence and administrative liability; and that the respondents failed to prove their claim for damages.

Ruling of the CA

The respondents appealed to the CA, contending that the RTC erred: (a) in considering itself barred from entertaining the case by the findings of fact of the SBMI in SBMI-ADM Case No. 08-88; (b) in not holding that the petitioner was negligent and did not exercise the required diligence and care in conducting Dr. Curso to his destination; (c) in not finding that the MV Doña Marilyn was unseaworthy at the time of its sinking; and (d) in not awarding damages to them.[2]

In its decision dated September 16, 2002,[3] the CA held and disposed:

Based on the events described by the appellee's witness, the Court found inadequate proof to show that Sulpicio Lines, Inc., or its officers and crew, had exercised the required degree of diligence to acquit the appellee of liability.

In the first place, the court finds inadequate explanation why the officers of the M.V. Doña Marilyn had not apprised themselves of the weather reports on the approach of typhoon "Unsang" which had the power of a signal no. 3 cyclone, bearing upon the general direction of the path of the M.V. Doña Marilyn. If the officers and crew of the Doña Marilyn had indeed been adequately monitoring the strength and direction of the typhoon, and had acted promptly and competently to avoid the same, then such a mishap would not have occurred.

Furthermore, there was no account of the acts and decision of the crew of the ill-fated ship from 8:00 PM on October 23, 1988 when the Chief Mate left his post until 4:00 AM the next day when he resumed duty. It does not appear what occurred during that time, or what weather reports were received and acted upon by the ship captain. What happened during such time is important in determining what information about the typhoon was gathered and how the ship officers reached their decision to just change course, and not take shelter while a strong typhoon was approaching.

Furthermore, the Court doubts the fitness of the ship for the voyage, since at the first sign of bad weather, the ship's hydraulic system failed and had to be repaired mid-voyage, making the vessel a virtual derelict amidst a raging storm at sea. It is part of the appellee's extraordinary diligence as a common carrier to make sure that its ships can withstand the forces that bear upon them during a voyage, whether they be the ordinary stress of the sea during a calm voyage or the rage of a storm. The fact that the stud bolts in the ships hydraulic system gave way while the ship was at sea discredits the theory that the appellee exercised due diligence in maintaining the seaworthy condition of the M.V. Doña Marilyn. xxx.[4]

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Aside from these, the defendant must compensate the plaintiffs for moral damages that they suffered as a result of the negligence attending the loss of the M.V. Doña Marilyn. Plaintiffs, have established that they took great pains to recover, in vain, the body of their brother, at their own cost, while suffering great grief due to the loss of a loved one. Furthermore, Plaintiffs were unable to recover the body of their brother. Moral damages worth P100,000.00 is proper.

WHEREFORE, premises considered, the appealed decision of the RTC of Naval, Biliran, Branch 16, rendered in Civil Case No. B-0851, is hereby SET ASIDE. In lieu thereof, judgment is hereby rendered, finding the defendant-appellee Sulpicio Lines, Inc, to have been negligent in transporting the deceased Cenon E. Curso who was on board the ill-fated M.V. Doña Marilyn, resulting in his untimely death. Defendant-appellee is hereby ordered to pay the plaintiffs heirs of Cenon E. Curso the following:

- (1) Death indemnity in the amount of P50,000.00;
- (2) Loss of Earning Capacity in the amount of P504,241.20;
- (3) Moral Damages in the amount of P100,000.00.
- (4) Costs of the suit.[5]

Hence, this appeal, in which the petitioner insists that the CA committed grievous errors in holding that the respondents were entitled to moral damages as the brothers and sisters of the late Dr. Curso; that the CA thereby disregarded Article 1764 and Article 2206 of the Civil Code, and the ruling in *Receiver for North Negros Sugar Co., Inc. v. Ybañez*,[6] whereby the Supreme Court disallowed the award of moral damages in favor of the brothers and sisters of a deceased passenger in an action upon breach of a contract of carriage.[7]

Issues

The petitioner raises the following issues:

ARE THE BROTHERS AND SISTERS OF A DECEASED PASSENGER IN A CASE OF BREACH OF CONTRACT OF CARRIAGE ENTITLED TO AN AWARD OF MORAL DAMAGES AGAINST THE CARRIER?

ASSUMING (THAT) THEY ARE ENTITLED TO CLAIM MORAL DAMAGES, SHOULD THE AWARD BE GRANTED OR GIVEN TO THE BROTHER OR SISTER NOTWITHSTANDING (THE) LACK OF EVIDENCE AS REGARDS HIS OR HER PERSONAL SUFFERING?

Ruling

The petition is meritorious.

As a general rule, moral damages are not recoverable in actions for damages predicated on a breach of contract, unless there is fraud or bad faith.[8] As an exception, moral damages may be awarded in case of breach of contract of carriage that results in the death of a passenger,[9] in accordance with Article 1764, in relation to Article 2206 (3), of the Civil Code, which provide:

Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

- (1) 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; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
- (2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand

support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) 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 foregoing legal provisions set forth the persons entitled to moral damages. The omission from Article 2206 (3) of the brothers and sisters of the deceased passenger reveals the legislative intent to exclude them from the recovery of moral damages for mental anguish by reason of the death of the deceased. *Inclusio unius est exclusio alterius*.^[10] The solemn power and duty of the courts to interpret and apply the law do not include the power to correct the law by reading into it what is not written therein.^[11] Thus, the CA erred in awarding moral damages to the respondents.

The petitioner has correctly relied on the holding in *Receiver for North Negros Sugar Company, Inc. v. Ybañez*,^[12] to the effect that in case of death caused by quasi-delict, the brother of the deceased was not entitled to the award of moral damages based on Article 2206 of the Civil Code.

Essentially, the purpose of moral damages is indemnity or reparation, that is, to enable the injured party to obtain the means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone by reason of the tragic event. According to *Villanueva v. Salvador*,^[13] the conditions for awarding moral damages are: (a) there must be an injury, whether physical, mental, or psychological, clearly substantiated by the claimant; (b) there must be a culpable act or omission factually established; (c) the wrongful act or omission of the defendant must be the proximate cause of the injury sustained by the claimant; and (d) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

To be entitled to moral damages, the respondents must have a right based upon law. It is true that under Article 1003^[14] of the Civil Code they succeeded to the entire estate of the late Dr. Curso in the absence of the latter's descendants, ascendants, illegitimate children, and surviving spouse. However, they were not included among the persons entitled to recover moral damages, as enumerated in Article 2219 of the Civil Code, viz:

Article 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

The parents of the female seduced, abducted, raped or abused referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

Article 2219 circumscribes the instances in which moral damages may be awarded. The provision does not include succession in the collateral line as a source of the right to recover moral damages. The usage of the phrase analogous cases in the provision means simply that the situation must be held similar to those expressly enumerated in the law in question^[15] following the ejusdem generis rule. Hence, Article 1003 of the Civil Code is not concerned with recovery of moral damages.

In fine, moral damages may be recovered in an action upon breach of contract of carriage only when: (a) where death of a passenger results, or (b) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result.^[16] Article 2206 of the Civil Code entitles the descendants, ascendants, illegitimate children, and surviving spouse of the deceased passenger to demand moral damages for mental anguish by reason of the death of the deceased.^[17]

WHEREFORE, the petition for review on certiorari is granted, and the award made to the respondents in the decision dated September 16, 2002 of the Court of Appeals of moral damages amounting to P100,000.00 is deleted and set aside.

SO ORDERED.

Puno, (Chairperson), Carpio Morales, Leonardo-De Castro, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 24-28.

[2] Id. at 52.

[3] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Josefina Guevara-Salonga and Edgardo F. Sundiam concurring, Id. at 49-60.

[4] Id. at 55-56.

[5] Id. at 59-60.

[6] G.R. No. L-22183, August 30, 1968, 24 SCRA 979.

[7] Rollo, p. 11.

[8] Japan Airlines v. Simangan, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 361.

[9] Victory Liner, Inc. v. Gammad, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 356.

[10] The express inclusion of one implies the exclusion of all others.

[11] Agote v. Lorenzo, G.R. No. 142675, July 22, 2005, 464 SCRA 60.

[12] Supra, note 6.

[13] G.R. No. 139436, January 25, 2006, 480 SCRA 39.

[14] Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles. (946a)

[15] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 130030, June 25, 1999, 309 SCRA 141, 146.

[16] *Morris v. Court of Appeals*, G.R. No. 127957, February 21, 2001, 352 SCRA 428.

[17] *Fores v. Miranda*, 105 Phil 266 (1959).

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