

R TRANSPORT CORPORATION, REPRESENTED BY ITS OWNER/PRESIDENT RIZALINA LAMZON, PETITIONER, VS. EDUARDO PANTE, RESPONDENT.

G.R. No. 162104. September 15, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari[1] of the Decision dated October 7, 2003 of the Court of Appeals in CA-G.R. CV No. 76170, and its Resolution dated February 5, 2004, denying petitioner's motion for reconsideration. The Court of Appeals affirmed the Decision of the Regional Trial Court (RTC) of Gapan City, Branch 35, dated January 26, 2002, holding petitioner liable to respondent for damages for physical injuries sustained by respondent due to a vehicular accident.

The facts[2] are as follows:

Petitioner R Transport Corporation, represented by its owner and president, Rizalina Lamzon,[3] is a common carrier engaged in operating a bus line transporting passengers to Gapan, Nueva Ecija from Cubao, Quezon City and back.

At about 3:00 a.m. of January 27, 1995, respondent Eduardo Pante rode petitioner's R. L. Bus Liner with Plate Number CVW-635 and Body Number 94810 in Cubao, Quezon City bound for Gapan, Nueva Ecija. Respondent paid the sum of P48.00 for his fare, and he was issued bus ticket number 555401.[4]

While traveling along the Doña Remedios Trinidad Highway in Baliuag, Bulacan, the bus hit a tree and a house due to the fast and reckless driving of the bus driver, Johnny Merdiquia. Respondent sustained physical injuries as a result of the vehicular accident. He was brought by an unidentified employee of petitioner to the Baliuag District Hospital, where respondent was diagnosed to have sustained a "laceration frontal area, with fracture of the right humerus,"[5] or the bone that extends from the shoulder to the elbow of the right arm. Respondent underwent an operation for the fracture of the right humerus per Certification dated February 17, 1995 issued by Dr. Virginia C. Cabling of the Baliuag District Hospital.[6]

The hospital's Statement of Account showed that respondent's operation and confinement cost P22,870.00.[7] Respondent also spent P8,072.60 for his medication. He was informed that he had to undergo a second operation after two years of rest.[8] He was unemployed for almost a year after his first operation because Goldilocks, where he worked as a production crew, refused to accept him with his disability as he could not perform his usual job.[9]

By way of initial assistance, petitioner gave respondent's wife, Analiza P. Pante, the sum of P7,000.00, which was spent for the stainless steel instrument used in his fractured arm.[10]

After the first operation, respondent demanded from petitioner, through its manager, Michael Cando, the full payment or reimbursement of his medical and hospitalization expenses, but petitioner refused payment.[11]

Four years later, respondent underwent a second operation. He spent P15,170.00 for medical and hospitalization expenses.[12]

On March 14, 1995, respondent filed a Complaint[13] for damages against petitioner with the RTC of Gapan City, Branch 35 (trial court) for the injuries he sustained as a result of the vehicular accident.

In its Answer,[14] petitioner put up the defense that it had always exercised the diligence of a good father of a family in the selection and supervision of its employees, and that the accident was a force majeure for which it should not be held liable.

At the pre-trial on October 4, 1995, petitioner was declared in default,[15] which was reconsidered by the trial court on December 12, 1995[16] upon finding that petitioner had earlier filed a Motion to Transfer Date of Hearing. Trial was first set on February 26, 1996, and from then on trial was postponed several times on motion of petitioner.

Six years later, on October 24, 2001, respondent's direct examination was concluded. His cross-examination was reset to December 5, 2001 due to the absence of petitioner and its counsel.[17] It was again reset to January 23, 2002[18] upon petitioner's motion. On January 23, 2002, petitioner, through its new counsel, asked for another postponement on the ground that he was not ready. Hence, the cross-examination of respondent was reset to March 13, 2002.[19]

On March 13, 2002, petitioner was declared to have waived its right to cross-examine respondent due to the absence of petitioner and its counsel, and respondent was allowed to offer his exhibits within five days.[20] Petitioner's motion for reconsideration dated April 4, 2002[21] was denied on May 7, 2002.[22]

In the hearing of June 19, 2002, petitioner was declared to have waived its right to present evidence on motion of respondent's counsel in view of the unexplained absence of petitioner and its counsel despite prior notice. The case was declared submitted for decision.[23]

On June 26, 2002, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the plaintiffs to be entitled to damages and ordering defendants to [pay]:

- 1.) P39,112.60 as actual damages;
- 2.) P50,000.00 as moral damages;
- 3.) P50,000.00 as exemplary damages;
- 4.) Twenty-five percent (25%) of the total of which shall constitute a lien as contingent fee of plaintiff's counsel.[24]

So ordered.

The trial court held that the provisions of the Civil Code on common carriers govern this case. Article 1756 of the Civil Code states that "[i]n 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." The trial court ruled that since petitioner failed to dispute said presumption despite the many opportunities given to it, such presumption of negligence stands.

Petitioner appealed the decision of the trial court to the Court of Appeals.

In its Decision dated October 7, 2003, the Court of Appeals affirmed the decision of the trial court, the dispositive portion of which reads:

WHEREFORE, for lack of merit, the appeal is DENIED and the Decision appealed from is AFFIRMED in toto. With double costs against the appellant.[25]

Petitioner's motion for reconsideration was denied for lack of merit in the Resolution of the Court of Appeals dated February 5, 2004.[26]

Hence, petitioner filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS, TENTH DIVISION GRAVELY ERRED IN NOT GIVING DUE COURSE TO THE DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION OF THE DECISION PROMULGATED ON OCTOBER 7, 2003, THEREBY DEPRIVING PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS.

II

THE HONORABLE COURT OF APPEALS, TENTH DIVISION FURTHER GRAVELY ERRED IN AFFIRMING IN TOTO THE DECISION OF THE REGIONAL TRIAL COURT OF GAPAN CITY, BRANCH 35, PARTICULARLY IN AWARDING DAMAGES TO THE RESPONDENT WITHOUT PRESENTING ANY SUBSTANTIAL EVIDENCE.

III

THE HONORABLE COURT OF APPEALS, TENTH DIVISION, IN AFFIRMING IN TOTO THE DECISION OF THE REGIONAL TRIAL COURT OF GAPAN CITY, BRANCH 35, HAS COMMITTED GRAVE AND REVERSIBLE ERROR IN ITS FINDING OF FACTS AND APPLICATION OF [THE] LAW.[27]

The main issue is whether or not petitioner is liable to respondent for damages.

The Court affirms the decision of the Court of Appeals that petitioner is liable for damages.

Under the Civil Code, common carriers, like petitioner bus company, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case.[28] They are 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.[29]

Article 1756 of the Civil Code states that "[i]n 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."

Further, Article 1759 of the Civil Code provides that "[c]ommon carriers are liable for the death or injury to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers. This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees."[30]

In this case, the testimonial evidence of respondent showed that petitioner, through its bus driver, failed to observe extraordinary diligence, and was, therefore, negligent in transporting the passengers of the bus safely to Gapan, Nueva Ecija on January 27, 1995, since the bus bumped a tree and a house, and caused physical injuries to respondent. Article 1759 of the Civil Code explicitly states that the common carrier is liable for the death or injury to passengers through the negligence or willful acts of its employees, and that such liability does not cease upon

proof that the common carrier exercised all the diligence of a good father of a family in the selection and supervision of its employees. Hence, even if petitioner was able to prove that it exercised the diligence of a good father of the family in the selection and supervision of its bus driver, it is still liable to respondent for the physical injuries he sustained due to the vehicular accident.[31]

Petitioner cannot complain that it was denied due process when the trial court waived its right to present evidence, because it only had itself to blame for its failure to attend the hearing scheduled for reception of its evidence on June 19, 2002. The trial court stated, thus:

It is noteworthy to state that during the course of the proceeding of this case, defendant (petitioner) and its counsel hardly appeared in court and only made innumerable motions to reset the hearings to the point that this case x x x dragged [on] for seven years from its filing up to the time that it has been submitted for decision. And for the unexplained absence of counsel for defendant in the hearing set last June 19, 2002 despite repeated resetting, upon motion of the counsel for plaintiff (respondent), Atty. Ireneo Romano, its right to present its evidence was considered waived.[32]

In *Silverio, Sr. v. Court of Appeals*,[33] the Court held that petitioner therein was not denied due process when the records of the case showed that he was amply given the opportunity to present his evidence, which he, however, waived. There is no denial of due process where a party was given an opportunity to be heard.[34]

Next, petitioner contends that the Court of Appeals erred in denying its motion for reconsideration of the appellate court's Decision dated October 7, 2003.

The contention is unmeritorious.

The Court of Appeals has the discretion to deny petitioner's motion for reconsideration since it found that there was no cogent reason to warrant reconsideration of its Decision dated October 7, 2003. According to the appellate court, it had already considered, if not squarely ruled upon, the arguments raised in petitioner's motion for reconsideration.[35]

Moreover, petitioner contends that the Court of Appeals erred in affirming the decision of the trial court, which awarded actual damages in the amount of P22,870.00 based on the statement of account issued by the Baliuag District Hospital and not based on an official receipt. Petitioner argues that the statement of account is not the best evidence.

The contention is without merit.

As cited by the Court of Appeals in its Decision, *Jarco Marketing Corporation v. Court of Appeals*[36] awarded actual damages for hospitalization expenses that was evidenced by a statement of account issued by the Makati Medical Center. Hence, the statement of account is admissible evidence of hospital expenses incurred by respondent.

Petitioner also contends that the award of moral damages is not proper, because it is not recoverable in actions for damages predicated on breach of the contract of transportation under Articles 2219 and 2220 of the Civil Code.[37]

The Court is not persuaded.

The Court of Appeals correctly sustained the award of moral damages, citing *Spouses Ong v. Court of Appeals*,[38] which awarded moral damages to paying passengers, who suffered physical injuries on board a bus that figured in an accident. *Spouses Ong* held that a person is entitled to the integrity of his body and if that integrity is violated, damages are due and assessable. Thus, the usual practice is to award moral damages for

physical injuries sustained. In *Spouses Ong*, the Court awarded moral damages in the amount of P50,000.00 to a passenger who was deemed to have suffered mental anguish and anxiety because her right arm could not function in a normal manner. Another passenger, who suffered injuries on his left chest, right knee, right arm and left eye, was awarded moral damages in the amount of P30,000.00 for the mental anxiety and anguish he suffered from the accident.

In this case, respondent sustained a "laceration frontal area, with fracture of the right humerus" due to the vehicular accident. He underwent an operation for the fracture of the bone extending from the shoulder to the elbow of his right arm. After a few years of rest, he had to undergo a second operation. Respondent, therefore, suffered physical pain, mental anguish and anxiety as a result of the vehicular accident. Hence, the award of moral damages in the amount of P50,000.00 is proper.

Petitioner likewise contends that the award of exemplary damages is improper, because it did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner.

The contention is without merit.

Article 2232 of the Civil Code states that "[i]n contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In this case, respondent's testimonial evidence showed that the bus driver, Johnny Merdiquia, was driving the bus very fast in a reckless, negligent and imprudent manner; hence, the bus hit a tree and a house along the highway in Baliuag, Bulacan. The award of exemplary damages is, therefore, proper. The award of exemplary damages is justified to serve as an example or as a correction for the public good.[39]

Further, the Court affirms the award of attorney's fees to respondent's counsel. The Court notes that respondent filed his Complaint for damages on March 14, 1995 as pauper-litigant. The award of legal fees by the trial court to respondent's counsel was a contingent fee of 25 percent of the total amount of damages, which shall constitute a lien on the total amount awarded. The said award was affirmed by the Court of Appeals. Twenty-five percent of the total damages is equivalent to P34,778.15. The award of legal fees is commensurate to the effort of respondent's counsel, who attended to the case in the trial court for seven years, and who finally helped secure redress for the injury sustained by respondent after 14 years.

Lastly, petitioner contends that the medical certificate presented in evidence is without probative value since respondent failed to present as witness Dr. Virginia Cabling to affirm the content of said medical certificate.

The contention lacks merit. The Court of Appeals correctly held that the medical certificate is admissible since petitioner failed to object to the presentation of the evidence.[40]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 76170, dated October 7, 2003, and its Resolution dated February 5, 2004, are hereby AFFIRMED. Petitioner R Transport Corporation is ordered to pay respondent Eduardo Pante P39,112.60 as actual damages; P50,000.00 as moral damages; and P50,000.00 as exemplary damages. Twenty-five percent (25%) of the total amount shall constitute a lien as contingent fee of respondent's counsel.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] As culled from the Decision of the Court of Appeals, the transcript of stenographic notes and the records of the case.

[3] Also referred to as Rosalina Lamson in the RTC Decision and as Rosalina Lanson in the CA Decision.

[4] Exhibit "A," records, p. 37.

[5] Exhibit "B," records, p. 114.

[6] Id.

[7] Exhibit "E," records, p. 119.

[8] TSN, October 4, 1990, p. 7.

[9] Id. at 7; TSN, October 24, 1995, pp. 6-7.

[10] Exhibit "D," records, p. 118; TSN, October 4, 1995, pp. 11-12.

[11] TSN, October 4, 1995, pp. 7-8.

[12] Exhibits "F-1" to "F-5," records, pp. 241-243.

[13] Docketed as Civil Case No. 1460.

[14] Records, pp. 53-57.

[15] Id. at 73.

[16] Id. at 96.

[17] Id. at 245.

[18] Id. at 249.

[19] Id. at 250.

[20] Id. at 255.

[21] Id. at 260.

[22] Id. at 268.

[23] CA rollo, p. 284.

[24] Rollo, p. 90.

[25] Id. at 47.

[26] Id. at 26.

[27] Id. at 5.

[28] Civil Code, 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.

[29] Civil Code, 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.

[30] Emphasis supplied.

[31] See *Mallari, Sr. v. Court of Appeals*, 381 Phil. 153 (2000); *Baliwag Transit, Inc. v. Court of Appeals*, 326 Phil. 762 (1996).

[32] Records, p. 89.

[33] G.R. No. 109979, March 11, 1999, 304 SCRA 541.

[34] *Id.*, citing *Gutierrez v. Commission on Elections*, G.R. No. 126298, March 25, 1997, 270 SCRA 413.

[35] Rollo, p. 26.

[36] 378 Phil. 991 (1999).

[37] Art. 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 of actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[38] 361 Phil. 338 (1999).

[39] *Prudencio v. Alliance Transport System*, G.R. No. L-33836, March 16, 1987, 148 SCRA 440.

[40] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514 (2001).

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