

LA MALLORCA AND PAMPANGA BUS COMPANY, INC., PETITIONERS VS. VALENTIN DE JESUS, MANOLO TOLENTINO AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 21486. May 14, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

La Mallorca and Pampanga Bus Company, Inc., commonly known as La Mallorca-Pambusco, filed this appeal by *csrtiorari* from the decision of the Court of Appeals which affirmed that rendered by the Court of First Instance of Bulacan in its civil case No. 2100, entitled "Valentin de Jesus and Manolo Tolentino vs. La Mallorca-Pambusco." The court *a quo* sentenced the defendant now petitioner, "to pay to plaintiffs the amount of P2,132.50 for actual damages; P14,400.00 as compensatory damages; P10,000.00 to each plaintiff by way of moral damages; and P3,000.00 as counsel fees."

Two errors are attributed to the appellate Court: (1) "in sustaining the decision (of the court *a quo*) holding that the petitioners were liable for the accident which was caused by a blow-out of one of the tires of the bus and in not considering the same as *caso fortuito*," and (2) in holding petitioners liable for moral damages.

The suit arose by reason of the death of Lolita de Jesus, 20-year old daughter of Valentin de Jesus and wife of Manolo Tolentino, in a head-on collision between petitioner's bus, on which she was a passenger, and a freight truck travelling in the opposite direction, in a barrio in Marilao, Bulacan, in the morning of October 8, 1959. The immediate cause of the collision was the fact that the driver of the bus lost control of the wheel when its left front tire suddenly exploded.

Petitioner maintains that a tire blowout is a fortuitous event and gives rise to no liability for negligence, citing the rulings of the Court of Appeals in *Rodriguez vs. Red Line Transportation Co.*, CA-G.R. No. 8136; December 29, 1954, and *People vs. Palapad*, CA-G.R. No. 18480, June 27, 1953. These rulings, however, not only are not binding on this Court but were based on considerations quite different from those that obtain in the case at bar. The appellate Court there made no findings of any specific acts of negligence on the part of the defendants and confined itself to the question of whether or not a tire, blowout, by itself alone and without a showing as to the causative factors, would generate liability. In the present case, the cause of the blowout was known. The inner tube of the left front tire, according to petitioner's own evidence and as found by the Court of Appeals, "was pressed between the inner circle, of the left wheel and the rim which had slipped out of the wheel." This was, said Court correctly held, a mechanical defect of the conveyance or a fault in its equipment which was easily discoverable if the bus had been subjected to a more thorough or rigid check-up before it took to the road that morning.

Then again both trial court and the Court of Appeals found as a fact that the bus was running quite fast immediately before the accident. Considering that the tire which exploded was not new—petitioner describes it as "*hindi masyadong kalbo*," or not so very worn out—the plea of *caso fortuito* cannot be entertained.

The second issue raised by petitioner is already a settled one. In this jurisdiction moral damages are recoverable by reason of the death of a passenger caused by the breach of contract of a common carrier, as provided in Article 1764, in relation to Article 2206, of the Civil Code. These articles have been applied by this Court in a number of cases, among them *Necessito, etc. vs. Paras, et al.*, 104 Phil. 75; *Mercado vs. Lira*, 113 Phil. 112; *Villa-Rey Transit vs. Bello*, 117 Phil. 745.

Wherefore, the judgment appealed from is affirmed, with costs against petitioner.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Decision affirmed.

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