

LAGUNA TAYABAS BUS CO., PETITIONER, VS. ANTONIO TIONGSON AND FELICITAS J. TIONGSON, RESPONDENTS.*G.R. No. 22143. April 30, 1966*

Ponente: DIZON, J.

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This is an appeal by certiorari taken by Laguna Tayabas Bus Co., a common carrier engaged in the land transportation business in the southern Tagalog provinces, to review the decision of the Court of Appeals affirming that of the Court of First Instance of Bulacan in Civil Case No. 1760 entitled "Antonio Tiongson, Paz C. Tiongson and Felicitas J. Tiongson, plaintiffs, vs. Laguna Tayabas Bus Company, defendant" sentencing the latter to pay the former the sum of P50,000.00 by way of actual, compensatory and moral damages, and the further sum of P5,000.00 as attorney's fees and costs.

On June 3, 1958, about two kilometers past the poblacion of Bay, Laguna, petitioner's LTB Bus No. 204, coming from San Pablo City towards Manila, collided with a 7-Up delivery truck coming from the opposite direction. As a consequence the bus fell on its right side on the shoulder of the road resulting in injuries to many of its passengers and the death of Ricardo C. Tiongson and a woman passenger. Both drivers were prosecuted for double homicide, multiple serious physical injuries and damage to property, thru reckless imprudence, in the Court of First Instance of Laguna, but a separate action for damages for breach of contract of carriage was filed in the Court of First Instance of Bulacan (Civil Case No. 1760) by respondents herein, as heirs of the deceased Ricardo C. Tiongson, against petitioner.

In its answer to the complaint, petitioner alleged that it had observed utmost diligence in operating Bus No. 204 on June 3, 1958; that its driver could not have prevented or avoided the accident which was fortuitous insofar as it was concerned; and that the proximate cause of the death of passenger Tiongson "was the negligence and imprudence of one Porvenir Aralar Barretto and his employer Santiago Syjuco, Inc. and/or Seven-Up Bottling Company of the Philippines, or, in the alternative, the gross negligence of the highway authorities in failing to keep and maintain the national roads in good repair at all times and in safe condition for all motorists".

Finding petitioner's driver to blame for the accident, the trial court, on December 28, 1959, rendered judgment as follows:

"Wherefore, judgment is hereby rendered sentencing defendant to pay to plaintiffs the sum of P50,000.00 by way of actual, compensatory and moral damages, and the further sum of P5,000.00 as counsel fees, with costs against defendant."

Both parties appealed to the Court of Appeals—petitioner from the portion thereof holding it liable for damages for breach of contract, and respondents from the portion determining the amount of damages awarded to them.

Meanwhile, on July 31, 1961, the Court of First Instance of Laguna, in Criminal Case No. B-331, acquitted Claro Samonte, petitioner's driver, of the offense charged mentioned heretofore, on the ground of reasonable doubt. Upon the other hand, on October 28, 1963, the Court of Appeals rendered the decision appealed from.

In its first assignment of error, petitioner contends that the Court of Appeals erred in affirming instead of reversing the findings made by the trial court to the effect that the driver of the LTB bus and not the driver of the 7-Up truck was to blame for the accident in question.

The following are the pertinent facts found established by the trial court:

"About two kilometers past the poblacion of Bay, Laguna, defendant's LTB Bus No. 204 collided with the 7-Up delivery truck which came from the opposite direction, that is, from Manila towards San Pablo City. As a result of the collision, defendant's bus fell on its right side on the shoulder of the road, which resulted in injuries to many passengers, and the death of Ricardo C. Tiongson and a woman passenger. * * * Having been notified of the collision, Gerardo Dilla, chief of police of Bay, Laguna, immediately proceeded to the scene thereof. The Bay Chief of Police made an on-the-spot investigation and prepared a sketch of the spot where the collision occurred. From the findings of the chief of police, it appears that the road had an asphalted pavement, 5½ meters wide, and shoulders on both sides, the shoulder going towards the poblacion. of Bay being 65 cm. wide and the one on the opposite side having a width of 70 cm. The chief of police also saw on the asphalted pavement a somewhat rectangular depression, 3 meters long, 2 meters wide, and 12 cm. deep, on the left side of the road going north, that is, going towards Manila * * *."

"Perhaps of most value to plaintiffs is the testimony of Rufo Reano, a farmer and a barrio lieutenant of Tabon, Bay, Laguna. The substance of Rufo's testimony is that * * * he saw two LTB trucks, following each other, from south to north at a distance of about 30 meters from each other; that he also saw a 7-Up truck going from north to south; that the leading LTB bus (presumably Bus No. 204) was traveling faster than the 7-Up truck; that suddenly, he heard the impact of a collision between the leading LTB bus and the 7-Up truck; that as a result of the collision, the LTB bus fell on its side while the 7-Up truck turned crosswise on the road; * * *."

"Samonte testified that x x x while he was in barrio Tabon, Bay, Laguna, at about 5:45 that same afternoon, he first saw the 7-Up truck from a distance of about 150 meters; that he was then running at about 30 kilometers per hour; that upon sighting the 7-Up truck, he slackened his speed and placed his bus on the right side of the road; that when the distance between his bus and the 7-Up truck had been reduced to about 10 meters and foreseeing that he could not avoid being hit by the truck which had swerved to the left, he applied his brakes and maneuvered his bus towards the right side of the road so much so that the right wheels were already on the shoulder of the road; but that before he could come to a complete stop, at a speed then of only 10 kilometers per hour, the left front mudguard of his bus was hit by the 7-Up truck."

After thus evaluating the prosecution evidence and the testimony of petitioner's witnesses, namely, Claro Samonte, its driver, Ernesto Alcantara, its conductor, and Teotimo de Mesa, its Chief Clerk, the trial court said:

"In moving forward to a conclusion in this case, certain general principles must be borne in mind, namely: (1) the liability of a carrier is contractual and arises upon its breach of the obligation, and there is a breach if it fails to exercise extra-ordinary diligence according to all the circumstances of each case; (2) a carrier is obliged to carry its passengers with the utmost diligence of a very cautious person, having due regard for all the circumstances; (3) a carrier is presumed to be at fault or to have acted negligently in case of death of, or injury to its passengers, it being its duty to prove that it exercised extra-ordinary diligence; (4) a carrier is not an insurer against all risks of travel (Isaac vs. A. L. Amen Transportation Co., Inc., G. R. No. L-9671, August 28, 1957); and (5) that a carrier shall not be responsible for events which could not be foreseen, or which, though foreseen, were inevitable (Alfaro vs. Ayson, 54 Off. Gaz. 7922).

"In the light of the foregoing principles and the evidence of record, the main questions for determination are whether defendant has successfully discharged its burden of disproving its presumptive negligence because of its failure to transport safely to his destination the deceased Ricardo C. Tiongson, and whether defendant has sufficiently established its defense of fortuitous event.

"After a review of the record, the court believes that defendant has not successfully discharged its burden.

Defendant's driver, Samonte, wanted to impress the court that he was entirely free from fault or negligence in the collision between his bus and the 7-Up truck. This he testified that when he first sighted the 7-Up truck, 150 meters away from his bus, the said truck was then running between 50 and 60 kilometers per hour, while he, for his part, was then going only at about 30 kilometers per hour. This testimony of Samonte is to be seriously doubted. In the first place, he and his conductor, Alcantara, must be necessarily biased witnesses for they are both employed by the defendant. In the second place, it is of common knowledge that a delivery truck fully loaded with cases of soft drinks is a slower moving vehicle than a passenger bus. A passenger bus is necessarily designed for speed because travellers usually want to arrive at their destinations within the shortest possible time, whereas soft drinks delivery trucks are built more for the safety of its bottled cargo than for speed. In the third place, Samonte's claim that when he applied the brakes of his bus when it was then about 10 meters away from the 7-Up truck, the speed of his bus was only about 10 kilometers per hour cannot be given full credence. He stated that after applying the brakes, his bus still moved less than 5 meters before being hit by the 7-Up truck. If his speed had only been 10 kilometers per hour, upon the application of the brakes, he would have stopped the bus within a much shorter distance.

"But even assuming that defendant's bus was then running only at approximately 10 kilometers per hour when the driver Samonte first applied the brakes, it would seem that he applied the brakes too late. Samonte testified that upon sighting the 7-Up truck at a distance of approximately 150 meters, he slackened his speed by first reducing it to 20 and then to 10 kilometers per hour, and brought his bus towards the right side of the road; and that it was only when the distance between the two vehicles was only about 10 meters that he first stepped on the brakes. The court feels that it was not enough for Samonte to slacken his speed gradually until he came down to 10 kilometers per hour. He should have stopped his bus immediately upon seeing the 7-Up truck veer towards his lane after jumping out of the big depression on the asphalted pavement. He was not unaware of such depression, and the location thereof for he had been travelling on the same route for a considerable length of time prior to 3 June 1958.

"It will not do for defendant's driver to claim that he could not avoid the 7-Up truck because if he did he would have fallen into the ditch on his side of the highway. If he was placed in the position claimed by him, it was entirely his fault, for he could have easily avoided the 7-Up truck if he had applied his brakes on time, while the 7-Up truck was still more than 10 meters away from him. Besides, instead of applying the brakes while the 7-Up truck was still some distance away from him, he could have veered to the left side of the road, going north, where there was sufficient space for him, taking into account that the asphalted pavement of the road was 5½ meters wide with a shoulder of 65 cm. wide. In such posture, he could have avoided collision with the 7-Up truck which, on the other hand, would have also been free to right its direction after it came out from the big depression.

"An examination of the sketch prepared by the chief of police of Bay, Laguna (Exhibit 1) shows that the collision between defendant's bus and the 7-Up truck occurred only 8 meters away from the big depression. This short distance would seem to indicate that defendant's driver, Samonte, knowing exactly the location of the depression, and anticipating that the 7-Up truck coming the opposite direction would veer to the left of the said depression in order to avoid the same, raced with the 7-Up truck in order that he could first pass through the space between the depression and what was left of the asphalted pavement of the lane on which he was then travelling, obviously for the purpose of avoiding delay. Because of this, the 7-Up truck driver who must have intended to pass on the said space in order to avoid going through the depression, was suddenly forced into the depression, in order to avoid a head-on collision with defendant's bus. But unfortunately, after bumping out of the depression, the truck veered to the left and hit defendant's bus on the left front side, thereby causing the bus to overturn on its right side."

The Court of Appeals agreed with the above being of the opinion that the testimony of Rufo Reaño, a barrio lieutenant and a disinterested eye-witness of the accident, was credible; that, to the contrary, the testimony of Claro Samonte and Ernesto Alcantara, driver and conductor respectively of petitioner's bus, was improbable and

biased; that Samonte actually applied the brakes on his bus too late to avoid the accident because at that time the distance between the two vehicles was only ten meters; that Samonte was well aware of the condition of the road, particularly of the existence of a depression near the place where the two vehicles collided, because he had been driving through and along the same route for a considerable period of time prior to the accident; that on May 16, 1958 or only two weeks before the fatal collision, Samonte had been apprehended for overspeeding, and finally, that certain admissions made on the witness stand by Teotimo de Mesa, petitioner's chief clerk since 1948, sufficiently showed that the company had not exercised due care and diligence in connection with the hiring of Samonte. The Court of Appeals therefore expressly found that petitioner not only failed to disprove the presumption of negligence arising against it (Articles 1733, 1755, and 1756 of the New Civil Code) but that, on the contrary, its negligence had been established by more than mere preponderance of evidence.

A thorough review of the record by Us has not disclosed any material fact or circumstance showing that the trial court and the Court of Appeals erred in the respects covered by the issue under consideration.

The remaining assignment of errors refer to the correctness of the decision appealed from in so far as it grants moral damages to respondents, the amount of the award for loss of earnings, and the additional award of P5,000 for attorney's fees.

Petitioner's liability for moral damages can not now be seriously questioned in view of the provisions of Articles 1764 and 2206, Nos. 1 and 3 of the New Civil Code and the ruling in *Necesito et al. vs. Paras et al.*, 104 Phil. 75, Resolution on motion to reconsider September 11, 1958 where, speaking through Mr. Justice Jose B. L. Reyes, We said:

"In awarding to the heirs of the deceased Severino Garces an indemnity for the loss of 'her guidance, protection and company,' although it is but moral damage, the Court took into account that the case of a passenger who dies in the course of an accident, due to the carrier's negligence, constitutes an exception to the general rule. While, as pointed out in the main decision, under Article 2220 of the new Civil Code there can be no recovery of moral damages for a breach of contract in the absence of fraud (malice) or bad faith, the case of a violation of the contract or carrier leading, to a passenger's death escapes this general rule, in view of Article 1764 in connection with Article 2206, No. 3 of the new Civil Code.

'Art. 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.'

'Art. 2206. * * *

'(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.'

"Being a special rule limited to cases of fatal injuries, these articles prevail over the general rule of Art. 2220. Special provisions control general ones (*Lichauco & Co. vs. Apostol*, 44 Phil. 138; *Sancho vs. Lizarrage*, 55 Phil. 601).

"It thus appears that under the new Civil Code, in case of accident due to a carrier's negligence, the heirs of a deceased passenger may recover moral damages, even though a passenger who is injured, but manages to survive, is not entitled to them. There is, therefore, no conflict between our main decision in the instant case and that of *Cachero vs. Manila Taxi Cab Co.*, G. R. No. L-8721, May 23, 1957, where the passenger suffered injuries, but did not lose his life."

The above ruling was followed and applied in *Cariaga vs. L.T.B.* G. R. No. L-11037, December 29, 1960, 110

Phil., 346; *Bernardo vs. Luna*, 113 Phil. 112; and *Martinez vs. Gonzales*, 116 Phil. 643.

Petitioner contends that the compensatory and moral damages awarded are excessive. We do not find them to be so, considering the pertinent facts of record. The deceased Ricardo C. Tiongson, at the time of his death on June 3, 1958, was only thirty-two years old. He was a Bachelor of Science in Commerce (Far Eastern University 1949) and obtained employment with the San Pablo City Branch of the People's Bank in 1954 with a starting monthly salary of P150.00 which, after six months in the service, was increased to P175.00. While thus employed with the People's Bank, he was also administering his mother's farm in Calamba, Laguna. He was the only son of respondent spouses Antonio Tiongson and Paz Cailles Tiongson, and had been married hardly three years when he died. The foregoing circumstances, in our opinion, fully justify the damages awarded in the appealed decision which are substantially in accord with the rules of law contained in Articles 1764 and 2206, Nos. 1 and 3 of the New Civil Code.

Lastly, it is contended that the Court of Appeals erred in affirming the trial court's award for attorney's fees. This contention is likewise untenable.

Considering the provisions of Article No. 2208, Nos. 2 and 11 of the New Civil Code, and the proven fact that petitioner ignored respondents' demand for an amicable settlement of their claim, the award of attorney's fees in this case seems to be completely justified (*Rex Taxi Cab Co. Inc. vs. Bautista*, 109 Phil., 712; *Necesito vs. Paras*, *supra*).

Wherefore, the decision appealed from is affirmed, with costs.

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

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