

CIVIL AERONAUTICS ADMINISTRATION, PETITIONER, VS. COURT OF APPEALS AND ERNEST E. SIMKE, RESPONDENTS.

G.R. No. 51806. November 08, 1988

Ponente: CORTES, J.

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CORTES, J.:

Assailed in this petition for review on certiorari is the decision of the Court of Appeals affirming the trial court decision which reads as follows:

WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff the amount of P15,589.55 as full reimbursement of his actual medical and hospital expenses, with interest at the legal rate from the commencement of the suit; the amount of P20,200.00 as consequential damages; the amount of P30,000.00 as moral damages; the amount of P40,000.00 as exemplary damages; the further amount of P20,000.00 as attorney's fees and the costs [Rollo, p. 24.]

The facts of the case are as follows:

Private respondent is a naturalized Filipino citizen and at the time of the incident was the Honorary Consul General of Israel in the Philippines.

In the afternoon of December 13, 1968, private respondent with several other persons went to the Manila International Airport to meet his future son-in-law. In order to get a better view of the incoming passengers, he and his group proceeded to the viewing deck or terrace of the airport.

While walking on the terrace, then filled with other people, private respondent slipped over an elevation about four (4) inches high at the far end of the terrace. As a result, private respondent fell on his back and broke his thigh bone.

The next day, December 14, 1968, private respondent was operated on for about three hours.

Private respondent then filed an action for damages based on quasi-delict with the Court of First Instance of Rizal, Branch VII against petitioner Civil Aeronautics Administration or CAA as the entity empowered "to administer, operate, manage, control, maintain and develop the Manila International Airport. . . ." [Sec. 32 (24), R.A. 776.]

Said claim for damages included, aside from the medical and hospital bills, consequential damages for the expenses of two lawyers who had to go abroad in private respondent's stead to finalize certain business transactions and for the publication of notices announcing the postponement of private respondent's daughter's wedding which had to be cancelled because of his accident [Record on Appeal, p. 5.]

Judgment was rendered in private respondent's favor prompting petitioner to appeal to the Court of Appeals. The latter affirmed the trial court's decision. Petitioner then filed with the same court a Motion for Reconsideration but this was denied.

Petitioner now comes before this Court raising the following assignment of errors:

- The Court of Appeals gravely erred in not holding that the present suit against the CAA is really a suit against the Republic of the Philippines which cannot be sued without its consent, which was not given in this case.
- The Court of Appeals gravely erred in finding that the injuries of respondent Ernest E. Simke were due to petitioner's negligence -- although there was no substantial evidence to support such finding; and that the inference that the hump or elevation in the surface of the floor area of the terrace of the (old) MIA building is dangerous just because said respondent tripped over it is manifestly mistaken ---circumstances that justify a review by this Honorable Court of the said finding of fact of respondent appellate court (Garcia v. Court of Appeals, 33 SCRA 622; Ramos v. CA, 63 SCRA 331).
- The Court of Appeals gravely erred in ordering petitioner to pay actual, consequential, moral and exemplary damages, as well as attorney's fees to respondent Simke -- although there was no substantial and competent proof to support said awards [Rollo, pp. 93-94.]

I.

Invoking the rule that the State cannot be sued without its consent, petitioner contends that being an agency of the government, it cannot be made a party-defendant in this case.

This Court has already held otherwise in the case of National Airports Corporation v. Teodoro, Sr. [91 Phil. 203 (1952).]

Petitioner contends that the said ruling does not apply in this case because: First, in the Teodoro case, the CAA was sued only in a substituted capacity, the National Airports Corporation being the original party. Second, in the Teodoro case, the cause of action was contractual in nature while here, the cause of action is based on a quasi-delict. Third, there is no specific provision in Republic Act No. 776, the law governing the CAA, which would justify the conclusion that petitioner was organized for business and not for governmental purposes [Rollo, pp. 94-97.]

Such arguments are untenable.

First, the Teodoro case, far from stressing the point that the CAA was only substituted for the National Airports Corporation, in fact treated the CAA as the real party in interest when it stated that:

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. . . To all legal intents and practical purposes, the National Airports Corporation is dead and the Civil Aeronautics Administration is its heir or legal representative, acting by the law of its creation upon its own rights and in its own name. The better practice then should have been to make the Civil Aeronautics Administration the third party defendant instead of the National Airports Corporation. [National Airports Corp. v. Teodoro, supra, p. 208.]

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Second, the Teodoro case did not make any qualification or limitation as to whether or not the CAA's power to sue and be sued applies only to contractual obligations. The Court in the Teodoro case ruled that Sections 3 and 4 of Executive Order 365 confer upon the CAA, without any qualification, the power to sue and be sued, albeit only by implication. Accordingly, this Court's pronouncement that where such power to sue and be sued has been granted without any qualification, it can include a claim based on tort or quasi-delict [Rayo v. Courts of First Instance of Bulacan, G.R. Nos. 55273-83, December 19, 1981, 110 SCRA 456] finds relevance and applicability to the present case.

Third, it has already been settled in the Teodoro case that the CAA as an agency is not immune from suit, it being engaged in functions pertaining to a private entity.

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The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may, more than the construction of public roads, be undertaken by private concerns [National Airports Corp. v. Teodoro, supra, p. 207.]

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True, the law prevailing in 1952 when the Teodoro case was promulgated was Exec. Order 365 (Reorganizing the Civil Aeronautics Administration and Abolishing the National Airports Corporation.) Republic Act No. 776 (Civil Aeronautics Act of the Philippines), subsequently enacted on June 20, 1952, did not alter the character of the CAA's objectives under Exec. Order 365. The pertinent provisions cited in the Teodoro case, particularly Secs. 3 and 4 of Exec. Order 365, which led the Court to consider the CAA in the category of a private entity were retained substantially in Republic Act 776, Sec. 32 (24) and (25). Said Act provides:

Sec. 32. Powers and Duties of the Administrator. - Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

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(24) To administer, operate, manage, control, maintain and develop the Manila International Airport and all government-owned aerodromes except those controlled or operated by the Armed Forces of the Philippines including such powers and duties as: (a) to plan, design, construct, equip, expand, improve, repair or alter aerodromes or such structures, improvement or air navigation facilities; (b) to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation or entity;

(25) To determine, fix, impose, collect and receive landing fees, parking space fees, royalties on sales or deliveries, direct or indirect, to any aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories and supplies, tools, other royalties, fees or rentals for the use of any of the property under its management and control.

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From the foregoing, it can be seen that the CAA is tasked with private or non-governmental functions which operate to remove it from the purview of the rule on State immunity from suit. For the correct rule as set forth in the Teodoro case states:

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Not all government entities, whether corporate or non-corporate, are immune from suits. Immunity from suits is determined by the character of the objects for which the entity was organized. The rule is thus stated in Corpus Juris:

Suits against State agencies with relation to matters in which they have assumed to act in private or non-governmental capacity, and various suits against certain corporations created by the state for public purposes, but to engage in matters partaking more of the nature of ordinary business rather than functions of a governmental or political character, are not regarded as suits against the state. The latter is true, although the state may own stock or property of such a corporation for by engaging in business operations through a corporation, the state divests itself so far of its sovereign character, and by implication consents to suits against the corporation. (59 C.J., 313) [National Airports Corporation v. Teodoro, supra, pp. 206-207; Underscored supplied.]

This doctrine has been reaffirmed in the recent case of *Malong v. Philippine National Railways* [G.R. No. L-49930, August 7, 1985, 138 SCRA 63], where it was held that the Philippine National Railways, although owned and operated by the government, was not immune from suit as it does not exercise sovereign but purely

proprietary and business functions. Accordingly, as the CAA was created to undertake the management of airport operations which primarily involve proprietary functions, it can not avail of the immunity from suit accorded to government agencies performing strictly governmental functions.

II

Petitioner tries to escape liability on the ground that there was no basis for a finding of negligence. There can be no negligence on its part, it alleged, because the elevation in question "had a legitimate purpose for being on the terrace and was never intended to trip down people and injure them. It was there for no other purpose but to drain water on the floor area of the terrace" [Rollo, p. 99.]

To determine whether or not the construction of the elevation was done in a negligent manner, the trial court conducted an ocular inspection of the premises.

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. . . This Court after its ocular inspection found the elevation shown in Exhs. A or 6-A where plaintiff slipped to be a step, a dangerous sliding step, and the proximate cause of plaintiff's injury.

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This Court during its ocular inspection also observed the dangerous and defective condition of the open terrace which has remained unrepaired through the years. It has observed the lack of maintenance and upkeep of the MIA terrace, typical of many government buildings and offices. Aside from the litter allowed to accumulate in the terrace, pot holes caused by missing tiles remained unrepaired and unattended. The several elevations shown in the exhibits presented were verified by this Court during the ocular inspection it undertook. Among these elevations is the one (Exh. A) where plaintiff slipped. This Court also observed the other hazard, the slanting or sliding step (Exh. B) as one passes the entrance door leading to the terrace [Record on Appeal, U.S., pp. 56 and 59; Underscoring supplied.]

The Court of Appeals further noted that:

The inclination itself is an architectural anomaly for as stated by the said witness, it is neither a ramp because a ramp is an inclined surface in such a way that it will prevent people or pedestrians from sliding. But if, it is a step then it will not serve its purpose, for pedestrian purposes (tsn, p. 35, id.) [Rollo, p. 29.]

These factual findings are binding and conclusive upon this Court. Hence, the CAA cannot disclaim its liability for the negligent construction of the elevation since under Republic Act No. 776, it was charged with the duty of planning, designing, constructing, equipping, expanding, improving, repairing or altering aerodromes or such structures, improvements or air navigation facilities [Section 32, supra, R.A. 776.] In the discharge of this obligation, the CAA is duty-bound to exercise due diligence in overseeing the construction and maintenance of the viewing deck or terrace of the airport.

It must be borne in mind that pursuant to Article 1173 of the Civil Code, "(t)he fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place." Here, the obligation of the CAA in maintaining the viewing deck, a facility open to the public, requires that CAA insure the safety of the viewers using it. As these people come to the viewing deck to watch the planes and passengers, their tendency would be to look to where the planes and the incoming passengers are and not to look down on the floor or pavement of the viewing deck. The CAA should have thus made sure that no dangerous obstructions or elevations exist on the floor of the deck to prevent any undue harm to the public.

The legal foundation of CAA's liability for quasi--delict can be found in Article 2176 of the Civil Code which provides that "(w)hoever by act or omission causes damage to another, there being fault or negligence, is obliged

to pay for the damage done. . . ." As the CAA knew of the existence of the dangerous elevation which it claims though, was made precisely in accordance with the plans and specifications of the building for proper drainage of the open terrace [See Record on Appeal, pp. 13 and 57; Rollo, p. 39], its failure to have it repaired or altered in order to eliminate the existing hazard constitutes such negligence as to warrant a finding of liability based on quasi-delict upon CAA.

The Court finds the contention that private respondent was, at the very least, guilty of contributory negligence, thus reducing the damages that plaintiff may recover, unmeritorious. Contributory negligence under Article 2179 of the Civil Code contemplates a negligent act or omission on the part of the plaintiff, which although not the proximate cause of his injury, contributed to his own damage, the proximate cause of the plaintiff's own injury being the defendant's lack of due care. In the instant case, no contributory negligence can be imputed to the private respondent, considering the following test formulated in the early case of *Picart v. Smith*, 37 Phil. 809 (1918):

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent man would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard suppose to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of the negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculations cannot be here of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. . . . [*Picart v. Smith*, supra, p. 813; Underscoring supplied.]

The private respondent, who was the plaintiff in the case before the lower court, could not have reasonably foreseen the harm that would befall him, considering the attendant factual circumstances. Even if the private respondent had been looking where he was going, the step in question could not easily be noticed because of its construction. As the trial court found:

In connection with the incident testified to, a sketch, Exhibit O, shows a section of the floorings on which plaintiff had tripped. This sketch reveals two pavements adjoining each other, one being elevated by four and one-fourth inches than the other. From the architectural standpoint the higher pavement is a step. However, unlike a step commonly seen around, the edge of the elevated pavement slanted outward as one walks to the interior of the terrace. The length of the inclination between the edges of the two pavements is three inches. Obviously, plaintiff had stepped on the inclination because had his foot landed on the lower pavement he would not have lost his balance. The same sketch shows that both pavements including the inclined portion are tiled in red cement, and as shown by the photograph Exhibit A, the lines of the tilings are continuous. It would therefore be difficult for a pedestrian to see the inclination especially where there are plenty of persons in the terrace as was the situation when plaintiff fell down. There was no warning sign to direct one's attention to the change in the elevation of the floorings. [Rollo, pp. 28-29.]

III

Finally, petitioner appeals to this Court the award of damages to private respondent. The liability of CAA to answer for damages, whether actual, moral or exemplary, cannot be seriously doubted in view of the conferment of the power to sue and be sued upon it, which, as held in the case of *Rayo v. Court of First Instance*, supra, includes liability on a claim for quasi-delict. In the aforestated case, the liability of the National Power Corporation to answer for damages resulting from its act of sudden, precipitate and simultaneous opening of the Angat Dam, which caused the death of several residents of the area and the destruction of properties, was upheld since the grant of the power to sue and be sued upon it necessarily implies that it can be held answerable for its tortious acts or any wrongful act for that matter.

With respect to actual or compensatory damages, the law mandates that the same be proven.

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages [New Civil Code.]

Private respondent claims P15,589.55 representing medical and hospitalization bills. This Court finds the same to have been duly proven through the testimony of Dr. Ambrosio Tangco, the physician who attended to private respondent (Rollo, p. 26) and who identified Exh. "H" which was his bill for professional services [Rollo, p. 31.]

Concerning the P20,200.00 alleged to have been spent for other expenses such as the transportation of the two lawyers who had to represent private respondent abroad and the publication of the postponement notices of the wedding, the Court holds that the same had also been duly proven. Private respondent had adequately shown the existence of such losses and the amount thereof in the testimonies before the trial court [CA decision, p. 8.] At any rate, the findings of the Court of Appeals with respect to this are findings of facts [*One Heart Sporting Club, Inc. v. Courts of Appeals*, G.R. Nos. 53790-53972, Oct. 23, 1981, 108 SCRA 416] which, as has been held time and again, are, as a general rule, conclusive before this Court [*Sese v. Intermediate Appellate Court*, G.R. No. 66186, July 31, 1987, 152 SCRA 585.]

With respect to the P30,000.00 awarded as moral damages, the Court holds private respondent entitled thereto because of the physical suffering and physical injuries caused by the negligence of the CAA [Arts. 2217 and 2219 (2), New Civil Code.]

With respect to the award of exemplary damages, the Civil Code explicitly states:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

Gross negligence which, according to the Court, is equivalent to the term "notorious negligence" and consists in the failure to exercise even slight care [*Caunan v. Compania General de Tabacos*, 56 Phil. 542 (1932)] can be attributed to the CAA for its failure to remedy the dangerous condition of the questioned elevation or to even post a warning sign directing the attention of the viewers to the change in the elevation of the floorings notwithstanding its knowledge of the hazard posed by such elevation [Rollo, pp. 28-29; Record on Appeal, P. 57.] The wanton disregard by the CAA of the safety of the people using the viewing deck, who are charged an admission fee, including the petitioner who paid the entrance fees to get inside the vantage place [CA decision, p. 2; Rollo, p. 25] and are, therefore, entitled to expect a facility that is properly and safely maintained -- justifies the award of exemplary damages against the CAA as a deterrent and by way of example or correction for the public good. The award of P40,000.00 by the trial court as exemplary damages appropriately underscores the point that

as an entity charged with providing service to the public, the CAA, like all other entities serving the public has the obligation to provide the public with reasonably safe service.

Finally, the award of attorney's fees is also upheld considering that under Art. 2208 (1) of the Civil Code, the same may be awarded whenever exemplary damages are awarded, as in this case, and, at any rate, under Art. 2208 (11), the Court has the discretion to grant the same when it is just and equitable.

However, since the Manila International Airport Authority (MIAA) has taken over the management and operations of the Manila International Airport [renamed Ninoy Aquino International Airport under Republic Act No. 6639] pursuant to Executive Order No. 778 as amended by Executive Orders Nos. 903 (1983), 909 (1983) and 298 (1987) and under Section 24 of the said Exec. Order 778, the MIAA has assumed all the debts, liabilities and obligations of the now defunct Civil Aeronautics Administration (CAA), the liabilities of the CAA have now been transferred to the MIAA.

WHEREFORE, finding no reversible error, the Petition for review on Certiorari is DENIED and the decision of the Court of Appeals in CA-G.R. No. 51172-R is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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