

JOSE PILAPIL, PETITIONER, VS. HON. COURT OF APPEALS AND ALATCO TRANSPORTATION COMPANY, INC., RESPONDENTS.

G.R. No. 52159. December 22, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition to review on certiorari the decision* rendered by the Court of Appeals dated 19 October 1979 in CA-G.R. No. 57354-R entitled "Jose Pilapil, plaintiff-appellee versus Alatco Transportation Co., Inc., defendant-appellant," which reversed and set aside the judgment of the Court of First Instance of Camarines Sur in Civil Case No. 7230 ordering respondent transportation company to pay to petitioner damages in the total sum of sixteen thousand three hundred pesos (P16,300.00).

The record discloses the following facts:

Petitioner-plaintiff Jose Pilapil, a paying passenger, boarded respondent-defendant's bus bearing No. 409 at San Nicolas, Iriga City on 16 September 1971 at about 6:00 P.M. While said bus No. 409 was in due course negotiating the distance between Iriga City and Naga City, upon reaching the vicinity of the cemetery of the Municipality of Baao, Camarines Sur, on the way to Naga City, an unidentified man, a bystander along said national highway, hurled a stone at the left side of the bus, which hit petitioner above his left eye. Private respondent's personnel lost no time in bringing the petitioner to the provincial hospital in Naga City where he was confined and treated.

Considering that the sight of his left eye was impaired, petitioner was taken to Dr. Malabanan of Iriga City where he was treated for another week. Since there was no improvement in his left eye's vision, petitioner went to V. Luna Hospital, Quezon City where he was treated by Dr. Capulong. Despite the treatment accorded to him by Dr. Capulong, petitioner lost partially his left eye's vision and sustained a permanent scar above the left eye.

Thereupon, petitioner instituted before the Court of First Instance of Camarines Sur, Branch I an action for recovery of damages sustained as a result of the stone-throwing incident. After trial, the court a quo rendered judgment with the following dispositive part:

"Wherefore, judgment is hereby entered:

1. Ordering defendant transportation company to pay plaintiff Jose Pilapil the sum of P10,000.00, Philippine Currency, representing actual and material damages for causing a permanent scar on the face and injuring the eye-sight of the plaintiff;
2. Ordering further defendant transportation company to pay the sum of P5,000.00, Philippine Currency, to the plaintiff as moral and exemplary damages;
3. Ordering furthermore, defendant transportation company to reimburse plaintiff the sum of P300.00 for his medical expenses and attorney's fees in the sum of P1,000.00, Philippine Currency; and

4. To pay the costs.

SO ORDERED."¹

From the judgment, private respondent appealed to the Court of Appeals where the appeal was docketed as CA-G.R. No. 57354-R. On 19 October 1979, the Court of Appeals, in a Special Division of Five, rendered judgment reversing and setting aside the judgment of the court a quo.

Hence the present petition.

In seeking a reversal of the decision of the Court of Appeals, petitioner contends that said court has decided the issue not in accord with law. Specifically, petitioner argues that the nature of the business of a transportation company requires the assumption of certain risks, and the stoning of the bus by a stranger resulting in injury to petitioner-passenger is one such risk from which the common carrier may not exempt itself from liability.

We do not agree.

In consideration of the right granted to it by the public to engage in the business of transporting passengers and goods, a common carrier does not give its consent to become an insurer of any and all risks to passengers and goods. It merely undertakes to perform certain duties to the public as the law imposes, and holds itself liable for any breach thereof.

Under Article 1733 of the Civil Code, common carriers are required to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case. The requirement of extraordinary diligence imposed upon common carriers is restated in Article 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." Further, in case of death of or injuries to passengers, the law presumes said common carriers to be at fault or to have acted negligently.²

While the law requires the highest degree of diligence from common carriers in the safe transport of their passengers and creates a presumption of negligence against them, it does not, however, make the carrier an insurer of the absolute safety of its passengers.³

Article 1755 of the Civil Code qualifies the duty of extraordinary care, vigilance and precaution in the carriage of passengers by common carriers to only such as human care and foresight can provide. What constitutes compliance with said duty is adjudged with due regard to all the circumstances.

Article 1756 of the Civil Code, in creating a presumption of fault or negligence on the part of the common carrier when its passenger is injured, merely relieves the latter, for the time being, from introducing evidence to fasten the negligence on the former, because the presumption stands in the place of evidence. Being a mere presumption, however, the same is rebuttable by proof that the common carrier had exercised extraordinary diligence as required by law in the performance of its contractual obligation, or that the injury suffered by the passenger was solely due to a fortuitous event.⁴

In fine, we can only infer from the law the intention of the Code Commission and Congress to curb the recklessness of drivers and operators of common carriers in the conduct of their business.

Thus, it is clear that neither the law nor the nature of the business of a transportation company makes it an insurer of the passenger's safety, but that its liability for personal injuries sustained by its passenger rests upon its negligence, its failure to exercise the degree of diligence that the law requires.⁵

Petitioner contends that respondent common carrier failed to rebut the presumption of negligence against it by

proof on its part that it exercised extraordinary diligence for the safety of its passengers.

We do not agree.

First, as stated earlier, the presumption of fault or negligence against the carrier is only a disputable pre-sumption. It gives in where contrary facts are established proving either that the carrier had exercised the degree of diligence required by law or the injury suffered by the passenger was due to a fortuitous event. Where, as in the instant case, the injury sustained by the petitioner was in no way due to any defect in the means of transport or in the method of transporting or to the negligent or wilful acts of private respondent's employees, and therefore involving no issue of negligence in its duty to provide safe and suitable cars as well as competent employees, with the injury arising wholly from causes created by strangers over which the carrier had no control or even knowledge or could not have prevented, the presumption is rebutted and the carrier is not and ought not to be held liable. To rule otherwise would make the common carrier the insurer of the absolute safety of its passengers which is not the intention of the lawmakers.

Second, while as a general rule, common carriers are bound to exercise extraordinary diligence in the safe transport of their passengers, it would seem that this is not the standard by which its liability is to be determined when intervening acts of strangers directly cause the injury, while the contract of carriage exists. Article 1763 governs:

"Article 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission."

Clearly under the above provision, a tort committed by a stranger which causes injury to a passenger does not accord the latter a cause of action against the carrier. The negligence for which a common carrier is held responsible is the negligent omission by the carrier's employees to prevent the tort from being committed when the same could have been foreseen and prevented by them. Further, under the same provision, it is to be noted that when the violation of the contract is due to the wilful acts of strangers, as in the instant case, the degree of care essential to be exercised by the common carrier for the protection of its passenger is only that of a good father of a family.

Petitioner has charged respondent carrier of negligence on the ground that the injury complained of could have been prevented by the common carrier if something like mesh-work grills had covered the windows of its bus.

We do not agree.

Although the suggested precaution could have prevented the injury complained of, the rule of ordinary care and prudence is not so exacting as to require one charged with its exercise to take doubtful or unreasonable precautions to guard against unlawful acts of strangers. The carrier is not charged with the duty of providing or maintaining vehicles as to absolutely prevent any and all injuries to passengers. Where the carrier uses cars of the most approved type, in general use by others engaged in the same occupation, and exercises a high degree of care in maintaining them in suitable condition, the carrier cannot be charged with negligence in this respect.⁷

Finally, petitioner contends that it is to the greater interest of the State if a carrier were made liable for such stone-throwing incidents rather than have the bus riding public lose confidence in the transportation system.

Sad to say, we are not in a position to so hold; such a policy would be better left to the consideration of Congress which is empowered to enact laws to protect the public from the increasing risks and dangers of lawlessness in society.

WHEREFORE, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Ragalado, JJ., concur.
Paras, J., no part. Concurred in CA decisions.

* Penned by Justice Hugo E. Gutierrez, Jr., with Justices Edgardo L. Paras, Milagros A. German, Jorge R. Coquia, concurring. Justice Ramon G. Gaviola, Jr. dissented.

1 Record on Appeal, Annex "B", Rollo, p. 31

2 Article 1756, New Civil Code

3 Strong v. Iloilo-Negros Air Express Co., 40 OG Supp. 12 p. 274; Alfaro v. Ayson, 54 OG Dec. 1, 1958, p. 7920

4 Art. 1174, Civil Code; Lasam v. Smith, 45 Phil. 657

5 Art. 1170, 1173, Civil Code; Alfaro v. Ayson, Supra, Necesito, et al. vs. Paras, et al., 104 Phil. 75

7 Irwin v. Louisville & N.R. Co., 50 Southern Reporter 62

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