

PHILIPPINE AIRLINES, INC., PETITIONER, VS. HON. COURT OF APPEALS AND NATIVIDAD VDA. DE PADILLA, SUBSTITUTED BY HER LEGAL HEIRS, NAMELY: AUGUSTO A. PADILLA, ALBERTO A. PADILLA, C...

G.R. No. 54470. May 08, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The only legal issue raised by the petitioner in this thirty-year-old case is whether the indemnity for the death of private respondent's son, the late Nicanor A. Padilla, should be computed on the basis of his life expectancy, as the trial court and the Court of Appeals did, rather than the life expectancy of private respondent, his only legal heir, as the petitioner contends.

On November 23, 1960, at 5:30 P.M., Starlight Flight No. 26 of the Philippine Air Lines (hereafter PAL) took off from the Manduriao Airport in Iloilo, on its way to Manila, with 33 persons on board, including the plane's complement. The plane did not reach its destination but crashed on Mt. Baco, Mindoro, one hour and fifteen minutes after take-off. The plane was identified as PI-C133, a DC-3 type aircraft manufactured in 1942 and acquired by PAL in 1948. It had flown almost 18,000 hours at the time of its ill-fated flight. It had been certified as airworthy by the Civil Aeronautics Administration.

Among the fatalities was Nicanor Padilla who was a passenger on the star-crossed flight. He was 29 years old, single. His mother, Natividad A. Vda. de Padilla, was his only legal heir.

As a result of her son's death, Mrs. Padilla filed a complaint (which was amended twice) against PAL, demanding payment of P600,000 as actual and compensatory damages, plus exemplary damages and P60,000 as attorney's fees.

In its answer, PAL denied that the accident was caused by its negligence or that of any of the plane's flight crew, and that, moreover, the damages sought were excessive and speculative.

On November 23, 1964, the trial court issued a pre-trial order requiring the parties to file on or before January 30, 1965 a stipulation of facts, or a negative manifestation in case they failed to submit a stipulation.

On June 8, 1965, the parties submitted a partial stipulation of facts providing as follows:

“1.

"Plaintiff is the widow of the late Alberto R. Padilla, Filipino, of legal age, and a resident of and with postal address at No. 970 (formerly No. 247) Gral. Solano St., San Miguel, Manila, while defendant Philippine Air Lines, Inc. is a corporation duly organized, registered and existing under and by virtue of the laws of the Philippines, engaged, as a common carrier, in the business of carrying or transporting by air passengers and goods, offering its services to the public as such for compensation, with offices at Makati Bldg., Makati, Rizal.

"2.

"Nicanor A. Padilla was born on January 10, 1931. He was a son by lawful marriage of plaintiff and Alberto R. Padilla, who died on September 2, 1948.

"3.

"Nicanor A. Padilla finished the elementary grades in 1943, high school in 1947, graduated the Reserve Officer's Course (Infantry Basic Course) Armed Forces of the Philippines in 1949, and graduated with the degree of Bachelor of Literature in 1951 and the degree of Bachelor of Laws in 1954, all in Ateneo de Manila.

"4.

"He was admitted by the Supreme Court of the Philippines to practice law on January 28, 1955, and from January 1958, to the time of his death on November 23, 1960, he was associated with the law offices of Senator Ambrosio Padilla, brother of his father, Alberto R. Padilla.

"5.

"At the time of his death, he was the President and General Manager of the Padilla Shipping Co., Inc. He was also Vice-President and Treasurer of the Allied Overseas Trading Co., Inc.

"6.

"He was a member of the Board of Directors of the Junior Chamber of Commerce (Jaycees) International and Chairman of its Committee on Governmental Affairs for the term 1960-1961. This Committee on Governmental Affairs published a pamphlet entitled 'Good Government is our Business,' for which the deceased was named 'Jaycee of the Month of January 1960.'

"7.

"Nicanor A. Padilla, while travelling and being transported and flown as a paid passenger on one [of] defendant's aircraft, a DC-3 with registry No. PI-C133, on 'Star Light Flight' No. 26 bound for Manila from the City of Iloilo on November 23, 1960, was killed when said plane crashed in the area of Mount Baco, Oriental Mindoro.

"8.

"Nicanor A. Padilla died single, leaving as his nearest of kin and sole heiress to his estate his mother the plaintiff herein with whom he was residing at the time of his death at 970 Gral. Solano St., Manila.

"9.

"The aircraft (PI-C133) that crashed on Mt. Baco, Oriental Mindoro, on November 23, 1960, was a twin-engine passenger plane of the Philippine Air Lines of the DC-3 type. It was manufactured by Douglas Aircraft Corporation of the United States for the U.S. Army and was purchased from the latter by the Commercial Air Lines, Inc., on September 25, 1946. The defendant Philippine Air Lines acquired the plane from the Commercial Air Lines, Inc., on October 15, 1948. The aircraft was registered by Philippine Air Lines with the Civil Aeronautics Administration as PI-C142 on May 10, 1949. On October 15, 1953, PI-C142 met with a non-fatal accident at Pia, Tuguegarao, Cagayan. PAL requested the Civil Aeronautics Administration for a change in the identification mark. Said request was granted and the registration number was changed from PI-C142 to PI-C133 on July 29, 1954. As (of) November 22, 1960, the day before the fatal crash on Mt. Baco, PI-C133 had a total flying time of 17,996:33 hours.

"10.

"PI-C133 was issued a certificate of airworthiness by the Civil Aeronautics Administration on September 13, 1960 which was to expire on September 12, 1961; a copy of which is attached hereto as Exhibit '1' and made a part of this stipulation.

"11.

"Other facts on which the parties cannot agree will be subject to proof at the trial." (pp. 34-39, Record on Appeal; p. 117, Rollo.)

On January 15, 1966, the parties submitted another partial stipulation of facts:

"1.

"That in the book written by Salvador B. Salvosa, M.S., University of Michigan and member of the Actuarial Society of the Philippines, entitled: 'Filipino Experience Mortality Table,' the complete life expectancy of Filipinos appear on page 3 thereof, a photostat of which is attached hereto as Exhibit 'A.'

"2.

"That in said Exhibit 'A', the columns under the heading 'Age x,' refers to the age of the individual, and the columns 'oe x' refers to the corresponding number of years the individual is expected to live. Thus, under the column 'Age x,' a person aged 29, the corresponding life expectancy of said person under column 'oe x' is '42.60' years; and under said column 'Age x' a person aged 60, corresponding life expectancy of said person under column 'oe x' is '17.90' years;

"3.

"That Salvador B. Salvosa's 'Filipino Experience Mortality Table,' including the table of life expectancy are used by the Philippine International Life Insurance Co., the Sterling Life Insurance Co., the Cardinal Life Insurance Co., and Star Life Insurance Co., and that the same has been approved by the Insurance Commissioner for the use of life insurance companies doing business in the Philippines as shown by a certificate issued by said Commissioner which is attached hereto as Exhibit 'B;'

"4.

"That the book of Nelson and Warren, Consulting Actuaries of St. Louis and Kansas cities, Missouri, entitled: 'Principal Mortality Tables', contains a table of comparison of complete life expectancy based on principal mortality tables used by life insurance companies, a photostat of which is likewise attached hereto as Exhibits 'C', 'C-1', 'C-2' and 'C-3;'

"5.

That of the life expectancy based on the different systems mentioned in said Exhibits 'C', 'C-1', 'C-2' and 'C--3,' the following are also used in the Philippines for life insurance purposes: (a) the American Experience appearing in Exhibit 'B,' fifth columns on both pages, the first column corresponding to the age of the individual (pages 12 and 13 of the book); (b) the Standard Industrial, appearing in the same Exhibit 'B,' sixth column on both pages (pages 12 and 13 of the book); and (c) the 1941 Commissioner Standard Ordinary, or CSO 1941 for short, appearing in Exhibit 'B-1,' third column, on both pages (pages 14 and 15 of the book).

"6.

"That the materiality and applicability [sic] of the life expectancy tables shown in Exhibit 'A,' or Exhibits 'C,' 'C-1,' 'C-2' and 'C-3' are left to the judgment of the Honorable Court." (pp. 39-42, Record on Appeal; p. 117, Rollo.)

On March 19, 1970, a third joint partial stipulation of facts was submitted by the parties to the trial court which

reads, thus:

"JOINT FIRST PARTIAL STIPULATION OF FACTS

"Plaintiff and defendant through their respective counsel, respectfully submit the following partial stipulation of facts:

"1. Defendant in November, 1960 and even before was authorized and rated to repair aircrafts of U.S. and foreign registries and as such holds the following:

Description

Exhibit

a) US FAA Air Agency Certificate

1

b) US FAA Repair Station Operations Specifications (2 pages) PI-

2 and 2-A

c) CAA Rating Grant to operate Repair Station with ratings on on [sic] (i) Aircraft Metal propeller Hubs Overhaul Shop, (ii) Aircraft Engine Overhaul Shop.

3

d) P.I. -CAA Rating Grant to operate a repair station with ratings on (i) Aircraft of Composite Construction; (ii) Aircraft of all Metal Construction; (iii) Aircraft Instrument.

4

"2. Defendant maintained and repaired aircrafts of the U.S. Air Force, U.S. Navy and commercial carriers like PANAM, Northwest Airways, KLM and other foreign airlines.

"3. Also in 1960 defendant was maintaining and following a CAA approved system of aircraft maintenance control using worksheets and work card which record the specific job on any particular aircraft. They are:

"a) Pre-flight inspections consisting of the -

(i) Through Check: - the visual inspection of an aircraft prior to flight and performed in stations where maintenance men are assigned.

(ii) Terminating Check: - the visual inspection of the aircraft performed in stations where aircraft terminated a flight and where maintenance men are assigned.

(iii) After Maintenance Check: - the visual inspection of an aircraft preparatory to any flight following the completion of any check from Check No. 1 to Check No. 6, to wit:

(a) Check No. 1 known as daily inspection check;

(b) Check No. 2 which is accomplished every 125 hours;

(c) Check No. 3 which is accomplished every 250 flying hours;

(d) Check No. 4 which is accomplished every 500 flying hours;

(e) Check No. 5 which is accomplished every 1,250 flying hours;

(f) Check No. 6 which is a series broken down into 6-A, 6-B, 6-C, 6-D, 6-E and 6-F.

“4. The Quality Control Division is the custodian of all worksheets for the checks performed and under PI-CAA regulations, is required to keep the records for at least 90 days.

“5. The forms used and accomplished for the various checks were:

Description

Exhibit

a) Pre-flight check sheet, including DC-3C Daily Airframe and Engine Routine and Cleaning Routine;

5, 6 & 6-A

b) Check No. 2, consisting of 37 work control cards;

7-A to 7-KK

c) Check No. 3 consisting of 49 work control cards;

8, 8-A to 8-XX

d) Check No. 4 consisting of a work control card;

9, 9-A to 9-F

e) Check No. 5 consisting of 9 work control cards;

10, 10-A to 10-H

f) Check No. 6-A consisting of 112 work control cards;

11, 11-A to 11-(G)

g) Check No. 6-B consisting of 114 work control cards;

12, 12-A to 12-(J)

h) Check No. 6-C consisting of 117 work control cards;

13, 13-A to 13-(I)

i) Check No. 6-D consisting of 110 work control cards;

14, 14-A to 14-(E)

j) Check No. 6-E consisting of 120 work control cards;

15, 15-A to 15-(E)

k) Check No. 6-F consisting of 118 work control cards

16, 16-A to 16-(M)

"The parties reserve their right to agree to additional stipulation of facts and/or to adduce evidence on other matters not covered by this stipulation.

"All exhibits mentioned and identified are attached to this stipulation." (pp. 42-46, Record on Appeal; p. 117, Rollo.)

During the hearing on September 4, 1972, the parties stipulated that they were reproducing the testimonial and documentary evidence presented in Civil Cases Nos. 5728 and 2790 of the Court of First Instance of Iloilo, arising out of the same accident. Certified copy of said transcript of stenographic notes were then submitted to the trial court.

A fourth partial stipulation of facts was submitted by the parties, reading as follows:

"PARTIAL STIPULATION OF FACTS

"Plaintiff and defendant respectfully submit the following partial stipulation of facts:

"1. For the convenience and brevity of these proceedings, considering that defendant's evidence on the basic issues of fortuitous event and extraordinary diligence of the carrier consists of the witnesses and documents presented in Civil Case No. 5720 of the Court of First Instance of Iloilo entitled 'Pedro R. Davila vs. Preciosa C. Tirol,' now pending appeal before the Supreme Court in G.R. No. L--28512, defendant has proposed to reproduce in this case the testimonies of same witnesses and documentary evidence identified and marked in the course of the same proceedings, as reflected in the corresponding transcript of stenographic notes, to wit:

Witness

Transcript of Stenographic Notes

At Pages

Exhibit

a. Mario Rodriguez

October 30, 1962

1 – 67

37

October 31, 1962

67 – 153

38

January 7, 1963

17 – 74

39

October 14, 1963

6 – 11

40

b. Pedro N, Mallari

March 19, 1963

17 – 39)

41

c. Arturo Camatoy

March 19, 1963

39 – 75)

d. Ponciano Saldaña

March 19, 1963

75 – 88)

42

e. Melecio Joson

March 20, 1963

91 – 161)

)

f. Alfredo Subesa

March 20, 1963

162 – 166)

40

g. Eduardo Estrella

October 14, 1963

11 – 27)

)

h. Vicente Sison

October 14, 1963

27 – 74)

i. Felipe Paculaba

October 15, 1963

4 – 15)

)

43

j. Antonio Lopez

October 15, 1963

15 – 25)

)

k. Isaac Lamela

October 15, 1963

26 – 55)

44

l. Ramon Pedrosa

December 19, 1963

6-83

m. Cesar Mijares

December 20, 1963

15 – 89)

45

n. Jaime Manzano

February 6, 1964

3 – 15)

)

o. Offer of documentary evidence

February 6, 1964

)

18-76)

46

"2. The transcript of stenographic notes are attached hereto and marked as above set forth.

"3. If aforementioned witnesses were called to testify in this case, they would give the same testimony as shown in the afore-mentioned transcript of stenographic notes on direct examination, cross-examination and re-direct examination, as the case may be, plaintiff's counsel hereby adopting the manifestations, objections, cross and re-cross examination by the plaintiff's counsels in Davila vs. PAL, supra and so far as the joint hearings held on December 20, 1963 and February 6, 1964, also of plaintiff's counsels in Abeto, et al. vs. PAL, Civil Case No. 5790, also of the Court of First Instance of Iloilo.

"4. All the documentary evidence marked in the course of the hearings shown in the transcripts of stenographic notes attached hereto have already been marked correspondingly before the Commissioner of this Honorable Court on a hearing held on May 24, 1968 with the same exhibit identification.

"5. Defendant reserves its right to present evidence on the question of damages.

"6. Plaintiff reserves her right to present such further evidence as she may deem proper in rebuttal." (pp. 47-50, Record on Appeal; p. 117, Rollo.)

In addition to the stipulations of facts, private respondent Padilla testified that her son, Nicanor Padilla, prior to

his death, was 29 years old, single, in good health, President and General Manager of Padilla Shipping Company at Iloilo City, and a legal assistant of the Padilla Law Office; that upon learning of the death of her son in the plane crash, she suffered shock and mental anguish, because her son who was still single was living with her; and that Nicanor had a life insurance of P20,000, the proceeds of which were paid to his sister.

Eduardo Mate, manager of the Allied Overseas Trading Company, testified that the deceased, Nicanor Padilla, was one of the incorporators of the company and also its vice-president and treasurer, receiving a monthly salary of P455.

Isaac M. Reyes, auditor of the Padilla Shipping Company, declared that the deceased was the President and General Manager of the firm and received a salary of P1,500 monthly.

The trial court in its decision stated that on March 19, 1970, it was manifested in court that "the parties agreed that they will abide with whatever decision the Supreme Court may have in similar cases involving the same airplane crash accident then pending before other courts pending decision in Supreme Court" (p. 51, Rec. on Appeal; p. 117, Rollo).

On August 31, 1973, the trial court promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, Judgment is hereby rendered ordering the defendant Philippine Air Lines, Inc. to pay the plaintiff Natividad A. Vda. de Padilla the sum of P477,000.00 as award for the expected income of the deceased Nicanor; P10,000.00 as moral damages; P10,000.00 as attorney's fees; and to pay the costs." (pp. 59-60, Record on Appeal; p. 117, Rollo.)

On appeal to the Court of Appeals (CA-G.R. No. 56079-R) dated July 17, 1980, the decision of the trial court was affirmed in toto.

As pointed out at the outset, the lone issue is whether or not the respondent court erred in computing the awarded indemnity on the basis of the life expectancy of the late Nicanor A. Padilla rather than on the life expectancy of private respondent, and thus erred in awarding what appears to the petitioner as the excessive sum of P477,000 as indemnity for loss of earnings.

Petitioner relies on "the principle of law generally recognized and applied by the courts in the United States" that "the controlling element in determining loss of earnings arising from death is, as established by authorities, the life expectancy of the deceased or of the beneficiary, whichever is shorter" (p. 19, Brief for the Defendant-Appellant; p. 119, Rollo).

However, resort to foreign jurisprudence would be proper only if no law or jurisprudence is available locally to settle a controversy. Even in the absence of local statute and case law, foreign jurisprudence is only persuasive.

For the settlement of the issue at hand, there are enough applicable local laws and jurisprudence. Under Article 1764 and Article 2206(1) of the Civil Code, the award of damages for death is computed on the basis of the life expectancy of the deceased, not of beneficiary. The articles provide:

"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. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

"(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court,

unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death; x x x." (Underscoring supplied.)

In the case of *Davila vs. PAL*, 49 SCRA 497 which involved the same tragic plane crash, this Court determined not only PAL's liability for negligence or breach of contract, but also the manner of computing the damages due the plaintiff therein which it based on the life expectancy of the deceased, Pedro Davila, Jr. This Court held thus:

"The deceased, Pedro Davila, Jr., was single and 30 years of age when he died. At that age one's normal life expectancy is 33-1/3 years, according to the formula ($2/3 \times [80-30]$) adopted by this Court in the case of *Villa Rey Transit, Inc. vs. Court of Appeals* on the basis of the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. However, although the deceased was in relatively good health, his medical history shows that he had complained of and been treated for such ailments as backaches, chest pains and occasional feelings of tiredness. It is reasonable to make an allowance for these circumstances and consider, for purposes of this case, a reduction of his life expectancy to 25 years.

"x x x x x x x x.

"Considering the fact that the deceased was getting his income from three (3) different sources, namely, from managing a radio station, from law practice and from farming, the expenses incidental to the generation of such income were necessarily more than if he had only one source. Together with his living expenses, a deduction of P600.00 a month, or P7,200.00 a year, seems to Us reasonable, leaving a net yearly income of P7,800.00. This amount, multiplied by 25 years, or P195,000.00 is the amount which should be awarded to the plaintiffs in this particular respect." (pp. 504-505, Rollo.)

The petitioner's recourse to our decision in *Alcantara vs. Surro*, 93 Phil. 472, undermines instead of supporting its stand here, for the indemnity in that case was also based on the life expectancy of the deceased and not of his beneficiaries.

The petitioner's contention that actual damages under Article 2206 of the Civil Code must be proven by clear and satisfactory evidence is correct, but its perception that such evidence was not presented in this case, is error.

The witnesses Mate and Reyes, who were respectively the manager and auditor of Allied Overseas Trading Company and Padilla Shipping Company, were competent to testify on matters within their personal knowledge because of their positions, such as the income and salary of the deceased, Nicanor A. Padilla (Sec. 30, Rule 130, Rules of Court). As observed by the Court of Appeals, since they were cross-examined by petitioner's counsel, any objections to their competence and the admissibility of their testimonies, were deemed waived. The payrolls of the companies and the decedent's income tax returns could, it is true, have constituted the best evidence of his salaries, but there is no rule disqualifying competent officers of the corporation from testifying on the compensation of the deceased as an officer of the same corporation, and in any event, no timely objection was made to their testimonies.

Following the procedure used by the Supreme Court in the case of *Davila vs. PAL*, 49 SCRA 497, the trial court determined the victim's gross annual income to be P23,100 based on his yearly salaries of P18,000 from the Padilla Shipping Company and P5,100 from the Allied Overseas Trading Corporation. Considering that he was single, the court deducted P9,200 as yearly living expenses, resulting in a net income of P13,900 (not P15,900 as erroneously stated in the decision). Since Nicanor Padilla was only 29 years old and in good health, the trial court allowed him a life expectancy of 30 years. Multiplying his annual net income of P13,900 by his life expectancy of 30 years, the product is P417,000 (not P477,000) which is the amount of death indemnity due his mother and only forced heir (p. 58, Record on Appeal; p. 117, Rollo).

While as a general rule, an appellee who has not appealed is not entitled to affirmative relief other than the ones

granted in the decision of the court below (Aparri vs. CA, 13 SCRA 611; Dy vs. Kuizon, 113 Phil. 592; Borromeo vs. Zaballero, 109 Phil. 332), we nevertheless find merit in the private respondent's plea for relief for the long delay this case has suffered on account of the petitioner's multiple appeals. Indeed, because of the 16-year delay in the disposition of this case, the private respondent herself has already joined her son in the Great Beyond without being able to receive the indemnity she well deserved. Considering how inflation has depleted the value of the judgment in her favor, in the interest of justice, the petitioner should pay legal rate of interest on the indemnity due her. The failure of the trial court to award such interest amounts to a "plain error" which we may rectify on appeal although it was not specified in the appellee's brief (Sec. 7, Rule 51, Rules of Court).

WHEREFORE, the petition is dismissed. The decision of the trial court is affirmed with modification. The petitioner is ordered to pay the private respondent or her heirs death indemnity in the sum of P417,000 (not P477,000), with legal rate of interest of 6% per annum from the date of the judgment on August 31, 1973, until it is fully paid. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), and Medialdea, J., concur.

Cruz, J., no part. Related to petitioner's counsel.

Gancayco, J., no part.

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