

REYNALDA GATCHALIAN, PETITIONER, VS. ARSENIO DELIM AND THE HON. COURT OF APPEALS, RESPONDENTS.*G.R. No. 56487. October 21, 1991*

Ponente: FELICIANO, J.

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At noon time on 11 July 1973, petitioner Reynalda Gatchalian boarded, as a paying passenger, respondent's "Thames" mini-bus at a point in San Eugenio, Aringay, La Union, bound for Bauang, of the same province. On the way, while the bus was running along the highway in Barrio Payocpoc, Bauang, La Union, "a snapping sound" was suddenly heard at one part of the bus and, shortly thereafter, the vehicle bumped a cement flower pot on the side of the road, went off the road, turned turtle and fell into a ditch. Several passengers, including petitioner Gatchalian, were injured. They were promptly taken to Bethany Hospital at San Fernando, La Union, for medical treatment. Upon medical examination, petitioner was found to have sustained physical injuries on the leg, arm and forehead, specifically described as follows: lacerated wound, forehead; abrasion, elbow, left; abrasion, knee, left; abrasion, lateral surface, leg, left.[1]

On 14 July 1973, while injured passengers were confined in the hospital, Mrs. Adela Delim, wife of respondent, visited them and later paid for their hospitalization and medical expenses. She also gave petitioner P12.00 with which to pay her transportation expense in going home from the hospital. However, before Mrs. Delim left, she had the injured passengers, including petitioner, sign an already prepared Joint Affidavit which stated, among other things:

"That we were passengers of Thames with Plate No. 52-222 PUJ Phil. 73 and victims after the said Thames met an accident at Barrio Payocpoc Norte, Bauang, La Union while passing through the National Highway No. 3;

That after a thorough investigation the said Thames met the accident due to mechanical defect and went off the road and turned turtle to the east canal of the road into a creek causing physical injuries to us:

x x x x x x x x

That we are no longer interested to file a complaint, criminal or civil against the said driver and owner of the said Thames, because it was an accident and the said driver and owner of the said Thames have gone to the extent of helping us to be treated upon our injuries.

x x x x x x x x"[2]

(Underscoring supplied)

Notwithstanding this document, petitioner Gatchalian filed with the then Court of First Instance of La Union an action extra contractu to recover compensatory and moral damages. She alleged in the complaint that her injuries sustained from the vehicular mishap had left her with a conspicuous white scar measuring 1 by ½ inches on the forehead, generating mental suffering and an inferiority complex on her part; and that as a result, she had to retire

in seclusion and stay away from her friends. She also alleged that the scar diminished her facial beauty and deprived her of opportunities for employment. She prayed for an award of: P10,000.00 for loss of employment and other opportunities; P10,000.00 for the cost of plastic surgery for removal of the scar on her forehead; P30,000.00 for moral damages; and P1,000.00 as attorney's fees.

In defense, respondent averred that the vehicular mishap was due to force majeure, and that petitioner had already been paid and moreover had waived any right to institute any action against him (private respondent) and his driver, when petitioner Gatchalian signed the Joint Affidavit on 14 July 1973.

After trial, the trial court dismissed the complaint upon the ground that when petitioner Gatchalian signed the Joint Affidavit, she relinquished any right of action (whether criminal or civil) that she may have had against respondent and the driver of the mini-bus.

On appeal by petitioner, the Court of Appeals reversed the trial court's conclusion that there had been a valid waiver, but affirmed the dismissal of the case by denying petitioner's claim for damages:

"We are not in accord, therefore, of (sic) the ground of the trial court's dismissal of the complaint, although we conform to the trial court's disposition of the case -- its dismissal.

IN VIEW OF THE FOREGOING considerations, there being no error committed by the lower court in dismissing the plaintiff-appellant's complaint, the judgment of dismissal is hereby affirmed.

Without special pronouncement as to costs.

SO ORDERED.[3]

In the present Petition for Review filed in forma pauperis, petitioner assails the decision of the Court of Appeals and asks this Court to award her actual or compensatory damages as well as moral damages.

We agree with the majority of the Court of Appeals who held that no valid waiver of her cause of action had been made by petitioner. The relevant language of the Joint Affidavit may be quoted again:

"That we are no longer interested to file a complaint, criminal or civil against the said driver and owner of the said Thames, because it was an accident and the said driver and owner of the said Thames have gone to the extent of helping us to be treated upon our injuries." (Underscoring supplied)

A waiver, to be valid and effective, must in the first place be couched in clear and unequivocal terms which leave no doubt as to the intention of a person to give up a right or benefit which legally pertains to him.[4] A waiver may not casually be attributed to a person when the terms thereof do not explicitly and clearly evidence an intent to abandon a right vested in such person.

The degree of explicitness which this Court has required in purported waivers is illustrated in *Yepes and Susaya v. Samar Express Transit* (supra), where the Court in reading and rejecting a purported waiver said:

"x x x It appears that before their transfer to the Leyte Provincial Hospital, appellees were asked to sign as, in fact, they signed the document Exhibit I wherein they stated that 'in consideration of the expenses which said operator has incurred in properly giving us the proper medical treatment, we hereby manifest our desire to waive any and all claims against the operator of the Samar Express Transit. 'x x x

x x x x x x x x

Even a cursory examination of the document mentioned above will readily show that appellees did not actually waive their right to claim damages from appellant for the latter's failure to comply with their contract of carriage. All that said document proves is that they expressed a 'desire' to make the waiver -- which obviously

is not the same as making an actual waiver of their right. A waiver of the kind invoked by appellant must be clear and unequivocal (Decision of the Supreme Court of Spain of July 8, 1887) -- which is not the case of the one relied upon in this appeal." (Underscoring supplied)

If we apply the standard used in *Yepes and Susaya*, we would have to conclude that the terms of the Joint Affidavit in the instant case cannot be regarded as a waiver cast in "clear and unequivocal" terms. Moreover, the circumstances under which the Joint Affidavit was signed by petitioner Gatchalian need to be considered. Petitioner testified that she was still reeling from the effects of the vehicular accident, having been in the hospital for only three days, when the purported waiver in the form of the Joint Affidavit was presented to her for signing; that while reading the same, she experienced dizziness but that, seeing the other passengers who had also suffered injuries sign the document, she too signed without bothering to read the Joint Affidavit in its entirety. Considering these circumstances, there appears substantial doubt whether petitioner understood fully the import of the Joint Affidavit (prepared by or at the instance of private respondent) she signed and whether she actually intended thereby to waive any right of action against private respondent.

Finally, because what is involved here is the liability of a common carrier for injuries sustained by passengers in respect of whose safety a common carrier must exercise extraordinary diligence, we must construe any such purported waiver most strictly against the common carrier. For a waiver to be valid and effective, it must not be contrary to law, morals, public policy or good customs.[5] To uphold a supposed waiver of any right to claim damages by an injured passenger, under circumstances like those exhibited in this case, would be to dilute and weaken the standard of extraordinary diligence exacted by the law from common carriers and hence to render that standard unenforceable.[6] We believe such a purported waiver is offensive to public policy.

Petitioner Gatchalian also argues that the Court of Appeals, having by majority vote held that there was no enforceable waiver of her right of action, should have awarded her actual or compensatory and moral damages as a matter of course.

We have already noted that a duty to exercise extra-ordinary diligence in protecting the safety of its passengers is imposed upon a common carrier.[7] In case of death or injuries to passengers, a statutory presumption arises that the common carrier was at fault or had acted negligently "unless it proves that it [had] observed extraordinary diligence as prescribed in Articles 1733 and 1755".[8] In fact, because of this statutory presumption, it has been held that a court need not even make an express finding of fault or negligence on the part of the common carrier in order to hold it liable.[9] To overcome this presumption, the common carrier must show to the court that it had exercised extraordinary diligence to prevent the injuries.[10] The standard of extraordinary diligence imposed upon common carriers is considerably more demanding than the standard of ordinary diligence, i.e., the diligence of a good paterfamilias established in respect of the ordinary relations between members of society. A common carrier is bound to carry its passengers safely "as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard to all the circumstances".[11]

Thus, the question which must be addressed is whether or not private respondent has successfully proved that he had exercised extraordinary diligence to prevent the mishap involving his mini-bus. The records before the Court are bereft of any evidence showing that respondent had exercised the extraordinary diligence required by law. Curiously, respondent did not even attempt, during the trial before the court a quo, to prove that he had indeed exercised the requisite extraordinary diligence. Respondent did try to exculpate himself from liability by alleging that the mishap was the result of force majeure. But allegation is not proof and here again, respondent utterly failed to substantiate his defense of force majeure. To exempt a common carrier from liability for death or physical injuries to passengers upon the ground of force majeure, the carrier must clearly show not only that the efficient cause of the casualty was entirely independent of the human will, but also that it was impossible to avoid.

Any participation by the common carrier in the occurrence of the injury will defeat the defense of force majeure. In *Servando v. Philippine Steam Navigation Company*,^[12] the Court summed up the essential characteristics of force majeure by quoting with approval from the *Enciclopedia Juridical Española*:

"Thus, where fortuitous event or force majeure is the immediate and proximate cause of the loss, the obligor is exempt from liability for non-performance. The *Partidas*, the antecedent of Article 1174 of the Civil Code, defines 'caso fortuito' as 'an event that takes place by accident and could not have been foreseen. Examples of this are destruction of houses, unexpected fire, shipwreck, violence of robbers.'

In its dissertation on the phrase 'caso fortuito' the *Enciclopedia Juridical Española* says: 'In legal sense and, consequently, also in relation to contracts, a 'caso fortuito' presents the following essential characteristics: (1) the cause of the unforeseen and unexpected occurrence, or of the failure of the debtor to comply with his obligation, must be independent of the human will; (2) it must be impossible to foresee the event which constitutes the 'caso fortuito', or if it can be foreseen, it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (4) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.'

Upon the other hand, the record yields affirmative evidence of fault or negligence on the part of respondent common carrier. In her direct examination, petitioner Gatchalian narrated that shortly before the vehicle went off the road and into a ditch, a "snapping sound" was suddenly heard at one part of the bus. One of the passengers an old woman, cried out, "What happened?" ("Apay addan samet nadadaelen?"). The driver replied, nonchalantly, "That is only normal" ("Ugali ti makina dayta"). The driver did not stop to check if anything had gone wrong with the bus. Moreover, the driver's reply necessarily indicated that the same "snapping sound" had been heard in the bus on previous occasions. This could only mean that the bus had not been checked physically or mechanically to determine what was causing the "snapping sound" which had occurred so frequently that the driver had gotten accustomed to it. Such a sound is obviously alien to a motor vehicle in good operating condition, and even a modicum of concern for life and limb of passengers dictated that the bus be checked and repaired. The obvious continued failure of respondent to look after the roadworthiness and safety of the bus, coupled with the driver's refusal or neglect to stop the mini-bus after he had heard once again the "snapping sound" and the cry of alarm from one of the passengers, constituted wanton disregard of the physical safety of the passengers, and hence gross negligence on the part of respondent and his driver.

We turn to petitioner's claim for damages. The first item in that claim relates to revenue which petitioner said she failed to realize because of the effects of the vehicular mishap. Petitioner maintains that on the day that the mini-bus went off the road, she was supposed to confer with the district supervisor of public schools for a substitute teacher's job, a job which she had held off and on as a "casual employee". The Court of Appeals, however, found that at the time of the accident, she was no longer employed in a public school since, being a casual employee and not a Civil Service eligible, she had been laid off. Her employment as a substitute teacher was occasional and episodic, contingent upon the availability of vacancies for substitute teachers. In view of her employment status as such, the Court of Appeals held that she could not be said to have in fact lost any employment after and by reason of the accident.^[13] Such was the factual finding of the Court of Appeals, a finding entitled to due respect from this Court. Petitioner Gatchalian has not submitted any basis for overturning this finding of fact, and she may not be awarded damages on the basis of speculation or conjecture.^[14]

Petitioner's claim for the cost of plastic surgery for removal of the scar on her forehead, is another matter. A person is entitled to the physical integrity of his or her body; if that integrity is violated or diminished, actual injury is suffered for which actual or compensatory damages are due and assessable. Petitioner Gatchalian is entitled to be placed as nearly as possible in the condition that she was before the mishap. A scar, especially one on the face of the woman, resulting from the infliction of injury upon her, is a violation of bodily integrity, giving

raise to a legitimate claim for restoration to her *conditio ante*. If the scar is relatively small and does not grievously disfigure the victim, the cost of surgery may be expected to be correspondingly modest. In *Araneta, et al. v. Areglado, et al.*,^[15] this Court awarded actual or compensatory damages for, among other things, the surgical removal of the scar on the face of a young boy who had been injured in a vehicular collision. The Court there held:

"We agree with the appellants that the damages awarded by the lower court for the injuries suffered by Benjamin Araneta are inadequate. In allowing not more than P1,000.00 as compensation for the 'permanent deformity and -- something like an inferiority complex' as well as for the 'pathological condition on the left side of the jaw' caused to said plaintiff, the court below overlooked the clear evidence on record that to arrest the degenerative process taking place in the mandible and restore the injured boy to a nearly normal condition, surgical intervention was needed, for which the doctor's charges would amount to P3,000.00, exclusive of hospitalization fees, expenses and medicines. Furthermore, the operation, according to Dr. Diño, would probably have to be repeated in order to effectuate a complete cure, while removal of the scar on the face obviously demanded plastic surgery.

x x x x x x x x

The father's failure to submit his son to a plastic operation as soon as possible does not prove that such treatment is not called for. The damage to the jaw and the existence of the scar in Benjamin Araneta's face are physical facts that can not be reasoned out of existence. That the injury should be treated in order to restore him as far as possible to his original condition is undeniable. The father's delay, or even his negligence, should not be allowed to prejudice the son who has no control over the parent's action nor impair his right to a full indemnity.

x x x Still, taking into account the necessity and cost of corrective measures to fully repair the damage; the pain suffered by the injured party; his feelings of inferiority due to consciousness of his present deformity, as well as the voluntary character of the injury inflicted; and further considering that a repair, however skillfully conducted, is never equivalent to the original state, we are of the opinion that the indemnity granted by the trial court should be increased to a total of P18,000.00. (Underscoring supplied)

Petitioner estimated that the cost of having her scar surgically removed was somewhere between P10,000.00 to P15,000.00.^[16] Upon the other hand, Dr. Fe Tayao Lasam, a witness presented as an expert by petitioner, testified that the cost would probably be between P5,000.00 to P10,000.00.^[17] In view of this testimony, and the fact that a considerable amount of time has lapsed since the mishap in 1973 which may be expected to increase not only the cost but also very probably the difficulty of removing the scar, we consider that the amount of P15,000.00 to cover the cost of such plastic surgery is not unreasonable.

Turning to petitioner's claim for moral damages, the long-established rule is that moral damages may be awarded where gross negligence on the part of the common carrier is shown.^[18] Since we have earlier concluded that respondent common carrier and his driver had been grossly negligent in connection with the bus mishap which had injured petitioner and other passengers, and recalling the aggressive maneuvers of respondent, through his wife, to get the victims to waive their right to recover damages even as they were still hospitalized for their injuries, petitioner must be held entitled to such moral damages. Considering the extent of pain and anxiety which petitioner must have suffered as a result of her physical injuries including the permanent scar on her forehead, we believe that the amount of P30,000.00 would be a reasonable award. Petitioner's claim for P1,000.00 as attorney fees is in fact even more modest.^[19]

WHEREFORE, the Decision of the Court of Appeals dated 24 October 1980, as well as the decision of the then Court of First Instance of La Union dated 4 December 1975 are hereby REVERSED and SET ASIDE. Respondent is hereby ORDERED to pay petitioner Reynalda Gatchalian the following sums: 1) P15,000.00 as

actual or compensatory damages to cover the cost of plastic surgery for the removal of the scar on petitioner's forehead; 2) P30,000.00 as moral damages; and 3) P1,000.00 as attorney's fees, the aggregate amount to bear interest at the legal rate of 6% per annum counting from the promulgation of this decision until full payment thereof. Costs against private respondent.

SO ORDERED.

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

[1] TSN, 19 December 1974, p. 8.

[2] Record on Appeal, p. 10.

[3] Annex A of Petition; Rollo, pp. 16-26. The Decision was split: Coquia, J. joined the ponente Asuncion, J.; Cuevas, J. concurred in the result, stating that there was a valid waiver of the civil but not of the criminal liability involved; German and Gopengco, JJ., dissented, holding that there was no valid waiver and the claim for damages should be granted.

[4] *Fernandez v. Sebido*, 70 Phil. 151 (1940); *Lang v. Provincial Sheriff of Surigao, et al.*, 93 Phil. 661 (1953); *Andres v. Crown Life Insurance Co.*, 102 Phil. 919 (1958); *Yepes and Susaya v. Samar Express Transit*, 17 SCRA 91 (1966).

[5] Article 6, Civil Code.

[6] See, e.g., *Maniego v. Castello*, 101 PHIL. 293 (1957); *Cui v. Arellano University*, 2 SCRA 205 (1961).

[7] Article 1733 and 1755, Civil Code.

[8] Article 1756, Civil Code.

[9] *Brito Sy. v. Malate Taxicab & Garage, Inc.*, 102 Phil. 482 (1957).

[10] *Landingin v. Pangasinan Transportation Co.*, 33 SCRA 284 (1970).

[11] Article 1755, Civil Code

[12] 117 SCRA 832, 837 (1982).

[13] Rollo, p. 18.

[14] Article 2199, Civil Code of the Philippines; *Suntay Tanjangco v. Jovellanos*, 108 Phil. 713 (1960).

[15] 104 Phil. 529 (1958).

[16] TSN, 15 July 1975, p. 10.

[17] *Id.*, 19 December 1974, p. 7.

[18] See, e.g., *Mecenas v. Court of Appeals*, 180 SCRA 83 (1989); *Kapalaran Bus Line v. Coronado*, 176 SCRA 792 (1989); *Sweet Lines, Inc. v. Court of Appeals*, 121 SCRA 769 (1983); *Ortigas, Jr. v. Lufthansa German Airlines*, 64 SCRA 610 (1975); *Air France v. Carrascoso*, 18 SCRA 155 (1966); *La Mallorca and Pampanga Bus Co. v. de Jesus, et al.* 17 SCRA 23 (1966); *Laguna Tayabas Bus Co. v. Tiongson, et al.* 16 SCRA 940 (1966); *Lopez, et al. v. Pan American World Airways*, 16 SCRA 431 (1966); *Laguna Tayabas Bus Co. v. Cornista*, 11 SCRA 181 (1964); *Verzosa v. Baytan, et al.*, 107 Phil. 1010 (1960); *Layda v. Court of Appeals and Brillantes*, 90

Phil. 724 (1952).

[19] Article 2208(2) and (11) Civil Code.

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