

SARKIES TOURS PHILIPPINES, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT, ARSENIO S. DIZON, JR. AND VIOLETA R. DIZON, RESPONDENTS.

G.R. No. 63723. September 02, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review of the Decision of the Intermediate Appellate Court in CA-G.R. No. 64228-R, to which we gave due course only in so far as the moral and exemplary damages awarded are concerned. The decretal portion of the judgment reads:

"WHEREFORE, premises considered, finding the Court a quo in error in dismissing the complaint against Sarkies Tours Phils., Inc., the decision insofar as it affects Sarkies Tours Phil., Inc., is set aside and another one entered sentencing Sarkies Tours Phils., Inc., jointly and solidarily, liable with Julian Mendoza. Consequently, the appealed decision is hereby modified to read as follows:

'PREMISES CONSIDERED, the plaintiffs having established their cause of action against both Julian Mendoza and Sarkies Tours Phils., Inc., judgment is hereby rendered condemning Julian Mendoza and Sarkies Tours Phils., Inc., to pay plaintiffs, jointly and severally:

- (a) P12,000.00 in actual damages for the death of Merceditas Dizon;
- (b) P1,650.00 for loss of cash and personal belongings;
- (c) P3,000.00 for funeral expenses;
- (d) P100,000.00 for moral damages;
- (e) P50,000.00 as exemplary damages;
- (f) P5,000.00 as attorney's fees; and
- (g) the costs of suit."

SO ORDERED."

A few weeks before June 12, 1971, petitioner Sarkies Tours Phils., Inc. (SARKIES, for short) advertised in the newspapers its tour to Corregidor on Independence Day, for a fee of "P10.00 per person including: a) boat fare - Manila-Corregidor--Manila b) shrine fee and c) tour of Corregidor Island by bus." A day before the scheduled tour, private respondent spouses (the DIZONS, for short), purchased six round-trip tickets from SARKIES. They were issued an official receipt under the SARKIES letterhead. Also issued by SARKIES for each set of tickets were one (1) blue ticket and one (1) white ticket, with the name "SARKIES" appearing on both the blue and white tickets, while the word "Edisco" was handwritten across the white ticket. With the DIZONS the next day, June 12, 1971, were their four children Cecilia, Bernardita, Merceditas and Emerito. From the SARKIES main office at

Filipinas Hotel, Roxas Boulevard, they were transported on a SARKIES bus, together with other excursionists, to Muelle del Banco Nacional, alongside the Pasig River, where they boarded the M/V Edisco. Upon departure from Manila, Manila Bay was then rather choppy (Folio, p. 77). The white tickets were collected on board by Julian V. MENDOZA, while the blue tickets were collected upon boarding the SARKIES bus at Corregidor Island.

The M/V Edisco, owned and operated by MENDOZA, is an oversized motorized banca with outriggers, a steel hull, a canvas awning and rattan chairs on the deck. It was not registered to ferry passengers, nor was it licensed to operate as a watercraft. On that trip, it had 146 passengers on board and was overloaded and lacked adequate lifesaving equipment.

Upon reaching Corregidor, the excursionists went on a guided tour conducted by petitioner's representative.

On the return trip to Manila, the weather was practically the same as when they left but with intermittent rains (Folio, p. 77). Around 2:00 P.M., disaster struck after about thirty minutes of cruising. The boat leaned towards starboard and the chairs slid into the water in that direction. In a matter of seconds, the boat capsized. Private respondents and their two children, Bernardita and Emerito, managed to clamber up the hull of the boat and were rescued by a passing yacht. Another daughter, Cecilia, was picked up by one of the other watercrafts that came to succor. Private respondents lost cash and personal belongings. Merceditas, their six-year-old daughter was missing and could not be located even after they reached Manila around 7:00 P.M. of that day. After six days of fruitless and heart-rending inquiries, private respondents were summoned to Funeraria Quiogue where they identified a lifeless body as that of their daughter, Merceditas. There were other fatalities.

For damages based on the drowning of MERCEDITAS, the DIZONS filed a complaint against SARKIES and MENDOZA before the then Court of First Instance of Manila. Answering, SARKIES alleged that it was not the owner nor charterer of M/V Edisco; that it is only a booking agent and not a carrier; and that it had acted with due diligence and care in relying on MENDOZA's representations that his vessel was duly authorized to operate and was seaworthy.

MENDOZA denied liability claiming that he was not the registered owner but merely a passenger of the capsized vessel together with his son who also perished in the tragedy; that the contract of carriage was between SARKIES and private respondents, and that the marine accident was due to force majeure. MENDOZA was declared in default for failure to appear during the pre-trial.

After trial on the merits, the Trial Court exonerated SARKIES from liability on the ground that it was "neither an agent nor the operator of M/V Edisco"; that it had merely booked private respondents with M/V Edisco, one of the three private carriers, in addition to a Philippine Navy boat, plying the route from Manila to Corregidor, and attributed sole responsibility to MENDOZA, whom it found to be the owner-operator of M/V Edisco, for negligence consisting of "unscrupulous conversion of a fishing boat into a ferry boat without first securing a license to operate as such."

On appeal to the then Court of Appeals, the Appellate Tribunal reversed and held both SARKIES and MENDOZA jointly and severally liable for the damages for the reason that the relationship between SARKIES and the excursionists was "a single operation ... which in effect guaranteed them safe passage all throughout" (Rollo, p. 98).

We concur with that view. The issue, we had resolved to consider, as earlier mentioned, is in respect of the award of moral and exemplary damages.

The award of exemplary damages should be eliminated. In *Munsayac vs. De Lara*, 23 SCRA 1086, 1089 (1968), it was said:

"It is not enough to say that an example should be made, or corrective measures be employed, for the public good especially in accident cases where public carriers are involved. The causative negligence in such cases is personal to the employees actually in charge of the vehicles, and it is they who should be made to pay this kind of damages by way of example or correction, unless by the demonstrative tolerance or approval of the owners they themselves can be held at fault and their fault is of the character described in article 2232 of the Civil Code."

In the case at bar, there is no showing that SARKIES acted "in a wanton or malevolent manner" (Art. 2232, Civil Code).

As to the award of moral damages, while we find them justly due, under the factual milieu, however, we consider the sum of P100,000.00 excessive and in the exercise of our discretion, hereby reduce them to P30,000.00.

In its Answer to the Complaint of the DIZONS, SARKIES included a cross-claim against MENDOZA as the owner/operator of the EDISCO. Considering that actual negligence for the drowning of MERCEDITAS was the responsibility of MENDOZA, it is but fair that SARKIES should have a right of action against MENDOZA for reimbursement. Although Article 2181 of the Civil Code is not technically invocable, its principle should be applied in favor of SARKIES. The provision of the Civil Code on common carriers is based on Anglo-American Law (Maranan v. Perez, 20 SCRA 412 [1967]). In regards to Grand Trunk R. Co. v. Latham, 63 Me. 177, the following was said:

"Where a railroad company had been compelled to pay a judgment for damages for injuries sustained by a passenger as a result of the maltreatment and misconduct of the conductor ... the Court (held) that the servant was liable to his master for all loss and damage sustained by it." (110 A.L.R. 836).

ACCORDINGLY, the judgment of the then Court of Appeals (now Intermediate Appellate Court) in its CA-G.R. No. 64228-R, in respect of petitioner, is modified by (1) eliminating exemplary damages therefrom; (2) reducing the adjudged moral damages from P100,000.00 to P30,000.00; and (3) ordering Julian V. Mendoza to pay and/or reimburse petitioner any and all expenses and damages to be paid by petitioner to the private respondents. The other parts of the judgment are confirmed. The judgment of the Trial Court in respect of Julian V. Mendoza, is maintained.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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