

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI) AND GLOBE MACKAY AND RADIO CORPORATION, PETITIONERS, VS. RUFUS B. RODRIGUEZ, RESPONDENT.

G.R. No. 83768. February 28, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks to reverse the decision of the Court of Appeals which affirmed the decision of the then Court of First Instance of Rizal, Branch 17-B, Quezon City in Civil Case No. Q-26623 ordering petitioner Radio Communications of the Philippines, Inc. [RCPI] and their co-defendant Globe Mackay and Radio Corporation (Globe Mackay), jointly and severally to pay the plaintiff, private respondent herein, a total amount of Two Hundred Thirteen Thousand One Hundred Forty Eight Pesos (P213,148.00) broken down as follows: a) P100,000.00 as moral damages; b) P50,000.00 as exemplary damages; c) P43,148.00 as actual damages; and d) P20,000.00 as attorney's fees by way of damages.

This is the second time that this case has been brought to us. The first was when petitioner RCPI questioned the decision of the Court of Appeals which refused to set aside the orders of the lower court directing execution pending appeal of the money awards. In that case (G. R. No. 59311, 134 SCRA 395 [1985]) we set aside the decision of the appellate court and entered a new order authorizing execution pending appeal of the award of actual damages but enjoining the execution of the award of moral damages, exemplary damages and attorney's fees until after the resolution of the issues in the main case. We summarized the facts of the case as follows:

"On September 8, 1978, Rufus B. Rodriguez, as President of the World Association of Law Students (WALS), sent two cablegrams overseas through RCPI, one addressed to Mohamed Elsir Taha in Khartoum, Sudan Socialist Union, and the other to Diane Merger in Athens, Georgia, United States. The cablegrams were, in turn, relayed to GLOBE for transmission to their foreign destinations. The telegram to Taha advised him of Rodriguez's pending arrival in Khartoum on September 18, 1978, while the telegram to Merger advised her of the scheduled WALS conference in Khartoum. Rodriguez left the Philippines on September 15, 1978. On September 18, 1978, he arrived in Khartoum, Sudan at 9:30 in the evening. Nobody was at the airport to meet him. Due to the lateness of the hour, he was forced to sleep at the airport. He lined up five (5) chairs together and lay down with his luggages near him. Because of the non-receipt of the cablegram, Taha was not able to meet him. Worse all preparations for the international conference had to be cancelled. Furthermore, Fernando Barros, the Vice-President, arrived the next day from Chile, followed by the other officers from other countries except Diane Merger, the organization's secretary. It turned out that the wire sent by Rodriguez to Merger was delivered to the address on the message but the person who delivered it was told that the addressee was no longer staying there. This fact was not accordingly reported to Rodriguez in Metro Manila. The undelivered cablegram was not returned by the correspondent abroad to Globe for disposition in the Philippines.

"On December 8, 1978, Rodriguez filed a complaint for compensatory damages in the amount of P45,147.00, moral damages in the amount of P200,000.00, and exemplary damages in the amount of P50,000.00 against RCPI and GLOBE.

"On March 17, 1980, the then Presiding Judge Lino L. Añover of the Court of First Instance of Rizal rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendants jointly and severally to pay the plaintiff the total sum of TWO HUNDRED THIRTEEN THOUSAND ONE HUNDRED FORTY EIGHT PESOS (P213,148.00) by way of damages and to pay the costs of this suit."

"The above amount is broken down as follows by the trial court:

"Moral damages consequent to the humiliation and embarrassment that the plaintiff suffered under the two causes of action in the amount of P100,000.00 are adequate. Exemplary damages under both counts are fixed reasonably at P50,000.00. On the actual damages, the court accepts plaintiff's expenses for the preparation of the trip at P10,000.00; plane fare at P20,000.00; stay in transit in Pakistan at P5,000.00; his hotel bills in Khartoum at P4,000.00; his meals in Khartoum at P4,000.00 and the telegraphic toll at P78.00. The court refuses the sum spent for the dinner that he allegedly tendered as not established by sufficient proof.

"With respect to the telegram sent to Diane Merger, the court finds that the actual damages amount to P70.00 representing the cost of cablegram. As for attorney's fees, the court finds that the amount of P20,000.00 including litigation of expenses are reasonable." (at pp. 396-398)

Upon appeal, the Court of Appeals affirmed the lower court's decision. A motion for reconsideration was denied.

Hence, this petition filed by RCPI. The title of the case includes Globe Mackay but the petition proper and the name of counsel show that only RCPI comes to this Court through the petition. Globe Mackay did not join as petitioner and its counsel Atty. Romulo P. Atencia did not sign the petition.

The issues raised by petitioner RCPI are two-fold — 1) whether or not petitioner RCPI is responsible for the non-delivery of the two (2) telegrams notwithstanding the fact that RCPI relayed said telegrams to Globe Mackay and 2) whether or not under the attendant facts and circumstances petitioner RCPI is liable for moral damages in the amount of P100,000.00; exemplary damages in the amount of P50,000.00; actual damages in the amount of P43,148.00 and attorney's fees in the amount of P20,000.00.

RCPI insists that its responsibility vis-a-vis the two (2) telegrams ceased after it relayed and transmitted the telegrams on the same day they were filed to Globe Mackay. It argues that it was not incumbent upon RCPI to advise respondent Rodriguez the status of his telegrams because Globe Mackay did not also inform RCPI what happened to the telegrams since the respective operating agency of the country of destination did not also inform Globe Mackay about the non-delivery of the telegrams.

Moreover, RCPI blames respondent Rodriguez for the non-delivery of the two telegrams. Regarding the telegram addressed to Elsir Taha, RCPI avers that it has an incomplete address as it did not include P.O. Box 1850 per instruction of Taha in an earlier cable asking for respondent to reply via telex, to wit:

"x x x send me a telegram immediately after receiving this one a telex number if any. Thanks, Mohammed Elsir Taha Regional Director WALS Africa Youth Committee SSU, Khartoum, P.O. Box 1850. (Exhibit "D")." (Rollo, p. 27)

In regard to the telegram addressed to Diane Merger which she did not receive because she had moved to another place RCPI avers that respondent Rodriguez was partly at fault for not verifying the address of Diane before sending the telegram and that Merger was negligent by not leaving her forwarding address with the present occupant of the apartment she vacated.

Petitioner RCPI is a domestic corporation engaged in the business of receiving and transmitting messages. Mr. Alfredo Catolico, Jr., manager, Customer and Relations Office testified that RCPI does not have facilities for

foreign countries, hence it has a contract to course all international communications thru Globe Mackay. On the other hand, Wenceslao Felix, the Traffic Operations Manager of Globe Mackay testified that Globe Mackay has an inter-connecting agreement with RCPI under which the latter's international messages are coursed thru Globe Mackay in the same way that local and domestic messages received by Globe Mackay are coursed thru RCPI.

Respondent Rodriguez and RCPI entered into a contract whereby for a fee RCPI undertook to send the respondent's messages overseas. When, therefore, respondent Rodriguez paid RCPI to deliver his messages overseas by telegram, RCPI obligated itself to transmit the messages to the addressee. Clearly, RCPI reneged on its obligation when it failed to deliver the messages or to inform the sender about the non-delivery, thus making it liable for damages. (Article 1170, Civil Code; Article 2176; see also *Telefast Communication/Philippine Wireless, Inc. v. Castro, Sr.*, 158 SCRA 445 [1988]).

Parenthetically, RCPI cannot escape liability for damages by passing off the blame for negligence to Globe Mackay. It has an inter-connecting agreement with Globe Mackay. RCPI receives messages for overseas destinations and conducts its business to transmit foreign messages only through Globe Mackay. To allow it to escape liability for damages by attributing sole negligence to Globe Mackay for the expedient reason that it had already delivered the messages to the latter would deprive the general public availing of the services of RCPI of an effective and adequate remedy. (See *Radio Communications of the Philippines, Inc. (RCPI) v. Court of Appeals*, 143 SCRA 657 [1986]). It cannot simply wash its hands of all responsibility.

RCPI's similar attempt to pass the total blame for the non-delivery of the telegram intended for Taha to respondent Rodriguez is not supported by the records. The evidence clearly demonstrates that an earlier cablegram dated July 27, 1978 (Exhibit "E") similarly addressed to Taha, Africa, Youth Committee, Khartoum, SSU and without P.O. Box 1850 was received by Taha. This is conclusively shown by a cable (Exhibit "F") addressed by Taha to respondent Rodriguez acknowledging the receipt of the July 27 cablegram. Evidence was also introduced to show that the Africa Youth Committee is a very important office in Khartoum, Sudan and the building that houses it is a very popular building known to the people.

We rule that the arguments about the alleged negligence on the part of respondent Rodriguez in not verifying the address of Diane Merger before sending the telegram and also the alleged negligence on the part of Merger for not leaving a forwarding address do not deserve much consideration. Considering the public utility nature of RCPI's business and its contractual obligation to transmit messages, it should exercise due diligence to ascertain that messages are delivered to the persons at the given address and should provide a system whereby in cases of undelivered messages the sender is given notice of non-delivery. Messages sent by cable or wireless means are usually more important and urgent than those which can wait for the mail.

For recovery of damages, Article 2217 of the New Civil Code applies. It is provided therein that: "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feeling, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission." (Italics supplied)

There is no doubt that RCPI'S failure to deliver the two questioned telegrams resulted in the suffering that respondent Rodriguez had to undergo.

Respondent Rodriguez left Manila for Khartoum, Sudan believing that Taha received his telegram and would meet him at the airport. He related his experience at the airport of Khartoum, Sudan as follows:

"Q.

All right, from 9:30 in the evening up to 12:00 midnight, was there any person or officer of the World

Association of Law Students who met you? "

"A.

None.

"Q.

Now, inform the Court what was your feeling during that time in a foreign country?

"A.

First of all, when I arrived at 9:30 A.M., I was thinking that Mr. Taha was first late in fetching me but when it was already 10:30 to 11:00 P.M., I was already afraid because there was no one there that I know and it was already late in the evening that I could not go to the address of Mr. Taha. (TSN pages 18 and 19, August 20, 1979).

"Q.

What were you doing at that time from 9:30 in the evening until 6:00 in the morning?

"A.

I was very tired and what I did was pulled five chairs together. I remember there were about ten (10) persons and some tourists in that restaurant. I got five chairs together and laid my baggage trying to sleep but which I was not able to do because of fear and anxiety. (TSN, pages 10 and 11, August 20, 1979)." (Rollo, p. 15)

We are convinced that respondent Rodriguez suffered a certain degree of mental anguish, fear and anxiety considering his experience at the airport of a foreign country. His suffering was caused by the non-appearance of Taha who did not receive the telegram sent by the respondent due to the gross negligence of RCPI. There is moreover, the dismay arising from the fact, that after so much preparation and travel on the part of Rodriguez, his pains were all for nothing. Hence, RCPI is liable for moral damages.

Nevertheless, we find the award of P100,000.00 as moral damages in favor of respondent Rodriguez excessive and unconscionable. In the case of *Prudenciado v. Alliance Transport System, Inc.* (148 SCRA 440 [1987]) we said:

"x x x [I]t is undisputed that the trial courts are given discretion to determine the amount of moral damages (*Alcantara v. Surro*, 93 Phil. 472) and that the Court of Appeals can only modify or change the amount awarded when they are palpably and scandalously excessive 'so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court' (*Gellada v. Warner Barnes & Co., Inc.*, 57 O.G. [4] 7347, 7358; *Sadie v. Bachrach Motors Co., Inc.*, 57 O.G. [4] 636 and *Adone v. Bachrach Motor Co., Inc.*, 57 O.G. 656). But in more recent cases where the awards of moral and exemplary damages are far too excessive compared to the actual losses sustained by the aggrieved party, this Court ruled that they should be reduced to more reasonable amounts.

"Thus, in the case of *San Andres v. Court of Appeals* (116 SCRA 85 [1982]) the Supreme Court ruled that

while the amount of moral damages is a matter left largely to the sound discretion of a court, the same when found excessive should be reduced to more reasonable amounts, considering the attendant facts and circumstances. Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.

"In a much later case (*Siguenza v. Court of Appeals*, 137 SCRA 578-579 [1985], the Supreme Court, reiterating the above ruling, reduced the awards of moral and exemplary damages which were far too excessive compared to the actual losses sustained by the aggrieved parties and where the records show that the injury suffered was not serious or gross and, therefore, out of proportion to the amount of damages generously awarded by the trial court.

"In any case the Court held that 'moral damages are emphatically not intended to enrich a complaint at the expense of a defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendants' culpable action.' The award of moral damages must be proportionate to the suffering inflicted (*R & B Surety & Insurance Co., Inc. v. Intermediate Appellate Court*, 129 SCRA 745 [1984] citing *Grand Union Supermarket, Inc. v. Espino, Jr.*, 94 SCRA 966)." (Italics supplied)

The respondent is not entirely blameless for the problems which befell him. Apart from the various arguments raised by RCPI in its petition, there are other factors to be considered in fixing the amount of damages. Anybody who has been involved in international conferences and meetings knows that a telegram is not adequate preparation. Considering the lackadaisical attitude of public utility employees in the Philippines and presumably in Africa, the head of an international student organization cannot simply send a telegram and nonchalantly assume that every preparation will proceed as he anticipates it. The planning expertise and degree of thoroughness incumbent upon conference organizers is missing from the records. The trial court appears to have been influenced by the impressive title of World Association of Law Students. There is nothing in the records pointing to a certain degree of distinction earned by WALs which would warrant substantial damages because of a failed meeting.

Be that as it may, damages are warranted. People depend on telecommunications companies in times of deep emotional stress or pressing financial needs. Knowing that messages about the illnesses or deaths of loved ones, births or marriages in a family, important business transactions, and notices of conferences or meetings as in this case, are coursed through the petitioner and similar corporations, it is incumbent upon them to exercise a greater amount of care and concern than that shown in this case. Every reasonable effort to inform senders of the non-delivery of messages should be undertaken. From the pleadings filed by counsel in this case, RCPI does not seem to be particularly concerned about its responsibility.

We rule that the amount of P10,000.00 as moral damages in favor of the respondent would be reasonable considering the facts and circumstances surrounding the petitioner's liability.

The award of exemplary damages is not proper considering that there is no showing that RCPI acted in "a wanton, fraudulent, reckless, oppressive, or malevolent manner." (Article 2232, New Civil Code).

Respondent Rodriguez was awarded the total amount of P43,148.00 as actual or compensatory damages broken down as follows: (a) P10,000.00 for the preparation of the trip; (b) P20,000.00 for plane fare; (c) P5,000.00 for respondent's stay in transit in Pakistan; (d) P4,000.00 for hotel bills in Khartoum; (e) P78.00 for the telegraphic toll, and P70.00 for the cost of the cablegram sent to Diane Merger. The trial court rejected the expenses allegedly incurred by the respondent for a dinner he tendered for the officers, organizers and students at Khartoum for insufficiency of evidence. It is to be noted that the petitioner does not controvert the amounts. Instead, the petitioner concentrates its opposition to the award of actual damages on the argument that the respondent's

expenses were actually paid by the organization and the Sudanese government. The petitioner, however, fails to substantiate its allegations with clear proof. On the other hand, what is evident on record is that due to the non-receipt of the telegram which would have confirmed the scheduled conference on September 20, 1978, Taha cancelled all preparations and stopped the soliciting of funds for the conference which would have included the expenses of the respondent. As a result of the cancellation of the conference, triggered by the non-delivery of the telegrams, the officers were constrained to schedule another meeting in Santiago, Chile in April 1979. Therefore, we see no reason to disturb these findings of the trial court affirmed by the appellate court as these were not sufficiently controverted by the petitioner (See *Ganzon v. Court of Appeals*, 161 SCRA 646 [1988]).

Finally, petitioner RCPI objects to the award of attorney's fees. Citing the case of *Mirasol v. De la Cruz* (84 SCRA 337 [1987]), RCPI contends that the award of attorney's fees was improper because there was no allegation in the complaint with respect to attorney's fees; respondent Rodriguez did not present any evidence to prove attorney's fees and the decision failed to explain why attorney's fees are being awarded.

We agree. In the recent case of *Stronghold Insurance Company, Inc. v. Court of Appeals*, (G. R. No. 88376, May 29, 1989), we ruled:

"In *Abrogar v. Intermediate Appellate Court* (G. R. No. 67970, January 15, 1988, 157 SCRA 57) the Court had occasion to state that '[t]he reason for the award of attorney's fees must be stated in the text of the court's decision, otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.' (at p. 61 citing *Mirasol v. dela Cruz*, G. R. No. L-32552, July 31, 1978, 84 SCRA 337)."

A cursory reading of the trial court's decision shows that the award of attorney's fees was stated only once — "As for attorney's fees, the court finds that the amount of P20,000.00 including litigation expenses are reasonable" — just below the dispositive portion of the decision which reads: "WHEREFORE judgment is hereby rendered ordering the defendants jointly and severally liable to pay the plaintiff the total sum of TWO HUNDRED THIRTEEN THOUSAND ONE HUNDRED FORTY EIGHT PESOS (P213,148.00) by way of damages and to pay the costs of this suit." The trial court failed to justify the payment of attorney's fees by RCPI, therefore, the award of attorney's fees as part of its liability should be disallowed and deleted.

WHEREFORE, the instant petition is PARTLY GRANTED. The questioned decision of the respondent court is MODIFIED. The award directing Radio Communications of the Philippines, Inc., to pay P100,000.00 moral damages is reduced to P10,000.00. The award ordering it to pay exemplary damages and attorney's fees is DELETED. In all other respects, the questioned decision is AFFIRMED. Costs against the petitioner.

SO ORDERED.

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

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