

KAPALARAN BUS LINE, PETITIONER, VS. ANGEL CORONADO, LOPE GRAJERA, DIONISIO SHINYO, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 85331. August 25, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Kapalaran Bus Line ("Kapalaran") seeks the reversal or modification of the Court of Appeals' decision in C.A.-G.R. CV No. 12476 and the absolution of petitioner from all liability arising from the collision between one of petitioner's buses and a jeepney owned by respondent Coronado, driven by respondent Grajera and in which jeepney respondent Shinyo was a passenger.

The facts of this case as found by the trial court and adopted by the Court of Appeals, are summarized in the trial court's decision and quoted in the Court of Appeals' own judgment in the following terms:

"The accident happened on the National Highway at 10:30 A.M. on August 2, 1982. The jeepney driven by Lope Grajera was then coming from Pila, Laguna on its way towards the direction of Sta. Cruz, traversing the old highway. As it reached the intersection where there is a traffic sign 'yield', it stopped and cautiously treated the intersection as a 'Thru Stop' street, which it is not. The KBL bus was on its way from Sta. Cruz, Laguna, driven by its regular driver Virgilio Llamoso, on its way towards Manila. The regular itinerary of the KBL bus is through the town proper of Pila, Laguna, but at times it avoids this if a bus is already fully loaded with passengers and can no longer accommodate additional passengers. As the KBL bus neared the intersection, Virgilio Llamoso inquired from his conductor if they could still accommodate passengers and learning that they were already full, he decided to bypass Pila and instead, to proceed along the national highway. Virgilio Llamoso admitted that there was another motor vehicle ahead of him.

The general rule is that the vehicle on the national highway has the right-of-way as against a feeder road. Another general rule is that the vehicle coming from the right has the right-of-way over the vehicle coming from the left. The general rules on right-of-way may be invoked only if both vehicles approach the intersection at almost the same time. In the case at bar, both roads are national roads. Also, the KBL bus was still far from the intersection when the jeepney reached the same. As testified to by Atty. Conrado L. Manicad who was driving a Mustang car coming from the direction of Sta. Cruz and proceeding towards the direction of Manila, he stopped at the intersection to give way to the jeepney driven by Grajera. Behind Manicad were two vehicles, a car of his client and another car. A Laguna Transit bus had just entered the town of Pila ahead of Atty. Manicad.

The sketch marked Exhibit 'E' indicates very clearly that the jeepney had already traversed the intersection when it met the KBL bus head-on. It is also obvious that the point of impact was on the right lane of the highway which is the lane properly belonging to the jeepney. As testified to by Lope Grajera, the KBL bus ignored the stopped vehicles of Atty. Manicad and the other vehicles behind Atty. Manicad and overtook both vehicles at the intersection, therefore, causing the accident.

Judging from the testimony of Atty. Conrado L. Manicad and the sketch (Exhibit 'E'), the sequence of events

shows that the first vehicle to arrive at the intersection was the jeepney. Seeing that the road was clear, the jeepney which had stopped at the intersection began to move forward, and for his part, Atty. Manicad stopped his car at the intersection to give way to the jeepney. At about this time, the KBL bus was approaching the intersection and its driver was engaged in determining from his conductor if they would still pass through the town proper of Pila. Upon learning that they were already full, he turned his attention to the road and found the stopped vehicles at the intersection with the jeepney trying to cross the intersection. The KBL bus had no more room within which to stop without slamming into the rear of the vehicle behind the car of Atty. Manicad. The KBL driver chose to gamble on proceeding on its way, unfortunately, the jeepney driven by Grajera, which had the right-of-way, was about to cross the center of the highway and was directly on the path of the KBL bus. The gamble made by Llamoso did not pay off. The impact indicates that the KBL bus was travelling at a fast rate of speed because, after the collision, it did not stop; it travelled for another 50 meters and stopped only when it hit an electric post (pp. 3-4, Decision; pp. 166-167, Record)."[1]

On 14 September 1982, Kapalaran, apparently believing that the best defense was offense, filed a complaint for damage to property and physical injuries through reckless imprudence against respondents Angel Coronado and Lope Grajera in the Regional Trial Court, Branch 27, Sta. Cruz, Laguna. Respondents answered with their own claims (counter-claims) for damages. A third-party complaint and/or a complaint for intervention was also filed in the same case against Kapalaran by jeepney passenger Dionisio Shinyo.

On 15 October 1986, after trial, the trial court rendered a judgment in favor of private respondents and ordering Kapalaran

"(a) to pay Angel Coronado the sum of P40,000.00 as compensation for the totally wrecked jeepney, plus the sum of P5,000.00 as attorney's fees and litigation expenses, and

(b) to Dionisio Shinyo the sum of P35,000.00 representing the expenses incurred by said intervenor for his treatment including his car-hire, the further sum of P30,000.00 representing the expenses said defendant will incur for his second operation to remove the intramedullary nail from his femur, the additional sum of P50,000.00 to serve as moral damages for the pain and suffering inflicted on said defendant, plus the sum of P10,000.00 in the concept of exemplary damages to serve as a deterrent to others who, like the plaintiff, may be minded to induce accident victims to perjure themselves in a sworn statement, and the sum of P15,000.00 as attorney's fees and litigation expenses."

From the above judgment, Kapalaran appealed to the Court of Appeals assailing the trial court's findings on the issue of fault and the award of damages. The Court of Appeals, on 28 June 1988, affirmed the decision of the trial court but modified the award of damages by setting aside the grant of exemplary damages as well as the award of attorney's fee and litigation expenses made to Dionisio Shinyo.[2]

This decision of the Court of Appeals is now before us on a Petition for Review, a motion for reconsideration by Kapalaran having been denied by that court on 13 October 1988.

Kapalaran assails the findings of fact of the Regional Trial Court and of the Court of Appeals, and insists before this Court that respondent Grajera, driver of the jeepney, was at fault and not the driver of Kapalaran's bus. It must be remembered that it is not the function of this Court to analyze and weigh evidence presented by the parties all over again and that our jurisdiction is in principle limited to reviewing errors of law that might have been committed by the Court of Appeals. Kapalaran has made no compelling showing of any misapprehension of facts on the part of the Court of Appeals that would require us to review and overturn the factual findings of that court. On the contrary, examination of the record shows that not only are the conclusions of fact of the Court of Appeals and the trial court on who -- the bus driver or the jeepney driver -- had acted negligently and was at fault in the collision of their vehicles, amply supported by the evidence of record, but also that Kapalaran's bus driver was grossly negligent and had acted wantonly and in obvious disregard of the applicable rules on safety on the

highway.

Kapalaran's driver had become aware that some vehicles ahead of the bus and travelling in the same direction had already stopped at the intersection obviously to give way either to pedestrians or to another vehicle about to enter the intersection. The bus driver, who was driving at a speed too high to be safe and proper at or near an intersection on the highway, and in any case too high to be able to slow down and stop behind the cars which had preceded it and which had stopped at the intersection, chose to swerve to the left lane and overtake such preceding vehicles, entered the inter-section and directly smashed into the jeepney within the intersection. Immediately before the collision, the bus driver was actually violating the following traffic rules and regulations, among others, in the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:

"Sec. 35. Restriction as to speed. -- (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

x x x x x x x x

Sec. 41. Restrictions on overtaking and passing. -- (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle, proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

x x x x x x x x

(c) The driver of a vehicle shall not overtake or pass any other vehicle proceeding in the same direction, at any railway grade crossing, or at any intersection of highways, unless such intersection or crossing is controlled by traffic signal, or unless permitted to do so by a watchman or a peace officer, except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle on the right. Nothing in this section shall be construed to prohibit a driver overtaking or passing, upon the right, another vehicle which is making or about to make a left turn.

x x x x x x x x."

(Underscoring supplied)

Thus, a legal presumption arose that the bus driver was negligent,[3] a presumption Kapalaran was unable to overthrow.

Petitioner's contention that the jeepney should have stopped before entering the "Y-intersection" because of the possibility that another vehicle behind the cars which had stopped might not similarly stop and might swerve to the left to proceed to the highway en route to Manila, is more ingenious than substantial. It also offers illustration of the familiar litigation tactic of shifting blame from one's own shoulders to those of the other party. But the jeepney driver, seeing the cars closest to the intersection on the opposite side of the highway come to a stop to give way to him, had the right to assume that other vehicles further away and behind the stopped cars would similarly come to a stop and not seek illegally to overtake the stopped vehicles and come careening into the intersection at an unsafe speed.[4] Petitioner's bus was still relatively far away from the intersection when the jeepney entered the same; the bus collided head-on into the jeepney because the bus had been going at an excessively high velocity immediately before and at the time of overtaking the stopped cars, and so caught the jeepney within the intersection. It was also the responsibility of the bus driver to see to it, when it overtook the two (2) cars ahead which had stopped at the intersection, that the left lane of the road within the intersection and

beyond was clear. The point of impact was on the left side of the intersection (the right lane so far as concerns the jeepney coming from the opposite side), which was precisely the lane or side on which the jeepney had a right to be.

Petitioner Kapalaran also assails the award of moral damages against itself, upon the ground that its own bus driver, third-party defendant, was apparently not held liable by the trial court.[5] Hence, Kapalaran argues that there was no justification for holding it, the employer, liable for damages, considering that such liability was premised upon the bus driver's negligence, and that petitioner "as mere employer" was not guilty of such negligence or imprudence.[6] This contention is thoroughly unpersuasive. The patent and gross negligence on the part of petitioner Kapalaran's driver raised the legal presumption that Kapalaran as employer was guilty of negligence either in the selection or in the supervision of its bus drivers.[7] Where the employer is held liable for damages, it has of course a right of recourse against its own negligent employee. If petitioner Kapalaran was interested in maintaining its right of recourse against or reimbursement from its own driver,[8] it should have appealed from that portion of the trial court's decision which had failed to hold the bus driver responsible for any damage. Contrary to Kapalaran's pretense, its liability for the acts and negligence of its bus driver is not "merely subsidiary", and is not limited to cases where the employee "cannot pay his liability", nor are private respondents compelled first to proceed against the bus driver. The liability of the employer under Article 2180 of the Civil Code is direct and immediate: it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee.[9] So far as the record shows, petitioner Kapalaran was unable to rebut the presumption of negligence on its own part. The award of moral damages against petitioner Kapalaran is not only entirely in order: it is also quite modest considering Dionisio Shinyo's death during the pendency of this petition, a death hastened by, if not directly due to, the grievous injuries sustained by him in the violent collision.

The Court of Appeals deleted the award of exemplary damages which the trial court had granted in order "to serve as a deterrent to others who, like the plaintiff [Kapalaran], may be minded to induce accident victims to perjure themselves in a sworn statement." The Court of Appeals held that there was no basis for this award of exemplary damages, stating that it was not "such a reprehensible act to try to gather witnesses for one's cause" and that there was no evidence of use of "pressure or influence" to induce the accident victims to perjure themselves. While that might have been so, both the trial court and the Court of Appeals overlooked another and far more compelling basis for the award of exemplary damages against petitioner Kapalaran in this case. There is no question that petitioner's bus driver was grossly and very probably criminally negligent in his reckless disregard of the rights of other vehicles and their passengers and of pedestrians as well. The Court is entitled to take judicial notice of the gross negligence and the appalling disregard of the physical safety and property of others so commonly exhibited today by the drivers of passenger buses and similar vehicles on our highways. The law requires petitioner as common carrier to exercise extraordinary diligence in carrying and transporting their 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." [10] In requiring the highest possible degree of diligence from common carriers and creating a presumption of negligence against them, the law compels them to curb the recklessness of their drivers.[11] While the immediate beneficiaries of the standard of extraordinary diligence are, of course, the passengers and owners of cargo carried by a common carrier, they are not the only persons that the law seeks to benefit. For if common carriers carefully observed the statutory standard of extraordinary diligence in respect of their own passengers, they cannot help but simultaneously benefit pedestrians and the owners and passengers of other vehicles who are equally entitled to the safe and convenient use of our roads and highways.[12] The law seeks to stop and prevent the slaughter and maiming of people (whether passengers or not) and the destruction of property (whether freight or not) on our highways by buses, the very size and power of which seem often to inflame the minds of their drivers. Article 2231 of the Civil Code explicitly authorizes the imposition of exemplary damages in cases of

quasi-delicts "if the defendant acted with gross negligence". Thus we believe that the award of exemplary damages by the trial court was quite proper, although granted for the wrong reason, and should not only be restored but augmented in the present case. The Court is aware that respondent Shinyo did not file a separate petition for review to set aside that portion of the Court of Appeals' decision which deleted the grant by the trial court of exemplary damages. It is settled, however, that issues which must be resolved if substantial justice is to be rendered to the parties, may and should be considered and decided by this Court even if those issues had not been explicitly raised by the party affected.[13] In the instant case, it is not only the demands of substantial justice but also the compelling considerations of public policy noted above, which impel us to the conclusion that the trial court's award of exemplary damages was erroneously deleted and must be restored and brought more nearly to the level which public policy and substantial justice require.

In much the same vein, we believe that the award by the trial court of P15,000.00 as attorney's fees and litigation expenses, deleted by the Court of Appeals, should similarly be restored, being both authorized by law[14] and demanded by substantial justice in the instant case.

WHEREFORE, the Petition for Review on Certiorari is DENIED for lack of merit and the Decision of the Court of Appeals is hereby AFFIRMED, except (1) that the award of exemplary damages to Dionisio Shinyo shall be restored and increased from P10,000.00 to P25,000.00, and (2) that the grant of attorney's fees and litigation expenses in the sum of P15,000.00 to Dionisio Shinyo shall similarly be restored. Costs against petitioner.

SO ORDERED.

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

[1] Record, pp. 63-65.

[2] Rollo, p. 34.

[3] Article 2185, Civil Code.

[4] Section 42 (a) of Republic Act No. 4136, as amended:

"Sec. 42. Right of way. -- (a) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise hereinafter provided. The driver of any vehicle traveling at any unlawful speed shall forfeit any right of way which he might otherwise have hereunder." (Underscoring supplied)

[5] The other grounds adduced by Kapalaran in its petition for review of the Court of Appeals' decision are clearly insubstantial and require no discussion.

[6] Petition for Review, p. 15; Rollo, p. 16.

[7] *Phoenix Construction, Inc. v. Intermediate Appellate Court*, 148 SCRA 370 (1987); *Poblete v. Fabros*, 93 SCRA 202 (1979); *Umali v. Bacani*, 69 SCRA 263 (1976).

[8] Article 2181, Civil Code.

[9] *Bienvenido Galisan v. Benito Alday*, 154 SCRA 388 (1987); *Rufo Mauricio Construction v. Intermediate Appellate Court*, 155 SCRA 713 (1987); *Malipol v. Tan*, 55 SCRA 214 (1974).

[10] Article 1255, Civil Code.

[11] *Nucom v. Laguna-Tayabas Bus Company*, 30 SCRA 69 (1969).

[12] Under Executive Order No. 202, dated 19 June 1987 (83 Official Gazette No. 27, p. 3122-B [6 July 1987]), the Land Transportation Franchising and Regulatory Board is authorized, among other things,

"k. To formulate, promulgate, administer, implement and enforce rules and regulations on land transportation, public utilities, standards of measurements and/or design and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote safety, protection, comfort and convenience to persons and property in their charges as well as safety of persons and property within their areas of operations;

x x x x x x x x"

(Underscoring supplied)

[13] *Heirs of Enrique Zambales v. Court of Appeals*, 120 SCRA 897 (1983); *Miguel v. Court of Appeals*, 29 SCRA 760 (1969); *Saura Import and Export Co., Inc. v. Philippine International Surety Co., Inc.*, 8 SCRA 148 (1963).

[14] Article 2208 (1), (2) and (5), Civil Code.

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