

BACHELOR EXPRESS, INCORPORATED, AND CRESENCIO RIVERA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS (SIXTH DIVISION), RICARDO BETER, SERGIA BETER, TEOFILO RAUTRAUT AND ZOETERA...*G.R. No. 85691. July 31, 1990*

Ponente: GUTIERREZ, JR., J.

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This is a petition for review of the decision of the Court of Appeals which reversed and set aside the order of the Regional Trial Court, Branch I, Butuan City dismissing the private respondents' complaint for collection of "a sum of money" and finding the petitioners solidarily liable for damages in the total amount of One Hundred Twenty Thousand Pesos (P120,000.00). The petitioners also question the appellate court's resolution denying a motion for reconsideration.

On August 1, 1980, Bus No. 800 owned by Bachelor Express, Inc. and driven by Cresencio Rivera was the situs of a stampede which resulted in the death of passengers Ornominio Beter and Narcisa Rautraut.

The evidence shows that the bus came from Davao City on its way to Cagayan de Oro City passing Butuan City; that while at Tabon-Tabon, Butuan City, the bus picked up a passenger; that about fifteen (15) minutes later, a passenger at the rear portion suddenly stabbed a PC soldier which caused commotion and panic among the passengers; that when the bus stopped, passengers Ornominio Beter and Narcisa Rautraut were found lying down the road, the former already dead as a result of head injuries and the latter also suffering from severe injuries which caused her death later. The passenger-assailant alighted from the bus and ran toward the bushes but was killed by the police. Thereafter, the heirs of Ornominio Beter and Narcisa Rautraut, private respondent herein (Ricardo Beter and Sergia Beter are the parents of Ornominio while Teofilo Rautraut and Zoetera [should be Zotera] Rautraut are the parents of Narcisa) filed a complaint for "sum of money" against Bachelor Express, Inc. its alleged owner Samson Yasay, and the driver Rivera.

In their answer, the petitioners denied liability for the death of Ornominio Beter and Narcisa Rautraut. They alleged that "xxx the driver was able to transport his passengers safely to their respective places of destination except Ornominio Beter and Narcisa Rautraut who jumped off the bus without the knowledge and consent, much less, the fault of the driver and conductor and the defendants in this case; the defendant corporation had exercised due diligence in the choice of its employees to avoid as much as possible accidents; the incident on August 1, 1980 was not a traffic accident or vehicular accident; it was an incident or event very much beyond the control of the defendants; defendants were not parties to the incident complained of as it was an act of a third party who is not in any way connected with the defendants and of which the latter have no control and supervision; x x x" (Rollo, pp. 112-113).

After due trial, the trial court issued an order dated August 8, 1985 dismissing the complaint.

Upon appeal however, the trial court's decision was reversed and set aside. The dispositive portion of the decision of the Court of Appeals states:

"WHEREFORE, the Decision appealed from is REVERSED and SET ASIDE and a new one entered finding the appellees jointly and solidarily liable to pay the plaintiffs-appellants the following amounts:

- 1) To the heirs of Ornominio Beter, the amount of Seventy Five Thousand Pesos (P75,000.00) in loss of earnings and support, moral damages, straight death indemnity and attorney's fees; and,
- 2) To the heirs of Narcisa Rautraut, the amount of Forty Five Thousand Pesos (P45,000.00) for straight death indemnity, moral damages and attorney's fees. Costs against appellees." (Rollo, pp. 71-72)

The petitioners now pose the following questions:

"What was the proximate cause of the whole incident? Why were the passengers on board the bus panicked (sic) and why were they shoving one another? Why did Narcisa Rautraut and Ornominio Beter jump off from the running bus?"

The petitioners opine that answers to these questions are material to arrive at "a fair, just and equitable judgment." (Rollo, p. 5) They claim that the assailed decision is based on a misapprehension of facts and its conclusion is grounded on speculation, surmises or conjectures.

As regards the proximate cause of the death of Ornominio Beter and Narcisa Rautraut, the petitioners maintain that it was the act of the passenger who ran amuck and stabbed another passenger of the bus. They contend that the stabbing incident triggered off the commotion and panic among the passengers who pushed one another and that "presumably out of fear and moved by that human instinct of self-preservation Beter and Rautraut jumped off the bus while the bus was still running resulting in their untimely death." (Rollo, p. 6) Under these circumstances, the petitioners asseverate that they were not negligent in the performance of their duties and that the incident was completely and absolutely attributable to a third person, the passenger who ran amuck, for without his criminal act, Beter and Rautraut could not have been subjected to fear and shock which compelled them to jump off the running bus. They argue that they should not be made liable for damages arising from acts of third persons over whom they have no control or supervision.

Furthermore, the petitioners maintain that the driver of the bus, before, during and after the incident was driving cautiously giving due regard to traffic rules, laws and regulations. The petitioners also argue that they are not insurers of their passengers as ruled by the trial court.

The liability, if any, of the petitioners is anchored on culpa contractual or breach of contract of carriage. The applicable provisions of law under the New Civil Code are as follows:

"ART. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both by land, water, or air, for compensation, offering their services to the public.

"ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

xxx xxx xxx

"ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

"ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault

or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755."

There is no question that Bachelor Express, Inc. is a common carrier. Hence, from the nature of its business and for reasons of public policy Bachelor Express, Inc. is bound to carry its passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

In the case at bar, Ornominio Beter and Narcisa Rautraut were passengers of a bus belonging to petitioner Bachelor Express, Inc. and, while passengers of the bus, suffered injuries which caused their death. Consequently, pursuant to Article 1756 of the Civil Code, petitioner Bachelor Express, Inc. is presumed to have acted negligently unless it can prove that it had observed extraordinary diligence in accordance with Articles 1733 and 1755 of the New Civil Code.

Bachelor Express, Inc. denies liability for the death of Beter and Rautraut on its posture that the death of the said passengers was caused by a third person who was beyond its control and supervision. In effect, the petitioner, in order to overcome the presumption of fault or negligence under the law, states that the vehicular incident resulting in the death of passengers Beter and Rautraut was caused by force majeure or caso fortuito over which the common carrier did not have any control.

Article 1174 of the present Civil Code states:

"Except in cases expressly specified by law, or when it is otherwise declared by stipulations, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable."

The above-mentioned provision was substantially copied from Article 1105 of the old Civil Code which states"

"No one shall be liable for events which could not be foreseen or which, even if foreseen, were inevitable, with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes liability."

In the case of *Lasam v. Smith* (45 Phil. 657 [1924]), we defined "events" which cannot be foreseen and which, having been foreseen, are inevitable in the following manner:

"xxx The Spanish authorities regard the language employed as an effort to define the term 'caso fortuito' and hold that the two expressions are synonymous. (Manresa Comentarios al Código Civil Español, vol. 8, pp. 88 et seq.; Scaevola, Código Civil, vol. 19, pp. 526 et seq.)

The antecedent to Article 1105 is found in Law II, Title 33, Partida 7, which defines caso fortuito as 'ocasion que acaese por aventura de que non se puede ante ver. E son estos, derrivamientos de casas e fuego que enciende a so ora, e quebrantamiento de navio, fuerca de ladrones.' (An event that takes place by incident and could not have been foreseen. Examples of this are destruction of houses, unexpected fire, shipwreck, violence of robbers. x x x)

Escriche defines caso fortuito as an unexpected event or act of God which could neither be foreseen nor resisted, such as floods, torrents, shipwrecks, conflagrations, lightning, compulsion, insurrections, destruction of buildings by unforeseen accidents and other occurrences of a similar nature.

In discussing and analyzing the term caso fortuito the Enciclopedia Jurídica Española says: In a 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 (debtor) must be free from any participation in the aggravation of the injury resulting to the creditor. (5) Enciclopedia Juridica Española, 309)

As will be seen, these authorities agree that some extraordinary circumstance independent of the will of the obligor, or of his employees, is an essential element of a caso fortuito. x x x"

The running amuck of the passenger was the proximate cause of the incident as it triggered off a commotion and panic among the passengers such that the passengers started running to the sole exit shoving each other resulting in the falling off the bus by passengers Beter and Rautraut causing them fatal injuries. The sudden act of the passenger who stabbed another passenger in the bus is within the context of force majeure.

However, in order that a common carrier may be absolved from liability in case of force majeure, it is not enough that the accident was caused by force majeure. The common carrier must still prove that it was not negligent in causing the injuries resulting from such accident. Thus, as early as 1912, we ruled:

"From all the foregoing, it is concluded that the defendant is not liable for the loss and damage of the goods shipped on the lorchá Pilar by the Chinaman, Ong Bien Sip, inasmuch as such loss and damage were the result of a fortuitous event or force majeure, and there was no negligence or lack of care and diligence on the part of the defendant company or its agents." (Tan Chiong Sian v. Inchausti & Co., 22 Phil. 152 [1912]; Emphasis supplied).

This principle was reiterated in a more recent case, Batangas Laguna Tayabas Co. v. Intermediate Appellate Court (167 SCRA 379 [1988]), wherein we ruled:

"xxx [F]or their defense of force majeure or act of God to prosper the accident must be due to natural causes and exclusively without human intervention." (Emphasis supplied)

Therefore, the next question to be determined is whether or not the petitioner's common carrier observed extraordinary diligence to safeguard the lives of its passengers.

In this regard the trial court and the appellate court arrived at conflicting factual findings.

The trial court found the following facts:

"The parties presented conflicting evidence as to how the two deceased Narcisa Rautraut and Ornominio Beter met their deaths.

However, from the evidence adduced by the plaintiffs, the Court could not see why the two deceased could have fallen off the bus when their own witnesses testified that when the commotion ensued inside the bus, the passengers pushed and shoved each other towards the door apparently in order to get off from the bus through the door. But the passengers also could not pass through the door because according to the evidence the door was locked.

On the other hand, the Court is inclined to give credence to the evidence adduced by the defendants that when the commotion ensued inside the bus, the two deceased panicked and, in state of shock and fear, they jumped off from the bus by passing through the window.

It is the prevailing rule and settled jurisprudence that transportation companies are not insurers of their passengers. The evidence on record does not show that defendants' personnel were negligent in their duties. The defendants' personnel have every right to accept passengers absent any manifestation of violence or drunkenness. If and when such passengers harm other passengers without the knowledge of the transportation company's personnel, the latter should not be faulted." (Rollo, pp. 46-47)

A thorough examination of the records, however, show that there are material facts ignored by the trial court which were discussed by the appellate court to arrive at a different conclusion. These circumstances show that the petitioner common carrier was negligent in the provision of safety precautions so that its passengers may be transported safely to their destinations. The appellate court states:

"A critical eye must be accorded the lower court's conclusions of fact in its tersely written ratio decidendi. The lower court concluded that the door of the bus was closed; secondly, the passengers, specifically the two deceased, jumped out of the window. The lower court therefore concluded that the defendant common carrier is not liable for the death of the said passengers which it implicitly attributed to the unforeseen acts of the unidentified passenger who went amuck.

There is nothing in the record to support the conclusion that the solitary door of the bus was locked as to prevent the passengers from passing through. Leonila Cullano, testifying for the defense, clearly stated that the conductor opened the door when the passengers were shouting that the bus stop while they were in a state of panic. Sergia Beter categorically stated that she actually saw her son fall from the bus as the door was forced open by the force of the onrushing passengers.

Pedro Collango, on the other hand, testified that he shut the door after the last passenger had boarded the bus. But he had quite conveniently neglected to say that when the passengers had panicked, he himself panicked and had gone to open the door. Portions of the testimony of Leonila Cullano, quoted below, are illuminating:

xxx xxx xxx

Q. When you said the conductor opened the door, the door at the front or rear portion of the bus?

A. Front door.

Q. And these two persons whom you said alighted, where did they pass, the fron(t) door or rear door?

A. Front door.

xxx xxx xxx

(Tsn., p. 4, Aug. 8, 1984)

xxx xxx xxx

Q. What happened after there was a commotion at the rear portion of the bus?

A. When the commotion occurred, I stood up and I noticed that there was a passenger who was sounded (sic). The conductor panicked because the passengers were shouting 'stop, stop.' The conductor opened the bus."

(Tsn., p. 3, August 8, 1984).

Accordingly, there is no reason to believe that the deceased passengers jumped from the window when it was entirely possible for them to have alighted through the door. The lower court's reliance on the testimony of Pedro Collango, as the conductor and employee of the common carrier, is unjustified, in the light of the clear testimony of Leonila Cullano as the sole uninterested eyewitness of the entire episode. Instead we find Pedro Collango's testimony to be infused by bias and fraught with inconsistencies, if not notably unreliable for lack of veracity. On direct examination, he testified:

xxx xxx xxx

Q. So what happened to the passengers inside your bus?

A. Some of the passengers jumped out of the window.

COURT:

Q. While the bus was in motion?

A. Yes, your Honor, but the speed was slow because we have just picked up a passenger.

Atty. Gambe:

Q. You said that at the time of the incident the bus was running slow because you have just picked up a passenger. Can you estimate what was your speed at that time?

Atty. Calo:

No basis, your Honor, he is neither a driver nor a conductor.

COURT:

Let the witness answer. Estimate only, the conductor experienced.

Witness:

Not less than 30 to 40 miles.

COURT:

Kilometers or miles?

A. Miles.

Atty. Gambe:

Q. That is only your estimate by your experience?

A. Yes, sir, estimate.

(Tsn., pp. 4-5, Oct. 17, 1983).

At such speed of not less than 30 to 40 miles xxx, or about 48 to 65 kilometers per hour, the speed of the bus could scarcely be considered slow considering that according to Collango himself, the bus had just come from a full stop after picking a passenger (Tsn, p. 4, id.) and that the bus was still on its second or third gear (Tsn., p. 12, id.).

In the light of the foregoing, the negligence of the common carrier, through its employees, consisted of the lack of extraordinary diligence required of common carriers, in exercising vigilance and utmost care of the safety of its passengers, exemplified by the driver's belated stop and the reckless opening of the doors of the bus while the same was traveling at an appreciably fast speed. At the same time, the common carrier itself acknowledged, through its administrative officer, Benjamin Granada, that the bus was commissioned to travel and take on passengers and the public at large, while equipped with only a solitary door for a bus its size and loading capacity, in contravention of rules and regulations provided for under the Land Transportation and Traffic Code (RA 4136 as amended.)" (Rollo, pp. 23-26)

Considering the factual findings of the Court of Appeals - the bus driver did not immediately stop the bus at the height of the commotion; the bus was speeding from a full stop; the victims fell from the bus door when it was opened or gave way while the bus was still running; the conductor panicked and blew his whistle after people had already fallen off the bus; and the bus was not properly equipped with doors in accordance with law - it is clear that the petitioners have failed to overcome the presumption of fault and negligence found in the law governing common carriers.

The petitioners' argument that the petitioners "are not insurers of their passengers" deserves no merit in view of the failure of the petitioners to prove that the deaths of the two passengers were exclusively due to force majeure and not to the failure of the petitioners to observe extraordinary diligence in transporting safely the passengers to their destinations as warranted by law. (See *Batangas Laguna Tayabas Co. v. Intermediate Appellate Court*, supra).

The petitioners also contend that the private respondents failed to show to the court that they are the parents of Ornominio Beter and Narcisa Rautraut respectively and therefore have no legal personality to sue the petitioners. This argument deserves scant consideration. We find this argument a belated attempt on the part of the petitioners to avoid liability for the deaths of Beter and Rautraut. The private respondents were identified as the parents of the victims by witnesses during the trial and the trial court recognized them as such. The trial court dismissed the complaint solely on the ground that the petitioners were not negligent.

Finally, the amount of damages awarded to the heirs of Beter and Rautraut by the appellate court is supported by the evidence. The appellate court stated:

"Ornominio Beter was 32 years of age at the time of his death, single, in good health and rendering support and service to his mother. As far as Narcisa Rautraut is concerned, the only evidence adduced is to the effect that at her death, she was 23 years of age, in good health and without visible means of support.

In accordance with Art. 1764 in conjunction with Art. 2206 of the Civil Code, and established jurisprudence, several factors may be considered in determining the award of damages, namely: 1) life expectancy (considering the state of health of the deceased and the mortality tables are deemed conclusive) and loss of earning capacity; (2) pecuniary loss, loss of support and service; and (3) moral and mental suffering (*Alcantara, et al. v. Surro, et al.*, 93 Phil. 470).

In the case of *People v. Daniel* (No. L--66551, April 25, 1985, 136 SCRA 92, at page 104), the High Tribunal, reiterating the rule in *Villa Rey Transit, Inc. v. Court of Appeals* (31 SCRA 511), stated that the amount of loss of earning capacity is based mainly on two factors, namely, (1) the number of years on the basis of which the damages shall be computed; and (2) the rate at which the losses sustained by the heirs should be fixed.

As the formula adopted in the case of *Davila v. Philippine Air Lines*, 49 SCRA 497, at the age of 30 one's normal life expectancy is 33-1/3 years based on the American Expectancy Table of Mortality (2/3 x 80-32). By taking into account the pace and nature of the life of a carpenter, it is reasonable to make allowances for these circumstances and reduce the life expectancy of the deceased Ornominio Beter to 25 years (*People v. Daniel*, supra). To fix the rate of losses it must be noted that Art. 2206 refers to gross earnings less necessary living expenses of the deceased, in other words, only net earnings are to be considered (*People v. Daniel*, supra; *Villa Rey Transit, Inc. v. Court of Appeals*, supra).

Applying the foregoing rules with respect to Ornominio Beter, it is both just and reasonable, considering his social standing and position, to fix the deductible, living and incidental expenses at the sum of Four Hundred Pesos (P400.00) a month, or Four Thousand Eight Hundred Pesos (P4,800.00) annually. As to his income, considering the irregular nature of the work of a daily wage carpenter which is seasonal, it is safe to assume that he shall have work for twenty (20) days a month at Twenty Five Pesos (P25.00) a day or Five Hundred Pesos (P500.00) a month. Annually, his income would amount to Six Thousand Pesos (P6,000.00) or One Hundred Fifty Thousand Pesos (P150,000.00) for twenty five years. Deducting therefrom his necessary expenses, his heirs would be entitled to Thirty Thousand Pesos (P30,000.00) representing loss of support and service (P150,000.00 less P120,000.00). In addition, his heirs are entitled to Thirty Thousand Pesos (P30,000.00) as straight death indemnity pursuant to Article 2206 (*People v. Daniel*, supra). For damages for their moral and mental anguish, his heirs are entitled to the reasonable sum of P10,000.00 as an exception to the general rule against moral damages in case of breach of contract rule Art. 2200 (*Necesito v. Paras*, 104 Phil. 75). As attorney's fees, Beter's heirs are entitled to P5,000.00. All in all, the plaintiff/appellants Ricardo

and Sergia Beter as heirs of their son Ornomino are entitled to an indemnity of Seventy Five Thousand Pesos (P75,000.00).

In the case of Narcisa Rautraut, her heirs are entitled to a straight death indemnity of Thirty Thousand Pesos (P30,000.00), to moral damages in the amount of Ten Thousand Pesos (P10,000.00) and Five Thousand Pesos (P5,000.00) as attorney's fees, or a total of Forty Five Thousand Pesos (P45,000.00.) as total indemnity for her death in the absence of any evidence that she had visible means of support." (Rollo, pp. 30-31).

WHEREFORE, the instant petition is DISMISSED. The questioned decision dated May 19, 1988 and the resolution dated August 1, 1988 of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

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