

GOTESCO INVESTMENT CORPORATION, PETITIONER, VS. GLORIA E. CHATTO AND LINA DELZA CHATTO, RESPONDENTS.

G.R. No. 87584. June 16, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Assailed in this petition for review under Rule 45 of the Rules of Court are both the Decision[1] promulgated on 27 July 1988 and the Resolution dated 14 March 1989[2] of the respondent Court of Appeals in C.A.-G.R. CV No. 09699 which, respectively affirmed in toto the decision of Branch XXI of the Regional Trial Court of Cebu in Civil Case No. R-22567 entitled "Gloria Chatto, et al. versus Gotesco Investment Corporation", and denied petitioner's motion to reconsider the same.

The trial court ordered the defendant, herein petitioner, to pay the plaintiff Lina Delza E. Chatto the sum of P10,000.00 as moral damages and the plaintiff Gloria E. Chatto the sum of P49,050.00 as actual and consequential damages, P75,000.00 as moral damages and P20,000.00 as attorney's fees, plus the cost of the suit. These awards, except for the attorney's fees, were to earn interest at the rate of twelve per cent (12%) per annum beginning from the date the complaint was filed, 16 November 1982, until the amounts were fully paid.

The antecedent facts, as found by the trial court and affirmed by the respondent Court, are summarized by the latter in the challenged decision as follows:

"The evidence shows that in the afternoon of June 4, 1982 plaintiff Gloria E. Chatto, and her 15-year old daughter, plaintiff Lina Delza E. Chatto went to see the movie 'Mother Dear' at Superama I theater, owned by defendant Gotesco Investment Corporation. They bought balcony tickets but even then were unable to find seats considering the number of people patronizing the movie. Hardly ten (10) minutes after entering the theater, the ceiling of its balcony collapsed. The theater was plunged into darkness and pandemonium ensued. Shocked and hurt, plaintiffs managed to crawl under the fallen ceiling. As soon as they were able to get out to the street they walked to the nearby FEU Hospital where they were confined and treated for one (1) day.

The next day, they transferred to the UST hospital. Plaintiff Gloria Chatto was treated in said hospital from June 5 to June 19 and plaintiff Lina Delza Chatto from June 5 to 11. Per Medico Legal Certificate (Exh. "C") issued by Dr. Ernesto G. Brion, plaintiff Lina Delza Chatto suffered the following injuries:

Physical injuries:

Contusions:

forehead and frontal region, scalp left with hematoma; chest anterior upper bilateral; back right, scapular region; back, mid-portion, thoraco-lumbar regions, bilateral.

Abrasions:

back lumbar region, horizontal, across mid-line, from left to right; hand right, palm, near wrist; hand left, index finger, dorsum, proximal phalanx.

Conclusion, cerebral.

X-Ray -- Skull; Thoraco-lumbar

region -- All negative.

CONCLUSIONS:

1. Physical injuries noted on the subject.
2. That under normal condition in the absence of complication, said physical injuries will require medical attendance and/or incapacitate the subject for a period of from two to four weeks.

On the other hand, the findings on plaintiff Gloria Chatto per Medico Legal Certificate (Exh. "D") of Dr. Brion are as follows:

x x x

Physical injuries:

Lacerated wounds:

scalp vertex, running across saggittal line, from left to right, 3.0 cm sutured;

Contusion, forearm right, anterior aspect, upper third.

Abrasions:

Shoulder and upper third, arm right, posterior aspect, linear; backright, scapular region, two in number, linear; elbow right, posterior aspect; forearm right, anterior aspect, middle third.

Concussion (sic), cerebral.

X-Ray -- Skull -- Negative.

Cervical spines -- Straightening of cervical spine, probably due to muscular spasm.

CONCLUSIONS:

1. Physical injuries noted on subject.
2. That under normal condition, in the absence of complication, said physical injuries will require medical attendance and/or incapacitate the subject for a period of from two to four weeks.

Due to continuing pain in the neck, headache and dizziness, plaintiff went to Illinois, USA in July 1982 for further treatment (Exh. "E"). She was treated at the Cook County Hospital in Chicago, Illinois. She stayed in the U.S. for about three (3) months during which time she had to return to the Cook County Hospital five (5) or six (6) times.

Defendant tried to avoid liability by alleging that the collapse of the ceiling of its theater was done due to force majeure. It maintained that its theater did not suffer from any structural or construction defect. (Exh. 1, 2, 3, 4, & 5)"[3]

In justifying its award of actual or compensatory and moral damages and attorney's fees, the trial court said:

"It has been established thru the uncontradicted testimony of Mrs. Chatto that during the chaos and confusion at the theater she lost a pair of earrings worth P2,500 and the sum of P1,000.00 in cash contained in her wallet which was lost; and that she incurred the following expenses: P500.00 as transportation fare from Cebu City to

Manila on the first leg of her trip to the United States; P350.00 for her passport; and P46,978.00 for her expense relative to her treatment in the United States, including the cost of a round-trip ticket (P11,798.00) hospital and medical bills and other attendant expenses. The total is P51,328.00, which is more than the sum of P49,050.00 claimed in the complaint, hence should be reduced accordingly.

The same testimony has also established that Mrs. Chatto contracted to pay her counsel the sum of P20,000.00 which this court considers reasonable considering, among other things, the professional standing of work (sic) involved in the prosecution of this case. Such award of attorney's fees is proper because the defendant's omission to provide the plaintiffs proper and adequate safeguard to life and limb which they deserved as patrons to (sic) its theater had compelled the plaintiffs to hire the services of a counsel, file this case and prosecute it, thus incurring expenses to protect their interest.

The plaintiffs are entitled to moral damages, which are the direct and proximate result of the defendant's gross negligence and omission. Such moral damages include the plaintiffs' physical suffering, mental anguish, fright and serious anxiety. On the part of Mrs. Chatto, who obviously suffered much more pain, anguish, fright and anxiety than her daughter Lina Delza, such damages are compounded by the presence of permanent deformities on her body consisting of a 6-inch scar on the head and a 2-inch scar on one arm. The court believes that the sum of P75,000.00 for plaintiff Gloria E. Chatto and the sum of P10,000.00 for plaintiff Lina Delza E. Chatto would be reasonable.”[4]

Petitioner submitted before the respondent Court the following assignment of errors:

“I. THE LOWER COURT ERRED IN ADMITTING PATENTLY - INADMISSIBLE EVIDENCE PRESENTED BY PLAINTIFF-APPELLEES AND IN GIVING LESS PROBATIVE VALUE TO PUBLIC DOCUMENTS AND CERTIFICATIONS OF THE CONDITION OF THE BUILDING, PARTICULARLY THE CERTIFICATE OF OCCUPANCY ISSUED BY THE CITY ENGINEER'S OFFICE OF MANILA.

II. THE LOWER COURT ERRED IN FINDING THAT ‘THE CEILING OF THE BALCONY COLLAPSED DUE TO SOME STRUCTURAL CONSTRUCTION OR ARCHITECTURAL DEFECT,’ AND NOT DUE TO AN ACT OF GOD OR FORCE MAJEURE.

III. THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT WAS GROSSLY NEGLIGENT IN FAILING ‘TO CAUSE PROPER AND ADEQUATE INSPECTION, MAINTENANCE AND UPKEEP OF THE BUILDING.’”[5]

In its decision, respondent Court found the appeal to be without merit. As to the first assigned error, it ruled that the trial court did not err in admitting the exhibits in question in the light of the ruling in *Abrenica vs. Gonda*[6] on waiver of objections arising out of failure to object at the proper time. Thus:

“Exh. “A”, the letter dated June 9, 1982 of Tina Mojica of defendant-appellant to the Administrator of UST Hospital expressing their willingness to guaranty the payment of the hospital bills of the plaintiffs-appellees was not objected to in trial court for lack of authentication. It is too late to raise that objection on appeal.

Exhibits "B", "C", "D", "F" to "F-13" are the hospital records at FEU, UST and Cook County Hospital. It may be true that the doctors who prepared them were not presented as witnesses. Nonetheless, the records will show that counsel for defendant-appellant cross examined plaintiff-appellee Gloria Chatto on the matter especially the content of Exhibits "F" to "F-13". Consequently, defendant-appellant is estopped from claiming lack of opportunity to verify their textual truth. Moreover, the record is full of the testimony of plaintiffs-appellees on the injuries they sustained from the collapse of the ceiling of defendant-appellant's theater. Their existence is crystal clear.

Exh. “E” is the flight coupon and passenger ticket (Northwest Orient) of plaintiff-appellee Gloria Chatto from the Philippines to the U.S. (Manila-Chicago--Manila). Certainly, this is relevant evidence on whether or not

she actually travelled (sic) to the U.S. for further medical treatment. Defendant-appellant's contention that the best evidence on the issue is her passport is off the mark. The best evidence rule applies only if the contents of the writing are directly in issue. In any event, her passport is not the only evidence on the matter.

Exh. "G" is the summary of plaintiff-appellee Gloria Chatto's (sic) expenses in the U.S. in her own handwriting. Defendant-appellant's objection that it is self serving goes to the weight of the evidence. The truth of Exh. "G" could be and should have been tested by cross examination. It cannot be denied however that such expenses are within the personal knowledge of the witness.

Exh. "H" is the surgical neckwear worn by the plaintiff-appellee Gloria Chatto as part of her treatment in the U.S. Defendant-appellant objects to its admission because it is self-serving. The objection is without merit in view of the evidence on record that plaintiff-appellee Gloria Chatto sustained head injuries from the collapse of the ceiling of defendant-appellant's theater. In fact, counsel for defendant-appellant cross examined the said witness on the medical finding of Cook County Hospital that she was suffering from neck muscle spasm. (TSN, April 17, 1984, p. 11) The wearing of a surgical neckwear has proper basis.

Exh. "I" is the photograph of plaintiff-appellee Gloria Chatto in the U.S. showing the use of her surgical neckwear. Defendant-appellant objects to this exhibit as hearsay because the photographer was not presented as a witness. The objection is incorrect. In order that photographs or pictures may be given in evidence, they must be shown to be a true and faithful representation of the place or objects to which they refer. The photographs may be verified either by the photographer who took it or by any person who is acquainted with the object represented and testify (sic) that the photograph faithfully represents the object. (Moran, Comments in the Rules of Court, Vol. V, 1980 ed., p. 80 citing New York Co. vs. Moore, 105 Fed. 725) In the case at bar, Exh. "I" was identified by plaintiff appellee Gloria Chatto."[7]

As to the other assigned errors, the respondent Court ruled:

"The lower court did not also err in its finding that the collapse of the ceiling of the theater's balcony was due to construction defects and not to force majeure. It was the burden of defendant-appellant to prove that its theater did not suffer from any structural defect when it was built and that it has been well maintained when the incident occurred (sic). This is its Special and Affirmative Defense and it is incumbent on defendant-appellant to prove it. Considering the collapse of the ceiling of its theater's balcony barely four (4) years after its construction, it behooved defendant-appellant to conduct an exhaustive study of the reason for the tragic incident. On this score, the effort of defendant-appellant borders criminal nonchalance. Its witness Jesus Lim Ong testified:

'Atty. Barcelona:

Q By the way, you made mention a while ago that your staff of engineer and architect used to make round inspection of the building under your construction. One of these buildings is Gotesco Cinema 1 and 2, subject matter of this case, and you also made a regular round up or inspection of the theater. Is that right?

A Yes, sir.

Q And do you personally inspect these buildings under your construction?

A Yes, whenever I can.

Q In the case of Gotesco Cinerama 1 and 2, had you any chance to inspect this building?

A Yes, sir.

Q Particularly in the months of May and June of 1982?

A Yes, in that (sic) months.

Q Now, you said also that sometime in June 1982 you remember that one of these theaters

Atty. Barcelona: continuing

particularly Superama 1, the ceiling had collapsed?

A Yes, sir.

Q Did you conduct an investigation?

A Yes, sir.

Q What was your finding?

A There was really nothing, I cannot explain. I could not give any reason why the ceiling collapsed.

Q Could it not be due to any defect of the plant?

Atty. Florido:

Already answered, Your Honor, he could not give any reason.

COURT:

Objection sustained.

Atty. Barcelona:

Q When that incident happened, did the owner Gotesco Investment Corporation went (sic) to you to call your attention?

A Yes, sir.

Atty. Florido:

Your Honor, we noticed (sic) series of leading questions, but this time we object.

COURT:

Sustained.

Atty. Barcelona:

Q What did the owner of Gotesco do when the ceiling collapsed, upon knowing that one of the cinemas you maintained collapsed?

A He asked for a thorough investigation.

Q And as a matter of fact he asked you to investigate?

A Yes, sir.

Q Did you come out with any investigation report?

A There was nothing to report.'

Clearly, there was no authoritative investigation conducted by impartial civil and structural engineers on the cause of the collapse of the theater's ceiling. Jesus Lim Ong is not an engineer. He is a graduate of architecture from the St. Louie (sic) University in Baguio City. It does not appear he has passed the government examination for architects. (TSN, June 14, 1985, p. 4) In fine, the ignorance of Mr. Ong about the cause of the

collapse of the ceiling of their theater cannot be equated as an act of God. To sustain that proposition is to introduce sacrilege in our jurisprudence.”[8]

Its motion for reconsideration of the decision having been denied by the respondent Court, petitioner filed this petition assailing therein the challenged decision on the following grounds:

“1. The basis of the award for damages stems from medical reports issued by private physicians of local hospitals without benefit of cross-examination and more seriously, xerox copies of medical findings issued by American doctors in the United States without the production of originals, without the required consular authentication for foreign documents, and without the opportunity for cross-examination.

2. The damage award in favor of respondents is principally made to depend on such unreliable, hearsay and incompetent evidence for which an award of more than P150,000.00 in alleged actual, moral and ‘consequential’ damages are awarded to the prejudice of the right of petitioner to due process. x x x

3. Unfortunately, petitioner's evidence of due diligence in the care and maintenance of the building was not seriously considered by the Court of Appeals, considering that frequent inspections and maintenance precautions had to be observed by hired engineers of petitioner, which enjoys an unsullied reputation in the business of exhibiting movies in a chain of movie-houses in Metro Manila.”[9]

After the private respondents filed their Comment as required in the Resolution of 17 May 1989, this Court resolved to give due course to the petition and required the parties to file their respective Memoranda. Subsequently, private respondents, in a motion, prayed for leave to adopt their Comment as their Memorandum, which this Court granted on 6 December 1989. Petitioner filed its Memorandum on 10 January 1990.

The petition presents both factual and legal issues. The first relates to the cause of the collapse of the ceiling while the latter involves the correctness of the admission of the exhibits in question.

We find no merit in the petition.

The rule is well-settled that the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive,[10] except only where a case is shown as coming under the accepted exceptions.[11] None of the exceptions which this Court has painstakingly summarized in several cases[12] has been shown to exist in this petition. Petitioner's claim that the collapse of the ceiling of the theater's balcony was due to force majeure is not even founded on facts because its own witness, Mr. Jesus Lim Ong, admitted that “he could not give any reason why the ceiling collapsed.” Having interposed it as a defense, it had the burden to prove that the collapse was indeed caused by force majeure. It could not have collapsed without a cause. That Mr. Ong could not offer any explanation does not imply force majeure. As early as eighty-five (85) years ago, this Court had the occasion to define force majeure. In *Pons y Compañia vs. La Campaña Maritima*,[13] this Court held:

“An examination of the Spanish and American authorities concerning the meaning of force majeure shows that the jurisprudence of these two countries practically agree upon the meaning of this phrase.

Blackstone, in his *Commentaries on English Law*, defines it as --

‘Inevitable accident or casual-ty; an accident produced by any physical cause which is irresistible; such as lightning, tempest, perils of the sea, inundation, or earthquake; the sudden illness or death of a person.’ (2 Blackstone's *Commentaries*, 122; *Story on Bailments*, sec. 25.)

Escriche, in his *Diccionario de Legislacion y Jurisprudencia*, defines fuerza mayor as follows:

‘The event which we could neither foresee nor resist; as, for example, the lightning stroke, hail, inundation,

hurricane, public enemy, attack by robbers; Vis major est, says Cayo, ea quae consilio humano neque provideri neque vitari potest. Accident and mitigating circumstances.'

Bouvier defines the same as --

'Any accident due to natural causes, directly, exclusively without human intervention, such as could not have been prevented by any kind of oversight, pains, and care reasonably to have been expected.' (Law Reports, 1 Common Pleas Division, 423; Law Reports, 10 Exchequer, 255.)

Cockburn, chief justice, in a well-considered English case (1 Common Pleas Division, 34, 432), said that where a captain --

'Uses all the known means to which prudent and experienced captains ordinarily have recourse, he does all that can be reasonably required of him; and if, under such circumstances, he is overpowered by storm or other natural agency, he is within the rule which gives immunity from the effects of such vis major.'

The term generally applies, broadly speaking, to natural accidents, such as those caused by lightning, earthquake, tempests, public enemy, etc."

Petitioner could have easily discovered the cause of the collapse if indeed it were due to force majeure. To Our mind, the real reason why Mr. Ong could not explain the cause or reason is that either he did not actually conduct the investigation or that he is, as the respondent Court impliedly held, incompetent. He is not an engineer, but an architect who had not even passed the government's examination. Verily, the post-incident investigation cannot be considered as material to the present proceedings. What is significant is the finding of the trial court, affirmed by the respondent Court, that the collapse was due to construction defects. There was no evidence offered to overturn this finding. The building was constructed barely four (4) years prior to the accident in question. It was not shown that any of the causes denominated as force majeure obtained immediately before or at the time of the collapse of the ceiling. Such defects could have been easily discovered if only petitioner exercised due diligence and care in keeping and maintaining the premises. But as disclosed by the testimony of Mr. Ong, there was no adequate inspection of the premises before the date of the accident. His answers to the leading questions on inspection disclosed neither the exact dates of said inspection nor the nature and extent of the same. That the structural designs and plans of the building were duly approved by the City Engineer and the building permits and certificate of occupancy were issued do not at all prove that there were no defects in the construction, especially as regards the ceiling, considering that no testimony was offered to prove that it was ever inspected at all.

It is settled that:

"The owner or proprietor of a place of public amusement impliedly warrants that the premises, appliances and amusement devices are safe for the purpose for which they are designed, the doctrine being subject to no other exception or qualification than that he does not contract against unknown defects not discoverable by ordinary or reasonable means." [14]

This implied warranty has given rise to the rule that:

"Where a patron of a theater or other place of public amusement is injured, and the thing that caused the injury is wholly and exclusively under the control and management of the defendant, and the accident is such as in the ordinary course of events would not have happened if proper care had been exercised, its occurrence raises a presumption or permits of an inference of negligence on the part of the defendant." [15]

That presumption or inference was not overcome by the petitioner.

Besides, even assuming for the sake of argument that, as petitioner vigorously insists, the cause of the collapse

was due to force majeure, petitioner would still be liable because it was guilty of negligence, which the trial court denominated as gross. As gleaned from Bouvier's definition of and Cockburn's elucidation on force majeure, for one to be exempt from any liability because of it, he must have exercised care, i.e., he should not have been guilty of negligence.

Turning now to the legal issue posed in this petition, the error lies not in the disquisitions of the respondent Court, but in the sweeping conclusion of petitioner. We agree with the respondent Court that petitioner offered no seasonable objection to the exhibits. More than this, however, We note that the exhibits were admitted not as independent evidence, but, primarily, as part of the testimony of Mrs. Gloria Chatto. Neither were the exhibits made the main basis for the award of damages. As to the latter, including the award for attorney's fees, the testimonial evidence presented is sufficient to support the same; moreover, petitioner was not deprived of its right to test the truth or falsity of private respondents' testimony through cross-examination or refute their claim by its own evidence. It could not then be successfully argued by petitioner that the admission of the exhibits violated the hearsay rule. As this Court sees it, the trial court admitted such merely as independently relevant statements, which was not objectionable, for:

“Where, regardless of the truth or the falsity of a statement, the fact that it has been made is relevant, the hearsay rule does not apply, but the statement may be shown. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue, or be circumstantially relevant as to the existence of such a fact.”[16]

Furthermore, and with particular reference to the documents issued in the United States of America (Exhibits “F”, “F-1” to “F-13”, inclusive), the main objection thereto was not that they are hearsay. In its written comment and/or opposition to documentary exhibits, petitioner objected to their admission on the following grounds only:

“x x x for being incompetent evidence considering that the same were not duly authenticated by the responsible consular and/or embassy officials authorized to authenticate the said documents.”[17]

All told, the instant petition is without merit.

WHEREFORE, judgment is hereby rendered DENYING the instant petition with costs against petitioner.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Per Associate Justice Reynato S. Puno, concurred in by Associate Justices Alfredo M. Marigomen and Regina G. Ordoñez-Benitez; Rollo, 24, et seq.

[2] Id., 36-37.

[3] Rollo, 24-26.

[4] Rollo, 26-27.

[5] Rollo, 27-28.

[6] 34 Phil. 739 [1916].

[7] Rollo, 29-30.

[8] Rollo, 30-32.

[9] Rollo, 6-7.

[10] Chan vs. Court of Appeals, 33 SCRA 737 [1970], citing a host of cases.

[11] FNCB Finance vs. Estavillo, 192 SCRA 514 [1990].

[12] See Remalante vs. Tibe, 158 SCRA 138 [1988].

[13] 9 Phil. 125, 129 [1907].

[14] 86 C.J.S. 718.

[15] Id., 718.

[16] FRANCISCO, V.J., The Revised Rules of Court in the Philippines, vol. VII, Part I, 1973 ed., 438.

[17] Page 13 of Petition; Rollo, 17.

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