

DANGWA TRANSPORTATION CO., INC. AND THEODORE LARDIZABAL Y MALECDAN, PETITIONERS, VS. COURT OF APPEALS, INOCENCIA CUDIAMAT, EMILIA CUDIAMAT BANDOY, FERNANDO CUDIAMAT, MARRIETA CU...

G.R. No. 95582. October 07, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

On May 13, 1985, private respondents filed a complaint[1] for damages against petitioners for the death of Pedrito Cudiamat as a result of a vehicular accident which occurred on March 25, 1985 at Marivic, Sapid, Mankayan, Benguet. Among others, it was alleged that on said date, while petitioner Theodore M. Lardizabal was driving a passenger bus belonging to petitioner corporation in a reckless and imprudent manner and without due regard to traffic rules and regulations and safety to persons and property, it ran over its passenger, Pedrito Cudiamat. However, instead of bringing Pedrito immediately to the nearest hospital, the said driver, in utter bad faith and without regard to the welfare of the victim, first brought his other passengers and cargo to their respective destinations before bringing said victim to the Lepanto Hospital where he expired.

On the other hand, petitioners alleged that they had observed and continued to observe the extraordinary diligence required in the operation of the transportation company and the supervision of the employees, even as they add that they are not absolute insurers of the safety of the public at large. Further, it was alleged that it was the victim's own carelessness and negligence which gave rise to the subject incident, hence they prayed for the dismissal of the complaint plus an award of damages in their favor by way of a counterclaim.

On July 29, 1988, the trial court rendered a decision, effectively in favor of petitioners, with this decretal portion:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby pronounced that Pedrito Cudiamat was negligent, which negligence was the proximate cause of his death. Nonetheless, defendants in equity, are hereby ordered to pay the heirs of Pedrito Cudiamat the sum of P10,000.00 which approximates the amount defendants initially offered said heirs for the amicable settlement of the case. No costs.

"SO ORDERED."[2]

Not satisfied therewith, private respondents appealed to the Court of Appeals which, in a decision[3] in CA-G.R. CV No. 19504 promulgated on August 14, 1990, set aside the decision of the lower court, and ordered petitioners to pay private respondents:

- "1. The sum of Thirty Thousand (P30,000.00) Pesos by way of indemnity for death of the victim Pedrito Cudiamat;
2. The sum of Twenty Thousand (P20,000.00) by way of moral damages;
3. The sum of Two Hundred Eighty Eight Thousand (P288,000.00) Pesos as actual and compensatory

damages;

4. The costs of this suit."[4]

Petitioners' motion for reconsideration was denied by the Court of Appeals in its resolution dated October 4, 1990,[5] hence this petition with the central issue herein being whether respondent court erred in reversing the decision of the trial court and in finding petitioners negligent and liable for the damages claimed.

It is an established principle that the factual findings of the Court of Appeals as a rule are final and may not be reviewed by this Court on appeal. However, this is subject to settled exceptions, one of which is when the findings of the appellate court are contrary to those of the trial court, in which case a reexamination of the facts and evidence may be undertaken.[6]

In the case at bar, the trial court and the Court of Appeals have discordant positions as to who between the petitioners and the victim is guilty of negligence. Perforce, we have had to conduct an evaluation of the evidence in this case for the proper calibration of their conflicting factual findings and legal conclusions.

The lower court, in declaring that the victim was negligent, made the following findings:

"This Court is satisfied that Pedrito Cudiamat was negligent in trying to board a moving vehicle, especially with one of his hands holding an umbrella. And, without having given the driver or the conductor any indication that he wishes to board the bus. But defendants can also be found wanting of the necessary diligence. In this connection, it is safe to assume that when the deceased Cudiamat attempted to board defendants' bus, the vehicle's door was open instead of being closed. This should be so, for it is hard to believe that one would even attempt to board a vehicle (i)n motion if the door of said vehicle is closed. Here lies the defendant's lack of diligence. Under such circumstances, equity demands that there must be something given to the heirs of the victim to assuage their feelings. This, also considering that initially, defendant common carrier had made overtures to amicably settle the case. It did offer a certain monetary consideration to the victim's heirs."[7]

However, respondent court, in arriving at a different opinion, declares that:

"From the testimony of appellees' own witness in the person of Vitaliano Safarita, it is evident that the subject bus was at full stop when the victim Pedrito Cudiamat boarded the same as it was precisely on this instance where a certain Miss Abenoja alighted from the bus. Moreover, contrary to the assertion of the appellees, the victim did indicate his intention to board the bus as can be seen from the testimony of the said witness when he declared that Pedrito Cudiamat was no longer walking and made a sign to board the bus when the latter was still at a distance from him. It was at the instance when Pedrito Cudiamat was closing his umbrella at the platform of the bus when the latter made a sudden jerk movement (as) the driver commenced to accelerate the bus.

"Evidently, the incident took place due to the gross negligence of the appellee-driver in prematurely stepping on the accelerator and in not waiting for the passenger to first secure his seat especially so when we take into account that the platform of the bus was at the time slippery and wet because of a drizzle. The defendants-appellees utterly failed to observe their duty and obligation as common carrier to the end that they should observe extra-ordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them according to the circumstances of each case (Article 1733, New Civil Code)."[8]

After a careful review of the evidence on record, we find no reason to disturb the above holding of the Court of Appeals. Its aforesaid findings are supported by the testimony of petitioners' own witnesses. One of them, Virginia Abalos, testified on cross-examination as follows:

"Q:

Is it not a fact Madam witness, that at bunkhouse 54, that is before the place of the incident, there is a crossing?

A:

The way going to the mines but it is not being pass(ed) by the bus.

Q:

And the incident happened before bunkhouse 56, is that not correct?

A:

It happened between 54 and 53 bunkhouses."[9]

The bus conductor, Martin Anglog, also declared:

"Q:

When you arrived at Lepanto on March 25, 1985, will you please inform this Honorable Court if there was any unusual incident that occurred?

A:

When we delivered a baggage at Marivic because a person alighted there between Bunkhouse 53 and 54.

Q:

What happened when you delivered this passenger at this particular place in Lepanto?

A:

When we reached the place, a passenger alighted and I signalled my driver. When we stopped we went out because I saw an umbrella about a split second and I signalled again the driver, so the driver stopped and we went down and we saw Pedrito Cudiamat asking for help because he was lying down.

Q:

How far away was this certain person, Pedrito Cudiamat, when you saw him lying down — from the bus how far was he?

A:

It is about two to three meters.

Q:

On what direction of the bus was he found about three meters from the bus, was it at the front or at the back?

A:

At the back, sir."^[10] (Italics supplied.)

The foregoing testimonies show that the place of the accident and the place where one of the passengers alighted were both between Bunkhouses 53 and 54, hence the finding of the Court of Appeals that the bus was at a full stop when the victim boarded the same is correct. They further confirm the conclusion that the victim fell from the platform of the bus when it suddenly accelerated forward and was run over by the rear right tires of the vehicle, as shown by the physical evidence on where he was thereafter found in relation to the bus when it stopped. Under such circumstances, it cannot be said that the deceased was guilty of negligence.

The contention of petitioners that the driver and the conductor had no knowledge that the victim would ride on the bus, since the latter had supposedly not manifested his intention to board the same, does not merit consideration. When the bus is not in motion there is no necessity for a person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. Hence, it becomes the duty of the driver and the conductor, every time the bus stops, to do no act that would have the effect of increasing the peril to a passenger while he was attempting to board the same. The premature acceleration of the bus in this case was a breach of such duty.^[11]

It is the duty of common carriers of passengers, including common carriers by railroad train, streetcar, or motorbus, to stop their conveyances a reasonable length of time in order to afford passengers an opportunity to board and enter, and they are liable for injuries suffered by boarding passengers resulting from the sudden starting up or jerking of their conveyances while they are doing so.^[12]

Further, even assuming that the bus was moving, the act of the victim in boarding the same cannot be considered negligent under the circumstances. As clearly explained in the testimony of the aforesaid witness for petitioners, Virginia Abalos, the bus had "just started" and "was still in slow motion" at the point where the victim had boarded and was on its platform.^[13]

It is not negligence per se, or as a matter of law, for one to attempt to board a train or streetcar which is moving slowly.^[14] An ordinarily prudent person would have made the attempt to board the moving conveyance under the same or similar circumstances. The fact that passengers board and alight from a slowly moving vehicle is a matter of common experience and both the driver and conductor in this case could not have been unaware of such an ordinary practice.

The victim herein, by stepping and standing on the platform of the bus, is already considered a passenger and is entitled to all the rights and protection pertaining to such a contractual relation. Hence, it has been held that the duty which the carrier of passengers owes to its patrons extends to persons boarding the cars as well as to those alighting therefrom.^[15]

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case.^[16] 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.^[17]

It has also been repeatedly held that in an action based on a contract of carriage, the court need not make an

express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay the damages sought by the passenger. By the contract of carriage, the carrier assumes the express obligation to transport the passenger to his destination safely and to observe extraordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier. This is an exception to the general rule that negligence must be proved, and it is therefore incumbent upon the carrier to prove that it has exercised extraordinary diligence as prescribed in Articles 1733 and 1755 of the Civil Code.[18]

Moreover, the circumstances under which the driver and the conductor failed to bring the gravely injured victim immediately to the hospital for medical treatment is a patent and incontrovertible proof of their negligence. It defies understanding and can even be stigmatized as callous indifference. The evidence shows that after the accident the bus could have forthwith turned at Bunk 56 and thence to the hospital, but its driver instead opted to first proceed to Bunk 70 to allow a passenger to alight and to deliver a refrigerator, despite the serious condition of the victim. The vacuous reason given by petitioners that it was the wife of the deceased who caused the delay was tersely and correctly confuted by respondent court:

"x x x The pretension of the appellees that the delay was due to the fact that they had to wait for about twenty minutes for Inocencia Cudiamat to get dressed deserves scant consideration. It is rather scandalous and deplorable for a wife whose husband is at the verge of dying to have the luxury of dressing herself up for about twenty minutes before attending to help her distressed and helpless husband." [19]

Further, it cannot be said that the main intention of petitioner Lardizabal in going to Bunk 70 was to inform the victim's family of the mishap, since it was not said bus driver nor the conductor but the companion of the victim who informed his family thereof.[20] In fact, it was only after the refrigerator was unloaded that one of the passengers thought of sending somebody to the house of the victim, as shown by the testimony of Virginia Abalos again, to wit:

"Q:

Why, what happened to your refrigerator at that particular time?

A:

I asked them to bring it down because that is the nearest place to our house and when I went down and asked somebody to bring down the refrigerator, I also asked somebody to call the family of Mr. Cudiamat.

COURT:

Q:

Why did you ask somebody to call the family of Mr. Cudiamat?

A:

Because Mr. Cudiamat met an accident, so I ask somebody to call for the family of Mr. Cudiamat.

Q:

But nobody ask(ed) you to call for the family of Mr. Cudiamat?

A:

No, sir."[21]

With respect to the award of damages, an oversight was, however, committed by respondent Court of Appeals in computing the actual damages based on the gross income of the victim. The rule is that the amount recoverable by the heirs of a victim of a tort is not the loss of the entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earnings, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and minus living and other incidental expenses.[22]

We are of the opinion that the deductible living and other expenses of the deceased may fairly and reasonably be fixed at P500.00 a month or P6,000.00 a year. In adjudicating the actual or compensatory damages, respondent court found that the deceased was 48 years old, in good health with a remaining productive life expectancy of 12 years, and then earning P24,000.00 a year. Using the gross annual income as the basis, and multiplying the same by 12 years, it accordingly awarded P288,000. Applying the aforesaid rule on computation based on the net earnings, said award must be, as it hereby is, rectified and reduced to P216,000.00. However, in accordance with prevailing jurisprudence, the death indemnity is hereby increased to P50,000.00.[23]

WHEREFORE, subject to the above modifications, the challenged judgment and resolution of respondent Court of Appeals are hereby AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Civil Case No. 584-R, Regional Trial Court, Branch 7, Baguio City.

[2] Rollo, 51.

[3] Penned by Justice Bonifacio A. Caceda, Jr., with Justices Gloria C. Paras and Serafin V.C. Guingona concurring.

[4] Rollo, 26-27.

[5] Ibid., 48.

[6] Sabinosa vs. Court of Appeals, et al., 175 SCRA 552 (1989).

[7] Original Record, 169; Judge Rodolfo D. Rodrigo, presiding.

[8] Rollo, 25.

[9] TSN, January 20, 1987, 26-27.

[10] TSN, November 18, 1986, 3-4.

[11] See Del Prado vs. Manila Electric Co., 52 Phil. 900 (1929).

[12] 14 Am. Jur. 2d 436.

[13] TSN, January 20, 1987, 11.

[14] 14 Am. Jur. 2d 414.

[15] Del Prado vs. Manila Electric Co., *supra*.

[16] Art. 1733, Civil Code.

[17] Art. 1755, Civil Code.

[18] Sy vs. Malate Taxicab & Garage, Inc., 102 Phil. 482 (1957); Batangas Transportation Co. vs. Caguimbal, et al., 22 SCRA 171 (1968).

[19] Rollo, 25.

[20] TSN, June 20, 1986, 3-4.

[21] TSN, January 20, 1987, 16.

[22] Villa Rey Transit, Inc. vs. Court of Appeals, et al., 31 SCRA 511 (1970); Davila, et al. vs. Philippine Airlines, Inc., 49 SCRA 497 (1973).

[23] People vs. Sazon, 189 SCRA 700 (1990).

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