

**CONCEPCION PELLOSA VDA. DE IMPERIAL, ETC., ET AL.,
PLAINTIFFS AND APPELLANTS, VS. HEALD LUMBER COMPANY,
DEFENDANT AND APPELLEE. LOURDES FERRER VDA. DE
HERNANDEZ, ETC., ET AL., P...**

G.R. Nos. 14088-89 and 14112. September 30, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Baguio dismissing the complaints in the above entitled three (3) cases, with costs against the plaintiffs.

On June 4, 1954, at about 6:50 a.m., a helicopter (PI-C-361) of the Philippine Air Lines, Inc. (PAL), which had been chartered by the Lepanto Consolidated Mining Co., took off from Nichols Field, in Makati, Rizal, headed for Mankayan, Mt. Province, via Rosales, Pangasinan. On board the helicopter were Capt. Gabriel Hernandez and Lt. Rex Imperial. The helicopter reached Rosales at 8:22 a.m., and, fifty-three (53) minutes later, or at 9:15 a.m., it undertook the last leg of its flight to Mankayan. However, the helicopter did not reach this place, for it crashed on the way. A search party—composed of, among others, Capts. Willis Rohlings and Jaime Manzano, both of the PAL—organized to track down the missing helicopter, found it in a ravine located in the Barrio of Ampusungan, Benguet, Mt. Province, within the lumber concession of defendant-appellee, Heald Lumber Co. which is several kilometers before reaching Mankayan. The helicopter was a total wreck and both Capt. Hernandez and Lt. Imperial were dead. The body of the former was strapped to his seat, but that of the latter was several feet away from the wreckage. At the time of the flight, Capt. Hernandez as a duly licensed helicopter pilot, whereas Lt. Imperial, although a licensed plane pilot, was then under training as helicopter pilot.

Owing to this accident, three (3) actions were instituted in the court aforementioned, against said defendant, namely: (1) case No. 580 (G. R. No. L-14112), filed by PAL on March 2, 1956; (2) case No. 591 (G. R. No. L-14088), filed by Concepcion Pelloso de Imperial, widow of the deceased Lt. Imperial, on April 13, 1956; and (3) case No. 592, (G. R. No. L-14089), filed by Lourdes Ferrer de Hernandez, widow of Capt. Hernandez, on the date last mentioned.

In the first case, the PAL sought to recover the following:

Value of the helicopter

P80,000.00

Compensation for the death of Capt. Hernandez and Lt.

Imperial at P20,000 each

40,000.00

Consequential damages due to the loss of the helicopter

53,400.00

Funeral expenses for Capt. Hernandez and Lt. Imperial

2,542.00

Expenses incurred in the training of Capt. Hernandez

in the U.S. and Lt. Imperial for operation of helicopter

17,405.82

Moral damages resulting from harmful publicity of

the crash

30,000.00

Total

P223,347.82

upon the ground that the mishap was due to the fact that the helicopter had collided "with defendant's tramway steel cables strung in parallel of approximately 3,000 yards in length between two mountains approximately 3,000 to 5,000 feet high in the vicinity of defendant's logging area in Ampusungan, Mountain Province."

In each of the other cases, the respective plaintiffs therein prayed for judgment as follows:

Actual and compensatory damages

P150,000.00

Exemplary damages

50,000.00

Moral damages

50,000.00

Expenses of litigation

10,000.00

Attorney's fees

20,000.00

Total

P280,000.00

raks

upon the theory that the death of Lt. Imperial and Capt. Hernandez was due to defendant's alleged "gross negligence" and "flagrant violation of applicable laws and regulations."

Being interrelated, the three (3) cases were jointly heard, and, in due course, thereafter, the lower court, presided by Hon. Jesus de Veyra, rendered the decision appealed from, finding that plaintiffs had "failed to make out a case of negligence on the part of the defendant" and, accordingly, dismissing the three (3) complaints. Hence, this appeal by the plaintiffs. The three (3) cases are before us the amount of the demand in each being in excess of P200,000, exclusive of costs and interest.

Appellants maintain that the accident is imputable to the defendant, because the helicopter, particularly its main rotor blades, had hit or collided with defendant's aforementioned steel cables.

In this connection, Capt. Rohlings, who, at the time of the occurrence, was Assistant Superintendent of the Flight Control of the PAL, testified that, during the investigation conducted by him at the site of the crash, he found on the rotor blades of the helicopter

"Several long marks which contained small indentations which were parallel to each other, parallel lines, if you

would put it that way, these marks were covered by blackish substance of some kind which I took to be grease of some kind" (t.s.n., p. 95.)

Capt. Manzano, the Superintendent of Helicopter Operations of the PAL, tried to corroborate this testimony of Capt. Rohlings. Both opined that the marks were due to the contact of said rotor blades with the steel cables of defendant herein. Photographs (Exhibits E-21, E-22 and E-24) allegedly taken by Capt. Rohlings—of the rotor blades, purporting to show the aforementioned markings, were introduced in evidence in lieu of said rotor blades.

It is admitted, however, that the helicopter had hit a tree before falling into a ravine. Moreover, commenting on appellants' evidence, His Honor, the trial Judge, had the following to say:

"The evidence for the plaintiffs as to the cause of the crash is not conclusive. The main rotor blade was not preserved, so this Court was not able to satisfy itself as to the nature of the two long seriated streaks on the main rotor blade. The composition of these streaks was not determined—whether they were grease from the steel cable or marks from hitting a pine tree—for it can be equally argued that these seriated streaks could have been caused by the strands of a greasy steel cable or the rough bark of a pine tree". (Decision, Record on Appeal, pp. 19-20.)

Upon the other hand, defendant endeavored to prove that the mishap had been due to two (2) causes, namely: (1) exhaustion of the fuel; and (2) negligence of the pilot.

The record shows that the helicopter had a main tank and an auxiliary tank with a capacity of twenty-seven (27) and fifteen (15) gallons of fuel, respectively. The main tank was connected to the engine, but the auxiliary tank was not. In order to transfer gasoline from the latter to the former, it was necessary to land the helicopter, as the process could not be undertaken during flight. This was, in all probability, the reason why the aircraft had to land in Rosales, Pangasinan, before proceeding to Mankayan.

Having left Rosales at 9:15 a.m., after its flight from Nichols Field, of one (1) hour and thirty-two (32) minutes (from 6:50 to 8:22), the helicopter was supposed to reach Mankayan at 10:44 a.m., the estimated flying time between Rosales and Mankayan being one (1) hour and twenty-nine (29) minutes. Upon the other hand, the time of the crash was placed at around 11:30 a.m., or between 11:00 and 11:30 a.m. By that time the helicopter had already flown from one (1) hour and forty-five (45) minutes to two (2) hours and fifteen (15) minutes, since it took off from Rosales, thus exceeding by sixteen (16) to forty-six (46) minutes the aforementioned estimated flying time. Considering that, with twenty-seven (27) gallons of gasoline, the helicopter had to refuel after a flight of one (1) hour and thirty-two (32) minutes (from Nichols Field to Rosales), it is apparent that, after flying for a longer period of one (1) hour and forty-five (45) minutes to two (2) hours and fifteen (15) minutes, with a little over fifteen (15) gallons—or at most twenty-seven (27) gallons—of gasoline, the provision of fuel must have already been exhausted.

Col. Arnaiz, aircraft dispatcher of PAL, testified that the "maximum flight endurance" of the helicopter was "two hours and fifty minutes including the auxiliary tank." The Flight Plan (Exhibit B-I), as explained by Col. Arnaiz, shows that the estimated flying time from Nichols Field to Rosales was one (1) hour and forty-two (42) minutes, and from Rosales to Mankayan, one (1) hour and twenty-nine (29) minutes, or an aggregate estimated flying time of three (3) hours and eleven (11) minutes, or twenty-one (21) minutes longer than the estimated "maximum flight endurance" of the helicopter. Even if we deduct from said total estimated flying time, from Nichols Field to Mankayan, the ten (10) minutes saved in the flight from Nichols Field to Rosales, Pangasinan, the result would still be eleven (11) minutes beyond the said "maximum flight endurance" of the helicopter. In fact, the crash site (Ampusungan) is only about sixteen (16) kilometers, or ten (10) minutes flying time, to Mankayan. In other words, the accident took place in the area in which the helicopter was to have fully consumed its entire supply of gasoline, thus justifying the belief that it was forced to land in Ampusungan due to lack of gasoline, and that, as

the engine ceased to function, its maneuverability must have become impaired, in view of which it crashed, thus causing it to fall into a ravine in defendant's concession.

Several factors indicate strongly that this was in all likelihood what happened for: (1) the site of the crash was more than a mile (over three (3) miles, according to the defendant) off the plotted course, altho, under normal conditions, no reasonably prudent pilot—according appellants' witness, Capt. Manzano—would have attempted to land in the vicinity of the scene of the occurrence; (2) the wrecked helicopter emitted no smell of gasoline and there was no sign of fire resulting from the crash, despite the fact that the helicopter was using high octane gasoline, which, admittedly, is highly inflammable and would have probably set the craft aflame upon hitting the pine tree above referred to, had there been some gasoline in the tank at that time; and (3) the helicopter was a total wreck, thus showing that the impact must have been strong.

The foregoing considerations suggest, also, that Capt. Hernandez and Lt. Imperial had acted recklessly in undertaking the flight with a supply of fuel hardly sufficient to enable them to reach their destination. Besides, the landing report (Exhibit 9) shows that the portions thereof pertaining to the pilot were accomplished or filled in by Lt. Imperial upon landing at the Rosales airport. In fact, he signed said report as pilot of the helicopter. Again, it appears that during the flight from Rosales to Mankayan, the helicopter had deviated from one to three miles from the course plotted by Capt. Hernandez, in which Col. Arnaiz concurred "because that was the most logical route to follow." Had Capt. Hernandez been piloting the machine from Rosales to Mankayan, he would have had no reason to deviate from the course planned by him, for the "visibility and ceiling were unlimited in the area and vicinity where the helicopter fell." All indications are, therefore, to the effect that, at the time of the accident, the helicopter was being piloted, not by Capt. Hernandez but by Lt. Imperial, in violation of Aeronautics Bulletin No. 1, Civil Aviation Regulations, of the Bureau of Aeronautics (CAA)[1], as well as Republic Act No. 776, Section 42 (H)[2], for Lt. Imperial was not a licensed helicopter pilot and was merely in the initial stage of his training as such pilot.

It is next urged that defendant was negligent in failing to give notice to the Civil Aeronautics Administration of the presence of the aforementioned tram cables, which, appellants maintain, constituted a hazard to aerial navigation. However, this pretense is not borne out by the record. Appellants' witness, Capt. Manzano, testified that although, in searching for the missing helicopter, his plane flew so low that there was a danger of collision with the mountains, he did not notice said cables. The same were not, therefore, within the navigable air space. Similarly, Capt. Rohlings, described the area over which the cables were strung as "a congested area full of pine trees" and a "mountainous terrain—sloping valley," thereby implying that the space from the cables down was not suitable for air navigation. In short, it has not been satisfactorily shown that the cables were a hazard to aerial navigation, or that the defendant should have or could have reasonably foreseen that aircrafts would fly so low over the place as to get entangled with said cables, for the area is dangerous to navigation owing to its mountainous terrain "full of pine trees."

In short, plaintiffs-appellants have failed to establish their pretense by a preponderance of evidence, in view of which the decision appealed from must be, as it is hereby affirmed, with costs against them. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.
Bautista Angelo, J., on leave.

[1] "CHAPTER VII—OPERATIONS OF LICENSED AIRCRAFT

"SEC. 5. Aircraft to be Flown by Appropriately Licensed Pilot.

"The registered owner or the operator of a licensed aircraft shall not permit it to be flown by any person other than one possessed with a pilot's license valid for the type of aircraft and operation involved, and shall not allow such aircraft to engage in air commerce in a schedule or non-schedule operation unless such aircraft is operating on their permit in accordance with the provisions of Section 6(h) of Commonwealth Act No. 168, as amended by Section 2, paragraph (h) of Commonwealth Act No. 529.

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CHAPTER IX—LICENSED PILOTS

"Sec. 1. Licensing Pilots, Regulations of.

"It shall be unlawful for any person to operate any aircraft in the Philippines unless such person is the holder of an appropriate effective pilot's license issued by the Bureau of Aeronautics: Provided, however, that this restriction shall not apply to license pilots of the United States or to foreign pilots operating aircraft of foreign countries with which the United States or the Philippines has a reciprocal or other agreement covering commercial pilot privileges in the Philippines.

"The term 'airman' shall be taken to mean and include any individual (including the person in command, and any pilot, mechanic, or member of the crew)' who engages or assists in the navigation or operation of aircraft while on their way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft or of parachutes." (*Italics supplied.*)

[2] "Any person serving in any capacity as an airman in connection with any civil aircraft without an airman certificate, or in violation of the terms of any such certificate or in excess of the rating of such certificate shall be punished by a fine not exceeding five thousand pesos. The repetition of this offense shall be sufficient cause for the revocation of the airman's certificate".

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