

**FILEMON YEPES AND MATEO SUSAYA, PLAINTIFFS AND APPELLEES,
VS. SAMAR EXPRESS TRANSIT, REPRESENTED BY PEDRO TY
BELIZAR, OPERATOR, DEFENDANT AND APPELLANT.***G.R. Nos. 19815-16. May 19, 1966*

Ponente: DIZON, J.

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DIZON, J.:

On July 23, 1959, appellees boarded appellant's Bus No. 56, with its driver, Alfredo Acol, at the wheel, at Burayan, bound for Dolores, both of the province of Bohol. While on its way the bus turned turtle and caught fire, causing injuries to some of its passengers, amongst them the appellees who suffered serious burns. Appellant had them taken to the Borongan Emergency Hospital in Borongan, Samar, where they received medical treatment, but were later brought, upon their request, to the Leyte Provincial Hospital at Tacloban City, for further treatment. Appellant paid all the expenses for their hospitalization and medical treatment. It appears that before their transfer to the Leyte Provincial Hospital, appellees were asked to sign, as in fact, they signed the document Exhibit I wherein they stated that "in consideration of the expenses which said operator has incurred in properly giving us the proper medical treatment, we hereby manifest our desire to waive any and all claims against the operator of the Samar Express Transit." This document notwithstanding, appellees filed with the lower court separate complaints for damages for breach of contract of carriage (Civil Cases Nos. 2709 and 2815) against appellant. In its answers to the complaints the latter invoked the following defenses: (a) that the accident was due to a fortuitous event beyond its control' and/or due to the negligence of one of its passengers, and (b) that the plaintiffs (appellees here) had waived their right to claim damages against it.

After a joint trial, the lower court rendered judgment ruling the above-mentioned waiver null and void as being contrary to public policy, and awarding damages in the sum of P204.00 and P272.00 to appellee Filemon Yepes and Mateo Susaya, respectively, and the further sum of P300.00 as attorney's fees, and costs. Hence the present appeal.

Sole contention of appellant is that the lower court erred in declaring that the "waiver" made by appellees pursuant to Exhibit I is against public policy and morals, and therefore void. This claim, in our opinion, is without merit.

Even a cursory examination of the document mentioned above will readily show that appellees did not actually waive their right to claim damages from appellant for the latter's failure to comply with their contract of carriage. All that said document proves is that they expressed a "desire" to make the waiver—which obviously is not the same as making an actual waiver of their right. A waiver of the kind invoked by appellant must be clear and unequivocal (Decision of the Supreme Court of Spain of July 8, 1887)—which is not the case of the one relied upon in this appeal.

In the light of the above conclusion, We deem it unnecessary to consider the question of whether or not such waiver, if actually made upon the consideration stated in the document already referred to, is against public policy

and morals.

Wherefore, the decision appealed from is affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

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