

PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND CASIANO PASCUA, ET AL., RESPONDENTS.

G.R. Nos. 66102-04. August 30, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Intermediate Appellate Court (now Court of Appeals) dated July 29, 1983 in AC-G.R. Nos. CV-65885, CV-65886 and CV-65887 which reversed the decision of the Court of First Instance (now Regional Trial Court) of Pangasinan dated December 27, 1978; and its resolution dated November 28, 1983 denying the motion for reconsideration.

It is an established principle that the factual findings of the Court of Appeals are final and may not be reviewed by this Court on appeal. However, this principle is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court (see *Sabinosa v. The Honorable Court of Appeals, et al.*, G.R. No. L-47981, July 24, 1989) in which case, a re-examination of the facts and evidence may be undertaken. This is Our task now.

The antecedent facts are as follows:

About 11:00 o'clock in the morning on December 24, 1966, Catalina Pascua, Caridad Pascua, Adelaida Estomo, Erlinda Meriales, Mercedes Lorenzo, Alejandro Morales and Zenaida Parejas boarded the jeepney owned by spouses Isidro Mangune and Guillerma Carreon and driven by Tranquilino Manalo at Dau, Mabalacat, Pampanga bound for Carmen, Rosales, Pangasinan to spend Christmas at their respective homes. Although they usually ride in buses, they had to ride in a jeepney that day because the buses were full. Their contract with Manalo was for them to pay P24.00 for the trip. The private respondents' testimonial evidence on this contractual relationship was not controverted by Mangune, Carreon and Manalo, nor by Filriters Guaranty Assurance Corporation, Inc., the insurer of the jeepney, with contrary evidence. Purportedly riding on the front seat with Manalo was Mercedes Lorenzo. On the left rear passenger seat were Caridad Pascua, Alejandro Morales and Zenaida Parejas. On the right rear passenger seat were Catalina Pascua, Adelaida Estomo, and Erlinda Meriales. After a brief stopover at Moncada, Tarlac for refreshment, the jeepney proceeded towards Carmen, Rosales, Pangasinan.

Upon reaching barrio Sinayoan, San Manuel, Tarlac, the right rear wheel of the jeepney was detached, so it was running in an unbalanced position. Manalo stepped on the brake, as a result of which, the jeepney which was then running on the eastern lane (its right of way) made a U-turn, invading and eventually stopping on the western lane of the road in such a manner that the jeepney's front faced the south (from where it came) and its rear faced the north (towards where it was going). The jeepney practically occupied and blocked the greater portion of the western lane, which is the right of way of vehicles coming from the north, among which was Bus No. 753 of petitioner Philippine Rabbit Bus Lines, Inc. (Rabbit) driven by Tomas delos Reyes. Almost at the time when the jeepney made a sudden U-turn and encroached on the western lane of the highway as claimed by Rabbit and delos

Reyes, or after stopping for a couple of minutes as claimed by Mangune, Carreon and Manalo, the bus bumped from behind the right rear portion of the jeepney. As a result of the collision, three passengers of the jeepney (Catalina Pascua, Erlinda Meriales and Adelaida Estomo) died while the other jeepney passengers sustained physical injuries. What could have been a festive Christmas turned out to be tragic.

The causes of the death of the three jeepney passengers were as follows (p. 101, Record on Appeal):

"The deceased Catalina Pascua suffered the following injuries, to wit: fracture of the left parietal and temporal regions of the skull; fracture of the left mandible; fracture of the right humerus; compound fracture of the left radius and ulna, middle third and lower third; fracture of the upper third of the right tibia and fibula; avulsion of the head, left internal; and multiple abrasions. The cause of her death was shock, secondary to fracture and multiple hemorrhage. The fractures were produced as a result of the hitting of the victim by a strong force. The abrasions could be produced when a person falls from a moving vehicle (sic) and rubs parts of her body against a cement road pavement. x x x.

"Erlinda Mariles (sic) sustained external lesions such as contusion on the left parietal region of the skull; hematoma on the right upper lid; and abrasions (sic) on the left knee. Her internal lesions were: hematoma on the left thorax; multiple lacerations of the left lower lobe of the lungs; contusions on the left lower lobe of the lungs; and simple fractures of the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th ribs, left. The forcible impact of the jeep caused the above injuries which resulted in her death. x x x.

"The cause of death of Erlinda or Florida Estomo (also called Adelaida) as per autopsy of Dr. Panlasigui was due to shock due to internal hemorrhage, ruptured spleen and trauma. x x x."

Caridad Pascua suffered physical injuries as follows (p. 101, Record on Appeal):

"x x x lacerated wound on the forehead and occipital region, hematoma on the forehead, multiple abrasions on the forearm, right upper arm, back and right leg. x x x."

The police investigators of Tacpal and policemen of San Manuel, Tarlac, Tarlac, upon arrival at the scene of the mishap, prepared a sketch (common exhibit "K" for private respondents and "19" for Rabbit) showing the relative positions of the two vehicles as well as the alleged point of impact (p. 100, Record on Appeal):

"x x x. The point of collision was a cement pave-portion of the Highway, about six (6) meters wide, with narrow shoulders with grasses beyond which are canals on both sides. The road was straight and points 200 meters north and south of the point of collision are visible and unobstructed. Purportedly, the point of impact or collision (Exh. 'K-4'-Pascua, on the sketch Exh. 'K'-Pascua) was on the western lane of the highway about 3 feet (or one yard) from the center line as shown by the bedris (sic), dirt and soil (obviously from the undercarriage of both vehicles) as well as paint, maroon (sic) from the Rabbit bus and greenish from the jeepney. The point of impact encircled and marked with the letter 'X' in Exh. 'K'-4, Pascua, had a diameter of two meters, the center of which was about two meters from the western edge of cement pavement of the roadway. Pictures taken by witness Bisquera in the course of the investigation showed the relative positions of the point of impact and center line (Exh. 'P'-Pascua) the back of the Rabbit bus (Exh. 'P-1-Pascua), the lifeless body of Catalina Pascua (Exh 'P-2-Pascua'), and the damaged front part of the Rabbit bus (Exh. 'P-3-Pascua'). No skid marks of the Rabbit bus was found in the vicinity of the collision, before or after the point of impact. On the other hand, there was a skid mark about 45 meters long purportedly of the jeepney from the eastern shoulder of the road south of, and extending up to the point of impact."

At the time and in the vicinity of the accident, there were no vehicles following the jeepney, neither were there oncoming vehicles except the bus. The weather condition of that day was fair.

After conducting the investigation, the police filed with the Municipal Court of San Manuel, Tarlac, a criminal complaint against the two drivers for Multiple Homicide. At the preliminary investigation, a probable cause was

found with respect to the case of Manalo, thus, his case was elevated to the Court of First Instance. However, finding no sufficiency of evidence as regards the case of delos Reyes, the Court dismissed it. Manalo was convicted and sentenced to suffer imprisonment. Not having appealed, he served his sentence.

Complaints for recovery of damages were then filed before the Court of First Instance of Pangasinan. In Civil Case No. 1136, spouses Casiano Pascua and Juana Valdez sued as heirs of Catalina Pascua while Caridad Pascua sued in her behalf. In Civil Case No. 1139, spouses Manuel Millares and Fidencia Arcica sued as heirs of Erlinda Meriales. In Civil Case No. 1140, spouses Mariano Estomo and Dionisia Sarmiento also sued as heirs of Adelaida Estomo.

In all three cases, spouses Mangune and Carreon, Manalo, Rabbit and delos Reyes were all impleaded as defendants. Plaintiffs anchored their suits against spouses Mangune and Carreon and Manalo on their contractual liability. As against Rabbit and delos Reyes, plaintiffs based their suits on their culpability for a quasi-delict. Filriters Guaranty Assurance Corporation, Inc. was also impleaded as additional defendant in Civil Case No. 1136 only.

For the death of Catalina Pascua, plaintiffs in Civil Case No. 1136 sought to collect the aggregate amount of P70,060.00 in damages, itemized as follows: P500.00 for burial expenses; P12,000.00 for loss of wages for 24 years; P10,000.00 for exemplary damages; P10,000.00 for moral damages; and P3,000.00 for attorney's fees. In the same case, plaintiff Caridad Pascua claimed P550.00 for medical expenses; P240.00 for loss of wages for two months; P2,000.00 for disfigurement of her face; P3,000.00 for physical pain and suffering; P2,500.00 as exemplary damages and P2,000.00 for attorney's fees and expenses of litigation.

In Civil Case No. 1139, plaintiffs demanded P500.00 for burial expenses; P6,000.00 for the death of Erlinda, P63,000.00 for loss of income P10,000.00 for moral damages and P3,000.00 for attorney's fees or total of P80,000.00.

In Civil Case No. 1140, plaintiffs claimed P500.00 for burial expenses; P6,000.00 for the death of Adelaida, P56,160.00 for loss of her income or earning capacity; P10,000.00 for moral damages; and P3,000.00 for attorney's fees.

Rabbit filed a cross-claim in the amount of P15,000.00 for attorney's fees and expenses of litigation. On the other hand, spouses Mangune and Carreon filed a cross-claim in the amount of P6,168.00 for the repair of the jeepney and P3,000.00 for its non-use during the period of repairs.

On December 27, 1978, the trial court rendered its decision finding Manalo negligent, the dispositive portion of which reads (pp. 113-114, Record on Appeal):

"PREMISES CONSIDERED, this Court is of the opinion and so holds:

"1) That defendants Isidro Mangune, Guillerma Carreon and Tranquilino Manalo thru their negligence, breached contract of carriage with their passengers the plaintiffs' and/or their heirs, and this Court renders judgment ordering said defendants, jointly and severally, to pay the plaintiffs -

'a) In Civil Case No. 1136, for the death of Catalina Pascua, to pay her heirs the amounts of P12,000.00 for indemnity for loss of her life; P41,760.00 for loss of earnings; P324.40 for actual expenses and P2,000.00 for moral damages;

'b) In the same Civil Case No. 1136 for the injuries of Caridad Pascua, to pay her the amounts of P240.00 for loss of wages, P328.20 for actual expenses and P500.00 for moral damages;

'c) In Civil Case No. 1139 for the death of Erlinda Meriales, to pay her heirs (the plaintiffs) the amount of

P12,000.00 - for indemnity for loss of her life; P622.00 for actual expenses, P60,480.00 for loss of wages or income and P2,000.00 for moral damages;

'd) In Civil Case No. 1140, for the death of Erlinda (also called Florida or Adelaida Estomo), to pay her heirs (the plaintiffs) the amount of P12,000.00 for indemnity for the loss of her life; P580.00 for actual expenses; P53,160.00 for loss of wages or income and P2,000.00 for moral damages.'

"2) The defendant Filriters Guaranty Insurance Co., having contracted to ensure and answer for the obligations of defendants Mangune and Carreon for damages due their passengers, this Court renders judgment against the said defendants Filriters Guaranty Insurance Co., jointly and severally with said defendants (Mangune and Carreon) to pay the plaintiffs the amount herein above adjudicated in their favor in Civil Case No. 1136 only. All the amounts awarded said plaintiffs as set forth in paragraph one (1) hereinabove;

"3) On the cross claim of Phil. Rabbit Bus Lines, Inc. ordering the defendants Isidro Mangune, Guillerma Carreon and Tranquilino Manalo, to pay jointly and severally, cross-claimant Phil. Rabbit Bus Lines, Inc., the amounts of P216.27 as actual damages to its Bus No. 753 and P2,173.60 for loss of its earning.

"All of the above amounts shall bear legal interest from the filing of the complaints.

"Costs are adjudged against defendants Mangune, Carreon and Manalo and Filriters Guaranty.

"SO ORDERED."

On appeal, the Intermediate Appellate Court reversed the above-quoted decision by finding delos Reyes negligent, the dispositive portion of which reads (pp. 55-57, Rollo):

"WHEREFORE, PREMISES CONSIDERED, the lower court's decision is hereby REVERSED as to item No. 3 of the decision which reads:

'(3) On the cross claim of Philippine Rabbit Bus Lines, Inc. ordering the defendants Isidro Mangune, Guillerma Carreon and Tranquilino Manalo, to pay jointly and severally, the amounts of P216.27 as actual damages to its Bus No. 753 and P2,173.60 for loss of its earnings.'

and another judgment is hereby rendered in favor of plaintiffs-appellants Casiana Pascua, Juan Valdez and Caridad Pascua, ordering the Philippine Rabbit Bus Lines, Inc. and its driver Tomas delos Reyes to pay the former jointly and severally damages in amounts awarded as follows:

"For the death of Catalina Pascua, the parents and/or heirs are awarded:

"Civil Case No. 1136 -

a) Indemnity for the loss of life

- P12,000.00

b) Loss of Salaries or earning capacity

- 14,000.00

c) Actual damages (burial expenses)

- 800.00

d) For moral damages

- 10,000.00

e) Exemplary damages

- 3,000.00

f) For attorney's fees

- 3,000.00

Total

P38,200.00 (sic)

"For the physical injuries suffered by Caridad Pascua:

"Civil Case No. 1136

a) Actual damages (hospitalization expenses)

- P 550.00

b) Moral damages (disfigurement of the face and physical suffering

- 8,000.00

c) Exemplary damages

- 2,000.00

Total

- P10,550.00

"For the death of Erlinda Arcega Meriales, the parents and/or heirs:

"Civil Case No. 1139

a) Indemnity for loss of life

- P12,000.00

b) Loss of Salary or Earning Capacity

- 20,000.00

c) Actual damages (burial expenses)

- 500.00

d) Moral damages

- 15 000.00

e) Exemplary damages

- 15,000.00

f) Attorney's fees

- 3,000.00

Total

- P45,500 00

"For the death of Florida Sarmiento Estomo:

"Civil Case No. 1140.

a) Indemnity for loss of life

- P12,000.00

b) Loss of Salary or Earning capacity

- 20,000.00

c) Actual damages (burial expenses)

- 500.00

d) Moral damages

- 3,000.00

e) Exemplary damages

- 3,000.00

f) Attorney's fees

- 3,000.00

Total

- P41,500.00

"With costs against the Philippine Rabbit Bus Lines, Inc.

"SO ORDERED."

The motion for reconsideration was denied. Hence, the present petition.

The issue is who is liable for the death and physical injuries suffered by the passengers of the jeepney?

The trial court, in declaring that Manalo was negligent, considered the following (p. 106, Record on Appeal):

"(1) That the un rebutted testimony of his passenger plaintiff Caridad Pascua that a long ways (sic) before reaching the point of collision, the Mangune jeepney was 'running fast' that his passengers cautioned driver Manalo to slow down but did not heed the warning; that the right rear wheel was detached causing the jeepney to run to the eastern shoulder of the road then back to the concrete pavement; that driver Manalo applied the brakes after which the jeepney made a U-turn (half-turn) in such a manner that it inverted its direction making it face South instead of north; that the jeepney stopped on the western lane of the road on the right of way of the oncoming Phil. Rabbit Bus where it was bumped by the latter;

"(2) The likewise un rebutted testimony of Police Investigator Tacpal of the San Manuel (Tarlac) Police who, upon responding to the reported collision, found the real evidence thereat indicating in his sketch (Exh. K, Pascua), the tracks of the jeepney of defendant Mangune and Carreon running on the Eastern shoulder (outside the concrete paved road) until it returned to the concrete road at a sharp angle, crossing the Eastern lane and

the (imaginary) center line and encroaching fully into the western lane where the collision took place as evidenced by the point of impact;

"(3) The observation of witness Police Corporal Cacalda also of the San Manuel Police that the path of the jeepney they found on the road (and indicated in the sketch (Exh. K-Pascua) was shown by skid marks which he described as 'scratches on the road caused by the iron of the jeep, after its wheel was removed;'

"(4) His conviction for the crime of Multiple Homicide and Multiple Serious Physical Injuries with Damage to Property thru Reckless Imprudence by the Court of First Instance of Tarlac (Exh. 24-Rabbit) upon the criminal Information by the Provincial Fiscal of Tarlac (Exh. 23-Rabbit), as a result of the collision, and his commitment to prison and service of his sentence (Exh. 25-Rabbit) upon the finality of the decision and his failure to appeal therefrom; and

"(5) The application of the doctrine of res-ipsa loquitar (sic) attesting to the circumstance that the collision occurred (sic) on the right of way of the Phil. Rabbit Bus."

The respondent court had a contrary opinion. Applying primarily (1) the doctrine of last clear chance, (2) the presumption that drivers who bump the rear of another vehicle guilty and the cause of the accident unless contradicted by other evidence, and (3) the substantial factor test, concluded that delos Reyes was negligent.

The misappreciation of the facts and evidence and the misapplication of the laws by the respondent court warrant a reversal of its questioned decision and resolution.

We reiterate that "[t]he principle about the 'last clear chance' would call for application in a suit between the owners and drivers of the two colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations. For it would be inequitable to exempt the negligent driver of the jeepney and its owners on the ground that the other driver was likewise guilty of negligence." This was Our ruling in *Anuran, et al. v. Buño, et al.*, G.R. Nos. L-21353 and L-21354, May 20, 1966, 17 SCRA 224.[1] Thus, the respondent court erred in applying said doctrine.

On the presumption that drivers who bump the rear of another vehicle guilty and the cause of the accident, unless contradicted by other evidence, the respondent court said (p. 49, Rollo):

"x x x, the jeepney had already executed a complete turnabout and at the time of impact was already facing the western side of the road. Thus the jeepney assumed a new frontal position vis a vis, the bus, and the bus assumed a new role of defensive driving. The spirit behind the presumption of guilt on one who bumps the rear end of another vehicle is for the driver following a vehicle to be at all times prepared of a pending accident should the driver in front suddenly come to a full stop, or change its course either through change of mind of the front driver, mechanical trouble, or to avoid an accident. The rear vehicle is given the responsibility of avoiding a collision with the front vehicle for it is the rear vehicle who has full control of the situation as it is in a position to observe the vehicle in front of it."

The above discussion would have been correct were it not for the undisputed fact that the U-turn made by the jeepney was abrupt (Exhibit "K," Pascua). The jeepney, which was then traveling on the eastern shoulder, making a straight skid mark of approximately 35 meters, crossed the eastern lane at a sharp angle, making a skid mark of approximately 15 meters from the eastern shoulder to the point of impact (Exhibit "K," Pascua). Hence, delos Reyes could not have anticipated the sudden U-turn executed by Manalo. The respondent court did not realize that the presumption was rebutted by this piece of evidence.

With regard to the substantial factor test, it was the opinion of the respondent court that (p. 52, Rollo):

"x x x. It is the rule under the substantial factor test that if the actor's conduct is a substantial factor it bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen the extent of the harm or

the manner in which it occurred does not prevent him from being liable (Restatement, Torts, 2d). Here, We find defendant bus running at a fast speed when the accident occurred and did not even make the slightest effort to avoid the accident, x x x. The bus driver's conduct is thus a substantial factor in bringing about harm to the passengers of the jeepney, not only because he was driving fast and did not even attempt to avoid the mishap, but also because it was the bus which was the physical force which brought about the injury and death to the passengers of the jeepney."

The speed of the bus was calculated by respondent court as follows (pp. 54-55, Rollo):

"According to the record of the case, the bus departed from Laoag, Ilocos Norte, at 4:00 o'clock A.M. and the accident took place at approximately around 12:30 P.M., after travelling roughly for 8 hours and 30 minutes. Deduct from this the actual stopover time of two Hours (computed from the testimony of the driver that he made three 40-minute stopovers), We will have an actual travelling time of 6 hours and 30 minutes.

"Under the circumstances, We calculate that the Laoag-Tarlac route (365 kms.) driving at an average of 56 km. per hour would take 6 hours and 30 minutes. Therefore, the average speed of the bus, give and take 10 minutes, from the point of impact on the highway with excellent visibility factor would be 80 to 90 kms. per hour, as this is the place where buses would make up for lost time in traversing busy city streets."

Still, We are not convinced. It cannot be said that the bus was travelling at a fast speed when the accident occurred because the speed of 80 to 90 kilometers per hour, assuming such calculation to be correct, is yet within the speed limit allowed in highways. We cannot even fault delos Reyes for not having avoided the collision. As aforesaid, the jeepney left a skid mark of about 45 meters, measured from the time its right rear wheel was detached up to the point of collision. Delos Reyes must have noticed the perilous condition of the jeepney from the time its right rear wheel was detached or some 90 meters away, considering that the road was straight and points 200 meters north and south of the point of collision, visible and unobstructed. Delos Reyes admitted that he was running more or less 50 kilometers per hour at the time of the accident. Using this speed, delos Reyes covered the distance of 45 meters in 3.24 seconds. If We adopt the speed of 80 kilometers per hour, delos Reyes would have covered that distance in only 2.025 seconds. Verily, he had little time to react to the situation. To require delos Reyes to avoid the collision is to ask too much from him. Aside from the time element involved, there were no options available to him. As the trial court remarked (pp. 107-108, Record on Appeal):

"x x x. They (plaintiffs) tried to impress this Court that defendant de los Reyes, could have taken either of two options: (1) to swerve to its right (western shoulder) or (2) to swerve to its left (eastern lane), and thus steer clear of the Mangune jeepney. This Court does not so believe, considering the existing exigencies of space and time.

"As to the first option, Phil. Rabbit's evidence is convincing and un rebutted that the Western shoulder of the road was narrow and had tall grasses which would indicate that it was not passable. Even plaintiff's own evidence, the pictures (Exhs. P and P-2, Pascua) are mute confirmation of such fact. Indeed, it can be noticed in the picture (Exh. P-2, Pascua) after the Rabbit bus came to a full stop, it was tilted to right front side, its front wheels resting most probably on a canal on a much lower elevation than of the shoulder or paved road. It too shows that all of the wheels of the Rabbit bus were clear of the roadway except the outer left rear wheel. These observation appearing in said picture (Exh. P-2, Pascua) clearly shows coupled with the finding the Rabbit bus came to a full stop only five meters from the point of impact (see sketch, Exh. K-Pascua) clearly show that driver de los Reyes veered his Rabbit bus to the right attempting to avoid hitting the Mangune's jeepney. That it was not successful in fully clearing the Mangune jeepney as its (Rabbit's) left front hit said jeepney (see picture Exh. 10-A-Rabbit) must have been due to limitations of space and time.

"Plaintiffs alternatively claim that defendant delos Reyes of the Rabbit bus could also have swerved to its left (eastern lane) to avoid bumping the Mangune jeepney which was then on the western lane. Such a claim is

premised on the hypothesis (sic) that the eastern lane was then empty. This claim would appear to be good copy if it were based alone on the sketch made after the collision. Nonetheless, it loses force if one were to consider the time element involved, for moments before that, the Mangune jeepney was crossing that very eastern lane at a sharp angle. Under such a situation then, for driver delos Reyes to swerve to the eastern lane, he would run the greater risk of running smack in the Mangune jeepney either head on or broadside."

After a minute scrutiny of the factual matters and duly proven evidence, We find that the proximate cause of the accident was the negligence of Manalo and spouses Mangune and Carreon. They all failed to exercise the precautions that are needed precisely *pro hac vice*.

In culpa contractual, the moment a passenger dies or is injured, the carrier is presumed to have been at fault or to have acted negligently, and this disputable presumption may only be overcome by evidence that he had observed extra-ordinary diligence as prescribed in Articles 1733, 1755 and 1756 of the New Civil Code[2] or that the death or injury of the passenger was due to a fortuitous event[3] (*Lasam v. Smith, Jr.*, 45 Phil. 657).

The negligence of Manalo was proven during the trial by the un rebutted testimonies of Caridad Pascua, Police Investigator Tacpal, Police Corporal Cacalda, his (Manalo's) conviction for the crime of Multiple Homicide and Multiple Serious Injuries with Damage to Property thru Reckless Imprudence, and the application of the doctrine of *res ipsa loquitur*, *supra*. The negligence of spouses Mangune and Carreon was likewise proven during the trial (p. 110, Record on Appeal):

"To escape liability, defendants, Mangune and Carreon offered to show thru their witness Natalio Navarro, an alleged mechanic, that he periodically checks and maintains the jeepney of said defendants, the last on Dec. 23, the day before the collision, which included the tightening of the bolts. This notwithstanding the right rear wheel of the vehicle was detached while in transit. As to the cause thereof no evidence was offered. Said defendant did not even attempt to explain, much less establish, it to be one caused by a *caso fortuito*. x x x."

In any event, "[i]n an action for damages against the carrier for his failure to safely carry his passenger to his destination, an accident caused either by defects in the automobile or through the negligence of its driver, is not a *caso fortuito* which would avoid the carrier's liability for damages (*Son v. Cebu Autobus Company*, 94 Phil. 892 citing *Lasam, et al. v. Smith, Jr.*, 45 Phil. 657; *Necesito, etc. v. Paras, et al.*, 104 Phil. 75).

The trial court was therefore right in finding that Manalo and spouses Mangune and Carreon were negligent. However, its ruling that spouses Mangune and Carreon are jointly and severally liable with Manalo is erroneous. The driver cannot be held jointly and severally liable with the carrier in case of breach of the contract of carriage. The rationale behind this is readily discernible. Firstly, the contract of carriage is between the carrier and the passenger, and in the event of contractual liability, the carrier is exclusively responsible therefor to the passenger, even if such breach be due to the negligence of his driver (see *Viluan v. The Court of Appeals, et al.*, G.R. Nos. L-21477-81, April 29, 1966, 16 SCRA 742). In other words, the carrier can neither shift his liability on the contract to his driver nor share it with him, for his driver's negligence is his.[4] Secondly, if We make the driver jointly and severally liable with the carrier, that would make the carrier's liability personal instead of merely vicarious and consequently, entitled to recover only the share which corresponds to the driver,[5] contradictory to the explicit provision of Article 2181 of the New Civil Code.[6]

We affirm the amount of damages adjudged by the trial court, except with respect to the indemnity for loss of life. Under Article 1764 in relation to Article 2206 of the New Civil Code, the amount of damages for the death of a passenger is at least three thousand pesos (P3,000.00). The prevailing jurisprudence has increased the amount of P3,000.00 to P30,000.00 (see *Heirs of Amparo delos Santos, et al. v. Honorable Court of Appeals, et al.*, G.R. No. 51165, June, 21, 1990 citing *De Lima v. Laguna Tayabas Co.*, G.R. Nos. L-35697-99, April 15, 1988, 160 SCRA 70).

ACCORDINGLY, the petition is hereby GRANTED. The decision of the Intermediate Appellate Court dated July 29, 1983 and its resolution dated November 28, 1983 are SET ASIDE. The decision of the Court of First Instance dated December 27, 1978 is REINSTATED WITH MODIFICATION that only Isidro Mangune, Guillerma Carreon and Filriters Guaranty Assurance Corporation, Inc. are liable to the victims or their heirs and that the amount of indemnity for loss of life is increased to thirty thousand pesos (P30,000.00).

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

* as it appears in the petition

[1] In this case, an improperly parked passenger jeepney was bumped from behind by a speeding truck with such violence that three of its passengers died whereas two other passengers suffered injuries. The representatives of the dead and of the injured passengers filed suits to recover damages against the driver and the owners of the truck and also against the driver and the owners of the jeepney. The trial court rendered judgment absolving the driver and the owners of the jeepney but required driver and the owners of the truck to compensate the victims. The plaintiffs appealed insisting that the driver and the owners of the jeepney should also be made liable. The appellate court, relying on the doctrine of last clear chance, affirmed the trial court's decision. The plaintiffs then filed a petition for review on certiorari before this Court. We modified the questioned decision by making all the defendants solidarily liable.

[2] Articles 1733, 1755 and 1756 of the New Civil Code, respectively provides:

"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.

"Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1746. Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756."

"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."

[3] Article 1174 of the New Civil Code provides:

"ART. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, 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."

[4] Article 1759 of the New Civil Code provides:

"ART. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers."

"This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees."

[5] Article 1217 of the New Civil Code provides:

"ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

"He who made the payment may claim from his codebtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

"When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each."

[6] Article 2181 of the New Civil Code provides:

"ART. 2181. Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim."

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