

BATANGAS LAGUNA TAYABAS BUS COMPANY & ARMANDO PON, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, THE HEIRS OF PAZ VDA. DE PAMFILO, THE HEIRS OF NORMA NERI, AND BAYLON SALES AND...

G.R. Nos. 74387-90. November 14, 1988

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition to Review by Certiorari, the decision[1] of the respondent appellate court which affirmed with modification the joint decision of the trial court in four (4) cases involving similar facts and issues, finding favorably for the plaintiffs (private respondents herein), the dispositive portion of said appellate judgment reading as follows:

"WHEREFORE, with the modification that the death indemnity is raised to P30,000.00 to each set of the victims' heirs, the rest of the judgment appealed from is hereby affirmed in toto. Costs against the defend-ants-appellants.

SO ORDERED." (p. 20, Rollo)

From the records of the case We have gathered the following antecedent facts:

The collision between Bus NO.1046 of the Batangas Laguna Tayabas Bus Company (BLTB, for brevity) driven by Armando Pon and Bus No. 404 of Superlines Transportation Company (Superlines, for brevity) driven by Ruben Dasco took place at the highway traversing Barangay Isabong, Tayabas, Quezon in the afternoon of August 11, 1978, which collision resulted in the death of Aniceto Rosales, Francisco Pamfilo and Romeo Neri and in several injuries to Nena Rosales (wife of Anecito) and Baylon Sales, all passengers of the BLTB Bus No. 1046. The evidence shows that as BLTB Bus NO. 1046 was negotiating the bend of the highway, it tried to overtake a Ford Fiera car just as Bus No. 404 of Superlines was coming from the opposite direction. Seeing thus, Armando Pon (driver of the BLTB Bus) made a belated attempt to slacken the speed of his bus and tried to return to his proper lane. It was an unsuccessful try as the two (2) buses collided with each other.

Nena Vda. de Rosales and Baylon Sales and the survi-ving heirs of the deceased Francisco Pamfilo, Aniceto Rosa-les and Romeo Neri instituted separate cases in the Court of First Instance of Marinduque against BLTB and Superlines together with their respective drivers praying for damages, attorney's fees and litigation expenses plus costs. Criminal cases against the drivers of the two buses were filed in the Court of First Instance of Quezon.

Defendants BLTB and Superlines, together with their drivers Pon and Dasco, denied liability by claiming that they exercised due care and diligence and shifted the fault against each other. They all interposed counterclaims against the plaintiffs and crossclaims against each other.

After trial on the merits, the lower court exone-rated defendants Superlines and its driver Dasco from liability and

attributed sole responsibility to defendants BLTB and its driver Pon, and ordered them jointly and severally to pay damages to the plaintiffs. Defendants BLTB and Armando Pon appealed from the decision of the lower court to respondent appellate court which affirmed with modification the judgment of the lower court as earlier stated.

Hence, this petition to review by certiorari of defendant BLTB assigning a lone error, to wit:

THE INTERMEDIATE APPELLATE COURT ERRED IN ADJUDGING THAT THE ACTIONS OF PRIVATE RESPONDENTS ARE BASED ON CULPA CONTRACTUAL. (p. 12, Rollo)

It is argued by petitioners that if the intention of private respondents were to file an action based on culpa contractual or breach of contract of carriage, they could have done so by merely impleading BLTB and its driver Pon. As it was in the trial court, private respondents filed an action against all the defendants basing their action on culpa aquiliana or tort.

Petitioners' contentions deserve no merit. A reading of the respondent court's decision shows that it anchored petitioners' liability both in culpa contractual and culpa aquiliana, to wit:

"The proximate cause of the collision resulting in the death of three and injuries to two of the passengers of BLTB was the negligence of the driver of the BLTB bus, who recklessly operated and drove said bus by overtaking a Ford Fiera car as he was negotiating the ascending bend of the highway (tsn, October 4, 1979), pp. 9-10, 35, 36, 61; Exhibit 6 Superlines, p. 47) which was divided into two lanes by a continuous yellow strip (tsn, October 4, 1979, p. 36). The driver of the BLTB bus admitted in his cross-examination that the continuous yellow line on the ascending bend of the highway signifies a no-overtaking zone (tsn, October 4, 1979, p. 36). It is no surprise then that the driver of the Superlines bus was exonerated by the lower court. He had a valid reason to presuppose that no one would overtake in such a dangerous situation. These facts show the patent imprudence of the BLTB driver.

It is well settled that a driver abandoning his proper lane for the purpose of overtaking another vehicle in ordinary situation has the duty to see that the road is clear and not to proceed if he can not do so in safety (People v. Enriquez, 40 O.G. No. 5, 984).

'x x x Before attempting to pass the vehicle ahead, the rear driver must see that the road is clear and if there is no sufficient room for a safe passage, or the driver ahead does not turn out so as to afford opportunity to pass, or if, after attempting to pass, the driver of the overtaking vehicle finds that he cannot make the passage in safety, the latter must slacken his speed so as to avoid the danger of a collision, even bringing his car to a stop if necessary.' (3-4 Huddy Encyclopedia of Automobile Law, Sec. 212, p. 195).

"The above rule becomes more particularly applicable in this case when the overtaking took place on an ascending curved highway divided into two lanes by a continuous yellow line. Appellant Pon should have remembered that:

'When a motor vehicle is approaching or rounding a curve there is special necessity for keeping to the right side of the road and the driver has not the right to drive on the left hand side relying upon having time to turn to the right if a car is approaching from the opposite direction comes into view.' (42 C.J. 42 906).

'Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.' (Art. 2165, Civil Code).

"In failing to observe these simple precautions, BLTB's driver undoubtedly failed to act with the diligence demanded by the circumstances.

"We now come to the subject of liability of the appellants.

"For his own negligence in recklessly driving the truck owned by his employer, appellant Armando Pon is

primarily liable (Article 2176, Civil Code).

"On the other hand, the liability of Pon's employer, appellant BLTB, is also primary, direct and immediate in view of the fact that the death of or injuries to its passengers was through the negligence of its employee (*Marahan v. Mendoza*, 24 SCRA 888, 894), and such liability does not cease even upon proof that BLTB had exercised all the diligence of a good father of a family in the selection and supervision of its employees (Article 1759, Civil Code).

"The common carrier's liability for the death of or injuries to its passengers is based on its contractual obligation to carry its passengers safely to their destination. That obligation is so serious that the Civil Code requires "utmost diligence of very cautious persons (Article 1755, Civil Code). They are presumed to have been at fault or to have acted negligently unless they prove that they have observed extraordinary diligence" (Article 1756, Civil Code). In the present case, the appellants have failed to prove extraordinary diligence. Indeed, this legal presumption was confirmed by the fact that the bus driver of BLTB was negligent. It must follow that both the driver and the owner must answer for injuries or death to its passengers.

"The liability of BLTB is also solidarily with its driver (*Viluan v. Court of Appeals*, 16 SCRA 742, 747) even though the liability of the driver springs from quasi delict while that of the bus company from contract." pp. 17-19, Rollo)

Conclusively therefore in consideration of the fore-going findings of the respondent appellate court it is settled that the proximate cause of the collision resulting in the death of three and injuries to two of the passengers of BLTB was the sole negligence of the driver of the BLTB Bus, who recklessly operated and drove said bus in a lane where overtaking is not allowed by Traffic Rules and Regulations. Such negligence and recklessness is binding against petitioner BLTB, more so when We consider the fact 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 for the payment of the damages sought by the passenger. By the contract of carriage, the carrier BLTB assumed the express obligation to transport the passengers to their destination safely and to observe extraordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by its passenger is right away attributable to the fault or negligence of the carrier (Art. 1756, New Civil Code).

Petitioners also contend that "a common carrier is not an absolute insurer against all risks of travel and are not liable for acts or accidents which cannot be foreseen or inevitable and that the responsibility of a common carrier for the safety of its passenger prescribed in Articles 1733 and 1755 of the New Civil Code is not susceptible of a precise and definite formulation." (p. 13, Rollo) Petitioners' contention holds no water because they had totally failed to point out any factual basis for their defense of force majeure in the light of the undisputed fact that the cause of the collision was the sole negligence and recklessness of petitioner Armando Pon. For the defense of force majeure or act of God to prosper the accident must be due to natural causes and exclusively without human intervention.

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Crisolito Pascual, concurred in by Justices Jose C. Campos, Jr., Serafin E. Camilon and Desiderio P. Jurado.

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