

## SECOND DIVISION

**[ G.R. No. 209969, September 27, 2017 ]**

**JOSE SANICO AND VICENTE CASTRO, PETITIONERS, VS.  
WERHERLINA P. COLIPANO, RESPONDENT.**

### DECISION

#### **CAGUIOA, J:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioners Jose Sanico (Sanico) and Vicente Castro (Castro), assailing the Decision<sup>[2]</sup> dated September 30, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 01889. The CA affirmed with modification the Decision<sup>[3]</sup> dated October 27, 2006 of the Regional Trial Court, Branch 25, Danao City (RTC) which found Sanico and Castro liable for breach of contract of carriage and awarded actual and compensatory damages for loss of income in favor of respondent Werherlina P. Colipano (Colipano). The CA reduced the compensatory damages that the RTC awarded.

#### **Antecedents**

Colipano filed a complaint on January 7, 1997 for breach of contract of carriage and damages against Sanico and Castro.<sup>[4]</sup> In her complaint, Colipano claimed that at 4:00 P.M. more or less of December 25, 1993, **Christmas Day**, she and her daughter were; paying passengers in the jeepney operated by Sanico, which was driven by Castro.<sup>[5]</sup> Colipano claimed she was made to sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap.<sup>[6]</sup> And, at an uphill incline in the road to Natimao-an, Carmen, Cebu, the jeepney slid backwards because it did not have the power to reach the top.<sup>[7]</sup> Colipano pushed both her feet against the step board to prevent herself and her child from being thrown out of the exit, but because the step board was wet, her left foot slipped and got crushed between the step board and a coconut tree which the jeepney bumped, causing the jeepney to stop its backward movement.<sup>[8]</sup> Colipano's leg was badly injured and was eventually amputated.<sup>[9]</sup> Colipano prayed for actual damages, loss of income, moral damages, exemplary damages, and attorney's fees.<sup>[10]</sup>

In their answer, Sanico and Castro admitted that Colipano's leg was crushed and amputated but claimed that it! was Colipano's fault that her leg was crushed.<sup>[11]</sup> They admitted that the jeepney slid backwards because the jeepney lost power.<sup>[12]</sup> The conductor then instructed everyone not to panic but Colipano tried to disembark and her foot got caught in between the step board and the coconut tree.<sup>[13]</sup> Sanico claimed that he paid for all the hospital and medical expenses of Colipano,<sup>[14]</sup> and that Colipano eventually freely and voluntarily executed an Affidavit of Desistance

and Release of Claim.<sup>[15]</sup>

After trial, the RTC found that Sanico and Castro breached the contract of carriage between them and Colipano but only awarded actual and compensatory damages in favor of Colipano. The dispositive portion of the RTC Decision states:

**WHEREFORE**, premises considered, this Court finds the defendants **LIABLE** for breach of contract of carriage and are solidarily liable to pay plaintiff:

1. Actual damages in the amount of P2,098.80; and
2. Compensatory damages for loss of income in the amount of P360,000.00.

No costs.

**SO ORDERED.**<sup>[16]</sup>

Only Sanico and Castro appealed to the CA, which affirmed with modification the RTC Decision. The dispositive portion of the CA Decision states:

IN LIGHT OF ALL THE FOREGOING, the instant appeal is PARTIALLY GRANTED. The Decision dated October 27, 2006 of the Regional Trial Court, Branch 25, Danao City, in Civil Case No. DNA-418, is AFFIRMED with MODIFICATION in that the award for compensatory damages for loss of income in paragraph 2 of the dispositive portion of the RTC's decision, is reduced to P200,000.00.

SO ORDERED.<sup>[17]</sup>

Without moving for the reconsideration of the CA Decision, Sanico and Castro filed this petition before the Court assailing the CA Decision.

### **Issues**

- a. Whether the CA erred in finding that Sanico and Castro breached the contract of carriage with Colipano;
- b. Whether the Affidavit of Desistance and Release of Claim is binding on Colipano; and
- c. Whether the CA erred in the amount of damages awarded.

### **The Court's Ruling**

The Court partly grants the petition.

***Only Sanico breached the contract of carriage.***

Here, it is beyond dispute that Colipano was injured while she was a passenger in the jeepney owned and operated by Sanico that was being driven by Castro. Both the CA and RTC found Sanico and Castro jointly and severally liable. This, however, is erroneous because only Sanico was the party to the contract of carriage with

Colipano.

Since the cause of action is based on a breach of a contract of carriage, the liability of Sanico is direct as the contract is between him and Colipano. Castro, being merely the driver of Sanico's jeepney, cannot be made liable as he is not a party to the contract of carriage.

In *Soberano v. Manila Railroad Co.*,<sup>[18]</sup> the Court ruled that a complaint for breach of a contract of carriage is dismissible as against the employee who was driving the bus because the parties to the contract of carriage are only the passenger, the bus owner, and the operator, *viz.*:

The complaint against Caccam was therefore properly dismissed. He was not a party to the contract; he was a mere employee of the BAL. The parties to that contract are Juana Soberano, the passenger, and the MRR and its subsidiary, the BAL, the bus owner and operator, respectively; and consequent to the inability of the defendant companies to carry Juana Soberano and her baggage and personal effects securely and safely to her destination as imposed by law (art. 1733, in relation to arts. 1736 and 1755, N.C.C.), their liability to her becomes direct and immediate.<sup>[19]</sup>

Since Castro was not a party to the contract of carriage, Colipano had no cause of action against him and the complaint against him should be dismissed. Although he was driving the jeepney, he was a mere employee of Sanico, who was the operator and owner of the jeepney. The obligation to carry Colipano safely to her destination was with Sanico. In fact, the elements of a contract of carriage existed between Colipano and Sanico: *consent*, as shown when Castro, as employee of Sanico, accepted Colipano as a passenger when he allowed Colipano to board the jeepney, and as to Colipano, when she boarded the jeepney; *cause or consideration*, when Colipano, for her part, paid her fare; and, *object*, the transportation of Colipano from the place of departure to the place of destination.<sup>[20]</sup>

Having established that the contract of carriage was only between Sanico and Colipano and that therefore Colipano had no cause of action against Castro, the Court next determines whether Sanico breached his obligations to Colipano under the contract.

***Sanico is liable as operator and owner of a common carrier.***

Specific to a contract of carriage, the Civil Code requires common carriers to observe extraordinary diligence in safely transporting their passengers. Article 1733 of the Civil Code states:

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 1745, Nos. 5, 6, and 7, while the

extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.

This extraordinary diligence, following Article 1755 of the Civil Code, means that common carriers have the obligation to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

In case of death of or injury to their passengers, Article 1756 of the Civil Code provides that common carriers are presumed to have been at fault or negligent, and this presumption can be overcome only by proof of the extraordinary diligence exercised to ensure the safety of the passengers.<sup>[21]</sup>

Being an operator and owner of a common carrier, Sanico was required to observe extraordinary diligence in safely transporting Colipano. When Colipano's leg was injured while she was a passenger in Sanico's jeepney, the presumption of fault or negligence on Sanico's part arose and he had the burden to prove that he exercised the extraordinary diligence required of him. He failed to do this.

In *Calalas v. Court of Appeals*,<sup>[22]</sup> the Court found that allowing the respondent in that case to be seated in an extension seat, which was a wooden stool at the rear of the jeepney, "placed [the respondent] in a peril greater than that to which the other passengers were exposed."<sup>[23]</sup> The Court further ruled that the petitioner in *Calalas* was not only "unable to overcome the presumption of negligence imposed on him for the injury sustained by [the respondent], but also, the evidence shows he was actually negligent in transporting passengers."<sup>[24]</sup>

*Calalas* squarely applies here. Sanico failed to rebut the presumption of fault or negligence under the Civil Code. More than this, the evidence indubitably established Sanico's negligence when Castro made Colipano sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap, which put her and her child in greater peril than the other passengers. As the CA correctly held:

For the driver, Vicente Castro, to allow a seat extension made of an empty case of beer clearly indicates lack of prudence. Permitting Werherlina to occupy an improvised seat in the rear portion of the jeepney, with a child on her lap to boot, exposed her and her child in a peril greater than that to which the other passengers were exposed. The use of an improvised seat extension is undeniable, in view of the testimony of plaintiffs witness, which is consistent with Werherlina's testimonial assertion. Werherlina and her witness's testimony were accorded belief by the RTC. Factual findings of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.<sup>[25]</sup>

The CA also correctly held that the defense of engine failure, instead of exonerating Sanico, only aggravated his already precarious position.<sup>[26]</sup> The engine failure "hinted lack of regular check and maintenance to ensure that the engine is at its best, considering that the jeepney regularly passes through a mountainous area."

[27] This failure to ensure that the jeepney can safely transport passengers through its route which required navigation through a mountainous area is proof of fault on Sanico's part. In the face of such evidence, there is no question as to Sanico's fault or negligence.

Further, common carriers may also be liable for damages when they contravene the tenor of their obligations. Article 1170 of the Civil Code states:

ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

In *Magat v. Medialdea*, [28] the Court ruled: "The phrase 'in any manner contravene the tenor' of the obligation includes any illicit act or omission which impairs the strict and faithful fulfillment of the obligation and every kind of defective performance."

[29] There is no question here that making Colipano sit on the empty beer case was a clear showing of how Sanico contravened the tenor of his obligation to safely transport Colipano from the place of departure to the place of destination as far as human care and foresight can provide, using the utmost diligence of very cautious persons, and with due regard for all the circumstances.

Sanico's attempt to evade liability by arguing that he exercised extraordinary diligence when he hired; Castro, who was allegedly an experienced and time-tested driver, whom he had even accompanied on a test-drive and in whom he was personally convinced of the driving skills, [30] are not enough to exonerate him from liability - because the liability of 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. This is the express mandate of Article 1759 of the Civil Code:

ART. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or willful 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.

The **only** defenses available to common carriers are (1) proof that they observed extraordinary diligence as prescribed in Article 1756, [31] and (2) following Article 1174 of the Civil Code, proof that the injury or death was brought about by an event which "could not be foreseen, or which, though foreseen, were inevitable," or a fortuitous event.

The Court finds that neither of these defenses obtain. Thus, Sanico is liable for damages to Colipano because of the injury that Colipano suffered as a passenger of Sanico's jeepney.

***The Affidavit of Desistance and Release of Claim is void.***

Sanico cannot be exonerated from liability under the Affidavit of Desistance and