

FIRST DIVISION

[G.R. No. 161909, April 25, 2012]

**PHILTRANCO SERVICE ENTERPRISES, INC., PETITIONER, VS.
FELIX PARAS AND INLAND TRAILWAYS, INC., AND HON. COURT
OF APPEALS, RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

In an action for breach of contract of carriage commenced by a passenger against his common carrier, the plaintiff can recover damages from a third-party defendant brought into the suit by the common carrier upon a claim based on tort or *quasi-delict*. The liability of the third-party defendant is independent from the liability of the common carrier to the passenger.

Philtranco Service Enterprises, Inc. (Philtranco) appeals the affirmance with modifications by the Court of Appeals (CA) of the decision of the Regional Trial Court (RTC) awarding moral, actual and temperate damages, as well as attorney's fees and costs of suit, to respondent Felix Paras (Paras), and temperate damages to respondent Inland Trailways, Inc. (Inland), respectively the plaintiff and the defendant/third-party plaintiff in this action for breach of contract of carriage, upon a finding that the negligence of the petitioner and its driver had caused the serious physical injuries Paras sustained and the material damage Inland's bus suffered in a vehicular accident.

Antecedents

The antecedent facts, as summarized by the CA, are as follows:

Plaintiff-appellant [respondent] Felix Paras (Paras for brevity), who hails from Cainta. Rizal is engaged in the buy and sell of fish products. Sometime on 08 February 1987, on his way home to Manila from Bicol Region, he hoarded a bus with Body No. 101 and Plate No. EVE 508, owned and operated- by Inland Trailways. Inc. (Inland for brevity) and driven by its driver Calvin Coner (Coner for brevity).

At approximately 3:50 o'clock in the morning of 09 February 1987, while the said bus was travelling along Maharlika Highway, Tiaong, Quezon, it was bumped at the rear by another bus with Plate No. 1-VB 259. owned and operated by Philtranco Service Enterprises, Inc. (Philtranco for brevity). As a result of the strong and violent impact, the Inland bus was pushed forward and smashed into a cargo truck parked along the outer right portion of the. highway and the shoulder thereof. Consequently, the said accident bought considerable damage to the vehicles involved and caused physical injuries to the passengers and crew of the two buses,

including the death of Coner who was the driver of the Inland Bus at the time of the incident.

Paras was not spared from the pernicious effects of the accident. After an emergency treatment at the San Pablo Medical Center, San Pablo City, Laguna. Paras was taken to the National Orthopedic Hospital. At the latter hospital, he was found and diagnosed by Dr. Antonio Tanchuling, Jr. to be affected with the following injuries: a) contusion/hematoma: b) dislocation of hip upon fracture of the fibula on the right leg; c) fractured small bone on the right leg: and d) close fracture on the tibial plateau of the left leg. (Exh. "A", p. 157. record)

On 04 March 1987 and 15 April 1987. Paras underwent two (2) operations affecting the fractured portions of his body. (Exhs. "A-2" and "A-3", pp. 159 and 160 respectively, record)

Unable to obtain sufficient financial assistance from Inland for the costs of his operations, hospitalization, doctors' fees and other miscellaneous expenses, on 31 July 1989. Paras filed a complaint for damages based on breach of contract of carriage against Inland.

In its answer, defendant Inland denied responsibility, by alleging, among others, that its driver Coner had observed an utmost and extraordinary care and diligence to ensure the safety of its passengers. In support of its disclaimer of responsibility. Inland invoked the Police Investigation Report which established the fact that the Philtranco bus driver of [sic] Apolinar Miralles was the one which violently bumped the rear portion of the inland bus. and therefore, the direct and proximate cause of Paras' injuries.

On 02 March 1990. upon leave of court. Inland Hied a third-party complaint against Philtranco and Apolinar Miralles (Third Party defendants). In this third-party complaint. Inland, sought for exoneration of its liabilities to Paras, asserting that the latter's cause of action should be directed against Philtranco considering that the accident was caused by Miralles' lack of care, negligence and reckless imprudence, (pp. 50 to 56, records).

After trial, the RTC (Branch 71) in Antipolo, Rizal rendered its judgment on July 18, 1997,^[1] viz:

WHEREFORE, third-party defendant Philtranco and Apolinar Miralles are hereby ordered to pay plaintiff jointly and severally, the following amounts:

1. P54,000.00 as actual damages;
2. P50,000.00 as moral damages;
3. P20,000.00 as attorney's fees and costs.

SO ORDERED.

All the parties appealed to the CA on different grounds.

On his part, Paras ascribed the following errors to the RTC, to wit:

I. THE TRIAL COURT ERRED IN HOLDING THAT ONLY THIRD-PARTY DEFENDANT-APPELLANT PHILTRANCO IS LIABLE FOR THE DAMAGES SUFFERED BY APPELLANT PARAS.

II. THE TRIAL COURT ERRED IN NOT HOLDING APPELLANT INLAND TRAILWAYS INC. TO BE JOINTLY AND SEVERALLY LIABLE FOR THE DAMAGES SUFFERED BY PARAS.

III. THE TRIAL COURT ERRED IN NOT AWARDING UNEARNED INCOME AS ADDITIONAL ACTUAL DAMAGES SUFFERED BY APPELLANT PARAS AS HIS PHYSICAL DISABILITY IS PERMANENT IN NATURE.

IV. THE TRIAL COURT ERRED IN NOT AWARDING EXEMPLARY DAMAGES IN FAVOR OF APPELLANT PARAS.

On the other hand. Inland assigned the following errors to the RTC, namely;

THE TRIAL COURT ERRED WHEN IT FAILED TO AWARD DAMAGES UNTO THE THIRD PARTY PLAINTIFF NOTWITHSTANDING CLEAR FINDING THAT:

'It is clear from the evidence that the plaintiff sustained injuries because of the reckless, negligence, and lack of precaution of third party defendant Apolinar Miralles, an employee of Philtranco. '

AND, COMPLETELY DISREGARDED "THE UNCONTROVERTED ORAL AND DOCUMENTARY EVIDENCES ESTABLISHING THE EXTENT AND DEGREE OF DAMAGES SUSTAINED BY THE THIRD PARTY PLAINTIFF.

Lastly, Philtranco stated that the RTC erred thuswise:

I

THE COURT A QUO MISERABLY ERRED IN AWARDING ACTUAL DAMAGES GREATER THAN WHAT WAS ALLEGED IN THE COMPLAINT ITSELF, AND EVEN MUCH MORE GREATER THAN WHAT WERE PROVED DURING HIE TRIAL, HENCE, PERPETUATING UNJUST ENRICHMENT.

II

THE COURT A QUO SERIOUSLY ERRED IN AWARDING MORAL DAMAGES TO A CAUSE OF ACTION OF CULPA-CONTRACTUAL EVEN WITHOUT ANY

EVIDENCE OF GROSS BAD FAITH; HENCE, CONTRARY TO THE ESTABLISHED DOCTRINE IN THE CASES OF PHIL. RABBIT BUS LINES VS. ESGUERRA; SOBERANO VS. BENGUET AUTO LINE AND FLORES VS. MIRANDA.

III

THE COURT A QUO MISERABLY ERRED IN HOLDING THAT MIRALLES WAS THE ONE AT FAULT MERELY ON THE STRENGTH OF THE TESTIMONY OF THE POLICE INVESTIGATOR WHICH IS IN TURN BASED ON THE STATEMENTS OF ALLEGED WITNESSES WHO WERE NEVER PRESENTED ON 'THE WITNESS STAND.

THE COURT A QUO COMMITTED A GRIEVOUS ERROR IN DISREGARDING THE TESTIMONY OF APPELLANTS' WITNESSES WHO TESTIFIED AS TO THE DEFENSE OF EXERCISE OF DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF EMPLOYEES PURSUANT TO ART. 2180, LAST PARAGRAPH, NEW CIVIL CODE.

On September 25, 2002, the CA promulgated its decision,^[2] disposing:

WHEREFORE, in consideration of the foregoing premises, the assailed decision dated 18 July 19(9)7 is perforce affirmed with the following modifications:

1. Third party defendants-appellants Philtranco and Apolinar Miralles are ordered to pay plaintiff-appellant Felix Paras jointly and severally the following amounts:

- a) P1,397.95 as actual damages;
- b) P50,000.00 as temperate damages;
- c) P50,000.00 as moral damages; and
- d) P20,000.00 as attorney's fees and costs of suit.

2. On the third party plaintiff-appellant Inland's claims, the third party defendant-appellants Philtranco and Apolinar Miralles are hereby ordered to pay the former (Inland) jointly and severally the amount of P250,000.00 as and by way of temperate damages.

SO ORDERED.

The CA agreed with the RTC's finding that no trace of negligence at the time of the accident was attributable to Inland's driver, rendering Inland not guilty of breach of contract of carriage; that faulty brakes had caused Philtranco's bus to forcefully bump Inland's bus from behind, making it hit the rear portion of a parked cargo truck; that the impact had resulted in considerable material damage to the three vehicles; and that Paras and others had sustained various physical injuries.

Accordingly, the CA:- (a) sustained the award of moral damages of P50,000.00 in favor of Paras pursuant to Article 2219 of the *Civil Code* based on *quasi-delict*

committed by Philtranco and its driver; (b) reduced the actual damages to be paid by Philtranco to Paras from P54,000.00 to P1,397.95 because only the latter amount had been duly supported by receipts; (c) granted temperate damages of P50,000.00 (in lieu of actual damages in view of the absence of competent proof of actual damages for his hospitalization and therapy) to be paid by Philtranco to Paras; and (d) awarded temperate damages of P250,000.00 under the same premise to be paid by Philtranco to Inland for the material damage caused to Inland's bus.

Philtranco moved for reconsideration,^[3] but the CA denied its motion for reconsideration on January 23, 2004.^[4]

Issues

Hence, this appeal, in which the petitioner submits that the CA committed grave abuse of discretion amounting to lack of jurisdiction in awarding moral damages to Paras despite the fact that the complaint had been anchored on breach of contract of carriage; and that the CA committed a reversible error in substituting its own judgment by *motu proprio* awarding temperate damages of P250,000.00 to Inland and P50,000.00 to Paras despite the clear fact that temperate damages were not raised on appeal by Paras and Inland.

Ruling

The appeal lacks merit.

The Court does not disturb the unanimous findings by the CA and the RTC on the negligence of Philtranco and its driver being the direct cause of the physical injuries of Paras and the material damage of Inland.

Nonetheless, we feel bound to pass upon the disparate results the CA and the RTC reached on the liabilities of Philtranco and its driver.

1.

Paras can recover moral damages in this suit based on *quasi-delict*

Philtranco contends that Paras could not recover moral damages because his suit was based on breach of contract of carriage, pursuant to which moral damages could be recovered only if he had died, or if the common carrier had been guilty of fraud or bad faith. It argues that Paras had suffered only physical injuries; that he had not adduced evidence of fraud or bad faith on the part of the common carrier; and that, consequently, Paras could not recover moral damages directly from it (Philtranco), considering that it was only being subrogated for Inland.

The Court cannot uphold the petitioner's contention.

As a general rule, indeed, moral damages are not recoverable in an action predicated on a breach of contract. This is because such action is not included in Article 2219 of the *Civil Code*^[5] as one of the actions in which moral damages may be recovered. By way of exception, moral damages are recoverable in an action predicated on a breach of contract: (a) where the mishap results in the death of a