612 Phil. 85

FIRST DIVISION

[G.R. No. 166640, July 31, 2009]

HERMINIO MARIANO, JR., PETITIONER, VS. ILDEFONSO C. CALLEJAS AND EDGAR DE BORJA, RESPONDENTS.

D E C I S I O N

PUNO, C.J.:

On appeal are the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 66891, dated May 21, 2004 and January 7, 2005 respectively, which reversed the Decision[3] of the Regional Trial Court (RTC) of Quezon City, dated September 13, 1999, which found respondents jointly and severally liable to pay petitioner damages for the death of his wife.

First, the facts:

Petitioner Herminio Mariano, Jr. is the surviving spouse of Dr. Frelinda Mariano who was a passenger of a Celyrosa Express bus bound for Tagaytay when she met her death. Respondent Ildefonso C. Callejas is the registered owner of Celyrosa Express, while respondent Edgar de Borja was the driver of the bus on which the deceased was a passenger.

At around 6:30 p.m. on November 12, 1991, along Aguinaldo Highway, San Agustin, Dasmariñas, Cavite, the Celyrosa Express bus, carrying Dr. Mariano as its passenger, collided with an Isuzu truck with trailer bearing plate numbers PJH 906 and TRH 531. The passenger bus was bound for Tagaytay while the trailer truck came from the opposite direction, bound for Manila. The trailer truck bumped the passenger bus on its left middle portion. Due to the impact, the passenger bus fell on its right side on the right shoulder of the highway and caused the death of Dr. Mariano and physical injuries to four other passengers. Dr. Mariano was 36 years old at the time of her death. She left behind three minor children, aged four, three and two years.

Petitioner filed a complaint for breach of contract of carriage and damages against respondents for their failure to transport his wife and mother of his three minor children safely to her destination. Respondents denied liability for the death of Dr. Mariano. They claimed that the proximate cause of the accident was the recklessness of the driver of the trailer truck which bumped their bus while allegedly at a halt on the shoulder of the road in its rightful lane. Thus, respondent Callejas filed a third-party complaint against Liong Chio Chang, doing business under the name and style of La Perla Sugar Supply, the owner of the trailer truck, for indemnity in the event that he would be held liable for damages to petitioner.

Other cases were filed. Callejas filed a complaint,[4] docketed as Civil Case No. NC-397 before the RTC of Naic, Cavite, against La Perla Sugar Supply and Arcadio Arcilla, the truck driver, for damages he incurred due to the vehicular accident. On

September 24, 1992, the said court dismissed the complaint against La Perla Sugar Supply for lack of evidence. It, however, found Arcilla liable to pay Callejas the cost of the repairs of his passenger bus, his lost earnings, exemplary damages and attorney's fees.[5]

A criminal case, Criminal Case No. 2223-92, was also filed against truck driver Arcilla in the RTC of Imus, Cavite. On May 3, 1994, the said court convicted truck driver Arcadio Arcilla of the crime of reckless imprudence resulting to homicide, multiple slight physical injuries and damage to property.[6]

In the case at bar, the trial court, in its Decision dated September 13, 1999, found respondents Ildefonso Callejas and Edgar de Borja, together with Liong Chio Chang, jointly and severally liable to pay petitioner damages and costs of suit. The dispositive portion of the Decision reads:

> ACCORDINGLY, the defendants are ordered to pay as follows:
>
> 1. The sum of P50,000.00 as civil indemnity for the loss of life;
> 2. The sum of P40,000.00 as actual and compensatory damages;
> 3. The sum of P1,829,200.00 as foregone income;
> 4. The sum of P30,000.00 as moral damages;
> 5. The sum of P20,000.00 as exemplary damages;
> 6. The costs of suit.
>
> SO ORDERED.[7]

Respondents Callejas and De Borja appealed to the Court of Appeals, contending that the trial court erred in holding them guilty of breach of contract of carriage.

On May 21, 2004, the Court of Appeals reversed the decision of the trial court. It reasoned:

> . . . the presumption of fault or negligence against the carrier is only a disputable presumption. It gives in where contrary facts are established proving either that the carrier had exercised the degree of diligence required by law or the injury suffered by the passenger was due to a fortuitous event. Where, as in the instant case, the injury sustained by the petitioner was in no way due to any defect in the means of transport or in the method of transporting or to the negligent or wilful acts of private respondent's employees, and therefore involving no issue of negligence in its duty to provide safe and suitable cars as well as competent employees, with the injury arising wholly from causes created by strangers over which the carrier had no control or even knowledge or could not have prevented, the presumption is rebutted and the carrier is not and ought not to be held liable. To rule otherwise would make the common carrier the insurer of the absolute safety of its passengers which is not the intention of the lawmakers.[8]

The dispositive portion of the Decision reads:

> WHEREFORE, the decision appealed from, insofar as it found defendants-appellants Ildefonso Callejas and Edgar de Borja liable for damages to plaintiff-appellee Herminio E. Mariano, Jr., is REVERSED and SET ASIDE and another one entered absolving them from any liability for the death of Dr. Frelinda Cargo Mariano.[9]

The appellate court also denied the motion for reconsideration filed by petitioner.

Hence, this appeal, relying on the following ground:

> THE DECISION OF THE HONORABLE COURT OF APPEALS, SPECIAL FOURTEENTH DIVISION IS NOT IN ACCORD WITH THE FACTUAL BASIS OF THE CASE.[10]

The following are the provisions of the Civil Code pertinent to the case at bar:

> 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.
>
> 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.

In accord with the above provisions, Celyrosa Express, a common carrier, through its driver, respondent De Borja, and its registered owner, respondent Callejas, has the express obligation "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,"[11] and to observe extraordinary diligence in the discharge of its duty. The death of the wife of the petitioner in the course of transporting her to her destination gave rise to the presumption of negligence of the carrier. To overcome the presumption, respondents have to show that they observed extraordinary diligence in the discharge of their duty, or that the accident was caused by a fortuitous event.

This Court interpreted the above quoted provisions in **Pilapil v. Court of Appeals**.