

THIRD DIVISION

[G.R. No. 162104, September 15, 2009]

**R TRANSPORT CORPORATION, REPRESENTED BY ITS
OWNER/PRESIDENT RIZALINA LAMZON, PETITIONER, VS.
EDUARDO PANTE, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*^[1] of the Decision dated October 7, 2003 of the Court of Appeals in CA-G.R. CV No. 76170, and its Resolution dated February 5, 2004, denying petitioner's motion for reconsideration. The Court of Appeals affirmed the Decision of the Regional Trial Court (RTC) of Gapan City, Branch 35, dated January 26, 2002, holding petitioner liable to respondent for damages for physical injuries sustained by respondent due to a vehicular accident.

The facts^[2] are as follows:

Petitioner R Transport Corporation, represented by its owner and president, Rizalina Lamzon,^[3] is a common carrier engaged in operating a bus line transporting passengers to Gapan, Nueva Ecija from Cubao, Quezon City and back.

At about 3:00 a.m. of January 27, 1995, respondent Eduardo Pante rode petitioner's R. L. Bus Liner with Plate Number CVW-635 and Body Number 94810 in Cubao, Quezon City bound for Gapan, Nueva Ecija. Respondent paid the sum of P48.00 for his fare, and he was issued bus ticket number 555401.^[4]

While traveling along the Doña Remedios Trinidad Highway in Baliuag, Bulacan, the bus hit a tree and a house due to the fast and reckless driving of the bus driver, Johnny Merdiquia. Respondent sustained physical injuries as a result of the vehicular accident. He was brought by an unidentified employee of petitioner to the Baliuag District Hospital, where respondent was diagnosed to have sustained a "laceration frontal area, with fracture of the right humerus,"^[5] or the bone that extends from the shoulder to the elbow of the right arm. Respondent underwent an operation for the fracture of the right humerus per Certification dated February 17, 1995 issued by Dr. Virginia C. Cabling of the Baliuag District Hospital.^[6]

The hospital's Statement of Account showed that respondent's operation and confinement cost P22,870.00.^[7] Respondent also spent P8,072.60 for his medication. He was informed that he had to undergo a second operation after two years of rest.^[8] He was unemployed for almost a year after his first operation because Goldilocks, where he worked as a production crew, refused to accept him with his disability as he could not perform his usual job.^[9]

By way of initial assistance, petitioner gave respondent's wife, Analiza P. Pante, the sum of P7,000.00, which was spent for the stainless steel instrument used in his fractured arm.^[10]

After the first operation, respondent demanded from petitioner, through its manager, Michael Cando, the full payment or reimbursement of his medical and hospitalization expenses, but petitioner refused payment.^[11]

Four years later, respondent underwent a second operation. He spent P15,170.00 for medical and hospitalization expenses.^[12]

On March 14, 1995, respondent filed a Complaint^[13] for damages against petitioner with the RTC of Gapan City, Branch 35 (trial court) for the injuries he sustained as a result of the vehicular accident.

In its Answer,^[14] petitioner put up the defense that it had always exercised the diligence of a good father of a family in the selection and supervision of its employees, and that the accident was a *force majeure* for which it should not be held liable.

At the pre-trial on October 4, 1995, petitioner was declared in default,^[15] which was reconsidered by the trial court on December 12, 1995^[16] upon finding that petitioner had earlier filed a Motion to Transfer Date of Hearing. Trial was first set on February 26, 1996, and from then on trial was postponed several times on motion of petitioner.

Six years later, on October 24, 2001, respondent's direct examination was concluded. His cross-examination was reset to December 5, 2001 due to the absence of petitioner and its counsel.^[17] It was again reset to January 23, 2002^[18] upon petitioner's motion. On January 23, 2002, petitioner, through its new counsel, asked for another postponement on the ground that he was not ready. Hence, the cross-examination of respondent was reset to March 13, 2002.^[19]

On March 13, 2002, petitioner was declared to have waived its right to cross-examine respondent due to the absence of petitioner and its counsel, and respondent was allowed to offer his exhibits within five days.^[20] Petitioner's motion for reconsideration dated April 4, 2002^[21] was denied on May 7, 2002.^[22]

In the hearing of June 19, 2002, petitioner was declared to have waived its right to present evidence on motion of respondent's counsel in view of the unexplained absence of petitioner and its counsel despite prior notice. The case was declared submitted for decision.^[23]

On June 26, 2002, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the plaintiffs to be entitled to damages and ordering defendants to [pay]:

- 1.) P39,112.60 as actual damages;
- 2.) P50,000.00 as moral damages;
- 3.) P50,000.00 as exemplary damages;
- 4.) Twenty-five percent (25%) of the total of which shall constitute a lien as contingent fee of plaintiff's counsel.^[24]

So ordered.

The trial court held that the provisions of the Civil Code on common carriers govern this case. Article 1756 of the Civil Code states that "[i]n 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 by Articles 1733 and 1755." The trial court ruled that since petitioner failed to dispute said presumption despite the many opportunities given to it, such presumption of negligence stands.

Petitioner appealed the decision of the trial court to the Court of Appeals.

In its Decision dated October 7, 2003, the Court of Appeals affirmed the decision of the trial court, the dispositive portion of which reads:

WHEREFORE, for lack of merit, the appeal is DENIED and the Decision appealed from is AFFIRMED *in toto*. With double costs against the appellant.^[25]

Petitioner's motion for reconsideration was denied for lack of merit in the Resolution of the Court of Appeals dated February 5, 2004.^[26]

Hence, petitioner filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS, TENTH DIVISION GRAVELY ERRED IN NOT GIVING DUE COURSE TO THE DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION OF THE DECISION PROMULGATED ON OCTOBER 7, 2003, THEREBY DEPRIVING PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS.

II

THE HONORABLE COURT OF APPEALS, TENTH DIVISION FURTHER GRAVELY ERRED IN AFFIRMING IN TOTO THE DECISION OF THE REGIONAL TRIAL COURT OF GAPAN CITY, BRANCH 35, PARTICULARLY IN AWARDDING DAMAGES TO THE RESPONDENT WITHOUT PRESENTING ANY SUBSTANTIAL EVIDENCE.

III

THE HONORABLE COURT OF APPEALS, TENTH DIVISION, IN AFFIRMING

IN TOTO THE DECISION OF THE REGIONAL TRIAL COURT OF GAPAN CITY, BRANCH 35, HAS COMMITTED GRAVE AND REVERSIBLE ERROR IN ITS FINDING OF FACTS AND APPLICATION OF [THE] LAW.^[27]

The main issue is whether or not petitioner is liable to respondent for damages.

The Court affirms the decision of the Court of Appeals that petitioner is liable for damages.

Under the Civil Code, common carriers, like petitioner bus company, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case.^[28] They are bound to carry the 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.^[29]

Article 1756 of the Civil Code states that "[i]n 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 by Articles 1733 and 1755."

Further, Article 1759 of the Civil Code provides that **"[c]ommon carriers are liable for the death or injury 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.**"^[30]

In this case, the testimonial evidence of respondent showed that petitioner, through its bus driver, failed to observe extraordinary diligence, and was, therefore, negligent in transporting the passengers of the bus safely to Gapan, Nueva Ecija on January 27, 1995, since the bus bumped a tree and a house, and caused physical injuries to respondent. Article 1759 of the Civil Code explicitly states that the common carrier is liable for the death or injury to passengers through the negligence or willful acts of its employees, and that such liability does not cease upon proof that the common carrier exercised all the diligence of a good father of a family in the selection and supervision of its employees. Hence, even if petitioner was able to prove that it exercised the diligence of a good father of the family in the selection and supervision of its bus driver, it is still liable to respondent for the physical injuries he sustained due to the vehicular accident.^[31]

Petitioner cannot complain that it was denied due process when the trial court waived its right to present evidence, because it only had itself to blame for its failure to attend the hearing scheduled for reception of its evidence on June 19, 2002. The trial court stated, thus:

It is noteworthy to state that during the course of the proceeding of this case, defendant (petitioner) and its counsel hardly appeared in court and