

THIRD DIVISION

[G.R. No. 135507, November 29, 2005]

PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. NELSON GOIMCO, SR., SPOUSES ISABELO AND REMEGIA LADIA, RESPONDENTS.

R E S O L U T I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for *certiorari* seeking to set aside the Resolutions^[1] of the Court of Appeals dated February 3, 1998 in CA-G.R. CV No. 56176 dismissing the appeal filed by the Philippine Rabbit Bus Liner, Inc., herein petitioner, for its failure to file the required appellant's brief within the reglementary period.

Petitioner is a corporation organized and existing under the Philippine laws and is engaged in business as a common carrier.

On October 17, 1983, petitioner's bus No. 309 collided with a ten-wheeler truck in Dolores, Mabalacat, Pampanga. As a result, several passengers were injured. Nelson Goimco, Sr., herein respondent and one of the passengers, filed with the Regional Trial Court (RTC), Branch 65, Tarlac City, a complaint for breach of contract of carriage against petitioner, docketed as Civil Case No. 6977. Spouses Isabelo and Remegia Ladia (also impleaded herein as respondents), parents of Isabelo Ladia, Jr. who died, likewise instituted a similar complaint with the same court, docketed as Civil Case No. 7054. The two cases were consolidated and jointly heard by the trial court.

After trial, the RTC rendered a Joint Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered in favor of the plaintiffs and against the defendant as follows:

- (1) Defendant is ordered to pay to plaintiff Nelson Goimco, Sr., the amount of P248,157.38 as and by way of actual damages; the amount of P100,000.00 as and by way of moral damages; the amount of P100,000.00 as and by way of exemplary damages; and the amount of P50,000.00 as and by way of attorney's fees;
- (2) Defendant is ordered to pay to the heirs of Isabelo Ladia, Jr., the amount of P50,000.00 for the death of Isabelo Ladia, Jr., the amount of P75,000.00 as and by way of actual damages, and amount of P15,000.00 as and by way of attorney's fees.
- (3) Third-party defendant First Integrated Bonding and

Insurance Company is ordered to pay to the defendant the amount of P50,000.00 by way of reimbursement of liabilities incurred by the defendant as a result of the accident.

SO ORDERED."^[2]

Both parties filed their respective motions for reconsideration of the Decision. Petitioner sought to be exonerated from all civil liabilities, while respondents asked for an award corresponding to the loss of income of respondent Nelson Goimco and the late Isabelo Ladia, Jr.

In an Order dated September 7, 1995, the trial court denied petitioner's motion but granted those of respondents Goimco and spouses Ladia, thus:

"WHEREFORE, the decision of this court is hereby amended awarding the amount of P679,629,60 to Nelson Goimco and P100,980.00 to the heirs of Isabelo Ladia, Jr., for loss of income.

SO ORDERED."^[3]

Petitioner then, through the law office of Escudero, Marasigan, Sta. Ana & E.H. Villareal, interposed an appeal to the Court of Appeals.

On October 2, 1997, petitioner received a copy of the Order of the Appellate Court directing it to file its appellant's brief within fifteen (15) days or until October 17, 1997. However, despite notice, petitioner did not file the required appellant's brief. Hence, on February 3, 1998, the Court of Appeals dismissed petitioner's appeal pursuant to Section 1 (3), Rule 50 of the 1997 Rules of Civil Procedure, as amended.

Petitioner filed a motion for reconsideration alleging that "the expiration of the reglementary period fell during more or less at the time that the office log book (of its counsel), containing the schedules of hearings and deadlines for pleadings, motions and other documents, inadvertently got lost."^[4] Hence, its failure to file the appellant's brief was due to "its (counsel's) mistake or excusable negligence."

On July 29, 1998, the Court of Appeals denied petitioner's motion for reconsideration, holding that its "counsel could have, with ordinary prudence, updated the schedule of hearings and deadlines for the filing of pleadings, briefs and other court papers within a lesser period of 4 months."^[5]

Hence, the instant petition for *certiorari*.

This petition lacks merit.

What petitioner should have filed is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, not a petition for *certiorari* under Rule 65 of the same Rules. We have consistently held that *certiorari* is not a substitute for a lost appeal.^[6]

The extraordinary writ of *certiorari* issues only for the correction of errors of