448 Phil. 706

SECOND DIVISION

[G.R. No. 117020, April 04, 2003]

VIRON TRANSPORTATION CO., INC., PETITIONER, VS. COURT OF APPEALS, PANTRANCO NORTH EXPRESS INC. AND DAMASO V. VENTURA, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 39066 reversing the Decision[2] of the Regional Trial Court of Manila, Branch 41, in Civil Case No. 91-58888 and remanding the case to the trial court for further proceedings.

The Antecedent Proceedings

On October 9, 1991, petitioner Viron Transportation Co., Inc., filed a complaint for damages against respondents Pantranco North Express Co., Inc. and Damaso V. Ventura, docketed as Civil Case No. 91-58888, with the Regional Trial Court of Manila, Branch 41. The petitioner alleged, *inter alia*, in its complaint *a quo* that:

> 2. - That plaintiff (herein petitioner) being engaged in a land transportation business is the registered owner of a passenger bus identified as Viron Transit Bus No. 58 with Plate No. AVC-255;
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> 3. - That defendant (respondent) Pantranco, being engaged in transportation business, is the registered owner of Pantranco Bus No. 1104, Plate No. AVH-112 while defendant (respondent) Ventura is the driver and person-in-charge of a northbound Pantranco Bus No. 1104 bearing Plate No. AVH-112 on October 4, 1991;
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> 4. - That on 4 October 1991 at 11:45 A.M. or thereabout, while said Viron Transit Bus No. 58 with Plate No. AVC-255 driven prudently and slowly by plaintiff's regular driver-employee Alberto Casino, then proceeding slowly towards the north direction from the right shoulder (eastern shoulder) of the National Highway with its left signal lights on at Brgy. Legaspi, San Manuel, Tarlac, said defendant while driving said Pantranco Bus No. 1104 in a reckless and imprudent manner hit and bumped from behind the rear left portion of said Viron Transit Bus No. 58, thereby causing actual damage to herein plaintiff in the amount of P34,900.00 representing costs of repair and/or replacement of parts, plus labor as well as loss of expected income;
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> 5. - That by reason of the recklessness, imprudence and negligence of

defendants and for their failure to pay plaintiff the damages which the latter sustained despite repeated demands, herein plaintiff was forced to engaged (sic) the services of counsel to file the instant complaint at an agreed honorarium of 25% of the total claim hereof as and for attorney's fees;

6. - That to set an example for public good so that others who are similarly situated or minded must, in the exercise of their right and performance of their duties, act with outmost caution and extra care in handling his assigned vehicle, said defendant should be made to pay plaintiff an amount of no less than P50,000.00 as exemplary damages;

7. - That the incident would have not ensued had defendant Pantranco North Express, Inc. exercised due diligence of a good father of a family in selecting and supervising its driver, herein defendant Damaso Ventura.[3]

The petitioner prayed therein as follows:

WHEREFORE, it is respectfully prayed of this Honorable Court that after due hearing a judgment be rendered in favor of plaintiff and against defendants, ordering the defendants to pay jointly and severally plaintiff the following:

a. P34,900.00, representing cost of materials, replacement of parts, labor and unearned income of plaintiff;

b. P50,000.00 as exemplary damages;

c. 25% of the total claim hereof as and for attorney's fees; and

d. Cost of litigation.

General relief is prayed therefor.[4]

The respondents, through counsel, Atty. Ricardo L. Saclayan, interposed special and affirmative defenses in their answer to the complaint, thus:

SPECIAL and/or AFFIRMATIVE DEFENSES

5. Plaintiff has no cause of action against defendants;

6. The direct and proximate cause of the subject accident was due to the recklessness, imprudence and negligence of the plaintiff's driver-

> employee – Alberto Casino and of plaintiff itself, for failure to exercise the required diligence in the selection, supervision and control of its employees including and particularly said driver A. Casino;
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> 7. Defendant – Damaso Ventura is a professional, experienced and skilled driver. He has been very careful and prudent, both before and during the subject accident;
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> 8. Defendant – Pantranco North Express, Inc. has always exercised the due diligence of a good father of the family in the selection, supervision and control of all its employees including its driver, Damaso Ventura;
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> 9. Plaintiff's claim is baseless, excessive, imaginary and speculative and filed for the purpose of harassment;[5]

The respondents also incorporated in their answer compulsory counterclaims for the amount of P20,000.00.

On December 9, 1991, the trial court issued a notice of pre-trial conference on January 10, 1992.[6] However, the pre-trial was reset to February 7, 1992 at 8:30 a.m. on joint motion of the parties on the ground that they were negotiating for the amicable settlement of the case.[7]

During the pre-trial on February 7, 1992, Ma. Josefina T. Payongayong appeared and informed the court that she was representing Atty. Antonio P. Pekas, the counsel of the respondents, and prayed for a resetting on the ground that said lawyer was not available for the pre-trial. However, the court denied the motion upon finding that the counsel of record of the respondents was Atty. Saclayan, not Atty. Pekas.

The court issued an order on said date declaring the respondents as in default and setting the reception, *ex parte*, of the evidence of the petitioner on March 13, 1992. [8] During the hearing, the petitioner presented Alberto Casino and marked its documentary evidence. However, the petitioner failed to complete its evidence and thus prayed for a continuance. The court granted the motion and set the case for hearing for the continuation of the presentation of petitioner's evidence on March 26, 1992.[9] However, on March 24, 1992, respondent Pantranco Co., Inc., through Atty. Pekas, filed a motion to lift order of default. Appended to the motion was the Secretary's Certificate that said counsel was authorized by the respondent company to

> … represent the corporation in the pre-trial proceedings of the said case, to negotiate or enter into any compromise agreement pertaining to the same, and to execute any document pertinent thereto, in accordance with Section 1, Rule 20 of the Revised Rules of Court. They are also authorized to represent the corporation during the trial of the said case. [10]

On April 10, 1992, the court issued an order granting the motion and lifting its order of default against the respondents.[11] On April 27, 1992, the branch clerk of court issued a mimeographed notice of hearing on May 22, 1992. However, typewritten on the notice were the words "Pre-Trial Conference."[12] The respondents and Atty. Saclayan, counsel of respondent Ventura, received on May 5, 1992 their respective copies of said notice.

During the pre-trial conference on May 22, 1992, only petitioner's counsel appeared. Neither respondent Ventura nor Atty. Saclayan and Atty. Pekas appeared. On petitioner's motion, the court issued an order declaring the respondents as in default and allowing the petitioner to continue presenting its evidence, *ex parte*, on June 19, 1992.[13] The petitioner presented Atty. Orlando N. Asuncion and Maximo Candaño, its manager, as witnesses. The petitioner forthwith offered its documentary evidence and rested its case. The court issued an order on the same day declaring that the case was submitted for decision as of said date.[14]

On July 13, 1992, the Office of the Government Corporate Counsel (OGCC) entered its appearance as counsel for the respondents.[15] On July 16, 1992, the court rendered judgment in favor of the petitioner, the decretal portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the defendants to pay plaintiff the sum of P25,900.00 as and by way of actual damage and the further sum of P5,000.00 as and by way of attorney's fees and expenses of litigation.
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> Costs against the defendants.
>
> SO ORDERED.[16]

On July 24, 1992, the respondents, through the OGCC, filed a motion to lift and/or set aside the trial court's Order of Default, dated May 22, 1992, alleging, *inter alia*, that:

> 1. Defendant is now a government-owned and controlled corporation and as such it is represented by the Office of the Government Corporate Counsel, the statutory counsel of all government-owned and controlled corporations;
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> 2. Prior to the appearance of the OGCC, Defendants were represented by a private counsel in the person of Atty. Ricardo L. Saclayan, the counsel of record;
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> 3. Because of the COA and statutory requirements that government-owned and controlled corporations must be represented by the OGCC, Defendant Pantranco recently endorsed all its cases to the OGCC;
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> 4. Because of the numerous cases involved in the turn over, the previous

> counsel of record failed to move for a reconsideration of the default order. Thus, when the instant case reached the OGCC, the undersigned counsel made the discovery and is thus filing the instant motion. The failure of the previous counsel may be considered as excusable negligence;[17]

The respondents prayed in their motion that:

> WHEREFORE, premises considered, it is respectfully prayed that the order of default issued by this Honorable Court be reconsidered and set aside and in lieu thereof Defendants' rights be restored and that, subsequently, Defendants be allowed to cross-examine the witnesses of the plaintiff and to present their evidence in support of their defense.
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> Further relief and remedies which may be deemed just and equitable under the premises are likewise prayed for.[18]

The respondents set the motion for hearing on August 7, 1992 at 8:30 a.m. appending thereto an affidavit of merit reiterating their special and affirmative defenses in their answer to the complaint.[19]

On July 27, 1992, the trial court issued an order merely noting the said motion considering that it had already rendered a judgment against respondents.[20] The respondents received a copy of the trial court's decision on July 31, 1992 and on August 10, 1992, they filed their notice of appeal therefrom to the Court of Appeals. [21]

In their petition filed with the Court of Appeals, the respondents assailed the decision of the trial court contending that:

I

> THE LOWER COURT ERRED IN DECLARING THE DEFENDANTS AS IN DEFAULT AND IN NOT LIFTING THE ORDER DECLARING DEFENDANT AS IN DEFAULT.

II

> THE LOWER COURT ERRED IN FINDING THE DEFENDANTS LIABLE FOR DAMAGES[22]