

TWELFTH DIVISION

[CA-G.R. CV NO. 77989, August 07, 2006]

LOURDES V. ALVAREZ, PLAINTIFF-APPELLEE, VS. PANTHER EXPRESS, INC. AND WILFREDO RONQUILLO, DEFENDANTS-APPELLANTS.

D E C I S I O N

MENDOZA, J.:

At bar is an appeal from the January 24, 2003 Decision^[1] of the Regional Trial Court, Branch 17, Cavite City, awarding damages in favor of the plaintiff-appellee, Lourdes V. Alvarez, whose Tamaraw FX was bumped by defendant-appellant Panther Express, Inc.'s passenger bus driven by co-defendant-appellant Wilfredo Ronquillo.

The factual and procedural antecedents and the respective positions of the parties and their evidence therefor have been summed up by the trial court, as follows:

"This is a **Complaint for damages** filed by Lourdes Alvarez as a result of an accident whereby her Toyota Tamaraw FX (FX, for short), with plate number UEE 823, was allegedly bumped by a bus owned by Panther Express, Inc., with plate number CVU 284, and driven by Wilfredo Ronquillo in Capas, Tarlac on December 27, 1998. Plaintiff alleges that Ronquillo's negligence was the cause of the accident and she claims P280,000 and lost income of P700 per day as actual damages, P100,000 as exemplary damages, P100,000 as moral damages, and P30,000 plus P2,500 per appearance as attorney's fees.

Their Motion to Dismiss having been denied, defendants filed their **Answer** denying the allegations of the Complaint and alleging that plaintiff did not exercise diligence in selecting and supervising her driver and that the cause of the accident was the negligence of plaintiff's driver, that defendant Panther exercised negligence in the selection and supervision of its employees, including Ronquillo; and that Ronquillo drove the bus with due care and at moderate speed. As compulsory counterclaim defendants claim P100,297.90 for the damages caused to the bus, P465,000 for unrealized income while the bus was under repair, P35,000 and P3,000 per appearance as attorney's fees, and P25,000 for litigation expenses.

Evidence for the plaintiff

Robinson Sison, driver of the FX, testified that on December 27, 1998, he was driving the FX of plaintiff Lourdes Alvarez from Baguio City with 8 passengers on board. Somewhere in Capas, Tarlac, at about 10 pm, he was bumped from behind by a Panther bus causing the FX to skid on the

pavement, hit the iron railing of the road, and overturned to its usual position (TSN 11/19/99, p. 6, 7, 12). As a result, the FX was totally wrecked. According to Sison, the driver of the bus told him that he (bus driver) was fixing the television when the bumping occurred. An inspector of the bus also told the bus driver that he (bus driver) was driving very fast. Sison stated that he was interviewed by the police who prepared two (2) reports (Exhs. B, C). The police investigator also took pictures of the FX (Exhs. E, E-1m E-2, and E-3) and the bus (Exhs. I, I-1). Sison claims that two employees of Panther told him in the morning of the following day that they will pay all the expenses. Sison also stated that the FX was still registered in the name of the previous owner, Dante Ignacio, at the time of the incident.

Lourdes Alvarez testified that she bought the FX, together with the franchise to operate it as taxi, from Dante Ignacio on December 11, 1998 (Deed of Absolute Sale, Exh. A; Certificate of Public Convenience, Exh. H, H-1). She earns a daily boundary of P700. Her lawyer wrote a demand letter to Panther but she received no response. She had sleepless nights and nervous breakdown as a result of the incident for which she claims moral damages of P100,000, exemplary damages of P100,000, attorneys fees of P30,000 plus P2,500 per appearance, and actual damages of P280,000 for the car plus P700/day as lost income. Alvarez also testified that the FX was insured by the previous owner with Pacific Assurance Corporation from March 12, 1998 to April 1, 1999 and is covered by Certificate of Public Convenience (Exh. H). She has not gone to the LTFRB concerning the transfer of the FX and the franchise to her and she was not aware that Sison had no valid driver's license.

SPO1 Leonardo Lee testified that as night investigator of the Capas Police Station on December 27, 1998, he conducted an ocular investigation of a vehicular accident in the vicinity of Brgy. Dolores, Capas, Tarlac. The bus driver admitted to him that he was the one who bumped the rear portion of the FX. When he arrived at the scene, the FX was lying on the creek under the bridge while the bus was along the eastern shoulder of the road, facing south (TSN 10/20/00, p. 6-7). After preparing a first report, dated December 29, 1998 (Exh. B), he did a second report on January 9, 1999 (Exh. C) after he noticed that the driver's license of Ronquillo was already 'invalid' at the time of the accident (TSN 10/20/00, p. 9). Lee also stated that the admission of the bus driver is not in his report because the latter did not execute a written affidavit and that it was the chief investigator who called his attention to the 'invalid' license after the records were turned over. When confronted with the license of Sison, Lee admitted that it was valid only up to July 1998 and that he did not indicated it in his second report (Exh. C); that his conclusion that Ronquillo has no driver's license was drawn from the entries on the temporary driver's license and he did not ask Ronquillo if he got a license within the 60 day period; that the two front wheels, the right and left doors of the FX were destroyed; that the FX driver told him that the operator of the FX is Dante Ignacio who was mentioned as such in the complaint filed with the MCTC of Capas; that the FX driver only presented the registration paper and not the deed of sale; and that Ronquillo did not mention to him that he (Ronquillo) was at fault because

he was sleeping.

Evidence of defendants:

Defendant Ronquillo testified that on December 27, 1998, between 9:30 to 10:30 pm, he was driving the Panther bus along McArthur Highway, Capas, Tarlac bound for Manila. He noticed that the driver of the FX which was following him was continuously blowing his horn as he wanted to overtake but could not do so as there were cars coming from the opposite direction. Subsequently, the FX overtook on the right side of the bus, along the shoulder which could accommodate a vehicle but narrows as it nears the bridge. The FX tried very hard to overtake the bus but since the road was narrowing the FX driver positioned his vehicle ahead of the bus and as he entered the lane of the bus, the right front portion of the bus and its windshield was hit by the FX (TSN 8/1/01, p. 6-7). Thereupon, the FX fell into the creek near the bridge. On board the bus were 54 passengers plus the inspector and the conductor. Ronquillo also stated that Sison had an expired license; that as a result of the incident the bus was under repair for one month (ibid, p. 17); that it earns P15,000 a day; and that a criminal case was filed in Capas, Tarlac against him. He denied that he was fixing the television when the incident happened and stated that, in his experience, the police favor the vehicle that has more victims.

Ronquillo further stated that there was heavy traffic at that time and the vehicles were moving slowly and it was only Sison who took the shoulder and drove fast to overtake him; that the bus was 10 meters from the bridge when the FX overtook him; that the FX sideswiped the bus before falling into the creek (TSN 8/21/01, pp. 33-36). When confronted with the police reports, Ronquillo stated the contents thereof are different from the reports that he submitted to the company but he did not present said reports (TSN 8/21/01, pp. 38-44). Defense counsel, however, manifested that there are no police reports other than those presented by plaintiff (TSN 9/3/01, p. 3). Ronquillo also stated that he did not see what happened to the right side of the bus and he was traveling at 60 km/hr when the FX suddenly overtook him (ibid, pp. 12-13); that he did not stop when he saw the FX on his right and even as the shoulder was narrowing; that he stopped after the bridge because he could not stop in the middle; that after the bumping he slowly stepped on the brakes but the bus still moved on and if he stopped fully it will be them who would fall from the bridge; that the bus stopped on the right shoulder after the bridge (ibid, pp. 31-34).

Amado Santos, bus inspector, who was on board the bus when the accident happened corroborated the testimony of Ronquillo that the FX tried to overtake the bus by using the shoulder and when the driver saw that the shoulder was narrowing he suddenly entered the lane of the bus, hit the bus, and then fell into the creek; that the bus stopped about 50-100 meters after the bridge (TSN 9/3/01, p. 62); that he was seated in front of the bus and he saw the FX when it was already on the shoulder but did not tell the driver (ibid, 51-52); that the FX was alongside the bus for less than a minute and blew its horn once when he saw that the

bridge was narrowing and while it was on the shoulder (ibid, 66); that they helped bring the victims to the hospital.

Regarding the damage to the bus, **Carlos Pring** testified that he repainted the bus and the cost of materials and labor was P10,000 and P7,000, respectively (Exh. 2-Job Estimate. Exh. 7). Luis Pena, a 'latero', testified that he did repair works on the bus and charged Panther P10,500 for labor and P70,000 for materials (Exh. 2, Job Estimate). Atty. Filemon Manlutac testified on the unrealized income of the bus (Exh. 3) as well as his attorney's fees. Ciriaco Magsino, union president of Panther, testified that as driver he receives a basic salary of P250 daily plus commission of 3.5% of the gross daily income; that if the bus is undergoing ordinary repair they do not earn anything but if the repair is due to accident they will receive salary if they win the case or if a settlement is paid in their favor but will not receive salary if they lose the case; that Panther gives a computation of loss on income of buses involved in accidents like one in the case at bar (Exh. 3)."[2]

Thereafter, on January 24, 2003, the trial court, Hon. Melchor Q. C. Sadang presiding, ruled in favor of plaintiff Alvarez, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Wilfredo Ronquillo and Panther Express Inc. to pay plaintiff Lourdes Alvarez, jointly and severally, the following:

1. the sum of P280,000 as actual or compensatory damages for the totally wrecked FX;
2. the sum of P50,000.00 as exemplary damages;
3. the sum of P10,000 as attorneys; and
4. costs of suit.

SO ORDERED."[3]

Not in conformity with the trial court's ruling, defendants-appellants appealed the decision. In their Brief,[4] defendants-appellants assailed the subject decision on the basis of this

"ASSIGNMENT OF ERRORS

The court a quo clearly erred –

--In not applying the correct jurisprudence in deciding N-6818.

--In not correctly appreciating the admissible and competent evidence therein.

--In not rendering a Decision in favor of the appellants."[5]