

FIRST DIVISION

[G.R. No. 203902, July 19, 2017]

**SPOUSES DIONISIO ESTRADA AND JOVITA R. ESTRADA,
PETITIONERS, V. PHILIPPINE RABBIT BUS LINES, INC. AND
EDUARDO R. SAYLAN, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

The Court restates in this petition two principles on the grant of damages. *First*, moral damages, as a general rule, are not recoverable in an action for damages predicated on breach of contract.^[1] *Second*, temperate damages in lieu of actual damages for loss of earning capacity may be awarded where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.^[2]

This Petition for Review on *Certiorari* assails the May 16, 2012 Decision^[3] and October 1, 2012 Resolution^[4] of the Court of Appeals (CA) in CA-G.R. CV No. 95520, which partially granted the appeal filed therewith by respondent Philippine Rabbit Bus Lines, Inc. (Philippine Rabbit) and denied petitioners spouses Dionisio C. Estrada (Dionisio) and Jovita R. Estrada's motion for reconsideration thereto.

Factual Antecedents

On April 13, 2004, petitioners filed with the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, a Complaint^[5] for Damages against Philippine Rabbit and respondent Eduardo R. Saylan (Eduardo).

The facts as succinctly summarized by the RTC are as follows:

[A] mishap occurred on April 9, 2002 along the national highway in Barangay Alipangpang, Pozorrubio, Pangasinan, between the passenger bus with plate number CVK-964 and body number 3101, driven by [respondent] Eduardo Saylan and owned by [respondent] Philippine Rabbit Bus, Lines, Inc., and the Isuzu truck with plate number UPB-974 driven by Willy U. Urez and registered in the name of Rogelio Cuyton, Jr. At the time of the incident, the Philippine Rabbit Bus was going towards the north direction, while the Isuzu truck was travelling towards the south direction. The collision happened at the left lane or the lane properly belonging to the Isuzu truck. The right front portion of the Isuzu Truck appears to have collided with the right side portion of the body of the Philippine Rabbit bus. x x x Before the collision, the bus was following closely a jeepney. When the jeepney stopped, the bus suddenly swerved to the left encroaching upon the rightful lane of the Isuzu truck, which resulted in the collision of the two (2) vehicles. x x x The [petitioner] Dionisio Estrada, who was among the passengers of the Philippine Rabbit

bus, as evidenced by the ticket issued to him, was injured on the [right] arm as a consequence of the accident. His injured right arm was amputated at the Villaflor Medical Doctor's Hospital in Dagupan City x x x. For the treatment of his injury, he incurred expenses as evidenced by x x x various receipts.^[6]

Dionisio argued that pursuant to the contract of carriage between him and Philippine Rabbit, respondents were duty-bound to carry him safely as far as human care and foresight can provide, with utmost diligence of a very cautious person, and with due regard for all the circumstances from the point of his origin in Urdaneta City to his destination in Pugo, La Union. However, through the fault and negligence of Philippine Rabbit's driver, Eduardo, and without human care foresight, and due regard for all circumstances, respondents failed to transport him safely by reason of the aforementioned collision which resulted in the amputation of Dionisio's right arm. And since demands for Philippine Rabbit^[7] to pay him damages for the injury he sustained remained unheeded, Dionisio filed the said complaint wherein he prayed for the following awards: moral damages of P500,000, actual damages of P60,000.00, and attorney's fees of P25,000.00.

Petitioners' claim for moral damages, in particular, was based on the following allegations:

9. [The] amount of P500,000.00 as moral damages for the amputation of [Dionisio's] right arm for life including his moral sufferings for such [loss] of right arm is reasonable.

Said amount is computed and derived using the formula $(2/3 \times [80 - \text{age of the complainant when the injury is sustained}] = \text{life expectancy})$ adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality. From such formula, [Dionisio] is expected to live for 18 years, which is equivalent [to] about 6570 days. For each day, [Dionisio] is claiming P80.00 as he is expected to work for 8 hours a day with his amputated arm or to enjoy the same for at least 8 hours a day (or is claiming P10.00 for each hour) for 18 years (6570 days). The amount that can be computed thereof would be P525,600.00 (6570 days x P80.00). [Dionisio] then [rounded] it off to P500,000.00, the moral damages consisted [of] his moral sufferings due to the [loss] of his right arm for life;^[8]

Denying any liability, Philippine Rabbit in its Answer^[9] averred that it carried Dionisio safely as far as human care and foresight could provide with the utmost diligence of a very cautious person and with due regard for all the circumstances prevailing. While it did not contest that its bus figured in an accident, Philippine Rabbit nevertheless argued that the cause thereof was an extraordinary circumstance independent of its driver's action or a fortuitous event. Hence, it claimed to be exempt from any liability arising therefrom. In any case, Philippine Rabbit averred that it was the Isuzu truck coming from the opposite direction which had the last clear chance to avoid the mishap. Instead of slowing down upon seeing the bus, the said truck continued its speed such that it bumped into the right side of the bus. The proximate cause of the accident, therefore, was the wrongful and negligent manner in which the Isuzu truck was operated by its driver. In view of this, Philippine Rabbit believed that Dionisio has no cause of action against it.

With respect to Eduardo, he was declared in default after he failed to file an Answer despite due notice.^[10]

Ruling of the Regional Trial Court

Treating petitioners' Complaint for damages as one predicated on breach of contract of carriage, the RTC rendered its Decision^[11] on December 1, 2009.

In concluding that Eduardo was negligent in driving the Philippine Rabbit bus, the said court ratiocinated, viz.:

Evidently, prior to the accident, [Eduardo] was tailgating the jeepney ahead of him. When the jeepney stopped, [Eduardo] suddenly swerved the bus to the left, encroaching in the process the rightful lane of the oncoming Isuzu truck, thereby resulting in the collision. The fact that [Eduardo] did not apply the brakes, but instead swerved to the other lane, fairly suggests that he was not only unnecessarily close to the jeepney, but that he was operating the bus at a speed greater than what was reasonably necessary for him to be able to bring his vehicle to a full stop to avoid hitting the vehicle he was then following. Clearly, immediately before the collision, [Eduardo] was actually violating Section 35 of the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:

Sec. 35. Restriction as to speed. - (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than [what] is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the clear distance ahead.

Too, when [Eduardo] swerved to the left and encroached on the rightful lane of the Isuzu truck, he was violating Section 41 of the same Traffic Code:

Sec. 41. Restriction on overtaking and passing. - (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle, proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

The fact that the collision occurred immediately after the bus swerved on the left lane clearly [indicates] that the other lane was not clear and free of oncoming vehicle at the time x x x [Eduardo] tried to overtake the jeepney to avoid hitting it.

It is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation, unless

there is proof to the contrary (Article 2185 of the Civil Code). [Eduardo] failed to rebut this legal presumption as he chose not answer the complaint and to testify in court. [Philippine Rabbit was also] unsuccessful in overthrowing the said legal presumption. x x x

[Eduardo's] failure to observe the proper and safe distance from the vehicle ahead of him and in running the bus at a speed greater than what was reasonably necessary to control and stop the vehicle when warranted by the circumstances, clearly were reflective of his lack of precaution, vigilance, and foresight in operating his vehicle. As an experienced driver, he should have known about the danger posed by tailgating another vehicle and driving his vehicle at an unreasonable speed called for by the circumstances. For, the sudden stopping of a motor vehicle, for whatever [reason], is not an uncommon and [unforeseeable] occurrence in the highway. If only he had exercised diligence, vigilance and foresight, he would have refrained from tailgating another vehicle at a dangerously close range. What he should have done instead was to maintain a reasonable distance from the jeepney and drove his vehicle at a speed not greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead. This he failed to do. As a consequence, when the jeepney stopped, he was unable to control and stop the bus. Instead, he was forced to swerve the bus to the left lane blocking the path of the oncoming Isuzu truck. While he averted smashing the jeepney, he however collided with the Isuzu truck. No doubt, it was [Eduardo's] lack of precaution, vigilance and foresight that led to the accident. Otherwise stated, it was his recklessness or negligence that was the proximate cause of the mishap.

[Philippine Rabbit's] imputation of fault to the driver of the Isuzu truck, claiming that it was the latter [which] had the last clear chance to avoid the accident, deserves scant consideration. As the evidence would show, the impact occurred immediately after the bus swerved and while in the process of encroaching on the left lane. This is evidenced by the fact that the front portion of the Isuzu truck collided with the right side portion of the bus. The driver of the Isuzu truck, before the accident, was cruising on the lane properly belonging to him. He had every right to expect that all the vehicles, including the bus coming from the opposite direction would stay on their proper lane. He certainly was not expected to know what prompted the bus driver to suddenly swerve his vehicle to the left. The abruptness by which the bus swerved without a warning could not have given him the luxury of time to reflect and anticipate the bus' encroachment of his lane for him to be able to avoid it. Needless to point out, there was no last clear chance to speak of on the part of the driver of the Isuzu truck to avoid the accident. Besides, the 'last clear chance' principle is not applicable in this case since the instant suit is between the passenger and the common carrier. x x x^[12]

The RTC then proceeded to determine whether Philippine Rabbit, as it claimed, exercised the diligence of a good father of a family in the selection and supervision of its drivers as to negate any liability for damages. The said court, however, was unconvinced after it found that (1) Philippine Rabbit failed to show that it had taken all the necessary and actual steps to thoroughly examine the qualifications of

Eduardo as a driver worthy of employment; and (2) no proof relative to the existence of company rules and regulations, instructions, and policies affecting its drivers, as well as to their actual implementation and observance, were presented. Hence, Philippine Rabbit was held jointly and severally liable with Eduardo for the awards made in favor of Dionisio as follows:

The emotional anguish and suffering of x x x Dionisio Estrada as a consequence of the injury and amputation of his right arm due to the reckless driving of x x x Eduardo, which resulted in the accident, cannot be overemphasized. The loss of the use of his right arm and the humiliation of being tagged in the public [eye] as a person with only one arm would certainly be borne by him for the rest of his life. The amount of moral damages he is praying appears to be reasonable under the circumstances.

Too, the award of attorney's fees is proper considering that x x x [Dionisio] was forced to litigate after x x x [Philippine Rabbit] refused to heed his demand for the payment of damages as a consequence of the accident.

WHEREFORE, judgment is hereby rendered ordering x x x Philippine Rabbit Bus Lines, Inc. and Eduardo Saylan to pay jointly and severally x x x Dionisio Estrada the following amounts:

1. Five Hundred Thousand Pesos (P500,000.00) as moral damages;
2. Fifty Seven Thousand Seven Hundred Sixty Six Pesos and Twenty Five Centavos (P57,766.25), as actual damages; and
3. Twenty Five Thousand Pesos (P25,000.00), as attorney's fees; and the costs of suit.

SO ORDERED.^[13]

Philippine Rabbit filed a Motion for Reconsideration^[14] but the same was denied for lack of merit in an Order^[15] dated May 31, 2010.

Ruling of the Court of Appeals

On appeal, Philippine Rabbit imputed error upon the RTC in not finding that it exercised the diligence of a good father of a family in the selection and supervision of its drivers. In any case, it argued that moral damages are not recoverable in an action for damages predicated on breach of contract except when death results or when the carrier is guilty of fraud or bad faith. Since none of the two aforementioned circumstances are present in this case, Philippine Rabbit contended that it is Eduardo alone who should be held civilly liable.

In a Decision^[16] dated May 16, 2012, the CA partially granted the appeal on the following ratiocination:

Based from [sic] the aforecited allegations in the complaint, it was rightly regarded by the trial court as an action to recover damages arising from breach of contract of carriage. There was in fact, an admission that [Dionisio] was a passenger of a bus owned by [Philippine Rabbit]. In an