

## FIRST DIVISION

[ G.R. No. 170071, March 09, 2011 ]

**HEIRS OF JOSE MARCIAL K. OCHOA NAMELY: RUBY B. OCHOA, MICAELA B. OCHOA AND JOMAR B. OCHOA, PETITIONERS, VS. G & S TRANSPORT CORPORATION, RESPONDENT.**

[G.R. No. 170125]

**G & S TRANSPORT CORPORATION, PETITIONER, VS. HEIRS OF JOSE MARCIAL K. OCHOA NAMELY: RUBY B. OCHOA, MICAELA B. OCHOA AND JOMAR B. OCHOA, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

An accident which claimed the life of a passenger is the root of these two petitions - one brought before us by the common carrier and the other by the heirs of the deceased.

These consolidated Petitions for Review on *Certiorari* assail the Court of Appeals' (CA) Decision<sup>[1]</sup> dated June 29, 2005 in CA-G.R. CV No. 75602 which affirmed with modification the December 21, 2001 Decision and March 5, 2002 Order of the trial court. Likewise assailed is the Resolution<sup>[2]</sup> dated October 12, 2005 denying the parties' respective Motions for Reconsideration thereto.

#### ***Factual Antecedents***

Jose Marcial K. Ochoa (Jose Marcial) died on the night of March 10, 1995 while on board an Avis taxicab owned and operated by G & S Transport Corporation (G & S), a common carrier. As narrated by the trial court, the circumstances attending Jose Marcial's death are as follows:

It appears that sometime in the evening of March 10, 1995, at the Manila Domestic Airport, the late Jose Marcial K. Ochoa boarded and rode a taxicab with Plate No. PKR-534, a passenger vehicle for hire owned and operated by defendant corporation under the business name "Avis Coupon Taxi" (Avis) and driven by its employee and authorized driver Bibiano Padilla, Jr. on his way home to Teacher's Village, Diliman, Quezon City.

At about 11:00 p.m., the taxicab was cruising along Epifanio delos Santos Avenue [EDSA], in front of Camp Aguinaldo in Quezon City at high speed. While going up the Boni Serrano (Santolan) fly-over, it overtook another cab driven by Pablo Clave and tried to pass another vehicle, a

ten-wheeler cargo truck. Because of the narrow space between the left side railing of the fly-over and the ten-wheeler truck, the Avis cab was unable to pass and because of its speed, its driver (Padilla) was unable to control it. To avoid colliding with the truck, Padilla turned the wheel to the left causing his taxicab to ram the railing throwing itself off the fly-over and fell on the middle surface of EDSA below. The forceful drop of the vehicle on the floor of the road broke and split it into two parts. Both driver Padilla and passenger Jose Marcial K. Ochoa were injured and rushed to the hospital. At the East Avenue Medical Center, Ochoa was not as lucky as Padilla who was alive. He was declared dead on arrival from the accident. The death certificate issued by the Office of the Civil Registrar of Quezon City cited the cause of his death as vehicular accident.<sup>[3]</sup>

On May 13, 1999, Jose Marcial's wife, Ruby Bueno Ochoa, and his two minor children, Micaela B. Ochoa and Jomar B. Ochoa (the heirs), through counsel, sent G & S a letter<sup>[4]</sup> demanding that the latter indemnify them for Jose Marcial's death, his loss of earning capacity, and funeral expenses in the total amount of P15,000,000.00. As G & S failed to heed the same, the heirs filed a *Complaint*<sup>[5]</sup> for Damages before the Regional Trial Court (RTC) of Pasig City which was raffled to Branch 164 of said court.

The heirs alleged that G & S, as a common carrier, is under legal obligation to observe and exercise extraordinary diligence in transporting its passengers to their destination safely and securely. However, G & S failed to observe and exercise this extraordinary diligence because its employee failed to transport Jose Marcial to his destination safely. They averred that G & S is liable to them for having breached the contract of common carriage. As an alternative cause of action, they asserted that G & S is likewise liable for damages based on *quasi-delict* pursuant to Article 2180<sup>[6]</sup> in relation to Article 2176<sup>[7]</sup> of the Civil Code. The heirs thus prayed for G & S to pay them actual damages, moral damages, exemplary damages, and attorney's fees and expenses of litigation.

In its Answer With Compulsory Counterclaims,<sup>[8]</sup> G & S claimed that Jose Marcial boarded an Avis taxicab driven by its employee, Bibiano Padilla (Padilla), at the Domestic Airport to bring him to Teacher's Village in Quezon City. While passing the Santolan fly-over, however, the Avis taxicab was bumped by an on-rushing delivery van at the right portion causing the taxicab to veer to the left, ram through the left side of the railings of the fly-over and fall to the center of the island below. The taxicab was split into two and Jose Marcial was thrown 10 meters away. G & S posited that the proximate cause of Jose Marcial's death is a

fortuitous event and/or the fault or negligence of the driver of the delivery van that hit the taxicab. It likewise claimed that it exercised the diligence required of a good father of a family in the selection and supervision of its employees including Padilla. By way of compulsory counterclaim, G & S sought to recover from the heirs the amount of P300,000.00 as attorney's fees and costs of suit.

### ***Ruling of the Regional Trial Court***

On December 27, 2001, the trial court rendered a Decision<sup>[9]</sup> finding the vehicular mishap not caused by a fortuitous event but by the negligence of Padilla. It likewise found the evidence adduced by G & S to show that it exercised the diligence of a good father of a family in the selection and supervision of its employees as insufficient. Hence, the trial court declared G & S civilly liable to the heirs. However, for lack of receipts or any proof of funeral expenses and other actual damages, the trial court denied the heirs' claim for actual damages. It also denied them moral and exemplary damages for lack of legal basis. The dispositive portion of said Decision reads:

WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:

1. P50,000.00 as civil indemnity for the death of deceased Jose Marcial K. Ochoa;
2. P6,537,244.96 for the loss of earning capacity of the deceased;
3. P100,00.00 for attorney's fees;
4. And the cost of litigation.

SO ORDERED.<sup>[10]</sup>

G & S filed a Notice of Appeal<sup>[11]</sup> while the heirs filed a Motion for Partial Reconsideration.<sup>[12]</sup> The heirs averred that they are entitled to moral damages pursuant to Article 1764<sup>[13]</sup> in relation to Article 2206(3)<sup>[14]</sup> of the Civil Code. They also cited applicable jurisprudence providing that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage where the mishap results in the death of the passenger. With respect to their claim for exemplary damages, the heirs relied upon Article 2232 of the Civil Code which provides that in contracts and *quasi*-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. And, since Padilla was declared by the trial court to have been grossly negligent in driving the taxicab, the heirs claimed that they are likewise entitled to exemplary damages.

After G & S filed its Opposition (To Plaintiffs' Motion for Partial Reconsideration),<sup>[15]</sup> the trial court issued an Order<sup>[16]</sup> on March 5, 2002. It found merit in the heirs' Motion for Partial Reconsideration and thus declared them entitled to moral and exemplary damages, *viz*:

WHEREFORE, the decision dated December 27, 2001 is hereby modified so as to order defendant Corporation to pay plaintiffs the amount of P300,000.00 as moral damages and P50,000.00 as exemplary damages. The dispositive portion of said decision is hereby amended to read as follows:

` WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:

1. P50,000.00 as civil indemnity for the death of the deceased Jose Marcial K. Ochoa;
2. P6,537,244.96 for the loss of earning capacity of the deceased.
3. P300,000.00 as moral damages;
4. P50,000.00 as exemplary damages;
5. P100,000.00 for attorney's fees;
6. And the costs of litigation.'

SO ORDERED.<sup>[17]</sup>

Because of this, G & S filed another Notice of Appeal<sup>[18]</sup> and same was given due course by the trial court in an Order<sup>[19]</sup> dated April 23, 2002.

### ***Ruling of the Court of Appeals***

Before the CA, G & S continued to insist that it exercised the diligence of a good father of the family in the selection and supervision of its employees. It averred that it has been carrying out not only seminars for its drivers even before they were made to work, but also periodic evaluations for their performance. Aside from these, it has also been conducting monthly check-up of its automobiles and has regularly issued rules regarding the conduct of its drivers. G & S claimed that it was able to establish a good name in the industry and maintain a clientele.

In an effort to build up Padilla's character as an experienced and careful driver, G & S averred that: (1) before G & S employed Padilla, he was a delivery truck driver of Inter Island Gas Service for 11 years; (2) Padilla has been an employee of G & S from 1989 to 1996 and during said period, there was no recorded incident of his being a negligent driver; (3) despite his qualifications, G & S still required Padilla to submit an NBI clearance, driver's license and police clearance; (4) Padilla's being a good driver-employee was manifest in his years of service with G & S, as in fact, he has received congratulatory messages from the latter as shown by the inter-office memos dated August 23, 1990 and February 1, 1993; and that (5) Padilla attended a seminar at the Pope Pius Center sometime in December 1999 as part of the NAIA Taxi Operation Program.

G & S also argued that the proximate cause of Jose Marcial's death is a fortuitous event and/or the fault or negligence of another and not of its employee. According to G & S, the collision was totally unforeseen since Padilla had every right to expect that the delivery van would just overtake him and not hit the right side of the taxicab. Therefore, what transpired was beyond Padilla's control. There was no negligence on his part but on the part of the driver of the delivery van. For this reason, G & S opined that it was not liable to the heirs.

On the other hand, the heirs maintained that Padilla was grossly negligent in driving the Avis taxicab on the night of March 10, 1995. They claimed that Padilla, while running at a very high speed, acted negligently when he tried to overtake a ten-wheeler truck at the foot of the fly-over. This forced him to swerve to the left and as a consequence, the Avis taxicab hit the center of the railing and was split into two upon hitting the ground. The manner by which Padilla drove the taxicab clearly showed that he acted without regard to the safety of his passenger.

The heirs also averred that in order for a fortuitous event to exempt one from liability, it is necessary that he has committed no negligence or conduct that may have occasioned the loss. Thus, to be exempt from liability for the death of Jose Marcial on this ground, G & S must clearly show that the proximate cause of the casualty was entirely independent of human will and that it was impossible to avoid. And since in the case at bar it was Padilla's inexcusable poor judgment, utter lack of foresight and extreme negligence which were the immediate and proximate causes of the accident, same cannot be considered to be due to a fortuitous event. This is bolstered by the fact that the court trying the case for criminal negligence arising from the same incident convicted Padilla for said charge.<sup>[20]</sup>

At any rate, the heirs contended that regardless of whether G & S observed due diligence in the selection of its employees, it should nonetheless be held liable for the death of Jose Marcial pursuant to Article 1759 of the Civil Code which provides:

ART. 1759 - Common carriers are liable for the death of or injuries 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.

In sum, the heirs prayed that the appeal be dismissed for lack of merit and the assailed Decision and Order of the trial court be affirmed in *toto*.

In a Decision<sup>[21]</sup> dated June 29, 2005, the CA ruled in favor of the heirs. The appellate court gave weight to their argument that in order for a fortuitous event to exempt one from liability, it is necessary that he committed no negligence or misconduct that may have occasioned the loss. In this case, the CA noted that Padilla failed to employ reasonable foresight, diligence and care needed to exempt G & S from liability for Jose Marcial's death. Said court also quoted pertinent portions of the MTC decision convicting Padilla of reckless imprudence resulting in homicide to negate G & S' claim that the proximate cause of the accident was the fault of the driver of the delivery van who allegedly hit the right side of the taxicab. And just like the trial court, the CA found insufficient the evidence adduced by G & S to support its claim that it exercised due diligence in the selection and supervision of its employees.

With respect to the award of P6,537,244.96 for Jose Marcial's loss of earning capacity, the CA declared the same unwarranted. It found the Certification<sup>[22]</sup> issued by Jose Marcial's employer, the United States Agency for International Development (USAID) through its Chief of Human Resources Division Jonas Cruz (Cruz), as self-serving, unreliable, and biased. While said certification states that Jose Marcial was earning an annual salary of P450,844.49 at the time of his untimely demise, the CA noted that same is unsupported by competent evidence such as income tax returns or receipts. This is in view of the ruling in *People v. Ereño*<sup>[23]</sup> where it was held that "there must be unbiased proof of the deceased's average income." Anent moral damages, the CA found the award of P300,000.00