

## SECOND DIVISION

[ G.R. No. 122346, February 18, 2000 ]

**PHILIPPINE TRANSMARINE CARRIERS, INC., HERNANDO S. EUSEBIO, ROSENDO GALLARDO, AND AUGUSTO ARREZA, JR., PETITIONERS, VS. COURT OF APPEALS AND JULIE P. SONG, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review on *certiorari* of the decision,<sup>[1]</sup> dated October 13, 1995, of the Court of Appeals, affirming the decision of the Regional Trial Court, Branch 135, Makati, which ordered petitioners to pay private respondent damages and attorney's fees in the total amount of P160,776.00, plus costs of suit.

The facts are as follows:

In 1985, private respondent Julie P. Song filed a complaint for attempted parricide against her husband, Hernane Song, in the Regional Trial Court, Branch 18, Manila, where the case was docketed as Crim. Case No. 85-34865. On August 5, 1988, private respondent and her husband entered into a compromise agreement<sup>[2]</sup> with respect to the civil aspect of the case, and on the same day, judgment<sup>[3]</sup> was rendered by the trial court as follows:

In the conference this morning, the accused, Hernane B. Song, assisted by his counsel, Atty. Romeo R. Robiso, and the private complainant, Julie Parcon Song, assisted by her counsel, Atty. Dante Garin, and Trial Fiscal Leonardo L. Lacalda, filed the following compromise agreement, dated August 5, 1988:

The accused, assisted by his counsel, and the private complainant, Julie Parcon-Song, assisted by the Trial Fiscal, respectfully submit the following compromise agreement:

1. Whereas, the accused and the private complainant are husband and wife, although they have been estranged and living apart from each other since 1984;
2. Whereas, they have a daughter, Gladeslie P. Song, who is five years old and living with the private complainant;
3. Whereas the accused is a licensed seaman third mate, and his employment with the Prometheus Maritime Company was recently terminated.

4. Wherefore, for and consideration of their mutual premises hereunder specified, the accused and the private complainant have agreed to settle amicably the civil aspect of this case under the following terms and conditions;

(a) Whenever the accused is employed as seaman third mate or marine officer, his basic salary shall be distributed as follows:

(1) Forty (40%) percent shall be allocated, remitted or paid to the private complainant;

(2) Forty (40%) percent shall be retained by the accused;

(3) The remaining twenty (20%) percent shall be deposited in a trust account in the name and for the support and education of their daughter Gladys P. Song;

(4) At the start of his employment as a seaman third mate or marine officer, the accused shall, in addition, pay the sum of P1,800.00 per month to the private complainant for a period of ten (10) months, or a total of P18,000.00;

(5) The accused shall have the right to visit their daughter, Gladys P. Song, as often as necessary or possible.

WHEREFORE, it is respectfully prayed that the foregoing Compromise Agreement be approved.

Finding the Compromise Agreement not contrary to law, morals, good customs, public order, or public policy, the same is hereby approved.

WHEREFORE, judgment is hereby rendered on the basis of the compromise agreement and the parties are hereby enjoined to comply with the terms and conditions thereof.

SO ORDERED.

It appears, however, that Hernane Song failed to comply with his obligation under the decision for which reason, on December 1, 1992, a Notice of Garnishment<sup>[4]</sup> was issued by the trial court to petitioner Philippine Transmarine Carriers, Inc., as Hernane Song's employer. The Notice of Garnishment reads:

YOU ARE HEREBY NOTIFIED by these presents that by virtue of the 2<sup>nd</sup> Alias Writ of Execution issued by the Honorable Perfecto A.S. Laguio, Jr., copy of which is hereto attached and served upon you, for the recovery by the private complainant against the accused is the amount as breakdown hereunder:

(a) US-representing the 10% difference in \$420.00 allotment due to private complainant which was only 50% when it should have been

60% pursuant to the compromise agreement.

(b) US-representing unpaid monthly allotment of \$1,457.40 US \$466.20 for March 1991 and US \$495.60 for January 1992 which were not remitted to the private complainant since the accused collected the same by way of cash advance and pay-on-board.

(c) US-representing allotment of 60% of the basic \$1,877.40 salary of Hernane B. Song for the months of November 1992, December 1992, January 1993 and February 1993 or total of US \$3,745.80 and

(d) -balance of arrears in support remaining P16,000.00 unpaid, due to said complainant in connection with this 2<sup>nd</sup> alias Writ of Execution, Garnishment is hereby made upon all the moneys, interests, receivables and other personal properties by the accused, Hernane B. Song under your control as of the date of service hereof, sufficient to cover the above-mentioned claim, attached hereof are the judgment and order dated August 28, 1989 of this Court and the breakdown prepared by the private complainant, Julie Song.

You are further notified that you should not deliver, transfer or otherwise dispose such properties in your possession or under your control belonging to said accused or to any person or entity except to the undersigned, deputy Sheriff, under Penalty Prescribed by Law.

You are requested to make a reply to this Garnishment as to such properties to the accused in your possession or under your control of any debt and receivables owned by you to said accused and forward the same to the undersigned within five (5) days from your receipt hereof, under warning that if no reply is made, you may be examined under oath before this Court.

The notice was served on petitioner-company on December 3, 1992. But, according to the Sheriff's Return,<sup>[5]</sup> on May 24, 1993, petitioner-company released only two checks, with the total amount of P31,000.00, representing the allotment for May 1993 only. The rest of the amounts indicated in the Notice of Garnishment was unsatisfied.

On July 20, 1993, private respondent filed a complaint for damages against petitioner-company and its officers, petitioners Hernando S. Eusebio, Rosendo Gallardo and Augusto Arreza, Jr. The complaint, which was filed in the Regional Trial Court, Branch 135, Makati, alleged in pertinent parts:<sup>[6]</sup>

6. That despite the said Notice of Garnishment, the salaries of the accused for the remaining contract months of December 1992, January 1993 and February 1993 which were in the possession and under the

control of defendants, were not being duly garnished; that instead, the allotments of herein plaintiff for the said months were withheld, so that during those months and the months that followed, plaintiff and her minor child greatly suffered financial problems as their support by way of allotment has been oppressively withheld by defendants; that it was only on 24 May 1993 that the allotments for plaintiff and that of the minor child representing only a total of 60% of the total salaries of the accused, were finally released and turned over by defendants thru the Deputy Sheriff, as evidenced by the Sheriff's Return, machine copy of which is hereto attached as Annex "C" forming integral part thereof;

7. That herein defendants, in total disregard of the Notice of Garnishment in a manner that is wanton, oppressive, reckless and fraudulent, and in contravention of the said Notice that defendants *should not deliver, transfer or otherwise dispose such properties in their possession or under their control belonging to the accused to any person or entity except to the Deputy Sheriff*, have caused the release of the remaining 40% of the accused's salaries together with his Leave Pay for two (2) months, to the accused, to the great prejudice and damage of herein plaintiff;

8. That the said willful, wanton and oppressive omission of defendants in not garnishing the total and entire salaries of the accused, has caused actual damages to plaintiff in the amount representing the remaining 40% or P20,776.00 plus the Leave Pay of P50,000.00 or a total of P70,776.00;

9. That the act of omission on the part of herein defendants has caused plaintiff to suffer several sleepless nights, mental anguish, serious anxieties, besmirched reputation, wounded feelings, morals hock and social humiliation, for which under the law, defendants individually are civilly liable to plaintiff for moral damages in the amount not less than P200,000.00; that the wrongful omission being done in a wanton manner, reckless, and oppressive, herein defendants are likewise individually liable to plaintiff for exemplary damages in the amount not less than P200,000.00;

10. That in order to protect the rights and interests of herein plaintiff, the latter sought legal services of counsel for an agreed attorney's fees of P30,000.00.

In their answer,<sup>[7]</sup> petitioners denied private respondent's allegations. They alleged that -

8. After the notice of garnishment was received by defendant Company, the latter stopped the remittance of the allotments of Hernane Song to the bank of his designated allottees in compliance with the garnishment.

9. Subsequent to its receipt of the notice of garnishment, defendant Company before any further action on the matter, made its own verification with the court on the actual existence of the case filed against Hernane Song and the actual issuance of the notice of garnishment.

10. Contrary to plaintiff's claim that defendants withheld the amounts due her, plaintiff was the one who failed to come and get her share in the garnished salaries of Hernane Song. All the while defendant Company was waiting in good faith for her to claim her share and that of her minor child in the monthly allotments of her estranged husband.

11. In accordance with the compromise agreement approved by the court under which plaintiff's estranged husband is entitled to retain 40% of his basic salary, defendant allowed in good faith the release to Hernane Song for his subsistence an amount equivalent only to 20% of his basic salaries remitted to the Philippines.

Petitioners claimed that the P50,000.00 leave pay released to Hernane Song was not "basic salary" and, thus, private respondent was not entitled thereto. By way of counterclaim, petitioners prayed for moral damages of P500,000.00, exemplary damages of P200,000.00 and attorney's fees/litigation costs of P200,000.00.

After private respondent filed her reply and answer to petitioners' counterclaim, the trial court required the parties to submit their pre-trial briefs and scheduled the pre-trial conference on October 12, 1993.

On October 7, 1993, Atty. Mylene T. Marcia, on behalf of petitioners' counsel, Atty. Albert Q. Daquigan, filed an "Urgent Motion for Re-Setting" of the pre-trial conference on the ground that Atty. Daquigan was on sick leave and petitioners themselves were unavailable on the scheduled date. However, her motion was denied by the trial court in its order dated October 12, 1993 and petitioners were declared "as in default," on the ground that no medical certificate had been attached to the motion. Private respondent was then allowed to present her evidence ex parte.

On October 19, 1993, petitioners asked the court to set aside its order of default, attaching to their motion a duly notarized medical certificate as well as an affidavit of merit signed by Atty. Daquigan. Petitioners' motion was denied for lack of merit in an order dated December 1, 1993 and the case was considered submitted for decision on the basis of private respondent's evidence.

On December 8, 1993, the trial court rendered its decision,<sup>[8]</sup> the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering the defendants to pay plaintiff the sum of P70,776.00 as actual damages;
2. Ordering the defendants to pay plaintiff the sum of P50,000.00 by way of moral damages;
3. Ordering defendants to pay P20,000.00 by way of exemplary damages;
4. Ordering defendants to pay plaintiff the sum of P20,000.00 for