

## THIRD DIVISION

[ G.R. No. 117103, January 21, 1999 ]

**SPOUSES RENATO S. ONG AND FRANCIA N. ONG, PETITIONERS,  
VS. COURT OF APPEALS, INLAND TRAILWAYS, INC. AND  
PHILTRANCO SERVICE ENTERPRISE, INC., RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Evidence not formally offered during the trial cannot be used for or against a party litigant. Neither may it be taken into account on appeal. Furthermore, actual and moral damages must be proven before any award thereon can be granted.

#### The Case

Before us is a Petition for Review on Certiorari of the Decision dated May 20, 1993 and the Resolution dated June 8, 1994, both promulgated by the Court of Appeals<sup>[1]</sup> in CA-GR CV No. 33755, modifying the Decision of the trial court in an action for damages filed by spouses Renato and Francia Ong (petitioners herein) against Philtranco Service Enterprise, Inc. and Inland Trailways, Inc. (respondents herein, hereafter referred to as "Philtranco" and "Inland," respectively).

The assailed Decision disposed as follows:<sup>[2]</sup>

"WHEREFORE, the appealed decision is hereby MODIFIED by ordering INLAND TRAILWAYS, INC. to pay [petitioners] P3,977.00 for actual damages, P30,000.00 as moral damages and ten (10) percent as contingent attorney's fees and to pay the costs of the suit."

Reconsideration was denied in the assailed Resolution:<sup>[3]</sup>

"WHEREFORE, IN VIEW OF THE FOREGOING, both motions for reconsideration filed by [petitioners] and xxx Inland Trailways, Inc. are hereby DENIED."

#### The Facts

On February 9, 1987, petitioners boarded as paying passengers Bus No. 101 with Plate No. EVB-508 ("Inland bus," for convenience), which was owned and operated by Inland Trailways under a Lease Agreement with Philtranco. It was driven by Calvin Coronel.<sup>[4]</sup> Around 3:50 in the morning of said date, when the Inland bus slowed down to avoid a stalled cargo truck in Tiaong, Quezon, it was bumped from the rear by another bus, owned and operated by Philtranco and driven by Apolinar Miralles. Francia sustained wounds and fractures in both of her legs and her right arm, while Renato suffered injuries on his left chest, right knee, right arm and left

eye.<sup>[5]</sup> They were brought to the San Pablo City District Hospital for treatment and were confined there from February 9 to 18, 1987.<sup>[6]</sup>

On December 22, 1988, petitioners filed an action for damages against Philtranco and Inland. <sup>[7]</sup> In their Complaint, they alleged that they suffered injuries, preventing Francia from operating a *sari-sari* store at Las Piñas, Metro Manila, where she derived a daily income of P200; and Renato from continuing his work as an overseas contract worker (pipe welder) with a monthly salary of \$690. Stating that they incurred P10,000 as medical and miscellaneous expenses, they also claimed moral damages of P500,000 each, exemplary and corrective damages of P500,000 each, and compensatory damages of P500,000 each plus 35 percent thereof as attorney's fees. In addition to their testimonies, petitioners also presented the following documentary evidence:

- Exhibit - Philtranco Bus Ticket No. 333398
- 'A'
- 'B' - Philtranco Bus Ticket No. 333399
- 'C' - Certification dated February 12, 1987
- 'D' - Medical Certificate of Francis Ong dated February 18, 1987
- 'E' - Medical Certificate of Renato S. Ong dated February 18, 1987
- 'F' - Statement of Account of Francia N. Ong in the amount of P1,153.50
- 'G' - Statement of Account of Renato S. Ong in the amount of P1,973.50
- 'H' - Receipt dated February 9, 1987
- 'I' - Receipt dated March 3, 1987
- 'J' - Receipt dated February 18, 1987
- 'K' - Receipt dated February 24, 1987
- 'L' & - Picture of face of Renato S. Ong
- 'L'-1'
- 'M' & - Picture of face of Renato S. Ong
- 'M-1'
- 'N' - Payroll Summary for [period ending] November 1986
- 'O' - Payroll Summary for [period ending] December, 1986"

Philtranco answered that the Inland bus with Plate No. EVB-508 (which had transported petitioners) was registered and owned by Inland; that its driver, Calvin Coronel, was an employee of Inland; that Philtranco was merely leasing its support facilities, including the use of its bus tickets, to Inland; and that under their Agreement, Inland would be solely liable for all claims and liabilities arising from the operation of said bus. Philtranco further alleged that, with respect to its own bus (which bumped the Inland bus), it exercised the diligence of a good father of a family in the selection and supervision of its drivers, and that the proximate cause of the accident was the negligence of either the cargo truck or the Inland bus which collided with said cargo truck.

Inland answered that, according to the Police Report, it was Apolinar Miralles, the driver of the Philtranco bus, who was at fault, as shown by his flight from the situs of the accident; that said bus was registered and owned by Philtranco; and that the driver of the Inland bus exercised extraordinary diligence as testified to by its passengers. Inland and Philtranco filed cross-claims against each other.

Both respondents moved to submit the case for decision without presenting further evidence. Consequently, the trial court, in its Order dated July 5, 1989, resolved:<sup>[8]</sup>

"When this case was called for continuation of presentation of plaintiff's evidence, over objections from counsels for defendants, plaintiff's counsel was allowed to recall his first witness, Renato S. Ong, for some additional direct questions[;] and after cross-examination by defendant Inland Trailways, Inc., adopted by defendant Philtranco Service Enterprise, Inc., plaintiff presented his second witness, [Francia] Ong, whose testimony on direct, cross and redirect was terminated[;] and as prayed for, counsel for the plaintiffs shall have five (5) days from today within which to submit his formal offer of evidence, furnishing copies thereof to defendants who shall have five (5) days from their receipt within which to submit comments after which the same shall be deemed submitted for resolution.

"By agreement, considering the stipulations of parties made of record regarding factual issues except as to whether or not the bus is included in the lease, counsels for the two (2) defendants are given a period of ten (10) days from today within which to submit simultaneous offer[s] of admission and denials not only on the above exception but on any other relevant matter.

"Considering that the documents are admitted, there is no necessity of any formal written offer of evidence and, therefore, after all the foregoing, the case shall be deemed submitted for decision upon simultaneous memoranda of the parties and upon submission of complete transcripts."

Thereafter, the trial court rendered its May 7, 1991 Decision, which disposed as follows:<sup>[9]</sup>

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the [petitioners] absolving Inland Trailways, Inc., from any liability whatsoever, and against xxx Philtranco Service Enterprise, Inc., ordering the latter to pay the [petitioners]—

- 1) P10,000.00 as actual damages for medical and miscellaneous expenses;
- 2) P50,000.00 as compensatory damages for the [diminution] of the use of the right arm of [petitioner]-wife;
- 3) P48,000.00 as unrealized profit or income;
- 4) P50,000.00 as moral damages;

- 5) 25% of the foregoing as contingent attorney's fees; and
- 6) the costs."

According to the trial court, the proximate cause of the accident was "the bumping from behind by the Philtranco bus with Plate No. 259 driven by Apolinar Miralles" based on the Police Report and the affidavits of passengers, to which Philtranco did not object. As it failed to prove that it exercised due diligence in the selection and supervision of its employees under Article 2176 of the Civil Code, Philtranco was held liable based on *culpa aquiliana*.

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

On appeal, the Court of Appeals (CA) resolved that Philtranco's liability for damages could not be predicated upon the Police Report which had not been formally offered in evidence. The report was merely annexed to the answer of Inland, and petitioner did not adopt or offer it as evidence. Consequently, it had no probative value and, thus, Philtranco should be absolved from liability.

Instead, the appellate court found that petitioners sufficiently established a claim against Inland based on *culpa contractual*. As a common carrier, Inland was required to observe extraordinary diligence under Articles 1735 and 1750 of the Code. Its liability arose from its failure to transport its passengers and cargo safely, and a finding of fault or negligence was not necessary to hold it liable for damages. Inland failed to overcome this presumption of negligence by contrary evidence; thus, it was liable for breach of its contractual obligation to petitioners under Article 2201 of the Civil Code.

The liability of Inland for medical and miscellaneous expenses was reduced, as the evidence on record showed that petitioners spent only P3,977. Deemed self-serving was Francia's testimony that the use of her right arm was diminished and that she lost income. Thus, the award for unearned income was disallowed and the amount of moral damages was reduced to P30,000.

Hence, this petition.<sup>[10]</sup>

### **The Issues**

In their Memorandum,<sup>[11]</sup> petitioners raise the following issues:<sup>[12]</sup>

- "[I] Whether or not public respondent committed grave abuse of discretion in completely reversing the decision of the Regional Trial Court, ordering Philtranco to indemnify petitioners and in lieu thereof, order[ing] Inland to pay petitioners for their damages.
- [II] Whether or not public respondent committed grave abuse of discretion in disallowing the P50,000.00 awarded to petitioner, Francia Ong for

the diminution of the use of her right arm and the P48,000.00 representing unrealized income.

- [III] Whether or not public respondent committed grave abuse of discretion in reducing the award for actual and miscellaneous expenses from P10,000.00 to P3,977.00; the award of P50,000.00 moral damages to P30,000.00; and the 25% contingent attorney's fees to 10% thereof."

Simply stated, the main issues raised are: (1) whether the Police Report, which was not formally offered in evidence, could be used to establish a claim against Philtranco based on *culpa aquiliana*; and (2) whether the reduction in the amounts of damages awarded was proper.

### **The Court's Ruling**

The petition is devoid of merit.

#### **First Issue:** **Requirement of Formal Offer of Evidence**

Petitioners take exception to the rule requiring documents to be formally offered in evidence before they can be given any probative value, arguing that the parties agreed to submit the case for resolution based on the July 5, 1989 Order of the trial court. Because of the agreement, petitioners assumed that all the pieces of documentary evidence, including the Complaint and its Annexes, as well as those in the respective Answers of the private respondents, were deemed admitted.

We disagree. Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered." A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.<sup>[13]</sup>

In adhering to this rule, the appellate court cannot be faulted with reversible error, as it held:<sup>[14]</sup>

"xxx [T]he burden of proof lies with the plaintiff in establishing fault or negligence on the part of the defendant (Ong vs. Metropolitan Water). This, however, plaintiff-appellees failed to establish. Albeit, there was a police investigation report finding the driver of PHILTRANCO negligent which became the basis of the court a quo [for] holding PHILTRANCO liable, this piece of evidence was merely attached as Annex '1' of INLAND's answer, nothing more. It was not presented and even offered as evidence by INLAND nor utilized by plaintiffs-appellees. Thus, even