

## SECOND DIVISION

[ G.R. No. 120496, July 17, 1996 ]

**FIVE STAR BUS CO., INC. AND CARLOS SALONGA, PETITIONERS,  
VS. COURT OF APPEALS, REGIONAL TRIAL COURT, KALOOKAN  
CITY, BR. 129 AND PEDRO AND LYDIA SANTOS, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

This petition for review on certiorari seeks to set aside the decision of the Court of Appeals<sup>[1]</sup> in CA-G.R. CV No. 40969 awarding to private respondents Pedro and Lydia Santos damages in the total amount of P122,000.00 for the death of their son in a vehicular accident; or, in the alternative, to modify said decision by deleting the award of moral damages of P50,000.00.

This case arose from Civil Case No. C-15500 for breach of contract of carriage and damages filed by private respondents on July 15, 1992 before the Regional Trial Court, Branch 129, Kalookan City against petitioners Five Star Bus Co., Inc. and Carlos Salonga.<sup>[2]</sup> The Santos spouses sought indemnification for the death of their twenty-two year old son, Joey Santos, who died on April 27, 1992 aboard a passenger bus owned and operated by petitioner Five Star and driven by petitioner Salonga. They alleged that their son rode the bus from Pangasinan to Manila when due to the "gross and wanton negligence, recklessness and imprudence" of the bus driver, it hit an oncoming trailer truck along the Urdaneta, Pangasinan Highway; that the impact resulted in the death of two bus passengers, one of whom was Joey Santos; and that petitioner refused to pay them damages as heirs of the deceased. Respondents prayed for P50,000.00 for the death of their son, P50,000.00 for moral damages, P20,000.00 for funeral expenses and P20,000.00 for attorney's fees.

On September 16, 1992, petitioners answered the complaint alleging that it was the negligence of the driver of the trailer truck which encroached on the oncoming bus' lane that caused the mishap resulting in Joey's death.

On September 22, 1992, the trial court set the pre-trial of the case on October 15, 1992 and instructed counsels for both parties to notify their respective clients and to file their pre-trial briefs. The pre-trial notice reads as follows:

"ORDER  
(Pre-Trial Notice)

Issues in this case being joined, the pre-trial conference under Section 1, Rule 20 of the Rules Of Court, in relation to Circular 1-89 of the Supreme Court, is set for October 15, 1992 at 8:30 A. M.

Counsels are instructed to notify their respective clients. Counsels are

also reminded of the mandatory filing of pre-trial briefs at least 3 days before the pre-trial date.

SO ORDERED.

Given this 22nd day of September 1992 at the City of Kalookan, Metro Manila.

(Signed)  
BAYANI S. RIVERA  
Judge"<sup>[3]</sup>

Copies of the pre-trial notice were sent to Atty. Emerico Lomibao, counsel for respondents and Atty. Arnel Naidas, counsel for petitioners.

On October 15, 1992, the day of the pre-trial, petitioners and their counsel failed to appear. Neither did they file a pre-trial brief. On motion by private respondents' counsel, the trial court declared petitioners as in default and scheduled the reception of their evidence on October 30, 1992, thus;

"ORDER

When this case was called for pre-trial conference this morning, neither defendants nor their counsel appeared in Court, despite previous notice.

Counsel for the plaintiffs moved that the defendants be declared as in default for failure to appear today despite notice.

The motion is well-taken. Not only did defendants fail to appear despite previous notice. They have likewise failed to file a pre-trial brief, pursuant to Circular No. 1-89 of the Supreme Court.

WHEREFORE, premises considered, defendants are declared as in default. Accordingly, plaintiffs shall present evidence ex-parte on October 30, 1992 at 8:30 A.M.

Counsel for plaintiffs is notified in open court.

Send a copy of this order to counsel for defendants.

SO ORDERED.

Given in open hearing this 15th day of October 1992 at the City of Kalookan, Metro Manila.

(Signed)  
BAYANI S. RIVERA  
Judge"<sup>[4]</sup>

As scheduled, on October 30, 1992, respondent Lydia Santos testified together with Roger Santos, a co-passenger of the deceased. Documents in support of their testimonies were also presented.

On November 4, 1992, the trial court rendered a decision in favor of respondents, awarding them as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant Five Star Bus Co. Inc, as follows:

1. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs compensatory damages in the sum of P50,000.00;
2. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs actual damages (funeral expenses) in the amount of P12,000.00;
3. Ordering defendant Five Star Bus Co., Inc. to pay plaintiffs' lawyer (Atty. Emerico B. Lomibao) the sum of P10,000.00 as attorney's fees; and
4. Ordering defendant Five Star Bus Co., Inc. to pay the costs of the suit.

SO ORDERED.

Given this 4th day of November 1992 at the City of Kalookan, Metro Manila.

(Signed)  
BAYANI S. RIVERA  
Judge"<sup>[5]</sup>

It appears that on the day of promulgation of the trial court's decision, the law firm of Vivar, Lopez and Associates entered its appearance as counsel for petitioners.

On November 10, 1992, a motion to set aside the order of default of October 15, 1992 was filed by Atty, Romulo Lopez of Vivar, Lopez and Associates. He alleged that Atty. Arnel Naidas, former counsel of petitioners to whom pre-trial notice was sent, resigned as petitioner Five Star's house counsel on September 30, 1992, and that their law firm's services were engaged by petitioner much later and the records of the case were delivered to them only on October 28, 1992, or days after the pre-trial conference.

On November 18, 1991, petitioners also filed a motion for reconsideration of the court's decision.

In an order dated December 10, 1992, the trial court denied both motions to set aside the order of default and for reconsideration.<sup>[6]</sup>

Petitioners appealed to the Court of Appeals.

On April 28, 1995, the Court of Appeals affirmed the decision of the trial court but added thereto an award of P50,000.00 for moral damages, as follows: