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FIRST DIVISION

[G.R. No. L-45637. May 31, 1985]

ROBERTO JUNTILLA, *petitioner, vs.* **CLEMENTE FONTANAR, FERNANDO BANZON and BERFOL CAMORO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; COMMON CARRIERS; BREACH OF CONTRACT; TIRE EXPLOSION IS NOT A FORTUITOUS EVENT; CASE AT BAR.— While it may be true that the tire that blew-up was still good because the grooves of the tire were still visible, this fact alone does not make the explosion of the tire a fortuitous event. No evidence was presented to show that the accident was due to adverse road conditions or that precautions were taken by the jeepney driver to compensate for any conditions liable to cause accidents. The sudden blowing-up, therefore, could have been caused by too much air pressure injected into the tire coupled by the fact that the jeepney was overloaded and speeding at the time of the accident. In the case at bar, the cause of the unforeseen and unexpected occurrence was not independent of the human will. The accident was caused either through the negligence of the driver or because of mechanical defects in the tire. Common carriers should teach their drivers not to overload their vehicles, not to exceed safe and legal speed limits, and to know the correct measures to take when a tire blows up thus insuring the safety of passengers at all times.

2. ID.; ID.; CONTRACT OF CARRIAGE; NATURE THEREOF.— It is sufficient to reiterate that the source of a common carrier's legal liability is the contract of carriage, and by entering into the said contract, it binds itself to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with a due regard for all the circumstances.

APPEARANCES OF COUNSEL

Valentin A. Zozobrado for petitioner.
Ruperto N. Alfarara for respondents.

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DECISION

GUTIERREZ, JR., *J.*:

This is a petition for review, on questions of law, of the decision of the Court of First Instance of Cebu which reversed the decision of the City Court of Cebu and exonerated the respondents from any liability arising from a vehicular accident.

The background facts which led to the filing of a complaint for breach of contract and damages against the respondents are summarized by the Court of First Instance of Cebu as follows:

"The facts established after trial show that the plaintiff was a passenger of the public utility jeepney bearing plate No. PUJ-71-7 on the course of the trip from Danao City to Cebu City. The jeepney was driven by defendant Berfol Camoro. It was registered under the franchise of defendant Clemente Fontanar but was actually owned by defendant Fernando Banzon. When the jeepney reached Mandaue City, the right rear tire exploded causing the vehicle to turn turtle. In the process, the plaintiff who was sitting at the front seat was thrown out of the vehicle. Upon landing on the ground, the plaintiff momentarily lost consciousness. When he came to his senses, he found that he had a lacerated wound on his right palm. Aside from this, he suffered injuries on his left arm, right thigh and on his back. (Exh. "D"). Because of his shock and injuries, he went back to Danao City but on the way, he discovered that his 'Omega' wrist watch was lost. Upon his arrival in Danao City, he immediately entered the Danao City Hospital to attend to his injuries, and also requested his father-in-law to proceed immediately to the place of the accident and look for the watch. In spite of the efforts of his father-in-law, the wrist watch, which he bought for ₱852.70 (Exh. "B") could no longer be found."

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Petitioner Roberto Juntilla filed Civil Case No. R-17378 for breach of contract with damages before the City Court of Cebu City, Branch I against Clemente Fontanar, Fernando Banzon and Berfol Camoro.

The respondents filed their answer, alleging *inter alia* that the accident that caused losses to the petitioner was beyond the

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control of the respondents taking into account that the tire that exploded was newly bought and was only slightly used at the time it blew up.

After trial, Judge Romulo R. Senining of the City Court of Cebu rendered judgment in favor of the petitioner and against the respondents. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants and the latter are hereby ordered, jointly and severally, to pay the plaintiff the sum of ₱750.00 as reimbursement for the lost Omega wrist watch, the sum of ₱246.64 as unrealized salary of the plaintiff from his employer, the further sum of ₱100.00 for the doctor's fees and medicine, an additional sum of ₱300.00 for attorney's fees and the costs."

The respondents appealed to the Court of First Instance of Cebu, Branch XIV.

Judge Leonardo B. Cañares reversed the judgment of the City Court of Cebu upon a finding that the accident in question was due to a fortuitous event. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered exonerating the defendants from any liability to the plaintiff without pronouncement as to costs."

A motion for reconsideration was denied by the Court of First Instance.

The petitioner raises the following alleged errors committed by the Court of First Instance of Cebu on appeal —

"a. The Honorable Court below committed grave abuse of discretion in failing to take cognizance of the fact that defendants and/or their employee failed to exercise 'utmost and/or extraordinary diligence' required of common carriers contemplated under Art. 1755 of the Civil Code of the Philippines.

"b. The Honorable Court below committed grave abuse of discretion by deciding the case contrary to the doctrine laid down by the Honorable Supreme Court in the case of *Necesito, et al. v. Paras, et al.*"

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We find the petition impressed with merit.

The City Court and the Court of First Instance of Cebu found that the right rear tire of the passenger jeepney in which the petitioner was riding blew up causing the vehicle to fall on its side. The petitioner questions the conclusion of the respondent court drawn from this finding of fact.

The Court of First Instance of Cebu erred when it absolved the carrier from any liability upon a finding that the tire blow out is a fortuitous event. The Court of First Instance of Cebu ruled that:

"After reviewing the records of the case, this Court finds that the accident in question was due to a fortuitous event. A tire blow-out, such as what happened in the case at bar, is an inevitable accident that exempts the carrier from liability, there being absence of a showing that there was misconduct or negligence on the part of the operator in the operation and maintenance of the vehicle involved. The fact that the right rear tire exploded, despite being brand new, constitutes a clear case of *caso fortuito* which can be a proper basis for exonerating the defendants from liability. xxx"

The Court of First Instance relied on the ruling of the Court of Appeals in *Rodriguez v. Red Line Transportation Co.*, CA-G.R. No. 8136, December 29, 1954, where the Court of Appeals ruled that:

"A tire blow-out does not constitute negligence unless the tire was already old and should not have been used at all. Indeed, this would be a clear case of fortuitous event."

The foregoing conclusions of the Court of First Instance of Cebu are based on a misapprehension of overall facts from which a conclusion should be drawn. The reliance of the Court of First Instance on the *Rodriguez* case is not in order. In *La Mallorca and Pampanga Bus Co., v. De Jesus, et al.* (17 SCRA 23), we held that:

"Petitioner maintains that a tire blow-out is a fortuitous event and gives rise to no liability for negligence, citing the rulings of the Court of Appeals in *Rodriguez v. Red Line Transportation Co.*, CA-G.R. No. 8136, December 29, 1954, and People v. Palapad, CA-

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G.R. No. 18480, June 27, 1958. These rulings, however, not only are not binding on this Court but were based on considerations quite different from those that obtain in the case at bar. The appellate court there made no findings of any specific acts of negligence on the part of the defendants and confined itself to the question of whether or not a tire blow-out, by itself alone and without a showing as to the causative factors, would generate liability. xxx"

In the case at bar, there are specific acts of negligence on the part of the respondents. The records show that the passenger jeepney turned turtle and jumped into a ditch immediately after its right rear tire exploded. The evidence shows that the passenger jeepney was running at a very fast speed before the accident. We agree with the observation of the petitioner that a public utility jeep running at a regular and safe speed will not jump into a ditch when its right rear tire blows up. There is also evidence to show that the passenger jeepney was overloaded at the time of the accident. The petitioner stated that there were three (3) passengers in the front seat and fourteen (14) passengers in the rear.

While it may be true that the tire that blew-up was still good because the grooves of the tire were still visible, this fact alone does not make the explosion of the tire a fortuitous event. No evidence was presented to show that the accident was due to adverse road conditions or that precautions were taken by the jeepney driver to compensate for any conditions liable to cause accidents. The sudden blowing-up, therefore, could have been caused by too much air pressure injected into the tire coupled by the fact that the jeepney was overloaded and speeding at the time of the accident.

In *Lasam v. Smith* (45 Phil. 657), we laid down the following essential characteristics of *caso fortuito*:

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"xxx 'In a legal sense and, consequently, also in relation to contracts, a *caso fortuito* presents the following essential characteristics: (1) The cause of the unforeseen and unexpected occurrence, or of the failure of the debtor to comply with his

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obligation, must be independent of the human will. (2) It must be impossible to foresee the event which constitutes the *caso fortuito*, or if it can be foreseen, it must be impossible to avoid. (3) The occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner. And (4) the obligor (debtor) must be free from any participation in the aggravation of the injury resulting to the creditor.' (5 *Encyclopedia Juridica Española*, 309.)"

In the case at bar, the cause of the unforeseen and unexpected occurrence was not independent of the human will. The accident was caused either through the negligence of the driver or because of mechanical defects in the tire. Common carriers should teach their drivers not to overload their vehicles, not to exceed safe and legal speed limits, and to know the correct measures to take when a tire blows up thus insuring the safety of passengers at all times. Relative to the contingency of mechanical defects, we held in *Necesito, et al. v. Paras, et al.* (104 Phil. 75), that:

"xxx 'The preponderance of authority is in favor of the doctrine that a passenger is entitled to recover damages from a carrier for an injury resulting from a defect in an appliance purchased from a manufacturer, whenever it appears that the defect would have been discovered by the carrier if it had exercised the degree of care which under the circumstances was incumbent upon it, with regard to inspection and application of the necessary tests. For the purposes of this doctrine, the manufacturer is considered as being in law the agent or servant of the carrier, as far as regards the work of constructing the appliance. According to this theory, the good repute of the manufacturer will not relieve the carrier from liability' (10 Am. Jur. 205, s, 1324; see also *Pennsylvania R. Co. v. Roy*, 102 U.S. 451; 20 L. Ed. 141; *Southern R. Co. v. Hussey*, 74 ALR 1172; 42 Fed. 2d 70; and Ed Note, 29 ALR 788; Ann. Cas. 1916E 929).

"The rationale of the carrier's liability is the fact that the passenger has neither choice nor control over the carrier in the selection and use of the equipment and appliances in use by the carrier. Having no privity whatever with the manufacturer or vendor of the defective equipment, the passenger has no remedy against him, while the carrier usually has. It is but logical, therefore, that the carrier, while not an insurer of the safety of his passengers, should nevertheless be held to answer for the flaws of his equipment if such flaws were at all discoverable. xxx"

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It is sufficient to reiterate that the source of a common carrier's legal liability is the contract of carriage, and by entering into the said contract, it binds itself to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with a due regard for all the circumstances. The records show that this obligation was not met by the respondents.

The respondents likewise argue that the petitioner cannot recover any amount for failure to prove such damages during the trial. The respondents submit that if the petitioner was really injured, why was he treated in Danao City and not in Mandaue City where the accident took place. The respondents argue that the doctor who issued the medical certificate was not presented during the trial, and hence not cross-examined. The respondents also claim that the petitioner was not wearing any wrist watch during the accident.

It should be noted that the City Court of Cebu found that the petitioner had a lacerated wound on his right palm aside from injuries on his left arm, right thigh and on his back, and that on his way back to Danao City, he discovered that his "Omega" wrist watch was lost. These are findings of facts of the City Court of Cebu which we find no reason to disturb. More so when we consider the fact that the Court of First Instance of Cebu impliedly concurred in these matters when it confined itself to the question of whether or not the tire blow out was a fortuitous event.

WHEREFORE, the decision of the Court of First Instance of Cebu, Branch IV appealed from is hereby REVERSED and SET ASIDE, and the decision of the City Court of Cebu, Branch I is REINSTATED, with the modification that the damages shall earn interest at 12% per annum and the attorney's fees are increased to SIX HUNDRED PESOS (₱600.00). Damages shall earn interests from January 27, 1975.

SO ORDERED.

Teehankee (Chairman), *Melencio-Herrera*, *Plana*, *Relova*, *De la Fuente*, and *Alampay*, *JJ.*, concur.