



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2021** which reads as follows:*

**“G.R. No. 225975 – (WG&A SHIPPING LINES, INC. (now 2Go, Inc.), petitioner v. SPOUSES LUIS and SYLVIA ASUNCION, respondents).** – This is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner WG&A Shipping Lines, Inc. (WG&A), (now 2Go Group Inc.) seeking to reverse and set aside the Decision<sup>2</sup> dated July 30, 2015 and Resolution<sup>3</sup> dated July 15, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 02742-MIN. The assailed CA Decision and Resolution affirmed the Decision<sup>4</sup> dated July 25, 2011 of the Regional Trial Court (RTC) of Zamboanga City, Branch 12, which held WG&A civilly liable for damages to Spouses Luis and Sylvia Asuncion (respondents) for the death of their daughter, Rizzie Gay Asuncion (Rizzie), arising from breach of contract of carriage.

**The Facts**

WG&A is a licensed domestic common carrier and owner of the vessel M/V Super Ferry 1 (Super Ferry 1).<sup>5</sup> Respondents are the parents of the late Rizzie, a 17-year-old high school graduate of Don Pablo Lorenzo Memorial High School in Zamboanga City.<sup>6</sup>

On September 25, 2002, Rizzie went to live with her aunt Pilar Asuncion (Pilar) at Lipa City, Batangas to explore the possibility of enrolling in a college there. After four months in Lipa City, Rizzie

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<sup>1</sup> *Rollo*, pp. 8-50.

<sup>2</sup> *Id.* at 53-66; penned by Associate Justice Pablito A. Perez, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

<sup>3</sup> *Id.* at 67-69; penned by Associate Justice Romulo V. Borja, with Associate Justices Oscar V. Badelles and Maria Filomena D. Singh, concurring.

<sup>4</sup> *Id.* at 82-103; penned by Presiding Judge Gregorio V. De La Peña III.

<sup>5</sup> *Id.* at 54.

<sup>6</sup> *Id.* at 82.

decided to return to Zamboanga City to attend the fiesta in Barangay Sta. Maria and get her transcript of records from her old high school. Pilar bought Rizzie a ticket from WG&A's sub-office in Lipa City for her trip from Manila to Zamboanga City.<sup>7</sup>

On February 1, 2003, Pilar brought Rizzie to Pier 4 of the Manila North Harbor where she would take Super Ferry 1 by herself to Zamboanga City.<sup>8</sup> Super Ferry 1 had a scheduled departure route of Manila – Zamboanga City – Cotabato City, and a return route of Zamboanga City – Iloilo City – Manila.<sup>9</sup>

Super Ferry 1 left Manila North Harbor at 10:00 a.m. while on board, Rizzie met Peter Estrella, her acquaintance and schoolmate in high school. They talked for a while in the canteen before going their separate ways.<sup>10</sup>

Super Ferry 1 arrived at Zamboanga City port on February 2, 2003 at around 6:00 p.m. Rizzie's siblings, Richard Asuncion (Richard) and Rubilyn Asuncion (Rubilyn), waited for her at the port to fetch her. To their surprise, they did not see Rizzie disembark from the vessel.<sup>11</sup>

Richard and Rubilyn inquired on Rizzie's whereabouts from Ramil Villafrancia (Villafrancia), officer-in-charge of WG&A's ticketing office at the port. Villafrancia radioed someone and thereafter accompanied them to the vessel to do a search.<sup>12</sup> However, before they could enter the vessel, WG&A's Assistant Security Officer Nestor Pimentero (Pimentero) stopped them and told them that Rizzie had already disembarked.<sup>13</sup>

Failing to locate Rizzie, Rubilyn called respondents. Respondents rushed to the port and asked for permission to search Super Ferry 1 for Rizzie. They were denied access because Super Ferry 1 was allegedly already leaving for Cotabato City. Respondents were directed to just return to Zamboanga City port the following day to search the vessel when it returns from Cotabato City.<sup>14</sup>

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<sup>7</sup> Id. at 54, 88.

<sup>8</sup> Id. at 70-71.

<sup>9</sup> Id. at 12.

<sup>10</sup> Id. at 54-55.

<sup>11</sup> Id. at 55.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

Respondents returned to Zamboanga City port the following morning. They were advised by Genevieve Daniel (Daniel), WG&A Passage Supervisor, that Super Ferry 1 would arrive later that evening and instructed to approach Villafrancia who will accompany them inside the vessel.<sup>15</sup>

Respondent Luis met with Villafrancia later that evening and was given a Visitor's ID to go up the vessel. However, as he and Villafrancia were about to go up, they were again stopped by WGA's Chief Security Vernon Tolentino (Tolentino) and Pimentero.<sup>16</sup> They were still denied access to the vessel and merely given the excuse that Rizzie had already disembarked.

Respondents had no choice but to register their complaint with the Sta. Maria Police Station and Zamboanga City Central Police Office.<sup>17</sup> Respondents returned accompanied by members of the police to search Super Ferry 1. Despite the presence of the police, WG&A's security personnel still adamantly denied them access to search the vessel. Chief Security Tolentino dismissed them and claimed that Rizzie had already disembarked at Cotabato City.<sup>18</sup>

During this time, respondents were able to retrieve all of Rizzie's belongings from Assistant Security Officer Pimentero. He told them that Rizzie left these behind when she disembarked.<sup>19</sup> The boarding officer stated that Rizzie's baggage was on board the vessel during its voyage from Cotabato City to Zamboanga City.<sup>20</sup>

By chance, Corporal Marlon Gallego (Gallego), a member of the Philippine Air Force assigned in Malacañang as Presidential Guard, was also waiting at the Zamboanga City port that night as a passenger of Super Ferry 1 on its return trip to Manila. He noticed the commotion between respondents and members of WG&A's personnel and recognized respondent Sylvia as his mother's fifth degree cousin. He approached respondent Sylvia to ask what was happening. Respondent Sylvia explained to him that Rizzie was missing and asked for his help to look for her when he boards the vessel.<sup>21</sup>

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<sup>15</sup> Id.

<sup>16</sup> Id. at 55, 88.

<sup>17</sup> Id. at 84.

<sup>18</sup> Id.

<sup>19</sup> Id. at 89.

<sup>20</sup> Id. at 93.

<sup>21</sup> Id. at 55-56, 90.

Super Ferry 1 left Zamboanga City port for Iloilo City at around 11:00 p.m.<sup>22</sup> While on board the vessel, Gallego inquired regarding Rizzie's whereabouts. He spoke with Ariel Tuyao, the officer in charge of the Linen Section, who insisted that Rizzie was bound for Cotabato City and not Zamboanga City. Gallego recovered Rizzie's school ID from the deposit box of the Linen Section which Tuyao said she deposited there but never reclaimed.<sup>23</sup>

Several days later, on February 9, 2003, respondents learned that Rizzie's lifeless body was found floating in the Rio Grande River in Cotabato City.<sup>24</sup> Respondents went to Cotabato City where respondent Luis identified Rizzie's body at the morgue.<sup>25</sup> The autopsy revealed that Rizzie was raped and thereafter shot with a .38 caliber pistol.<sup>26</sup>

On March 23, 2004, respondents filed a civil case against WG&A for breach of contract of carriage and damages. They claimed that WG&A failed to exercise the utmost diligence required in transporting their daughter Rizzie to Zamboanga City on February 2, 2003.<sup>27</sup> The case was raffled to the RTC of Zamboanga City, Branch 12, and docketed as Civil Case No. 5501.

WG&A filed its Amended Answer<sup>28</sup> where it denied liability for the death of Rizzie, raising the following special and affirmative defenses:

33. It is a fact that no crime was reported to the captain of M/V Superferry 1 or to any member of the vessel's complement, at any time between leaving port of Manila on February 1, 2003 and arriving port of Zamboanga on February 2, 2003, or port of Polloc, Cotabato on February 3, 2003. No crime, much less that of homicide or murder was committed or perpetrated on board the vessel at all time material hereto.

34. As a common carrier, defendant discharged its obligation in the premises fully and faithfully. It carried the passengers on this voyage safely, and with extraordinary diligence, as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due (sic) regard for all the circumstances.

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<sup>22</sup> Id. at 90.

<sup>23</sup> Id.

<sup>24</sup> Id. at 84.

<sup>25</sup> Id. at 56.

<sup>26</sup> Id. at 84.

<sup>27</sup> Id. at 56.

<sup>28</sup> Id. at 200-207.

35. As a common carrier, however, defendant is not required to be the absolute insurer of the safety of its passengers at all costs and in all circumstances like when the passenger had already disembarked when danger befalls.

36. Answering defendant likewise observed due diligence in the selection and supervision of its employees.

37. Without hesitation, and disregarding the financial cost, but without admitting legal liability, defendant extended all possible assistance to the plaintiffs and cooperated fully in the investigation conducted by authorities.

x x x x

40. Assuming, *arguendo*, that the plaintiff's relative met an untimely death, or a victim of foul play, the unfortunate incident occurred after the person concerned, assuming she was indeed a paying passenger of the subject voyage, had by then already disembarked or was no longer in the vessel's or defendant's premises.<sup>29</sup>

### RTC Ruling

The RTC rendered its Decision<sup>30</sup> dated July 25, 2011 in favor of respondents, holding WG&A civilly liable for damages arising from breach of contract:

WHEREFORE, in view of all the foregoing, Judgment is hereby rendered in favor of the [respondents] and against [WG&A] herein, by ordering the latter to pay the former the following sum, to wit:

- 1.) P100,000.00 as civil indemnity for the death of Rizzie Gay Asuncion;
- 2.) P500,000.00 representing temperate damages;
- 3.) P100,000.00 as moral damages;
- 4.) P100,000.00 in exemplary damages;
- 5.) P50,000.00 representing attorney's fees; and
- 6.) To pay the cost of this suit.

SO ORDERED.<sup>31</sup>

The RTC held that WG&A failed to exercise the utmost diligence required of common carriers under Articles 1755, 1756, and 1759 of the Civil Code.<sup>32</sup> It emphasized the indifference shown by WG&A's employees to respondents' serious concerns,<sup>33</sup> and pronounced:

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<sup>29</sup> Id. at 205.

<sup>30</sup> Id. at 82-103.

<sup>31</sup> Id. at 103.

<sup>32</sup> Id. at 100-101.

<sup>33</sup> Id. at 99.

x x x What saddens this Court is that the management of [WG&A's] vessel seemed not to have the slightest concern of the seriousness and gravity of the incident that it allowed such cover up to happen by not acting promptly and accordingly on the report of the [respondents] herein that their daughter[,] who was a confirmed passenger of defendant's vessel[,] did not disembark therefrom when it arrived [in] Zamboanga City from Manila on February 2, 2003. Had they done so[,] the truth about what actually happened to Rizzie Gay Asuncion and who were the perpetrators thereof would have been easily discovered which to this Court should have been the primary concern of the defendant['s] vessel's employees and officers and not to strictly adhere and observe their scheduled departure from the port of Zamboanga City.

x x x x

As pointed out above, had [WG&A], in their mandated obligation to see to it and assure the safety of each and every passenger from their point of origin to their point of destination, simply allowed the search of its vessel by the [respondents] upon its arrival at Zamboanga City where it was immediately brought to their attention the missing Rizzie Gay Asuncion, a clear picture of what really transpired and who may have been actors thereof would have been uncovered.

Miserably failing to comply with the aforementioned mandated provisions of the Civil Code on common carriers, which resulted in untimely and ghastly death of their passenger, Rizzie Gay Asuncion, [WG&A] must and should be made liable to [respondents] herein for such disregard.<sup>34</sup>

Aggrieved, WG&A appealed the RTC Decision to the CA.

### **CA Ruling**

The CA rendered its Decision<sup>35</sup> dated July 30, 2015 which denied WG&A's appeal and affirmed the RTC ruling:

WHEREFORE, foregoing premises considered, this ordinary appeal is hereby DENIED. The 25 July 2011 Decision of the Regional Trial Court of Zamboanga City, Branch 12, is hereby AFFIRMED.

SO ORDERED.<sup>36</sup>

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<sup>34</sup> Id. at 100-102.

<sup>35</sup> Id. at 53-66.

<sup>36</sup> Id. at 65.

The CA held that WG&A failed prove that it took all reasonable measures to ensure the safety and well-being of its passengers.<sup>37</sup> It also failed to give evidence of “any policy or procedure intended to anticipate any risk or danger that may possibly befall a minor travelling alone.”<sup>38</sup>

WG&A moved for the reconsideration of the CA Decision but was denied by the CA in its Resolution<sup>39</sup> dated July 15, 2016 for lack of merit.

WG&A thus, filed the instant Petition for Review on *Certiorari*<sup>40</sup> with this Court assailing the CA Decision and Resolution.

Respondents filed their Answer/Comment to the Petition for Review.<sup>41</sup>

### Issue

The issue in this case is whether or not the CA committed reversible error in affirming the RTC Decision holding WG&A civilly liable to respondents for damages arising from breach of contract of carriage.

### Ruling of the Court

In its appeal, WG&A primarily argued that the CA should not have upheld its disputable presumption of negligence as a common carrier due to the lack of evidence that Rizzie was raped and killed inside its vessel, or that it was committed by its servants or employees.<sup>42</sup> It claimed that it exercised the extraordinary diligence required of it as a common carrier because: (1) no untoward incidents were reported during its trip; (2) it deployed security personnel and other sea marshals from the Philippine Coast Guard, Philippine Navy, Philippine National Police and Philippine Army; (3) it implemented Vessel House Rules with passenger safety and security standards; and (4) it extended assistance to respondents in trying to locate Rizzie.<sup>43</sup>

WG&A’s arguments are unmeritorious. The appeal is denied.

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<sup>37</sup> Id. at 62.

<sup>38</sup> Id. at 63.

<sup>39</sup> Id. at 67-69.

<sup>40</sup> Id. at 8-50.

<sup>41</sup> Id. at 387-394.

<sup>42</sup> Id. at 22.

<sup>43</sup> Id. at 38.

It must first be emphasized that factual issues are outside the purview of a petition for review under Rule 45 of the Rules of Court. This Court is not a trier of facts, and it is not duty-bound to re-examine evidence and disturb the factual findings of lower courts, especially when affirmed by the CA.<sup>44</sup>

Petitioner WG&A anchors its appeal on factual matters relating to its alleged exercise of extraordinary diligence as a common carrier. These factual matters have already been reviewed extensively and decided upon by the RTC and CA. The Court finds no compelling reason to disturb these factual findings and conclusions.

Notwithstanding the foregoing, the Court takes this opportunity to elucidate on the extent of the extraordinary diligence required of common carriers to ensure the safety and security of their passengers.

It is well-settled that common carriers are duty-bound to exercise the utmost diligence of very cautious persons, with a due regard for all the circumstances, in carrying its passengers safely to their intended destination.<sup>45</sup>

Article 1759 of the Civil Code renders common carriers liable for the death or injuries of passengers due to the negligence or willful acts of their employees:

Article 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful 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 case of death or injuries to passengers, Article 1756 of the Civil Code establishes a presumption of fault or negligence on the part of common carriers:

Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

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<sup>44</sup> *Gatan v. Vinarao*, 820 Phil. 257, 265-267 (2017).

<sup>45</sup> CIVIL CODE OF THE PHILIPPINES, ARTICLE 1755.



The liability of common carriers is demanded by their duty to exercise extraordinary diligence to safely transport their passengers.<sup>46</sup>

It was pronounced in *Spouses Zalamea vs. Court of Appeals*<sup>47</sup> that a contract of carriage generates a relation attended with public duty, and the common carrier's duty to provide public service and convenience to its passengers must be paramount to its self-interest or enrichment:

A contract to transport passengers is quite different in kind and degree from any other contractual relation. So ruled this Court in *Zulueta v. Pan American World Airways, Inc.* This is so, for a contract of carriage generates a relation attended with public duty — a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller planes, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.<sup>48</sup> (Citation omitted, emphasis and underscoring supplied)

In this case, it is undisputed that Rizzie was a passenger of Super Ferry 1. WG&A was thus duty-bound to exercise the utmost diligence required by law to transport her safely to her port of destination at Zamboanga City. However, Rizzie did not arrive safely at Zamboanga City. She was instead raped and murdered, and her lifeless body found floating along the Rio Grande River in Cotabato City, the succeeding port of destination of Super Ferry 1.

It is explicit under Article 1756 of the Civil Code that WG&A is presumed negligent or at fault for Rizzie's death. After extensive review, this Court affirms the ruling that WG&A failed to overcome this presumption. The records are replete with badges of negligence on the part of WG&A and its employees in handling the case of Rizzie.

*First*, the CA correctly noted that WG&A failed to present evidence of any policy or procedure it implemented specifically applicable to ensure the safety and security of vulnerable passengers (e.g., minors travelling alone).<sup>49</sup> It is expected that these passengers will

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<sup>46</sup> *Sulpicio Lines, Inc. v. Sesante*, 791 Phil. 409, 421 (2016); *Gacal v. Philippines Airlines, Inc.*, 262 Phil. 209, 214 (1990).

<sup>47</sup> 298 Phil. 672 (1993).

<sup>48</sup> *Id.* at 681.

<sup>49</sup> *Rollo*, p. 63.

require extra care. WG&A as a diligent common carrier should have anticipated this and had special policies or procedures in place to care for them.

*Second*, it is apparent that WG&A and its employees were not aware and in control of what has happening in their own vessel.

It is unthinkable that WG&A did not have the most basic and common records which could be used to verify which passengers disembarked at each port of destination. WG&A could therefore not even prove with certainty the simple fact that Rizzie disembarked from the vessel.

WG&A's employees did not know, or at least pretended not to know, who was still on board the vessel and who had already disembarked. Assistant Security Officer Pimentero denied respondents access to search the vessel claiming that Rizzie already disembarked at Zamboanga City port.<sup>50</sup> This contradicts Chief Security Tolentino's statement to respondents that Rizzie disembarked at Cotabato City port.<sup>51</sup> This is again inconsistent with Captain Narciso A. Gutib's testimony that "there was no passenger who was not supposed to be on board during the trip from Zamboanga to Polloc, Cotabato."<sup>52</sup>

If at all, the evidence available tends to prove that Rizzie never disembarked from the vessel and met her fate on-board it during the trip. It is highly unlikely and contrary to human experience that Rizzie would disembark from the vessel without all her personal belongings. She would also not have left her school ID at the Linen Section considering that she would need it to transact with her old high school.

The gun which shot Rizzie was determined to be a .38 caliber pistol. This matched Chief Security Tolentino's testimony that security personnel onboard the vessel were armed with .38 caliber pistols issued by their agency.<sup>53</sup>

It is also dubious that WG&A would posit that Rizzie disembarked at the farther port of Cotabato City when her ticket was only for Zamboanga City. It is contrary to sound business practice to neglect monitoring passengers and allow them to disembark at a farther port with a presumably higher ticket fare.

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<sup>50</sup> Id. at 87.

<sup>51</sup> Id. at 84.

<sup>52</sup> Id. at 93.

<sup>53</sup> Id. at 96.

This clearly proves that WG&A and its employees did not exercise the required extraordinary diligence for common carriers as it failed to implement even the most rudimentary system of monitoring its passengers and the occurrences in its vessel during the voyage.

*Third*, WG&A relies on its self-serving allegation that no untoward incident was reported to its officers during the voyage. The CA correctly pronounced that “the statutory presumption of negligence is not disproved by a convenient claim of lack of knowledge of what transpired on the vessel, or of what befell a passenger, but by being able to account for all significant events on the vessel in the course of the voyage. On the contrary, such lack of awareness of what is happening on board may itself suggest negligent conduct.”<sup>54</sup>

*Fourth*, WG&A failed to exercise the required extraordinary diligence for common carriers when it did not sufficiently act on respondents’ request to search for Rizzie and investigate her disappearance.

The mandate and duty of common carriers to exercise extraordinary diligence in the transportation of its passengers does not end with the implementation of safety and security-related preventive measures. This duty continues for the whole voyage and includes also reactive measures taken, especially in cases involving passengers’ injury or death. In such cases, common carriers are duty-bound to thoroughly investigate and provide sufficient assistance to passengers and other concerned parties to ensure that no further harm or injury is caused.

In this case, it is evident that WG&A and its employees exhibited an abhorrent indifference to respondents’ request to search for Rizzie. It was their inaction and lack of cooperation which greatly hindered discovering the truth of what truly transpired. It is possible that Rizzie’s fate could have been avoided if WG&A and its employees engaged in an earnest effort to search for her at the Zamboanga City port and investigate her disappearance when requested by respondents.

WG&A had multiple opportunities to let respondents search Super Ferry 1 for Rizzie but they did not allow them. If this search was not possible during its first arrival at Zamboanga City port on February 2, 2003 since it was already in the process of undocking, WG&A should have at least exerted other efforts to search for Rizzie. It could have coordinated with an officer on board the vessel to do a search and

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<sup>54</sup> Id. at 63.

provided respondents with updates. However, WG&A instead merely brushed respondents aside and instructed them to return the following day.

WG&A's refusal to allow respondents and the police to search the vessel when it re-docked at Zamboanga City port the following day upon its return from Cotabato City was inexcusable. WG&A already had notice that respondents wanted to search the vessel for their missing daughter. It should have ensured that respondents would be allowed to search the vessel when it arrived. Unfortunately, WG&A dismissed respondents again without extending them any assistance to search for Rizzie.

Moreover, the records show that WG&A and its employees hardly conducted any search or investigation to find Rizzie. This is clear from Captain Gutib's testimony that he did not even begin to start asking about Rizzie until the return trip from Zamboanga City port to Iloilo City. In fact, it was only upon their arrival at Iloilo City that he even knew the name of Rizzie. This is an implied admission that Captain Gutib, the head officer of the vessel, did not order any search or investigation of Rizzie's case during the whole journey from Zamboanga City to Cotabato City and back. The CA summarized Captain Gutib's testimony as follows:

x x x That while the vessel was maneuvering to leave the port of Zamboanga to Iloilo, he received a radio call from the boarding officer that the relatives of a missing passenger wanted to board the vessel to conduct a search. That he did not heed the said requests since the vessel was in the process undocking from the port of Zamboanga and that to do otherwise would be dangerous as it may damage the vessel. That after the vessel left the port of Zamboanga, he conducted an investigation by interviewing the security personnel, hotel manager and other crew members. That the vessel arrived safely at the port of Iloilo. That while at the Iloilo port, members of the Philippine Coast Guard boarded the vessel and conducted a search for the alleged missing passenger. **That was the first time that he learned the name of the missing passenger as 'Rizzie'.** That the members of the Philippine Coast Guard interviewed him but there was no formal investigation conducted.<sup>55</sup>

Respondents' fervent demands from the time the vessel docked at Zamboanga City port thus fell on deaf ears. By the time the vessel's captain even learned of Rizzie's name, they were already in Iloilo City and it was too late. No timely search and investigation were clearly ever conducted by WG&A's employees.

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<sup>55</sup> Id. at 93- 94; Emphasis and underscoring supplied.

Based on all the foregoing, it is overwhelmingly established that Petitioner WG&A failed to observe the extraordinary diligence required of it as a common carrier to overcome the presumption of its negligence and fault.<sup>56</sup> It should thus be held liable for the death of Rizzie through the negligence and willful acts of its employees.<sup>57</sup>

Even worse, Petitioner WG&A's failure to exercise extraordinary diligence has resulted in allowing the perpetrators of this most heinous crime to escape being brought to justice. This is an immeasurable burden carried by Respondents which entitles them to an increased award of damages.

### **Respondents Are Entitled To An Increased Award of Damages**

Although the general rule is that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below,<sup>58</sup> this is not without exception. It is well-settled that the Court may relax the strict application of the rules in the exercise of its equity jurisdiction to serve the broader interests of substantial justice.<sup>59</sup>

In this case, even if respondents did not appeal the CA Decision and assign the amount of damages awarded as an error, the Court finds compelling reasons to review and modify it in the interest of substantial justice. This is likewise in keeping with the Court's statutory duty under Article 24 of the Civil Code, to wit:

Article 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

The minimal damages awarded to respondents by the RTC and CA in this case is severely inadequate and incommensurate to the loss and suffering they experienced sought to be indemnified. The Court must thus, step in to relax the rules and correct this error to avoid a grave injustice.

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<sup>56</sup> CIVIL CODE OF THE PHILIPPINES, Article 1756.

<sup>57</sup> *Id.* at Article 1759.

<sup>58</sup> *Manese v. Jollibee Foods Corporation*, 697 Phil. 322, 337 (2012).

<sup>59</sup> *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, 700 Phil. 575, 582-583 (2012).

### ***Civil Indemnity***

Article 2206 of the Civil Code grants an award of damages for death caused by *quasi-delict*. In view of the foregoing, the Court affirms the grant of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity for the death of Rizzie.

### ***Moral Damages***

Article 1764 in relation to Article 2206(3) of the Civil Code allows the grant of moral damages in cases of death of a passenger caused by a breach of contract of carriage. Articles 1764 and 2206 pertinently provide:

Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

The Court in *Spouses Zalamea v. Court of Appeals*<sup>60</sup> held that a common carrier's inattention and lack of care for the interest of its passengers entitles the latter to moral damages.<sup>61</sup>

It was likewise held in *Sulpicio Lines Inc. v. Sesante*<sup>62</sup> that the award of moral damages resulting from a breach of contract of carriage

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<sup>60</sup> Supra note 47.

<sup>61</sup> Id. at 681.

<sup>62</sup> Supra note 46.

should reasonably approximate the extent of the injury and be proportional to the wrong committed. It should take into consideration the mental anguish, agony, and pain suffered, and meant to enable the injured party to alleviate the moral and physical sufferings:

The aforestated negligent acts of the officers and crew of M/V Princess of the Orient could not be ignored in view of the extraordinary duty of the common carrier to ensure the safety of the passengers. **The totality of the negligence by the officers and crew of M/V Princess of the Orient, coupled with the seeming indifference of the petitioner to render assistance to Sesante, warranted the award of moral damages.**

While there is no hard-and-fast rule in determining what is a fair and reasonable amount of moral damages, the discretion to make the determination is lodged in the trial court with the limitation that the amount should not be palpably and scandalously excessive. The trial court then bears in mind that moral damages are not intended to impose a penalty on the wrongdoer, or to enrich the plaintiff at the expense of the defendant. **The amount of the moral damages must always reasonably approximate the extent of injury and be proportional to the wrong committed.**

The Court recognizes the mental anguish, agony and pain suffered by Sesante who fought to survive in the midst of the raging waves of the sea while facing the immediate prospect of losing his life. His claim for moral and economic vindication is a bitter remnant of that most infamous tragedy that left hundreds of families broken in its wake. The anguish and moral sufferings he sustained after surviving the tragedy would always include the memory of facing the prospect of his death from drowning, or dehydration, or being preyed upon by sharks. Based on the established circumstances, his survival could only have been a miracle wrought by God's grace, by which he was guided in his desperate swim for the safety of the shore. But even with the glory of survival, he still had to grapple with not just the memory of having come face to face with almost certain death, but also with having to answer to the instinctive guilt for the rest of his days of being chosen to live among the many who perished in the tragedy.

While the anguish, anxiety, pain and stress experienced by Sesante during and after the sinking cannot be quantified, the moral damages to be awarded should at least approximate the reparation of all the consequences of the petitioner's negligence. **With moral damages being meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate his moral and physical sufferings,** the Court is called upon to ensure that proper recompense be allowed to him, through his heirs. For this purpose, the amount of ₱1,000,000.00, as granted by the RTC and affirmed by the CA, is maintained.<sup>63</sup>

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<sup>63</sup> Id. at 427-429. Citations omitted, underscoring and emphasis supplied.



It cannot be denied that respondents suffered tremendous mental anguish, agony, and pain by reason of Rizzie's death. WG&A's failure to exercise extraordinary diligence and provide respondents assistance further aggravated their suffering. In this regard, the Court resolves to increase the award of moral damages to ₱3,000,000.00.

### *Temperate Damages*

Article 2224 of the Civil Code allows the grant of temperate damages in cases when the court finds that some pecuniary loss has been suffered but cannot be proved with certainty.

In lieu of actual damages suffered by respondents, for the wake, burial, and other expenses, the Court affirms the grant of temperate damages in the amount of ₱500,000.00.

### *Exemplary Damages*

In contracts and quasi-contracts, exemplary damages may be granted in cases where the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.<sup>64</sup> This cannot be recovered as a matter of right and is left to judicial discretion. Exemplary damages may also be granted to "permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior."<sup>65</sup>

In this case, WG&A and its employees acted in a wanton and oppressive manner towards respondents and violated their duty to exercise extraordinary diligence. No common carrier should ever demonstrate such a degree of indifference and lack of care for the welfare of its passengers. This Court thus resolves to increase the award of exemplary damages to ₱3,000,000.00.

### *Attorney's Fees*

Article 2208 of the Civil Code provides that Attorney's fees and expenses of litigation may be recovered in cases when exemplary damages are awarded and in other cases where the court deems it just and equitable. The Court thus affirms the grant of attorney's fees in this case in the amount of ₱50,000.00.

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<sup>64</sup> *Sulpicio Lines, Inc. v. Sesante*, supra note 46 at 432; Article 2232, CIVIL CODE OF THE PHILIPPINES.

<sup>65</sup> *Id.* at 434.



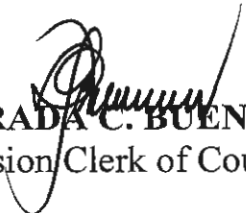
**WHEREFORE**, the Decision dated July 30, 2015 and Resolution dated July 15, 2016 of the Court of Appeals in CA-G.R. CV No. 02742-MIN are hereby **AFFIRMED** with the **MODIFICATION** that WG&A Shipping Lines, Inc. (now 2Go, Inc.) is ordered to pay respondents the following amounts:

1. Civil Indemnity in the amount of ₱100,000.00;
2. Moral damages in the amount of ₱3,000,000.00;
3. Temperate damages in the amount of ₱500,000.00;
4. Exemplary Damages in the amount of ₱3,000,000.00;
5. Attorney's Fees in the amount of ₱50,000.00.

All damages awarded are subject to legal interest of six percent (6%) *per annum* from the finality of this Resolution until full satisfaction.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:


**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**223-B**

THE LAW OFFICE OF MA.  
VICTORIA P. LIM-FLORIDO  
& K.P. LIM II (LIM &  
ASSOCIATES)  
Counsel for Petitioner  
22<sup>nd</sup> Floor, Cityland Pasong Tamo  
Tower, Pasong Tamo  
1200 Makati City

Court of Appeals  
9000 Cagayan de Oro City  
(CA-G.R. CV No. 02742-MIN)

CERILLES NAVARRO NUVAL &  
GO LAW OFFICES  
Counsel for Respondents  
Room 8, Vetran's Avenue  
7000 Zamboanga City

- over -



The Hon. Presiding Judge  
Regional Trial Court, Branch 12  
7000 Zamboanga City  
(Civil Case No. 5501)

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**G.R. No. 225975 – WG&A SHIPPING LINES, INC. (now 2Go, Inc.),  
petitioner, versus SPOUSES LUIS and SYLVIA ASUNCION,  
respondents.**

Promulgated:

**JAN 12 2021**



X-----

**CONCURRING OPINION**

**CAGUIOA, J.:**

I concur.

Petitioner WG&A Shipping Lines, Inc. (WG&A) should be held liable for breach of contract of carriage, as WG&A undoubtedly failed to overcome the statutory presumption of negligence established under Article 1759 of the Civil Code. Further, WG&A should be made to pay respondents Luis and Sylvia Asuncion (Spouses Asuncion) moral and exemplary damages in the increased amount of ₱3,000,000.00 each, on account of the abhorrent conduct of its officers and employees.

I submit this Concurring Opinion to expound on the Court's jurisdiction to grant affirmative relief in favor of parties who did not appeal, and highlight the exceptional circumstances which impel the Court to grant such relief in this case.

In its Decision dated July 25, 2011, the Regional Trial Court of Zamboanga City (RTC), Branch 12, awarded Spouses Asuncion moral and exemplary damages in the amount of to ₱100,000.00 each. Based on the records, only WG&A assailed the RTC Decision before the Court of Appeals (CA).

As a general rule, “an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below.”<sup>1</sup> Thus, based on the general rule governing appeals, it would appear that Spouses Asuncion are precluded from obtaining an increase in the judgment award granted by the RTC.

This general rule, however, is not absolute. The Court *en banc*'s ruling in *La Mallorca v. Court of Appeals*<sup>2</sup> (*La Mallorca*) is instructive.

<sup>1</sup> See *Cruz v. Manila International Airport Authority*, G.R. No. 184732, September 9, 2013, 705 SCRA 275, 281 [Second Division, per *J. Bernabe*]. Emphasis omitted.

<sup>2</sup> 124 Phil. 145 (1966) [En Banc, per *J. Barrera*].



In *La Mallorca*, respondent Mariano Beltran together with his wife and three (3) minor daughters rode Pambusco Bus No. 352 on December 20, 1953. At their stop in Anao, Pampanga, Mariano led his family to the pedestrian side of the road while he returned to the bus to retrieve their baggage. While Mariano was still on the running board, the driver suddenly moved the bus forward without waiting for his conductor's signal. After traveling about 10 meters, the driver made a complete stop. However, the driver accelerated again, causing Mariano to jump out from the running board without waiting for his remaining baggage. At this time, Mariano noticed people gathering around the lifeless body of a child who had been crushed by the bus. The child turned out to be his 4-year-old daughter Raquel.

Because of this incident, Mariano and his wife (Spouses Beltran) filed an action against bus operator La Mallorca. The trial court found the latter liable for breach of contract of carriage and awarded Spouses Beltran ₱3,000.00 for the death of Raquel and ₱400.00 as compensatory damages.

La Mallorca appealed, insisting that there was no breach of contract of carriage since Raquel was no longer a passenger when she met her fate. The CA agreed but nevertheless found La Mallorca guilty of quasi-delict and held the latter liable for the negligence of its driver. The CA increased the damages awarded to Spouses Beltran from ₱3,000.00 to ₱6,000.00. Unsatisfied, La Mallorca elevated the case to the Court questioning, among others, the increased award.

On the increase of damages, the Court held:

In the present case, the father returned to the bus to get one of his baggages which was not unloaded when they alighted from the bus. Raquel, the child that she was, must have followed the father. However, although the father was still on the running board of the bus awaiting for the conductor to hand him the bag or *bayong*, the bus started to run, so that even he (the father) had to jump down from the moving vehicle. It was at this instance that the child, who must be near the bus, was run over and killed. In the circumstances, it cannot be claimed that the carrier's agent had exercised the "utmost diligence" of a "very cautious person" required by Article 1755 of the Civil Code to be observed by a common carrier in the discharge of its obligation to transport safely its passengers. In the first place, the driver, although stopping the bus, nevertheless did not put off the engine. Secondly, he started to run the bus even before the bus conductor gave him the signal to go and while the latter was still unloading part of the baggages of the passengers Mariano Beltran and family. The presence of said passengers near the bus was not unreasonable and they are, therefore, to be considered still as passengers of the carrier, entitled to the protection under their contract of carriage.

x x x x

The increase of the award of damages from ₱3,000.00 to ₱6,000.00 by the Court of Appeals, however, cannot be sustained. Generally, the



appellate court can only pass upon and consider questions or issues raised and argued in appellant's brief. Plaintiffs did not appeal from that portion of the judgment of the trial court awarding them only ₱3,000.00 damages for the death of their daughter. **Neither does it appear that, as appellees in the Court of Appeals, plaintiffs have pointed out in their brief the inadequacy of the award, or that the inclusion of the figure ₱3,000.00 was merely a clerical error, in order that the matter may be treated as an exception to the general rule.** Herein petitioner's contention, therefore, that the Court of Appeals committed error in raising the amount of the award for damages is, evidently, meritorious.<sup>3</sup> (Emphasis supplied)

The exception referred to in *La Mallorca* is found in Section 7, Rule 51 of the 1964 Rules of Court governing appeals filed with the CA. This rule was adopted as Section 8, Rule 51 of the 1997 Rules of Court. It states:

SEC. 8. *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Thus, a party who has not appealed cannot obtain affirmative relief other than the ones granted in the decision below, except in cases where said relief: (i) proceeds from errors affecting the lower court's jurisdiction over the subject matter, (ii) is necessary to correct plain errors not specified, and (iii) is necessary to correct clerical errors.<sup>4</sup>

Here, in light of the Court's supervening ruling in *Fernando v. Northwest Airlines, Inc.*<sup>5</sup> (*Northwest case*), the RTC's grant of minimal moral and exemplary damages should be deemed a "plain error not specified" which should have been passed upon on appeal.

In the *Northwest case*, Jesus and Elizabeth Fernando (Spouses Fernando) filed an action for damages against Northwest Airlines, Inc. (Northwest) on account of two separate incidents — first involving Northwest personnel's failure to properly verify Spouses Fernando's return tickets causing Jesus to be interrogated by immigration officers; and second, Northwest personnel's refusal to allow Spouses Fernando to board their return flight to Manila despite having confirmed tickets. Based on these incidents, the Court deemed it proper to increase the award of moral damages from ₱200,000.00 to ₱3,000,000.00, as the breach of the contract of carriage therein had been tainted with bad faith. The Court also found it proper to award exemplary damages amounting to ₱2,000,000.00. The Court held:

<sup>3</sup> Id. at 151-152.

<sup>4</sup> See *Madrid v. Spouses Mapoy*, 612 Phil. 920, 935 (2009) [Second Division, per *J. Brion*].

<sup>5</sup> G.R. Nos. 212038 & 212043, February 8, 2017, 817 SCRA 233 [Second Division, per *J. Peralta*].



In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. As the aggrieved party, the Fernandos only had to prove the existence of the contract and the fact of its nonperformance by Northwest, as carrier, in order to be awarded compensatory and actual damages.

Therefore, having proven the existence of a contract of carriage between Northwest and the Fernandos, and the fact of nonperformance by Northwest of its obligation as a common carrier, it is clear that Northwest breached its contract of carriage with the Fernandos. Thus, Northwest opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.

x x x x

We, thus, sustain the findings of the CA and the RTC that Northwest committed a breach of contract "in failing to provide the spouses with the proper assistance to avoid any inconvenience" and that the actuations of Northwest in both subject incidents "fall short of the utmost diligence of a very cautious person expected of it." Both ruled that considering that the Fernandos are not just ordinary passengers but, in fact, frequent flyers of Northwest, the latter should have been more courteous and accommodating to their needs so that the delay and inconveniences they suffered could have been avoided. **Northwest was remiss in its duty to provide the proper and adequate assistance to them.**

Nonetheless, We are not in accord with the common finding of the CA and the RTC when both ruled out bad faith on the part of Northwest. While We agree that the discrepancy between the date of actual travel and the date appearing on the tickets of the Fernandos called for some verification, however, the Northwest personnel failed to exercise the utmost diligence in assisting the Fernandos. **The actuations of Northwest personnel in both subject incidents are constitutive of bad faith.**

On the *first* incident, Jesus Fernando even gave the Northwest personnel the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline's computer for her to see that the ticket is still valid. But Linda Puntawongdaycha refused to check the validity of the ticket in the computer. As a result, the Immigration Officer brought Jesus Fernando to the interrogation room of the INS where he was interrogated for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States (U.S.), instead of the usual six (6) months.

As in fact, the RTC awarded actual or compensatory damages because of the testimony of Jesus Fernando that he had to go back to Manila and then return again to LA, USA, two (2) days after requiring him to purchase another round trip ticket from Northwest in the amount of \$2,000.00 which was not disputed by Northwest. **In ignoring Jesus Fernando's pleas to check the validity of the tickets in the computer, the Northwest personnel exhibited an indifferent attitude without due regard for the inconvenience and anxiety Jesus Fernando might have experienced.**



Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rule or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

**In requiring compliance with the standard of extraordinary diligence, a standard which is, in fact, that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property.**

Notably, after the incident, the Fernandos proceeded to a Northwest Ticket counter to verify the status of the ticket and they were assured that the ticket remained unused and perfectly valid. And, to avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando. The failure to promptly verify the validity of the ticket connotes bad faith on the part of Northwest.

**Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud. A finding of bad faith entitles the offended party to moral damages.**

As to the *second* incident, there was likewise fraud or bad faith on the part of Northwest when it did not allow the Fernandos to board their flight for Manila on January 29, 2002, in spite of confirmed tickets. We need to stress that they have confirmed bookings on Northwest Airlines NW Flight No. 001 for Narita, Japan and NW 029 for Manila. They checked in with their luggage at LA Airport and were given their respective boarding passes for business class seats and claim stubs for six (6) pieces of luggage. With boarding passes and electronic tickets, apparently, they were allowed entry to the departure area; and, they eventually joined the long queue of business class passengers along with their business associates.

However, in the presence of the other passengers, Northwest personnel Linda Tang pulled the Fernandos out of the queue and asked for paper tickets (*coupon type*). Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number. Again, the Northwest personnel refused to do so; she, instead, told them to pay for new tickets so they could board the plane. Hence, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. They were assisted by Northwest personnel Jeanne Meyer who retrieved their control number from her computer and was able to ascertain that the Fernandos' electronic tickets were valid, and they were confirmed passengers on both NW Flight No. 001 for Narita Japan and NW 029 for Manila on that day.

X X X X



**Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. Clearly, in this case, the Fernandos are entitled to an award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action.**

We note that even if both the CA and the RTC ruled out bad faith on the part of Northwest, the award of "some moral damages" was recognized. Both courts believed that considering that the Fernandos are good clients of Northwest for almost ten (10) years being Elite Platinum World Perks Card holders, and are known in their business circle, they should have been given by Northwest the corresponding special treatment. They own hotels and a chain of apartelles in the country, and a parking garage building in Indiana, USA. From this perspective, We adopt the said view. We, thus, increase the award of moral damages to the Fernandos in the amount of P3,000,000.00.

x x x x

**Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. They are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior.** Hence, given the facts and circumstances of this case, We hold Northwest liable for the payment of exemplary damages in the amount of P2,000,000.00.<sup>6</sup> (Emphasis supplied)

In the *Northwest case*, the Court awarded ₱3,000,000.00 in moral damages to alleviate the moral suffering Spouses Fernando sustained due to the embarrassment and stress caused by the acts of Northwest's personnel. As well, the Court awarded ₱2,000,000.00 as exemplary damages for the wanton, fraudulent, reckless, oppressive, and malevolent manner that Northwest's personnel dealt with Spouses Fernando.

In stark contrast, the award of moral damages in this case is meant to compensate Spouses Asuncion for the rape and death of their minor daughter Rizzie. On the other hand, the exemplary damages awarded in this case is meant to correct WG&A's complete and utter disregard for Rizzie's well being and the manner through which it condoned the cover up orchestrated by its employees. Clearly, the award of moral and exemplary damages respectively amounting to ₱3,000,000.00 and ₱2,000,000.00 in the *Northwest case* rendered the award of minimal moral and exemplary damages each amounting to ₱100,000.00 in the present case grossly inadequate and patently erroneous. Justice will not be served if these awards are sustained, particularly in the face of the alarming circumstances in this case.

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<sup>6</sup> Id. at 253-260.





As stated in the *Resolution*, the records are replete with badges of negligence on the part of WG&A and its employees. In fact, the actuations of WG&A's employees point to a cover up showing malevolent intent or evident bad faith. To quote:

**First, the CA correctly noted that WG&A failed to present evidence of any policy or procedure it implemented specifically applicable to ensure the safety and security of vulnerable passengers (e.g., minors travelling alone).** It is expected that these passengers will require extra care. WG&A as a diligent common carrier should have anticipated this and had special policies or procedures in place to care for them.

**Second, it is apparent that WG&A and its employees were not aware and in control of what [w]as happening in their own vessel.**

It is unthinkable that WG&A did not have the most basic and common records which could be used to verify which passengers disembarked at each port of destination. WG&A could therefore not even prove with certainty the simple fact that Rizzie disembarked from the vessel.

WG&A's employees did not know, or at least pretended not to know, who was still on board the vessel and who had already disembarked. Assistant Security Officer Pimentero denied respondents access to search the vessel claiming that Rizzie already disembarked at Zamboanga City port. This contradicts Chief Security Tolentino's statement to respondents that Rizzie disembarked at Cotabato City port. This is again inconsistent with Captain Narciso A. Gutib's testimony that "there was no passenger who was not supposed to be on board during the trip from Zamboanga to Polloc, Cotabato."

If at all, the evidence available tends to prove that Rizzie never disembarked from the vessel and met her fate on-board it during the trip. It is highly unlikely and contrary to human experience that Rizzie would disembark from the vessel without all her personal belongings. She would also not have left her school ID at the Linen Section considering that she would need it to transact with her old high school.

The gun which shot Rizzie was determined to be a .38 caliber pistol. This matched Chief Security Tolentino's testimony that security personnel onboard the vessel were armed with .38 caliber pistols issued by their agency.

It is also dubious that WG&A would posit that Rizzie disembarked at the farther port of Cotabato City when her ticket was only for Zamboanga City. It is contrary to sound business practice to neglect monitoring passengers and allow them to disembark at a farther port with a presumably higher ticket fare.

This clearly proves that WG&A and its employees did not exercise the required extraordinary diligence for common carriers as it failed to implement even the most rudimentary system of monitoring its passengers and the occurrences in its vessel during the voyage.



**Third, WG&A relies on its self-serving allegation that no untoward incident was reported to its officers during the voyage.** The CA correctly pronounced that “the statutory presumption of negligence is not disproved by a convenient claim of lack of knowledge of what transpired on the vessel, or of what befell a passenger, but by being able to account for all significant events on the vessel in the course of the voyage. On the contrary, such lack of awareness of what is happening on board may itself suggest negligent conduct.”

**Fourth, WG&A failed to exercise the required extraordinary diligence for common carriers when it did not sufficiently act on respondents’ request to search for Rizzie and investigate her disappearance.**

The mandate and duty of common carriers to exercise extraordinary diligence in the transportation of its passengers does not end with the implementation of safety and security-related preventive measures. This duty continues for the whole voyage and includes also reactive measures taken, especially in cases involving passengers’ injury or death. In such cases, common carriers are duty-bound to thoroughly investigate and provide sufficient assistance to passengers and other concerned parties to ensure that no further harm or injury is caused.

In this case, it is evident that WG&A and its employees exhibited an abhorrent indifference to respondents’ request to search for Rizzie. It was their inaction and lack of cooperation which greatly hindered discovering the truth of what truly transpired. It is possible that Rizzie’s fate could have been avoided if WG&A and its employees engaged in an earnest effort to search for her at the Zamboanga City port and investigate her disappearance when requested by respondents.

WG&A had multiple opportunities to let respondents search Super Ferry 1 for Rizzie but they did not allow them. If this search was not possible during its first arrival at Zamboanga City port on February 2, 2003 since it was already in the process of undocking, WG&A should have at least exerted other efforts to search for Rizzie. It could have coordinated with an officer on board the vessel to do a search and provided respondents with updates. However, WG&A instead merely brushed respondents aside and instructed them to return the following day.

WG&A’s refusal to allow respondents and the police to search the vessel when it re-docked at Zamboanga City port the following day upon its return from Cotabato City was inexcusable. WG&A already had notice that respondents wanted to search the vessel for their missing daughter. It should have ensured that respondents would be allowed to search the vessel when it arrived. Unfortunately, WG&A dismissed respondents again without extending them any assistance to search for Rizzie.

Moreover, the records show that WG&A and its employees hardly conducted any search or investigation to find Rizzie. This is clear from Captain Gutib’s testimony that he did not even begin to start asking about Rizzie until the return trip from Zamboanga City port to Iloilo City. In fact, it was only upon their arrival at Iloilo City that he even knew the name of Rizzie. This is an implied admission that Captain Gutib, the head officer of the vessel, did not order any search or investigation of Rizzie’s



case during the whole journey from Zamboanga City to Cotabato City and back. x x x<sup>7</sup> (Emphasis supplied)

Worse, WG&A's persistent refusal to pay Spouses Asuncion a dime illustrates its continued indifference and utter lack of concern for Rizzie's tragic death. The Court can surely take judicial notice of the fact that WG&A, now 2Go, Inc., boasts that it is one of the largest sea travel providers in the Philippines, and is present in more than 2,000 outlets nationwide.<sup>8</sup> That WG&A chose to sustain increased legal fees by elevating this case to the Court in order to avoid paying Spouses Asuncion the total judgment award of less than ₱1,000,000.00 bespeaks bad faith. To condone such callousness on the ground of technicality would frustrate the ends of justice. As held in *Barnes v. Padilla*:<sup>9</sup>

Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.<sup>10</sup>

An increase in the amount of moral damages awarded in this particular case would be more in keeping with the Court's statutory duty under Article 24 of the Civil Code:

ART. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Notably, the contract of carriage that was breached in this case is between WG&A and Rizzie, a minor traveling alone. In *La Mallorca*, the Court emphasized that "the relation of carrier and passenger does not cease at the moment the passenger alights from the carrier's vehicle at a place selected by the carrier at the point of destination, but continues until the passenger has had a reasonable time or a reasonable opportunity to leave the carrier's premises."<sup>11</sup> Here, the facts on record indicate that Rizzie never even alighted WG&A's vessel. Undoubtedly, the gross negligence and bad faith exhibited by WG&A's employees constitutes a breach of the contract of carriage Rizzie entered with WG&A. The Court must therefore exercise vigilance in order to give Rizzie's parents due compensation for WG&A's failure to afford Rizzie the protection necessary to ensure her safety, and to exercise utmost diligence in the face of her disappearance and untimely death.

<sup>7</sup> Resolution, pp. 8-10.

<sup>8</sup> See <<https://travel.2go.com.ph/about-us.aspx>>.

<sup>9</sup> 482 Phil. 903 (2004) [Second Division, per J. Austria-Martinez].

<sup>10</sup> Id. at 915.

<sup>11</sup> *La Mallorca v. Court of Appeals*, supra note 2, at 150.



Even if it assumed, for the sake of argument, that the contract of carriage between WG&A and Rizzie had been terminated at the time WG&A's vessel docked at the port of Zamboanga City, WG&A can still be held liable for the negligence of its employees pursuant to Article 2180, in connection with Article 2176 of the Civil Code, which governs quasi-delicts.<sup>12</sup> These provisions state:

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

x x x x

ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

As a final note, I stress that the Court's ultimate purpose is to dispense justice. Accordingly, the Court's immense powers must be exercised to achieve this end. Thus, procedural rules must always be applied to facilitate, rather than frustrate, the dispensation of justice. Indeed, "judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities. Where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case."<sup>13</sup>

Here, WG&A and its employees' adamant and inexplicable refusal to allow Spouses Asuncion and the assisting police officers to conduct the necessary search and investigation to determine Rizzie's whereabouts, as well as their indifference and inaction towards the incident, unjustifiably foreclosed Spouses Asuncion's hope of bringing justice to their minor daughter. As emphasized in the Resolution, this is an immeasurable burden<sup>14</sup> which Spouses Asuncion are forced to bear as parents. To deprive Spouses

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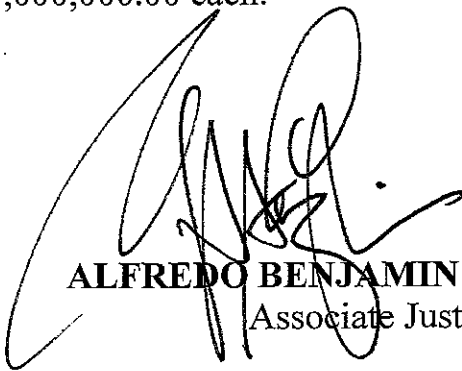
<sup>12</sup> See *id.* at 151.

<sup>13</sup> *Fulgencio v. National Labor Relations Commission*, 457 Phil. 868, 880-881 (2003) [Second Division, per J. Callejo, Sr.].

<sup>14</sup> Resolution, p. 11.

Asuncion of the due compensation owing to them by established jurisprudence merely on the ground of technicality would be to deny them justice for the second time. Thus, I find the increased award of moral and exemplary damages proper, if not imperative.

Based on the foregoing premises, I vote to **DENY** the Petition and register my concurrence with the increased award of moral and exemplary damages in the amount of ₱3,000,000.00 each.

A handwritten signature in black ink, appearing to be 'ABC', is written over the printed name and title of the signatory.

**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice