the front or back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he impliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it has been actually signed by him or by any person in his behalf. This is more so where respondent is both the shipper and the consignee of the goods in question. These circumstances take this case out of our ruling in the Mirasol case (invoked by the Court of Appeals) and place it within our doctrine in the case of Mendoza v. Philippine Air Lines Inc., L-3678, promulgated on February 29, 1952, x x x.

x x x x x x

"With regard to the contention that the Carriage of Goods by Sea Act should also control this case the same is of no moment. Article 1753 (New Civil Code) provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means the law of the Philippines, or our new Civil Code. Under Article 1766, 'In all matters *not* regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,' and here we have provisions that govern said rights and obligations (Articles 1736, 1737, and 1738). Therefore, although Section 4(5) of the Carriage of Goods by Sea Act states that the carrier shall not be liable in an amount exceeding $500.00 per package unless the value of the goods had been declared by the shipper and inserted in the bill of lading, said section is merely suppletory to the provisions of the Civil Code. In this respect, we agree to the opinion of the Court of Appeals.

Wherefore, the decision appealed from is modified in the sense that petitioner Delgado Brothers, Inc. should not be made liable for the damage caused to the goods in question, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, J.B.L. Reyes, Barrera, Gutierrez David and Paredes, JJ., concurred.

VI

Paz Fores, Petitioner, vs. Ireneo Miranda, Respondent, G.R. No. L-12163, March 4, 1959, Reyes, J.B.L., J.

1. PUBLIC SERVICE COMMISSION; APPROVAL OF CONVEYANCE OR ENCUMBRANCE OF PROPERTIES OF OPERATOR OF PUBLIC SERVICE. — The provisions of Section 20 of the Public Service Act (Commonwealth Act 146) prohibit the sale, alienation, lease, or encumbrance of the property, franchise, certificate, privileges or rights, or any part thereof, of the owner or operator of the public service without approval or authorization of the Public Service Commission.

2. ID.; ID.; PURPOSE OF THE LAW. — The law was designed primarily for the protection of the public interest; and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of the Commission, to which the public has right to rely upon.

3. MORAL DAMAGES; CANNOT BE RECOGNIZED IN DAMAGE ACTION BASED ON A BREACH OF CONTRACT OF TRANSPORTATION.—It has been held in Cachero vs. Manila Yellow Taxicab Co., Inc., G.R. No. L-8721, May 23, 1957; Necesito, et al vs. Paras, G.R. No. L-10605-10606, June 30, 1958, that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code.

4. ID.; REQUISITE TO JUSTIFY AN AWARD. — In cases of breach of contract, including one of transportation, proof of bad faith or fraud (dolus), i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages.

5. ID.; BREACH OF CONTRACT NOT INCLUDED IN THE TERM "ANALOGOUS CASES" USED IN ARTICLE 2219, CIVIL CODE. — A breach of contract can not be considered in the descriptive term "analogous cases" used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by the contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code expressly excludes the cases where there is a "preexisting contractual relation between the parties."

6. ID.; MERE CARELESSNESS OF CARRIER'S DRIVER DOES NOT PER SE CONSTITUTE AN INFERENCE OF BAD FAITH OF CARRIER.—The mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier.

7. ID.; AWARD OF MORAL DAMAGES FOR BREACH OF CONTRACT WITHOUT PROOF OF BAD FAITH WOULD BE A VIOLATION OF LAW. — To award moral damages for breach of contract, without proof of bad faith or malice would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

8. ID.; PRESUMPTION OF LIABILITY OF CARRIER; BURDEN OF PROOF. — The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to *force majeure* (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777).

DECISION

Defendant-petitioner Paz Fores brings this petition for review of the decision of the Court of Appeals (C. A. Case No. 1437-R) awarding to the plaintiff-respondent Ireneo Miranda the sums of ₱5,000.00 by way of actual damages and counsel fees, and ₱10,000.00 as moral damages, with costs.

Respondent was one of the passengers on a jeepney driven by Eugenio Luga. While the vehicle was descending the Sta. Mesa bridge at an excessive rate of speed, the driver lost control thereof, causing it to swerve and to hit the bridge wall. The accident occurred on the morning of March 22, 1953. Five of the passengers were injured, including the respondent who suffered a fracture of the upper high humoruz. He was taken to the National Orthopedic Hospital for treatment, and later was subjected to a series of operations: the first on May 23, 1953, when wire loops were wound around the broken bones and screwed into place; a second, effected to insert a metal splint, and a third one to remove such splint. At the time of the trial, it appears that respondent had not yet recovered the use of his right arm.

The driver was charged with serious physical injuries through reckless imprudence, and upon interposing a plea of guilty was sentenced accordingly.

The contention that the evidence did not sufficiently establish the identity of the vehicle as that belonging to the petitioner was rejected by the appellate court which found, among other things, that it carried plate No. TPU-1163, series of 1952, Quezon City, registered in the name of Paz Fores, (appellant herein) and that the vehicle even had the name of "Doña Paz" painted below its windshield. No evidence to the contrary was introduced by the petitioner, who relied on an attack upon the credibility of the two

A point to be further remarked is petitioner's contention that on March 21, 1953, or one day before the accident happened, she allegedly sold the passenger jeep that was involved therein policemen who went to the scene of the incident.
to a certain Carmen Sackerman.

The initial problem raised by the petitioner in this appeal may be formulated thus — "Is the approval of the Public Service Commission necessary for the sale of a *public service vehicle* even without conveying therewith the authority to operate the same?" Assuming the *dubious* sale to be a fact, the Court of Appeals answered the query in the affirmative. The ruling should be upheld.

Section 20 of the Public Service Act (Commonwealth Act No. 146) provides:

"Sec 20. Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the previous approval and authority of the Commission previously had —

x x x

(g) To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with those of any other public service. The approval herein required shall be given, after notice to the public and after hearing, if it be shown that there are just and reasonable grounds for making the mortgage or encumbrance for liabilities of more than one year maturity, or the sale, alienation, lease merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of sale, the date on which the same is to be consummated shall be fixed in the order of approval: *Provided, however*, That nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business."

Interpreting the effects of this particular provision of law, we have held in the recent cases of Montoya vs. Ignacio, 50 Off. Gaz. No. 1. p. 108; Timbol vs. Osias, et al al, G.R. No. L-7547, April 30, 1955, and Medina vs. Cresencia, G. R. No. L-8193, 52 Off. Gaz. No. 10, 4606, that a transfer contemplated by the law, if made without the requisite approval of the Public Service Commission, is not effective and binding in so far as the responsibility of the grantee under the franchise in relation to the public is concerned. Petitioner assails, however, the applicability of these rulings to the instant case, contending that in those cases, the operator did not convey, by lease or by sale, the vehicle independently of his rights under the franchise. This line of reasoning does not find support in the law. The provisions of the statute are clear and prohibit the sale, alienation, lease or encumbrance of the property, franchise, certificate, privileges or rights, or any part thereof of the owner or operator of the public service without approval of the Public Service Commission. The law was designed primarily for the protection of the public interest, and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of Commission, to which the public has a right to rely upon.

The *proviso* contained in the aforequoted law, to the effect that nothing therein shall be construed "to prevent the transaction from being negotiated or completed before its approval" means only that the sale without the required approval is still valid and binding between the parties (Montoya vs. Ignacio, *supra*). The phrase "in the ordinary course of its business" found in the other *proviso* "or to prevent the sale, alienation, or lease by any public service of any of its property", as correctly observed by the lower court, could not have been intended to include the sale of the vehicle itself, but at most may refer only to such property that may be conceivably disposed of by the carrier in the ordinary course of its business, like junked equipment or share parts.

The case of Indalecio de Torres vs. Vicente Ona (63 Phil. 594, 597) is enlightening; and there, it was held:

"Under the law, the Public Service Commission has not only general supervision and regulation of, but also full jurisdiction and control over all public utilities including the property, equipment and facilities used, and the property rights and franchises enjoyed by every individual and company engaged in the performance of a public service in the sense this phrase is used in the Public Service Act or Act No. 3108 (sec. 1308). By virtue of the provisions of said Act, *motor vehicles used in the performance of a service, as the transportation of freight* from one point to another, have to this date been considered — and they cannot but be so considered — *public service property;* and by reasons of its own nature, a TH truck, which means that the operator thereof places it at the disposal of anybody who is willing to pay a rental for its use, when he desires to transfer or carry his effects, merchandise or any other cargo from one place to another, is necessarily a public service property." (Emphasis supplied)

Of course, this Court has held in the case of Bachrach Motor Co. vs. Zamboanga Transportation Co., 52 Phil. 244, that there may be a *nunc pro tunc* authorization which has the effect of having the approval retroact to the date of the transfer, but such outcome cannot prejudice rights intervening in the meantime. It appears that no such approval was given by the Commission before the accident occurred.

The ₱10,000.00 actual damages awarded by the Court of First Instance of Manila were reduced by the Court of Appeals to only ₱2,000.00, on the ground that a review of the records failed to disclose a sufficient basis for the trial court's appraisal, since the only evidence presented on this point consisted of respondent's bare statement that his expenses and loss of income amounted to ₱20,000.00. On the other hand, "it cannot be denied," the lower court said, "that appellee (respondent) did incur expenses." It is well to note further that respondent was a painter by profession and a professor of Fine Arts, so that the amount of ₱2,000.00 awarded cannot be said to be excessive (see Art. 2224 and 2225, Civil Code of the Philippines). The attorney's fees in the sum of ₱3,000.00 also awarded to the respondent are assailed on the ground that the Court of First Instance did not provide for the same, and since no appeal was interposed by said respondent it was allegedly error for the Court of Appeals to award them *motu proprio*. Petitioner fails to note that attorney's fees are included in the concept of actual damages under the Civil Code and may be awarded whenever the court deems it just and equitable (Art. 2208, Civil Code of the Philippines). We see no reason to alter these awards.

Anent the moral damages ordered to be paid to the respondent, the same must be discarded. We have repeatedly ruled (Cachero vs. Manila Yellow Taxicab Co. Inc., G.R. No. L-8721, May 23, 1957, Necesito, et al vs. Paras, G.R. No. 10605-10606, June 30, 1958, that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code, which provide as follows:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

x x x x x

"Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that under the circumtances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

By contrasting the provisions of these two articles it immediately becomes apparent that:

(a) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (dolus). i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages: and

(b) That a breach of contract can not be considered included in the descriptive term, "analagous cases" used in Art. 2219, not only because Art. 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of *quasi delict* in Art. 2176 of Code expressly excludes the cases where there is a "pre-existing contractual relation between the parties."

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

The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Art. 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to "demand moral damages for mental anguish by reason of the death of the deceased" (Necesito vs. Paras, G. R. No. L-10605, Resolution on Motion to reconsider, September 11, 1968). But the exceptional rule of Art. 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by Art. 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

The Court of Appeals has invoked our rulings in Castro vs. Acro Taxicab Co. R. G. No. 4815, December 14, 1948 and Layda vs. Court of Appeals, G. R. No. L-4487, January 29, 1952; but these doctrines were predicated upon our former law of damages, before judicial discretion in fixing them became limited by the express provisions of the new Civil Code (previously quoted). Hence, the aforesaid rulings are now inapplicable.

Upon the other hand, the advantageous position of a party suing a carrier for breach of the contract of transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforseen event or to *force majeure* (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777). Moreover, the carrier unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 1759, new Civil Code; Cangco vs. Manila Railroad Co.. *supra;* Prado vs. Manila Electric Co., 51 Phil. 900).

The difference in conditions, defenses and proof, as well as the codal concept of *quasi-delict* as essentially *extra-contractual* negligence, compel us to differentiate between actions *ex contractu*, and actions *quasi ex delicto*, and prevent us from viewing the action for breach of contract as simultaneously embodying an action on tort. Neither can this action be taken as one to enforce on employer's liability under Art. 103 of the Revised Penal Code, since the responsibility is not alleged to be subsidiary, nor is there on record any averment or proof that the driver of appellant was insolvent. In fact, he is not even made a party to the suit.

It is also suggested that a carrier's violation of its engagement to safely transport the passenger involves a breach of the passenger's confidence, and therefore should be regarded as a breach of contract in bad faith, justifying recovery of moral damages under Art. 2220. This theory is untenable, for under it the carrier would always be deemed in bad faith, in every case its obligation to the passenger is infringed, and it would be never accountable for simple negligence; while under the law (Art. 1756), the presumption is that common carriers acted *negligently* (and not maliciously), and art 1762 speaks of *negligence* of the common carrier.

"Art. 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 extraordinarily diligence as prescribed in articles 1733 and 1755."

"Art. 1762. The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced."

The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored (Art. 1170-1172); their consequences being clearly differentiated by the Code.

"Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or written attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

It is to be presumed, in the absence of statutory provision to the contrary, that this difference was in the mind of the lawmakers when in Art. 2220 they limited recovery of moral damages to breaches of contract in bad faith. It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees.

In view of the foregoing considerations, the decision of the Court of Appeals is modified by eliminating the award of ₱5.000.00 by way of moral damages (Court of Appeals Resolution of May 5, 1957). In all other respects, the judgment is affirmed. No costs in this instance.

So Ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, A. Reyes, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concurred.

VII

Bartolome San Diego, Petitioner, vs. Eligio Sayson, Respondent, G.R. No. L-16258, August 31, 1961, *Labrador, J.*

1. CIVIL CODE; ART. 1724 OF THE NEW CIVIL CODE AND ART. 1593, OLD CODE COMPARED. — Article 1724 of the new Civil Code is a modified form of Article 1593 of the Spanish Civil Code. It will be noted that under Article 1593 of the old Civil Code recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, while article 1724 of the new Civil Code requires that instead of merely proving authorization, such authorization by the proprietor must be made *in writing*.
2. ID.; AUTHORIZATION FOR RECOVERY OF ADDITIONAL COSTS BY REASONS OF CHANGES IN PLAN IN CONSTRUCTION CONTRACT BE IN WRITING; PURPOSE OF THE AMENDMENT.— The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party, can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article