(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

1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

The new provision was evidently adopted to prevent misunderstandings and litigations between contractors and owners. Clearly it was the intention of the legislature in making the amendment to require authorization in writing before costs of additional labor in a contract for the construction of a buliding may be demanded.

D E C I S I O N

This is a petition for certiorari to review a decision of the Court of Appeals affirming a judgment of the Court of First Instance of Manila which sentenced petitioner Bartolome San Diego to pay respondent Eligio Sayson the sum of ₱5,541.75 with legal interest thereon from September 10, 1956, plus ₱500 as attorney's fees and costs. In the action brought by respondent Eligio Sayson in the Court of First Instance of Manila, he alleged that in November, 1954, he and San Diego entered into an agreement whereby Sayson would furnish labor for the construction of a building at 1200 Arlegui, Farnecio, Quiapo, Manila, in accordance with the plans approved by the city engineer, at the price of ₱15,000; that in the course of the construction the plans approved by the city engineer were modified and changes were made not called for in the approved plans, for which plaintiff had to perform and/or furnish labor valued at ₱6,840.31; and that San Diego has refused to pay this additional sum. In a special defense, San Diego alleged that even granting that additional work had been performed, he may not held liable for the same in view of the provisions of Article 1724 of the Civil Code.

At the trial the Court of First Instance of Manila found the following extra or additional work performed by Sayson:

> "x x x he testified that the width of the building was increased from 13.80 meters in the plan as approved to 14.30 meters; the party wall of hollow blocks as appearing in the plan was changed to reinforced concrete; that although the mezzanine was ordered eliminated in the plan and therefore not included in the contract, defendant had it constructed; that after the stairs were constructed, it was ordered removed (Exhibit A-1-a); that the partitions were enlarged (Exhibit A-1-b); that the partitions on the second floor was raised, the transom was removed and the partition elevated to the ceiling (Exh. A-1-c); that all the partitions which were single in the plan were ordered made into double wall; the wooden flooring in Section 22 in the plan was changed to reinforced concrete (Exhibit A-3-a); that the eaves facing Farnecio Street although crossed out by the City Engineer were ordered made (Exh. A-1-d); that the walls had "costura" only under the plan but were ordered plastered and ceilings were ordered although not included in the plan (Exh. A-1-e). These changes which were ordered by defendant and his engineer are summarized on page 8 of Exhibit B as follows:
>
> x x x x
>
> For additional work performed ₱6,840.31." (Record on Appeal, pp. 18, 19-20.)

Judgment for Sayson having been rendered for this amount the case was appealed to the Court of Appeals. In said court petitioner herein again raised as his defense the provision of Article 1724 of the Civil Code, but this court held:

> "We do not see any plausible reason why defendant should not compensate plaintiff for the alterations done by the latter at the instance of the former who was benefited thereby. Bid for such alterations were not included in the amount of ₱15,000. which amount was computed and submitted in the light of the approved plans. And since those alterations undoubtedly entailed expenses, time and efforts on the part of the contractor, then he should be in justice and equity to him paid for by defendant as owner of the building where they were done. It is true that there was no written agreement for such alterations but the absence thereof should not be allowed to make the contractor poorer and the owner of the building richer. Defendant in trying to justify his refusal to pay plaintiff for the latter's claim cites the following article of the Civil Code."
>
> "Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowners can neither withdraw from the contract nor demand increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> (1) Such change has been authorized by the proprietor in writing; and
>
> (2) The additional price to be paid to the contractor has been determined in writing by both parties.
>
> "Obviously, the aforequoted provision of law is not applicable on the claim of defendant."

The decision was affirmed. Hence the case was brought here on an appeal by certiorari.

Article 1724 of the Civil Civil Code is a modified form of Article 1593 of the Spanish Civil Code, which provides as follows:

> "No architect or contractor who, for a lump sum, undertakes the construction of a building, or any other work to be done in accordance with a plan agreed upon with the owner of the ground, may demand an increase of the price, even if the cost of the materials or labor has increased; but he may do so when any change increasing the work is made in the plans, provided the owner has given his consent thereto."

In his commentaries on this Article, Manresa said:

> "El articulo 1.793 del Codigo frances es mas provisor que al que comentamos, pues exigo para que el aumento de precio pueda pedirse, que los cambios o ampliaciones del plan se hayan autorizado por escrito y que se haya convenido el precio con el proprietario." (X Manresa, Fifth ed., p. 926.)

Obviously influenced by the above criticism of the article, the Code Commission recommended and the legislature approved the provision as it now stands. It will be noted that whereas under the old article recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, the amendment evidently requires that instead of merely proving authorization, such authorization by the proprietor must be made in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. Is this additional requirement of a written authorization to be considered as a mere extension of the Statute of Frauds, or is it a substantive provision. 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 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

Our duty in this respect is not to dispute the wisdom of the provision; we should only limit ourselves to inquiring into the legislative intent, and once this is determined to make said intent effective. The new provision was evidently adopted to prevent misunderstandings and litigations between contractors and owners. Clearly it was the intention of the legislature in making the amendment to require authorization in writing before costs of additional labor in a contract for the construction of a building may be demanded. We find that the provision is applicable to the circumstances surrounding the case at bar, and we are in duty bound to enforce the same. The trial court should have denied the demand for

additional costs as directed by the provisions of Article 1724 of the Civil Code.

WHEREFORE, the writ is hereby granted, the decision of the Court of Appeals reversed, and the action of respondent dismissed. Without costs.

Bengzon, C.J., Padilla, J.B.L. Reyes, Paredes, Dizon and De Leon, JJ., concurred.

Barrera, Natividad and Concepcion, JJ., took no part.

VIII

La Mallorca Bus Co., et al., Petitioners-appellees, vs. Nicanor Ramos, et al., Respondents; Fuentes and Plomantes, Respondents-appellants, G.R. No. L-15476, September 19, 1961, Natividad, J.

1. DEPARTMENT OF LABOR; REORGANIZATION PLAN NO. 20-A; JUDICIAL POWER CONFERRED TO REGIONAL OFFICES ORIGINAL AND EXCLUSIVE JURISDICTION OVER MONEY CLAIMS OF LABORERS IS NULL AND VOID.— The provisions of Reorganization Plan No. 20-A, undertaken under the provisions of Republic Act No. 997, as amended, insofar as they confer judicial power upon the Regional Offices thereby created and give said offices original and exclusive jurisdiction over money claims of laborers other than those falling under the Workmen's Compensation Law, are null and void and of no effect. Corominas, et al. vs. Labor Standard Commission, G.R. No. L-14837, and companion cases, June 30, 1961; Miller vs. Mardo, G.R. No. L-15138, and companion cases, July 31, 1961; Caltex (Phil.) Inc. vs. Villanueva, et al., August 21, 1961.

2. WORKMEN'S COMPENSATION LAW; APPLICABILITY TO CLAIM FOR COMPENSATION FOR DISABILITY DUE TO TUBERCULOSIS. — The claim for disability due to tuberculosis, allegedly to have been caused and aggravated by the nature of plaintiff's employment in the petitioners' service, falls squarely under Section 2 of the Workmen's Compensation Law (Act No. 3423, as amended by Act No. 3812, Commonwealth Act No. 210 and Republic Act Nos. 772 and 889).

3. WORKMEN'S COMPENSATION COMMISSION; JURISDICTION WHICH IS NOT REPEALED BY REP. ACT 992; REGIONAL OFFICES; JURISDICTION OVER CLAIMS FOR COMPENSATION FALLING UNDER WORKMEN'S COMPENSATION LAW.— As the jurisdiction vested by Act No. 3428, as amended, on the Workmen's Compensation Commission to hear and decide claims for compensation coming under its provisions has not been revoked, either expressly or by necessary implication, by Republic Act No. 992, as amended, or by any other subsequent statute, and the regional offices created under Reorganization Plan No. 20-A in the Department of Labor partake of the nature of referees which the Workmen's Compensation Commission had the right to appoint and clothe with jurisdiction to hear and decide such claims (Sec. 48, Act No. 3428, as amended), the provisions of said organization plan, insofar as they confer on said regional offices jurisdiction over claims for compensation falling under the Workmen's Compensation Law, is perfectly legal, and their decisions on such claims are valid and binding.

D E C I S I O N

This action for prohibition with preliminary injunction, initiated in the Court of First Instance of Manila to enjoin the respondents from enforcing a decision of the Regional Office No. 3 of the Department of Labor which ordered the petitioners to pay to respondent Nicanor Ramos the sum of P1,862.00 as compensation for disability due to tuberculosis, plus P19.00 as fees, is now before this Court on the appeal interposed by the respondents from the judgment therein entered by that Court granting the writ therein prayed for, on the ground that said regional office was without jurisdiction to hear and determine the claim therein involved.

It appears that respondent Nicanor Ramos was a driver of the petitioners La Mallorca and Pampanga Bus Co., Inc. Sometime prior to November 19, 1958, said respondent filed against the latter with the Regional Office No. 3 of the Department of Labor a complaint asking for payment of compensation for disability due to tuberculosis allegedly contracted by him as a result of his employment in said concerns. The petitioners resisted the action. After hearing, the Regional Office No. 3 of the Department of Labor, on November 19, 1958, rendered a decision ordering the petitioners to pay to said respondent the sum of P1,862.00 as disability compensation, and to said office the amount of P19.00 as fees.

Notified of this decision the petitioners, on January 23, 1959, filed in the Court of First Instance of Manila the instant action, wherein they asked that the enforcement of said decision of the Regional Office No. 3 be restrained, alleging that it is null and void *ab initio* as said regional office had no jurisdiction to hear and decide the claim which was the subject-matter thereof. Respondents filed an answer to the petition. When the case was called for hearing on February 13, 1959, the parties submitted the same for judgment on the pleadings. The trial court took the case under advisement, and on March 12, 1959, rendered judgment on the pleadings, vacating and setting aside the decision of the Regional Office No. 3 of the Department of Labor complained of, on the ground that said regional office was without jurisdiction to hear and decide the claim therein involved, and granting the writ of prohibition applied for.

From this judgment, the respondents appealed to this Court. They contend in this instance that the trial court committed error in granting, on the ground invoked, the writ of prohibition applied for by the petitioners. It is claimed that the decision of the Regional Office No. 3 of the Department of Labor complained of is legal and binding, for the Reorganization Plan No. 20-A, undertaken pursuant to Republic Act No. 997, as amended, gives said regional office jurisdiction to hear claims for compensation under the Workmen's Compensation Act.

The issues raised has already been the subject of previous pronouncements made by this Court. In three recent decisions on the subject, this Court held that the provisions of Reorganization Plan No. 20-A, undertaken under the provisions of Republic Act No. 997, as amended, insofar as they confer judicial power upon the Regional Offices thereby created and give said offices original and exclusive jurisdiction over money claims of laborers other than those falling under the Workmen's Compensation Law, are null and void and of no effect. Corominas, et al. vs. Labor Standard Commission, G.R. No. L-14837, and companion cases, June 30, 1961; Miller vs. Mardo, G.R. No. L-15138, and companion cases, July 31, 1961; Caltex (Phil.) Inc. vs. Villanueva, et al., August 21, 1961. In the Corominas case, *supra*, this Court said:

> "The provision of Reorganization Plan No. 20-A, particularly Section 23, which grants to the regional offices original and exclusive jurisdiction over money claims of laborers, is null and void, said grant having been made without authority by Republic Act No. 997."

In that of Miller vs. Mardo, *supra*, this Court held:

> "On the basis of the foregoing consideration, we hold and declare that Reorganization Plan No. 20-A, insofar as it confers judicial power to the Regional Offices over cases other than those falling under the Workmen's Compensation Law, is invalid and of no effect."

And in the Caltex case *supra*, this Court said:

> "From the foregoing provision of law and rules, it may be gathered that a regional office of the Department of Labor has original jurisdiction to hear and determine claims for compensation under the Workmen's Compensation Act. If a claim is controverted it shall be heard and decided only by a reg-