

**SILVERIO MARCHAN AND PHILIPPINE RABBIT BUS CO., INC.,
PETITIONERS, VS. ARSENIO MENDOZA, LEONARDA ILAYA, AND
ZENAIDA MENDOZA, RESPONDENTS.***G.R. No. L-24471. January 31, 1969*

Ponente: FERNANDO, J.

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This is a motion for the reconsideration of our decision promulgated on August 30, 1968, "insofar as it condemns petitioners (a) to pay exemplary damages of P30,000.00; (b) to pay attorney's fees of P5,000.00; (c) to pay interest on the awards of compensatory and exemplary damages and attorney's fees; and (d) to pay the costs of these proceedings, * * *." [1] The crucial question is the correctness of the award of exemplary damages to respondents. For as set forth in the motion itself, if no such exemplary damages were awarded, the granting of attorney's fees would not be justifiable.

In the decision sought to be reconsidered, the Resolution of the Court of Appeals of March 31, 1965 holding petitioners liable for exemplary damages was sustained. As therein pointed out, the Court of Appeals relied on our ruling in *Singson v. Aragon*. [2] Thus: "From the above legal provisions it appears that exemplary damages may be imposed by way of example or correction only in addition, among others, to compensatory damages, but that they cannot be recovered as a matter of right, their determination depending upon the discretion of the court. It further appears that the amount of exemplary damages need not be proved, because its determination depends upon the amount of compensatory damages that may be awarded to the claimant. If the amount of exemplary damages need not be proved, it need not also be alleged, and the reason is obvious it is merely incidental or dependent upon what the court may award as compensatory damages. Unless and until this premise is determined and established, what may be claimed as exemplary damages would amount to mere surmise or speculation. It follows as a necessary consequence that the amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be determined by the court if in the use of its discretion the same is warranted by the evidence, and this is just what appellee has done." [3]

After such citation, the decision sought to be reconsidered continues: "Such a principle has been repeatedly upheld. In *Corpuz v. Cuaderno*, this Court, again through Justice J.B.L. Reyes, made clear that the amount 'lies within the province of the court a quo, * * *.' It must be admitted, of course, that where it could be shown that a tribunal acted 'with vindictiveness or wantonness and not in the exercise of honest judgment,' then there is room for the interposition of the corrective power of this Tribunal." [4] It was then stated that there could be no such reproach "hurled at a decision and resolution [of the Court of Appeals] now under review."

Petitioners, however, invoking *Rotea v. Halili*, [5] are not in conformity. They have misread the decision. The exemplary damages sought in that case arose from a subsidiary liability under Articles 102 and 103 of the Revised Penal Code. The opinion of Justice Bautista Angelo, speaking for this Court, makes that evident. Thus: "After stating that this action was brought to enforce the indemnity fixed in the criminal case taken against appellee's

driver based upon the subsidiary liability of appellee under Articles 102 and 103 of the Revised Penal Code, which indemnity amounts to P13,513.00, including the sum of P10,000.00 as exemplary damages, appellant contends that the trial court erred in modifying said indemnity by reducing it to P3,513.00 as actual and liquidated damages, eliminating therefrom the sum of P10,000.00 as exemplary damages. * * *"[6]

Whatever doubts on the matter as to our conclusion being made to rest solely on the fact that the issue therein posed was the subsidiary liability arising from a criminal offense would be erased by another excerpt from the opinion of Justice Bautista Angelo. Thus: "On the other hand, the trial court was justified in not requiring appellee to pay exemplary damages there being no evidence whatever that he had any participation in the wrongful act committed by his employee. The rule is that exemplary damages are imposed primarily upon the wrongdoer as a deterrent in the commission of similar acts in the future. Such punitive damages cannot be applied to his master or employer except only to the extent of his participation or ratification of the act because they are penal in character. Moreover, in this jurisdiction, exemplary damages may only be imposed when the crime is committed with one or more aggravating circumstances (Article 2230, new Civil Code), and here the crime being only qualified by negligence is not accompanied by any aggravating circumstance."[7]

It is to be noted that the motion for reconsideration was not unaware of the above portion of the opinion, but emphasis was placed on the general statement requiring "participation in the wrongful act" attributed to the employee ignoring that such a broad statement is limited by the more specific ruling appearing in the same paragraph to the effect that "exemplary damages may only be imposed when the crime is committed with one or more aggravating circumstances."

Thereafter, in another pleading subsequently submitted by petitioners, the attention of this Court was invited to *Munsayac v. De Lara*.^[8] Again, the appreciation of petitioners of the scope and extent of the ruling announced by us is not sufficiently precise. In the opinion of this Court, through Justice Makalintal, the alleged basis for the liability for exemplary damages is thus clearly set forth: "Appellant points out that the act referred to in Article 2232 must be one which is coetaneous with and characterizes the breach of the contract on which the suit is based, and not one which is subsequent to such breach and therefore has no causal relation thereto, such as the herein defendant's failure to placate the sufferings of the plaintiff."

It is clear that the act from which exemplary damages could be predicated was the failure on the part of therein defendant "to placate the sufferings of [plaintiff]." The ruling that no basis for such an award existed cannot then possibly be objected to, as was so emphatically expressed by us: "It is difficult to conceive how the defendant in a breach of contract case could be held to have acted in a wanton, fraudulent, reck-less, oppressive or malevolent manner within the meaning of Article 2232 for something he did or did not do after the breach, which had no causal connection therewith." Our conclusion therefore necessarily follows. Thus: "The mere statement that the defendant failed, even refused, to placate the suffering of the plaintiff, necessitating the filing of the action, is too tenuous a basis to warrant the conclusion that the defendant approved of the wrongful act of his servant with full knowledge of the facts."

It is thus apparent that neither the *Rotea* nor the *Munsayac* decisions lend support to this plea for reconsideration. Rather our decision in *Laguna-Tayabas Bus Co. v. Diasanta*,^[9] cited in the comments submitted by respondents on petitioner's motion for reconsideration, calls for application. In that case as well as in this case, there was a finding of gross negligence on the part of the driver of the vehicle which was the cause of the injury sustained by the victims. Necessarily then, as set forth in our opinion of this Court in the *Diasanta* case through the present Chief Justice: "As regards the exemplary damages, Article 2232 of the Civil Code of the Philippines provides that, in contracts and quasi-contracts the court may award exemplary damages if the defendant acted in a 'wanton, fraudulent, reckless, oppressive or malevolent manner.' In the case at bar, petitioner's driver and, hence, its agent

has been found guilty of recklessness."[10]

Thus, it clearly appears that there is no occasion to reconsider an award of exemplary damages to respondent. It will follow likewise that attorney's fees should be imposed. We did so and there is no reason for us to exempt petitioners from such liability. The claim that petitioners should not be held liable for interest as well as for cost is insubstantial. We reject it.

WHEREFORE, the motion for reconsideration of petitioners, filed on November 18, 1968, is denied.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Motion for Reconsideration, opening paragraph.

[2] 92 Phil. 514, 518 (1953).

[3] Decision of August 30, 1968, pp. 6-7.

[4] Ibid, p. 7.

[5] 60 O.G. 7549, Sept. 30, 1960.

[6] Ibid, p. 7550.

[7] Ibid, pp. 7551-7552.

[8] L-21151, June 26, 1968.

[9] L-19882, June 30, 1964.

[10] Comments on Petitioners' Motion for Reconsideration and Motion to Set Said Motion for Oral Argument, p. 3.

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