

**SOFRONIO G. ALCANTARA, ET AL., PLAINTIFFS AND APPELLANTS,
VS. PATRICIO SURRO AND MANILA ELECTRIC COMPANY,
DEFENDANTS AND APPELLANTS.**

G. R. No. L-4555. July 23, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila which awards to plaintiffs an indemnity in the amount of P25,155 itemized as follows: P18,00 as total salary the deceased Hermenegildo L. Co would have received for the period of four years, 1946 to 1949; P5,000 as moral and "patrimonial" damages for the physical and moral sufferings of his family; and P2,155 as "pecuniary expenses", with legal interest thereon from the filing of the complaint until its full payment. It was declared in the judgment that the liability of defendant Manila Electric Company shall not be executory until after the writ of execution against its co-defendant Patricio Surro has been returned unsatisfied.

The facts as found by the lower court and which are not disputed by the parties are quoted hereunder for ready reference:

"This is an action to recover damages for wrongful death. The plaintiffs are the legitimate children and heirs of the deceased Hermenegildo L. Co namely, Lolita, Hermenegildo Jr., Carlos, Eduardo, Romeo and Manuel, who were 13, 11, 9, 8, 6 and 5 years old respectively at the time of his death, and are now represented by their judicial guardians Sofronio G. Alcantara and Cornelia L. Co. (Exhibit A). The defendant Patricio Surro was a chauffeur of the Manila Electric Company.

Surro was charged with and convicted of the crime of homicide through reckless imprudence in the Court of First Instance of Manila for having caused the death of the late Hermenegildo L. Co on November 24, 1945 (Criminal Case No. 72534). Before the hearing, the private prosecutor, in behalf of the heirs of the offended party reserved their right to institute a separate civil action for damages. Surro appealed but the Court of Appeals affirmed the decision of the lower court with the modification of the designation of the penalties in view of the fact that the offense committed did not come within the purview of the Revised Penal Code but of the provision of section 67 (d) of Act No. 3992 known as the Automobile Law. No payment of indemnity was ordered in view of the express reservation that the heirs of the offended if party made of their right to institute a separate action for damages.

"The facts found by the Court of Appeals were as follows: that on November 24, 1945, Surro was a chauffeur of the Manila Electric Company who, at about 7:50 a.m. of that day, was in charge of and driving passenger truck No. 50 of said company, along Rizal Avenue of this City of Manila, north bound; that on that occasion said truck was following passenger truck No. 55 of the same company that when both these trucks were approaching the intersection of Rizal Avenue and Blumentritt Streets, the traffic policemen posted at said intersection ordered the vehicles coming from the south of Rizal Avenue to stop in order to let those from Blumentritt to pass; that the chauffeur of Meralco truck No. 55 forthwith stopped his car, and by so doing enabled one Hermenegildo Co to board the same; that this man had hardly grasped the hand rails and set his

right foot on the first step of the rear stepboard of truck No. 55, when truck No. 50, driven by the accused, closed in and bumped the former truck from behind with the result that the front bumper of appellant's truck struck said Hermenegildo Co who was thus crushed between the two Meralco autobuses Nos. 55 and 50; and that Hermenegildo Co fell down unconscious and was taken to the Chinese General Hospital where he died a few minutes later in that day due to 'shock, secondary to severe fracture of the pelvis, of left leg, with evisceration of the intestines,' caused by the crush (Exhibits B and B-1).

"It was admitted that on or about November 24, 1945, the defendant Manila Electric Company was engaged in the business of land transportation in the City of Manila. (Exhibit BB.)

"In their complaint, the plaintiffs pray that the defendant Surro be sentenced to pay them the sum of P120,177.98 with interest, and that, in the event of his failure to pay the same and the return of the writ of execution against him unsatisfied, the defendant Manila Electric Company be sentenced to pay the said sum with interest."

Both parties have appealed from the decision of the lower court, but their assignments of error merely center on the amount of damages awarded to the plaintiffs.

The factors that were considered by the lower court in fixing the indemnity awarded to the plaintiffs in view of the death of their father are: (1) the tender ages of the plaintiffs at the time of death—ranging from 5 to 13 years; (2) the age and life expectancy of the deceased; (3) the state of health of the deceased at the time of death; (4) the earning capacity of the deceased; (5) the actual pecuniary damages; (6) the pain and suffering of the deceased and the plaintiffs; and (7) the pecuniary situation of the party liable, as contemplated by Commonwealth Act No. 284. It should be noted that while the lower court elaborated on those factors in an effort to reach a fair and reasonable conclusion as regards the indemnity to be awarded to the plaintiffs, not all of them were actually taken into account; only a few were considered, such as the salary which the deceased would have received during the years 1946, 1947, 1948 and 1949, the physical and moral suffering of the plaintiffs for the loss of their father, and the expenses actually incurred as a necessary incident of his death. Has the lower court erred in following this pattern?

In this jurisdiction, the civil liability arising from crimes is governed by the provisions of the Revised Penal Code. Under article 104, this liability includes restitution, reparation of the damage caused, and indemnification for consequential damages. And under Article 107, indemnification for consequential damages includes not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

Again, Commonwealth Act No. 284 provides that the civil liability for the death of a person shall be fixed by the competent court at a reasonable sum, upon consideration of the pecuniary situation of the party liable and other circumstances; but it shall in no case be less than P2,000. And under this statute, it has been the uniform policy of this Court to award to the heirs of the deceased in criminal cases as a matter of course an indemnity in the amount of P2,000. After liberation, this policy has been liberalized, and since then up to the present the amount of indemnity awarded in criminal cases as a matter of right and without the necessity of proof was generally fixed at P6,000. (*People vs. Amansec*, 80 Phil. 424.) In addition, we may cite cases wherein this Court awarded certain indemnity for patrimonial and moral damages to injured persons considering their physical condition and their social standing (*Lilius vs. Manila Railroad Company*, 59 Phil., 758; *Castro vs. Acro Taxicab Co., Inc.*, G. R. No. 49155; *Layda vs. Court of Appeals*, 90 Phil. 724).

In the United States, a similar pattern is followed. As stated by Mr. Justice Malcolm, "Many American statutes have arbitrarily limited the amounts that could be recovered (as damages for the death of a person) to \$5,000 or \$10,000. In Louisiana, \$2,500, \$3,000, \$4,000 and \$6,000 were allowed in the respective cases for the death of a child. In Porto Rico, \$1,000 and \$1,500 has been allowed for such a loss" (*Manzanares vs. Moreta*, 38 Phil. 821,

823).

The determination of the indemnity to be awarded to the heirs of a deceased person has therefore no fixed basis. Much is left to the discretion of the court considering the moral and material damages involved, and so it has been said that "There can be no exact or uniform rule for measuring the value of a human life and the measure of damages cannot be arrived at by precise mathematical calculation, but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiary, whichever is shorter, is an important factor." (25 C. J. S. 1241.) Other factors that are usually considered are: (1) pecuniary loss to plaintiff or beneficiary (25 C. J. S. 1243-1250); (2) loss of support (25 C. J. S., 1250-1251); (3) loss of service (25 C. J. S. 1251-1254); (4) loss of society (25 C. J. S. 1254-1255); (5) mental suffering of beneficiaries (25 C. J. S., 1258-1259); and (6) medical and funeral expenses (25 C. J. S., 1254-1260).

We therefore find that the factors considered by the lower court in determining the indemnity under consideration are reasonable and within the realm sanctioned by law and precedents. The only thing to be determined is whether they had been properly applied to the particular case under consideration.

Take the item of P18,000. This amount was arrived at by considering the salary to which the deceased would have been entitled had he survived the years 1946, 1947, 1948 and 1949. It was proven that the deceased was earning a salary of P250 a month as vice-president of Go Soe & Sons and Sy Gui Huat, Inc., a closed family corporation. This was testified to by Cornelia L. Co, president of the corporation and sister of the deceased, and by Patricio Fajardo, chief accountant of the corporation. This salary also appears in the income tax return of the deceased. In October, 1948; the salaries of all the officers of the corporation were increased, and on the basis of this increase the deceased would have received at least P750 a month. This is the reason why the lower court considered the salary of P250 a month, or P3,000 a year, for the years 1946, 1947, 1948 and a salary of P750 a month, or P9,000 a year, for the year 1949.

This finding is reasonable considering the life expectancy of the deceased. The records show that the deceased was 39 years old at the time of his death and according to the American Experience Table of Mortality, he had a life expectancy of 28.90 years. Yet, the lower court did not take this duration as basis, but limited its scope to four years. This action of the court is fair and reasonable. The rule is that "The introduction of mortality tables is not absolutely essential to prove the life expectancy of a deceased or his beneficiary, and if introduced they are not conclusive, and the jury are not bound by them. The value of these tables when applied to a particular case, it is said, must depend largely upon other circumstances, such as the state of health, habits, and the manner of life and the social condition of the person injured." (25 C. J. S., 1299-1300.) This is what the lower court has done.

With regard to the state of health of the deceased, the court found that his health was normal at the time of his death and that he has not been seriously ill since 1927 and 1928 except for food poisoning which he suffered on November 8, 1941, as testified to by the family physician, Dr. Castro Pineda. True, Doctor Andaya, medical officer of the Insular Life Assurance Co., testified that when he examined the deceased on November 6, 1943, he found that his pulse pressure was low and was informed by him that he had an attack of encephalitis on November 8, 1941, for which reasons his application for insurance was rejected. But this was belied by Dr. Pineda, who said that as family physician he had taken the blood pressure of the deceased from time to time since 1927 or 1928 and has found it to be normal, and the lower court gave credence to this testimony. We find no reason to disturb this finding.

Counsel for defendants-appellants make mention of the portion of the decision of the lower court concerning the pecuniary situation of the Manila Electric Company which they consider to be erroneous because in their opinion the only criterion in determining its civil liability is the pecuniary situation of its co-defendant Patricio Surro. And

they base this claim upon the fact that under Commonwealth Act No. 284, "the pecuniary situation of the party liable" should be the only basis of the civil liability for the death of a person, and the party liable primarily herein is Patricio Surro. This may be true under Commonwealth Act No. 284, but it should be observed that this Act is not the only criterion. The civil liability of the defendants can also be determined in the light of the provisions of articles 104 and 107 of the Revised Penal Code. At any rate, this claim seems academic for the lower court does not seem to have taken much into account the financial condition of the defendant company in fixing the indemnity in question.

As regards the claim of plaintiffs-appellants that the lower court erred in not considering the bonus which the corporation in which the deceased was employed has resolved to award to its deserving officers and employees, it should be noted that the resolution granting said bonus was intended to apply only to the profits earned up to September 30, 1945. Moreover, the granting of bonus is merely a privilege which may be given depending upon the financial condition of the employer and the behavior and conduct of the employee and it cannot be claimed as a matter of right, and so we believe that the lower court acted rightly in not considering such bonus as a factor in determining the indemnity in this case. (Philippine Education Company, Inc. vs. Court of Industrial Relations, 92 Phil. 381.)

The other items awarded to the plaintiffs such as the sum of P5,000 as moral and "patrimonial" damages for their physical and moral sufferings, and the sum of P2,155 as actual expenses, should not be disturbed since they are supported by proof and precedents.

Finding no error in the decision appealed from, the same is hereby affirmed, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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