

**LUISA CO CHAN, LOUISE NICHOLLE CHAN, STACIE NOELLE CHAN,
AND NICANOR CHAN, JR., PLAINTIFFS-APPELLANTS, VS. VICTORY
LINER, INC., DEFENDANT-THIRD PARTY PLAINTIFF AND
APPELLANT, VS...**

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GALAPATE-LAGUILLES, J:

Before Us are the separate Appeals under Rule 41 of the Rules of Court filed by plaintiffs-appellants Luisa Co Chan, Louise Nicholle Chan, Stacie Noelle Chan and Nicanor Chan, Jr. (the heirs), on one hand, and defendant-third party plaintiff and appellant Victory Liner, Inc. (Victory Liner), on the other, challenging the Decision[1] dated 20 March 2012 of the Regional Trial Court of Tuguegarao City, Branch 2, in Civil Case No. 5968 for Damages, which ordered Victory Liner and third-party defendants-appellees Vicente Recuenco, Jr. (Recuenco), Cesar A. Gamiz (Gamiz) and Warlito F. Dela Cruz (Dela Cruz) to pay, jointly and severally, the heirs the amounts of Php 500,000.00 as temperate damages and Php 500,000.00 as moral damages.

The following are the antecedent facts:

On 3 March 2001 at around 3:30 in the morning, Nicanor Chan boarded Victory Liner bus with Plate No. CVP-402 for Manila from Tuguegarao City. While cruising along Maharlika Highway in Munoz, Nueva Ecija, the bus met an accident when it hit an acacia tree at the left shoulder of the highway thus shattering its windows and front windshield. Nicanor Chan, who was seated at the front portion of the bus, was not spared from the pernicious effects of the accident. He was rushed immediately to a nearby hospital in Nueva Ecija but was later transferred to the Philippine General Hospital in Manila for treatment. He succumbed to his injuries on 9 March 2001.[2]

On 15 March 2002, the heirs, through counsel, filed a Complaint[3] for damages arising from culpa contractual against Victory Liner, Inc, praying for the payment of damages on the ground that Nicanor Chan was not transported safely to his destination.

In its Answer with Counterclaim[4] filed on 30 April 2002, Victory Liner alleged that its driver, Leviticus Lamire (Lamire), was driving the bus in a careful and prudent manner in accordance with traffic rules and regulations. It further averred that on the fateful day of 3 March 2001, an Elf truck with Plate No. TFK-913 driven by Dela Cruz was turning alternately left and right despite the road being in good condition. Lamire attempted to overtake the Elf truck and while doing so, the Elf truck veered towards the lane being occupied by the Victory Liner bus. As the bus tried to move over the left shoulder, it hit a bent trunk of an acacia tree. Thus, the proximate cause of the accident was the gross negligence of the driver of the Elf truck in veering towards the lane occupied by the Victory Liner bus.[5]

On 17 July 2002, upon leave of court,[6] Victory Liner filed a Third-Party Complaint[7] against Recuenco, the registered owner of the Elf truck; Gamiz, the owner of the Elf Truck; and dela Cruz, employee of Gamiz. It averred that the proximate cause of the incident was the inexcusable and gross negligence of the driver of the Elf truck, dela Cruz.[8]

In his Answer to the Third Party Complaint,[9] Recuenco contended that prior to the accident, he no longer had supervision and control over the operation and use of the Elf Truck as the same was absolutely sold, transferred and conveyed to third-party defendant, Gamiz, sometime in February 2000. Thus, Recuenco supplicated that the Third Party Complaint filed against him be dismissed.[10]

Gamiz also filed his Answer[11] to the Third Party Complaint wherein he denied the claim of Victory Liner that the Elf truck was running in a zigzag manner at the time of the incident.[12] He alleged that on the fateful day of the incident, the Elf truck was travelling ahead of the Victory Liner bus along Maharlika Highway, Nueva Ecija, when Lamire, the Victory Liner bus driver, suddenly accelerated the speed of the bus intending to overtake the Elf truck. In doing so, Lamire miscalculated the width of the bus causing it to accidentally ram the left shoulder of the road and, in the process, hit a protruding big branch of an acacia tree. In his attempt to avoid injuries to the passengers, Lamire veered the bus and occupied the lane of the Elf truck, causing it to sideswipe the latter vehicle. The driver of the Elf truck, dela Cruz, on the other hand, suddenly stepped on the brakes, pulled and turned the steering wheel on the right side of the road but while doing so, the Elf truck was rammed on the shoulder of the road and its frontage portion was destroyed.[13]

On 20 March 2012, the RTC rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff Luisa Co Chan, Louise Nicholle Chan, Stacie Chan and Nicanor Chan, Jr. and ordering defendant-third party plaintiff Victory Liner, Inc, Inc. and third party-defendants Vicente Recuerdo, Jr., Cesar A. Gamiz and Warlito F. Dela Cruz to pay them jointly and solidarily the sum of P500,000.00 as temperate damages and P500,000.00 as moral damages.

The plaintiff's (sic) having been authorized to litigate as pauper litigants, the award of damages granted to the plaintiffs is subject to the lien to the extent of the lawful fees that are to be collected.

SO ORDERED.

On Motion for Reconsideration[14] filed by the heirs, the RTC issued an Order[15] dated 21 September 2012, amending the foregoing Decision, to read as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff Luisa Co Chan, Louise Nicholle Chan, Stacie Chan and Nicanor Chan, Jr. and ordering defendant-third party plaintiff Victory Liner, Inc, Inc. and third party-defendants Vicente Recuerdo, Jr., Cesar A. Gamiz and Warlito F. Dela Cruz to pay them jointly and solidarily the sum of P50,000.00 as death indemnity, P500,000.00 as temperate damages and P500,000.00 as moral damages.

The plaintiff's (sic) having been authorized to litigate as pauper litigants, the award of damages granted to the plaintiffs is subject to the lien to the extent of the lawful fees that are to be collected.

SO ORDERED.

Feeling aggrieved, both the heirs and Victory Liner appealed the foregoing Decision of the RTC.

The heirs impute the following assignment of errors[16] to the RTC, viz:

- a.) the trial court erred in ordering the defendant and third party plaintiff (Victory Liner) and the third party defendants jointly and solidarily liable;
- b.) the trial court erred in not awarding actual damages including loss of expected earnings;
- c.) the trial court erred in not awarding exemplary damages and attorney's fees; [and]

d.) the award of Php 500,000.00 as moral damages should be increased.

Victory Liner, on the other hand, raised the following assignment of errors, to wit:

- The trial court erred in declaring that the plaintiffs['] evidence was not rebutted by the defendant-third party plaintiff nor by the third party defendants;
- The trial court erred in ruling that it was driver Leviticus Lamire who was negligent that he should have exercised an even greater prudence;
- The trial court erred in imputing negligence on the employer Victory Liner given that at the time of the vehicular accident, its driver was engaged in a negligent act;
- The trial court erred in declaring that both parties (Victory liner and Isuzu Elf) were deemed negligent;
- The trial court erred imputing negligence on Lamire yet it held the third defendants negligent for failure to rebut the allegations of Lamire that the Isuzu elf was zigzagging from left to right and saying were it not for the swinging movement of the truck, no collision could have occurred;
- The trial court erred in citing Orix vs. Mangalinao (G.R. No. 174089) as basis in awarding temperate damages in the amount of P500,000.00.
- The trial court erred in awarding P500,000.00 by way of moral damages.[17]

The foregoing issues raised by the heirs and Victory Liner can be summed into: (1.) Whether or not the trial court erred in finding both Victory Liner and the appellees negligent, thus resulting to the subject accident; (2.) Whether or not the trial court erred in holding Victory Liner and the appellees jointly and severally liable given that the suit by the heirs against Victory Liner was based on culpa contractual; (3.) Whether or not the trial court erred in not awarding actual damages including loss of earning capacity, as well as exemplary damages and attorney's fees; (4) Whether or not the trial court is correct in awarding to the heirs Php 500,000.00 as moral damages and Php 500,000.00 as temperate damages.

The respective Appeals of the heirs and Victory Liner are partly meritorious.

The following are the provisions of the Civil Code pertinent to the case at bar:

ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

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 extraordinary diligence as prescribed in articles 1733 and 1755.

In this case, Nicanor Chan contracted with Victory Liner, as owner and operator of the bus, for transportation from Tuguegarao City to Manila. It is undisputed that Nicanor Chan was not safely transported to the destination agreed upon. In actions for breach of contract, only the existence of such contract, and the fact that the obligor, in this case the common carrier, failed to transport its passenger safely to his destination are the matters that need to be proved. This is because under the said contract of carriage, Victory Liner assumed the express obligation to transport Nicanor Chan to his destination safely and to observe extraordinary diligence with due regard for all circumstances. Any injury suffered by the passengers in the course thereof is immediately attributable to the

negligence of the carrier. Upon the happening of the accident, the presumption of negligence at once arises, and it becomes the duty of a common carrier to prove that it observed extraordinary diligence in the care of its passengers. It must be stressed that in requiring the highest possible degree of diligence from common carriers and in creating a presumption of negligence against them, the law compels them to curb the recklessness of their drivers.[18]

While evidence may be submitted to overcome such presumption of negligence, it must be shown that the carrier observed the required extraordinary diligence, which means that the carrier must show the utmost diligence of very cautious persons as far as human care and foresight can provide, or that the accident was caused by fortuitous event.[19] Victory Liner failed to conclusively rebut such presumption. The negligence of Lamire as driver of the passenger bus is, thus, binding against Victory Liner, as the owner of the passenger bus engaged as a common carrier.[20]

Indeed, Lamire's negligence in driving the Victory Liner bus is apparent from the records. By Lamire's own admission, the Victory Liner bus was tailing behind the Elf truck driven by Dela Cruz which was allegedly running in a zigzag manner. The unusual running of the Elf truck prompted Lamire to overtake the same. Lamire, as it turned out, underestimated, however, the width of the bus causing it to ram on the left shoulder and eventually hitting the Elf truck. The pertinent portions of Lamire's testimony reveal:

Q: Alright, you also testified during the last hearing that there was an incident involving the plaintiff. Now, Mr. Witness, could you tell the court what was the situation before there was that incident or immediately before the incident?

A: That was the time when we met an accident, sir.

Q: How did the accident happen?

A: I was then tailing an ISUZU type when I overtook them, I warned them by using my horn and flushing (sic) lights after which the ISUZU elf is "gumaywang gaywang" and he took the lane I am supposed to be, sir. I would like to make a clarification. The Isuzu elf truck was already swinging the whole car from left to right when I was supposed to overtake it that is why I made a warning by ringing my horn and flushing (sic) my lights, sir.

Q: Now, when you said that the Isuzu elf truck turn to the left occupied the lane that you were supposed to occupy you were supposed (sic) to overtake during that time?

A: No, sir.[.] [H]e was the one the act of overtaking, sir.

Q: When you tried to overtake him was he successful?

A When he bumped the side of my bus I already swerved to the left thereby hitting a tree which caused my injury on my elbow, my head and my clavicle, sir.[21]

x x x

Given that Lamire saw the Elf truck running in a zigzag manner, he, as the driver of the Victory Liner bus, should have exercised greater caution and utmost diligence especially at that point when he proceeded to overtake the Elf

truck. He should have been mindful of the road condition ahead. Had he been so, he could have been forewarned by the peril along the road such as trees with extended branches and, thus, could have avoided hitting the Elf truck. It is easier to believe that Lamire swerved to the left lane without proper clearance when it attempted to overtake the Elf truck, since at 3.30 a.m., the approximate time of the accident, there were no oncoming vehicles at the opposite direction. On this score, We agree with the following findings of the RTC, to wit:

“The events that transpired on the day of the accident was based on the account of only one person who was an eyewitness, bus driver Leviticus Lamire. From his account of what transpired on the day of accident, he admits tailing an Isuzu Elf, which according to him was “gumagaywang gaywang”. He then stated that he proceeded to overtake the same but in the process of doing so, the Isuzu Elf swerved onto his path causing him to veer left and bump into a branch of an acacia tree. From his statement, the Court finds bus driver Lamire to be negligent.

First, while overtaking itself is not a wrongful act, the person overtaking should exercise prudence and care when doing so, specially that it only takes a split second to make a wrong move. In this case, Lamire, as the driver of the Victory Liner bus, should have exercised an even greater amount of prudence knowing that the lives of his passengers depended on him. He admitted having seen the Isuzu Elf zigzagging ahead of him. This should have alerted him of an impending danger in the event that he decides to overtake the said vehicle. Secondly, even if he would have been cautious in overtaking, he should also be aware of obstructions along the highway, including low-lying branches of roadside trees. From his testimony, he had been driving the same route for a number of times already and so, it is safe to assume that he is familiar with this particular stretch of road and the fact that it is dotted with trees. It is for this reason that the court finds Lamire, as the bus driver, to be negligent.”

x x x

Given the foregoing observations, no sufficient evidence has been proffered to rebut the statutory presumption that the proximate cause of Nicolas Chan's death was the negligence of Victory Liner. Resultantly, Victory Liner is guilty of breach of contract of carriage.

We observe from the records, too, that the appellees did not appeal the Decision of the RTC, thus, We are constrained to uphold the findings of the lower court holding them liable under the Third-Party Complaint filed by Victory Liner against them. By running in a zigzag manner, the Elf truck created an unreasonable risk for any one driving within the vicinity, hence it must be held responsible also for the accident. In *Phoenix Construction, Inc. v. Intermediate Appellate Court*,^[22] where therein respondent Dionisio sustained injuries when his vehicle rammed against a dump truck parked askew, the Court ruled that the improper parking of a dump truck without any warning lights or reflector devices created an unreasonable risk for anyone driving within the vicinity, and for having created such risk, the truck driver must be held responsible. In ruling against the petitioner therein, the Court elucidated, thus:

... In our view, Dionisio's negligence, although later in point of time than the truck driver's negligence, and therefore closer to the accident, was not an efficient intervening or independent cause. What the petitioners describe as an "intervening cause" was no more than a foreseeable consequence of the risk created by the negligent manner in which the truck driver had parked the dump truck. In other words, the petitioner truck driver owed a duty to private respondent Dionisio and others similarly situated not to impose upon them the very risk the truck driver had created. Dionisio's negligence was not that of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the *juris vinculum* of liability. ...

...

We hold that private respondent Dionisio's negligence was "only contributory," that the "immediate and

proximate cause" of the injury remained the truck driver's "lack of due care."...

The heirs, however, argue that since their complaint for damages against Victory Liner was based on culpa contractual and the third-party complaint brought by Victory Liner against the appellees was for the sole purpose of subrogation, indemnity or contribution, the liability of the two cannot be joint and solidary.[23]

The contention of the heirs is misplaced.

There is no question that Victory Liner filed its third-party complaint against the appellees in order to establish in this action that the latter, instead of Victory Liner, should be directly liable to the heirs for the death of Nicanor Chan because of negligence. To be precise, the appellees were brought into the action on the theory that the proximate cause of the collision between Victory Liner bus and the Elf truck was the "inexcusable and gross negligence of the driver of the [E]lf truck, third party defendant dela Cruz... [when] he operated the Isuzu elf truck without regard to other's property and safety." [24] The apparent objective of Victory Liner was not to merely subrogate the third-party defendants for itself but to obtain a different relief whereby the third-party defendants (herein appellees) would be held directly, fully and solely liable to the heirs for whatever damages each had suffered from the negligence committed by the appellees. In other words, the appellees were charged here as joint tortfeasors who would be jointly and severally be liable to the heirs.

Impleading the appellees through the third-party complaint filed on 17 July 2002 was correct. The procedural device of third-party action, also known as impleader, was in accord with Section 12, Rule 6 of the Revised Rules of Court, the rule then applicable, viz.:

Section 12. Third-party complaint. — A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

Explaining the application of Section 12, Rule 6, the Supreme Court said in *Balbastro v. Court of Appeals*, [25] to wit:

Section 12 of Rule 6 of the Revised Rules of Court authorizes a defendant to bring into a lawsuit any person "not a party to the action . . . for contribution, indemnity, subrogation or any other relief in respect of his opponent's claim." From its explicit language it does not compel the defendant to bring the third-parties into the litigation, rather it simply permits the inclusion of anyone who meets the standard set forth in the rule. The secondary or derivative liability of the third-party is central — whether the basis is indemnity, subrogation, contribution, express or implied warranty or some other theory. The impleader of new parties under this rule is proper only when a right to relief exists under the applicable substantive law. This rule is merely a procedural mechanism, and cannot be utilized unless there is some substantive basis under applicable law.

Apart from the requirement that the third-party complainant should assert a derivative or secondary claim for relief from the third-party defendant there are other limitations on said party's ability to implead. The rule requires that the third-party defendant is "not a party to the action" for otherwise the proper procedure for asserting a claim against one who is already a party to the suit is by means of counterclaim or cross-claim under sections 6 and 7 of Rule 6. In addition to the aforecited requirement, the claim against the third-party defendant must be based upon plaintiff's claim against the original defendant (third-party claimant). The crucial characteristic of a claim under section 12 of Rule 6, is that the original "defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff."

Accordingly, the requisites for a third-party action are, firstly, that the party to be impleaded must not yet be a party to the action; secondly, that the claim against the third-party defendant must belong to the original defendant; thirdly, the claim of the original defendant against the third-party defendant must be based upon the

plaintiff's claim against the original defendant; and, fourthly, the defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff.[26]

As the foregoing indicates, the claim that the third-party complaint asserts against the third-party defendant must be predicated on substantive law. Here, the substantive law on which the right of Victory Liner to seek such other relief through its third-party complaint rested were Article 2176 and Article 2180 of the Civil Code, which read:

Article 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 pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this chapter.

Article 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.

xxx xxx xxx

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.

xxx xxx xxx

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.

The heirs' cause of action against Victory Liner (breach of contract of carriage) did not need to be the same as the cause of action the latter has against the appellees (tort or quasi-delict) in the impleader. It is settled that a defendant in a contract action may join as third-party defendants those who may be liable to him in tort for the plaintiff's claim against him, or even directly to the plaintiff.[27]

It is further worth adding that allowing the recovery of damages by the heirs based on quasi-delict, despite their complaint being upon contractual breach, served the judicial policy of avoiding multiplicity of suits and circuitry of actions by disposing of the entire subject matter in a single litigation.[28]

Thus, We agree with the RTC that the liability of Victory Liner and the appellees should be joint and several.

Going now to the issue on the failure of the RTC to award actual damages, the heirs argue that they cannot be denied a just award for the expenses they incurred for the hospitalization, wake and funeral of Nicholas Chan, more so that they were able to substantiate the same through receipts, albeit photocopies only.[29]

We do not agree.

For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[30]

Here, the heirs failed to prove the fact of expenses it allegedly incurred for the hospitalization, wake and burial of Nicanor Chan because the photocopies of the original receipts they presented in court were inadmissible in evidence.[31]

The original copies of the receipts are the best evidence to prove the alleged hospital, wake and burial expenses of the heirs. Photocopies thereof are mere secondary evidence. As such, they are inadmissible because the heirs, as the offeror, failed to prove any of the exceptions provided under Section 3[32] of Rule 130 of the Rules of Court, as well as the conditions of their admissibility. Because of the inadmissibility of the photocopies in the absence of

the originals, the heirs' purported expenses were not established.

Section 5 of Rule 130 of the Rules of Court states:

SEC. 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Applying the above Rule to the present case, before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents. At the sound discretion of the court, this order may be changed if necessary.[33]

In the instant case, the existence of the original receipts was established by the photocopies thereof. The heirs, however, failed to prove that the originals had been lost or could not be produced in court after reasonable diligence and good faith in searching for them.[34] The original receipts would have constituted the best evidence of the fact of expenses incurred for the hospitalization, wake and burial of Nicanor Chan. It baffles the court why they never bothered to present the original receipts for the expenses considering that the same without doubt are in their possession. A mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.[35]

Nonetheless, it cannot be denied that the heirs had suffered substantial losses. Article 2224 of the Civil Code allows the recovery of temperate damages when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty. In lieu of actual damages, therefore, temperate damages of Php 25,000.00 is awarded. Such amount, in our view, is reasonable under the circumstances.

The heirs next allege that the trial court erred when it did not award indemnity for the loss of earning capacity to them.[36] Victory Liner, however, counters that the trial court erred in awarding Php 500,000.00 as temperate damages in lieu of loss of earning capacity pursuant to the ruling of the Supreme Court in[37] *Orix Metro Leasing and Finance Corporation v. Minors: Denis, Mylene, Melanie and Marikris, all surnamed Mangalinao y Dizon, et al.*[38]

The amount of Php 500,000.00 as temperate damages in lieu of indemnity for the loss of earning capacity should be modified.

It is noteworthy that in its Decision, the RTC awarded Php 500,000.00 as temperate damages to the heirs in lieu of indemnity for the loss of earning capacity. Thus, the heirs are mistaken in their contention that the RTC did not award indemnity for the loss of earning capacity to them. We reiterate herein that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.[39] In this case, we only had the testimony of Nicanor Chan's father who claimed that the victim was earning Php 10,000.00 a month.

At any rate, in the case of *Heirs of Jose Marcial K. Ochoa v. G & S Transport Corporation*,[40] the Supreme Court laid the guidelines for the award of damages for loss of earning capacity, to wit:

In *Ereño*, we denied the claim for loss of income because the handwritten estimate of the deceased's daily income as a self-employed vendor was not supported by competent evidence like income tax returns or receipts. This was in view of the rule that compensation for lost income is in the nature of damages and as such

requires due proof of damages suffered. We reiterated this rule in *People v. Yrat* where we likewise denied the same claim because the only evidence presented to show that the deceased was earning P50,000.00 a month was the testimony of the wife. There we stated that for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough. In *People v. Caraig*, we declared that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages therefor may be awarded despite the absence of documentary evidence, provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws". However, we subsequently ruled in *Pleyto v. Lomboy* that "failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity". Hence, we held as sufficient to establish a basis for an estimate of damages for loss of earning capacity the testimony of the victim's widow that her husband was earning a monthly income of P8,000.00. Later, in *Victory Liner, Inc. v. Gammad*, after finding that the deceased's earnings does not fall within the exceptions laid down in *Caraig*, we deleted the award for compensatory damages for loss of earning capacity as same was awarded by the lower courts only on the basis of the husband's testimony that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue with a salary of P83,088.00 per annum at the time of her death. This same rule was also applied in the 2008 case of *Licyayo v. People*. (citations omitted)

In all the foregoing cases cited in *Heirs of Jose Marcial K. Ochoa*, the sole basis for the claim for loss of earning capacity were the testimonies of the claimants. Regrettably, We have nothing to anchor upon the award for loss of earning capacity except the bare testimony of Nicanor Chan's father. Thus, the trial court was correct in disallowing the award of loss of earning capacity and in lieu thereof, awarded temperate damages to the heirs.

Nevertheless, We find merit in *Victory Liner's* contention that the *Orix* case is not on all fours with the instant case with respect to the award of temperate damages in lieu of loss of earning capacity. It is noteworthy that in the *Orix* case, deceased Roberto Mangalinao, the breadwinner of the family, was a businessman engaged in buying and selling palay and agricultural supplies that required high capital in its operations and was only 37 years old at the time of his death. Moreover, the *Pathfinder* which he owned, became a total wreck. Under the circumstances, the High Court found it reasonable to award Php 500,000.00 as temperate damages in lieu of actual damages for loss of earning capacity. In the instant case, without the slightest intention to belittle the deceased Nicanor Chan's capacity for future income during his lifetime, was only assisting in the business of his father and no vehicle owned by him was involved in the accident. Hence, We deem it wise and just to reduce the amount of temperate damages to Php 300,000.00.

It is relevant to clarify that awarding the temperate damages for the substantial pecuniary losses corresponding to Nicanor Chan's hospitalization, wake and burial, and the actual damages to compensate lost earnings give rise to no incompatibility. These damages cover distinct pecuniary losses suffered by the heirs, and do not infringe the statutory prohibition against recovering damages twice for the same act or omission.[41]

Both the heirs and *Victory Liner* next assail the moral damages of Php 500,000.00 awarded by the RTC to the heirs. The heirs insist that the Php 500,000.00 awarded to all the four of them (or Php 125,000.00 each) eleven years after the inception of the case is but a miniscule amount to ease their suffering.[42] *Victory Liner*, on the other hand, argues that the amount of Php 500,000.00 awarded to the heirs is palpably and scandalously excessive, and is meant to enrich the heirs at the expense of the company.[43]

The Php 500,000.00 moral damages awarded to the heirs should be modified.

Moral damages,[44] it must be stressed, are not intended to enrich plaintiff at the expense of the defendant. They are awarded to enable the injured party to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he/she had undergone due to the other party's culpable action and must, perforce, be proportional to the suffering inflicted.[45] While not all the heirs testify before the court, undoubtedly, they suffered the pain and ordeal of losing the breadwinner of the family, hence, the award of moral damages is justified. Under this circumstance, We thus find as sufficient and somehow proportional to and in approximation of the suffering inflicted an award of moral damages in the amount of Php 300,000.00. Hence, the moral damages awarded by the RTC in the amount of Php 500,000.00 is reduced to Php 300,000.00.

Since Victory Liner failed to prove that it exercised the extraordinary diligence required of common carriers, it is presumed to have acted recklessly, thus warranting the award too of exemplary damages, which are granted in contractual obligations if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[46] Thus, We also award exemplary damages in the amount of Php 50,000.00 to the heirs.

In view of the award of exemplary damages, We deem it apt also to award the heirs attorney's fees, in consonance with Article 2208(1) of the Civil Code.[47] Hence, a reasonable attorney's fees of Php 20,000.00 is awarded to the heirs.

Finally, in keeping with current jurisprudence, the heirs are also entitled to indemnity for the death of Nicanor Chan which is fixed at Php 50,000.00,[48] as correctly awarded by the trial court in its Order dated 12 September 2012.

Pursuant to *Nacar v. Gallery Frames*,[49] legal interest at the rate of 6% per annum accrues on the amounts adjudged reckoned from 20 March 2012, the date when the RTC rendered its judgment; and legal interest at the rate of 6% per annum shall be imposed from the finality of the judgment until its full satisfaction, the interim period being regarded as the equivalent of a forbearance of credit.

WHEREFORE, premises considered, the Court AFFIRMS with MODIFICATIONS the Decision dated 20 March 2012 of the Regional Trial Court of Tuguegarao City, Branch 2, in Civil Case No. 5968, by ORDERING Victory Liner and the appellees Vicente Recuenco, Jr., Cesar A. Gamiz and Warlito F. Dela Cruz to pay, jointly and severally, plaintiffs-appellants Luisa Co Chan, Louise Nicholle Chan, Stacie Noelle Chan, and Nicanor Chan, Jr., the amounts of Php 50,000.00 as indemnity for the death of Nicanor Chan; Php 25,000.00 as temperate damages in lieu of actual damages; Php 300,000.00 as temperate damages in lieu of indemnity for the loss of earning capacity; Php 300,000.00 as moral damages; Php 50,000.00 as exemplary damages; and Php 20,000.00 as attorney's fees.

The total amount adjudged shall earn interest at the rate of 6% per annum reckoned from 20 March 2012, the date when the RTC rendered its judgment. From the time this Decision becomes final and executory and the judgment amount remains unsatisfied, the same shall earn interest at the rate of 6% per annum until its satisfaction.

SO ORDERED.

[*]Ybañez, E. A., Acting Chairperson and Macalino, F. S., J.J., concur.

[*] Vice J. Punzalan Castillo, M.P., per Office Order No. 33-15-ABR dated January 30, 2015

[1] Original Records, pp. 309-318. Penned by Judge Vilma T. Pauig.

[2] *Id.*, pp. 4-5.

- [3] Id., pp. 4-6.
- [4] Id., pp. 21-24.
- [5] Id., pp. 21-22.
- [6] Id., p. 27. See Order dated June 13, 2002.
- [7] Id., pp. 28-33.
- [8] Id., p. 30.
- [9] Id., pp. 40-41.
- [10] Id.
- [11] Id., pp. 46-50.
- [12] Id., p. 47.
- [13] Id.
- [14] Id., pp. 319-321.
- [15] Id., pp. 333-334.
- [16] Rollo, p. 53.
- [17] Rollo, pp. 62-63.
- [18] Tiu v. Arriesgado, G.R. No. 138060, September 1, 2004.
- [19] Id.
- [20] Id.
- [21] TSN, February 21, 2007, pp. 5-6.
- [22] 148 SCRA 353 (1987). See Tiu v. Arriesgado, G.R. No. 138060, September 1, 2004.
- [23] Rollo, p. 53.
- [24] Original Records, p. 30.
- [25] G.R. No. 33255, November 29, 1972, 48 SCRA 231. See Philtranco Service Enterprise, Inc. v. Paras, et al., G.R. No. 161909, April 25, 2012.
- [26] Philtranco Service Enterprise, Inc. v. Paras, et al., supra.
- [27] Cf. Philtranco Service Enterprise, Inc. v. Paras, et al., G.R. No. 161909, April 25, 2012.
- [28] Id.
- [29] Rollo, pp. 53-54.
- [30] Cathay Pacific Airways v. Reyes, G.R. No. 185891, June 26, 2013.
- [31] Citibank, N.A. Mastercard v. Teodoro, G.R. No. 150905, September 23, 2003.
- [32] Section 3 of Rule 130 provides:

SEC. 3. Original document must be produced, exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[33] Citibank, N.A. Mastercard v. Teodoro, *supra*.

[34] Cf. Citibank, N.A. Mastercard v. Teodoro, *supra*.

[35] Mangahas, et al. v. Court of Appeals, G.R. No. 173375, September 25, 2008

[36] Rollo, pp. 53-54.

[37] Rollo, pp. 73-74.

[38] G.R. Nos. 174089 and 174266, January 25, 2012.

[39] People v. Ibanez, et al., G.R. No. 197813, September 25, 2013.

[40] G.R. Nos. 170071 and 170125, March 9, 2011.

[41] Philtranco Service Enterprise, Inc. v. Paras, et al., *supra*.

[42] Rollo, p. 55.

[43] *Id.*, p. 74.

[44] Predicated on Articles 2217 and 2219 of the Civil Code which provide: Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

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

- A criminal offense resulting in physical injuries;
- Quasi-delicts causing physical injuries;
- Seduction, abduction, rape, or other lascivious acts;
- Adultery or concubinage;
- Illegal or arbitrary detention or arrest;
- Illegal search;
- Libel, slander or any other form of defamation;

- Malicious prosecution;
- Acts mentioned in Article 309;
- Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages. The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[45] Orix Metro Leasing and Finance Corporation v. Minors: Denis, Mylene, Melanie and Marikris, all surnamed Mangalinao y Dizon, et al., *supra*.

[46] Spouses Cruz v. Sun Holidays, Inc., G.R. No. 186312, June 29, 2010.

[47] CIVIL CODE, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: (1) When exemplary damages are awarded.

[48] Spouses Cruz v. Sun Holidays, Inc., *supra*.

Article 1764 vis-à-vis Article 2206 of the Civil Code holds the common carrier in breach of its contract of carriage that results in the death of a passenger liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity and (3) moral damages.

[49] G.R. No. 189871, August 13, 2013.

To recapitulate and for future guidance, the guidelines laid down in the case of Eastern Shipping Lines 42 are accordingly modified to embody BSP-MB Circular No. 799, as follows:

- When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

- With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal

interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

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