

**CIRIACO L. MERCADO, PETITIONER, VS. THE COURT OF APPEALS,
MANUEL QUISUMBING, JR., ET AL., RESPONDENTS.***G.R. No. L-14342. May 30, 1960*

Ponente: LABRADOR, J.

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This is a petition to review a decision of the Court of Appeals, which condemned petitioner to pay P2,000 as moral damages and P50 for medical expenses, for a physical injury caused by the son of petitioner, Augusto Mercado, on a classmate, Manuel Quisumbing, Jr., both pupils of the Lourdes Catholic School, Kanlaon, Quezon City. The case had originated in the Court of First Instance of Manila, Hon. Bienvenido A. Tan, presiding, which dismissed the complaint filed by Manuel Quisumbing, Jr. and his father against petitioner, father of the above-mentioned Mercado. The facts found by the Court of Appeals are as follows:

"Plaintiff-appellant Manuel Quisumbing, Jr. is the son of his co-plaintiff-appellants Ana Pineda and Manuel L. Quisumbing, while Augusto Mercado is the son of defendant-appellee Ciriaco L. Mercado, Manuel Quisumbing, Jr. and Augusto Mercado were classmates in the Lourdes Catholic School on Kanlaon, Quezon City. A 'pitogo', which figures prominently in this case, may be described as an empty nutshell used by children as a piggy bank. On February 22, 1966, Augusto Mercado and Manuel Quisumbing, Jr. quarrelled over a 'pitogo'. As a result, Augusto wounded Manuel, Jr. on the right cheek with a piece of razor.

* * * * *

"The facts of record clearly show that it was Augusto Mercado who started the aggression. Undeniably, the 'pitogo' belonged to Augusto Mercado but he lent it to Benedicto P. Lim and in turn Benedicto lent it to Renato Legaspi. Renato was not aware that the 'pitogo' belonged to Augusto, because right after Benedicto gave it to him, Benedicto ran away to get a basket ball with which they could play. Manuel Quisumbing, Jr. was likewise unaware that the 'pitogo' belonged to Augusto. He thought it was the 'pitogo' of Benedicto P. Lim, so that when Augusto attempted to get the 'pitogo' from Renato, Manuel, Jr. told him not to do so because Renato was better at putting the chain into the holes of the 'pitogo'. However, Augusto resented Manuel, Jr.'s remark and he aggressively pushed the latter. The fight started then. After Augusto gave successive blows to Manuel, Jr. and the latter was clutching his stomach which bore the brunt of Augusto's anger, Augusto seeing that Manuel, Jr. was in a helpless position, cut him on the right cheek with a piece of razor.

"Although the doctor who treated Manuel Quisumbing, Jr., Antonio B. Past, testified for plaintiffs-appellants, he did not declare as to the amount of fees he collected from plaintiffs-appellants for the treatment of Manuel, Jr. The child was not even hospitalized for the wound. We believe that the sum of P50.00 is a fair approximation of the medical expenses incurred by plaintiffs-appellants.

* * * * *

"The damages specified in paragraphs C and D of the aforequoted portion of plaintiffs-appellant's complaint come under the class of moral damages. The evidence of record shows that the child suffered moral damages by reason of the wound inflicted by Augusto Mercado. Though such kind of damages cannot be fully

appreciated in terms of money, we believe that the sum of P2,000.00 would fully compensate the child.

"As second cause of action, plaintiffs-appellants pray for P5,000.00 covering the moral damages they allegedly suffered due to their son's being wounded; and the sum of P3,000.00 as attorney's fees. The facts of record do not warrant the granting of moral damages to plaintiffs-appellants Manuel Quisumbing and Ana Pineda. 'In law mental anguish is restricted, as a rule, to such mental pain or suffering as arises from an injury or wrong to the person himself, as distinguished from that form of mental suffering which is the accompaniment of sympathy or sorrow for another's suffering or which arises from a contemplation of wrongs committed on the person of another. Pursuant to the rule stated, a husband or wife cannot recover for mental suffering caused by his or her sympathy for the other's suffering. Nor can a parent recover for mental distress and anxiety on account of physical injury sustained by a child or for anxiety for the safety of his child placed in peril by the negligence of another.' (15 Am. Jur. 597). Plaintiffs-appellants are not entitled to attorney's fees, it not appearing that defendant-appellee had wantonly disregarded their claim for damages."

In the first, second and third assignments of error, counsel for petitioner argues that since the incident of the inflicting of the wound on respondent occurred in a Catholic School (during recess time), through no fault of the father, petitioner herein, the teacher or head of the school should be held responsible instead of the father. This precise question was brought before this Court in *Exconde vs. Capuno and Capuno*, 101 Phil., 843, but we held, through Mr. Justice Bautista:

"We find merit in this claim. It is true that under the law above" quoted, 'teachers, or directors of arts and trades are liable for any damage caused by their pupils or apprentices while they are under their custody', but this provision only applies to an institution of arts and trades and not to any academic educational institution (*Padilla*, Civil Law, 1953 Ed., Vol. IV, p. 841; See *12 Manresa*, 4th Ed., p. 557)"

The last paragraph of Article 2180 of the Civil Code, upon which petitioner rests his claim that the school where his son was studying should be made liable, is as follows:

"Art. 2180. * * *

"Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody."

It would seem that the clause "so long as they remain in their custody," contemplates a situation where the pupil lives and boards with the teacher, such that the control, direction and influence on the pupil supersedes those of the parents. In these circumstances the control or influence over the conduct and actions of the pupil would pass from the father and mother to the teacher; and so would the responsibility for the torts of the pupil. Such a situation does not appear in the case at bar; the pupils appear to go to school during school hours and go back to their homes with their parents after school is over. The situation contemplated in the last paragraph of Article 2180 does not apply, nor does paragraph 2 of said article, which makes father or mother responsible for the damages caused by their minor children. The claim of petitioner that responsibility should pass to the school must, therefore, be held to be without merit.

We next come to the claim of petitioner that the moral damages fixed at P2,000 are excessive. We note that the wound caused to respondent was inflicted in the course of an ordinary or common fight between boys in a grade school. The Court of Appeals fixed the medical expenses incurred in treating and curing the wound at P50. Said court stated that the wound did not even require hospitalization. Neither was Mercado found guilty of any offense nor the scar in Quisumbing's face pronounced to have caused a deformity, unlike the case of *Araneta, et al. vs. Arreglado, et al.*, 104 Phil., 529; 55 Off. Gaz. (9) 1561. Petitioner's counsel argues that if death call for P3,000 to P6,000, certainly the incised wound could not cause mental pain and suffering to the tune of P2,000.

In the decision of the Court of Appeals, said court pronounces that the child Quisumbing suffered moral damages "by reason of the wound inflicted by Augusto Mercado." While moral damages included physical suffering, which must have been caused to the wounded boy Quisumbing (Art. 2217, Civil Code), the decision of the court below does not declare that any of the cases specified in Article 2219 of the Civil Code in which moral damages may be recovered, has attended or occasioned the physical injury. The only possible circumstance in the case at bar in which moral damages are recoverable would be if a criminal offense or a quasi-delict has been committed.

It does not appear that a criminal action for physical injuries was ever presented. The offender, Augusto Mercado, was nine years old and it does not appear that he had acted with discernment when he inflicted the physical injuries on Manuel Quisumbing, Jr.

It is possible that the Court of Appeals may have considered Augusto Mercado responsible for or guilty, of a quasi-delict causing physical injuries, within the meaning of paragraph 2 of Article 2219. Even if we assume that said court considered Mercado guilty of a quasi-delict when it imposed the moral damages, yet the facts found by said court indicate that Augusto's resentment, which motivated the assault, was occasioned by the fact that Manuel, Jr. had tried to intervene in or interfere with the attempt of Mercado to get "his pitogo from Renato." This is, according to the decision appealed from, the reason why Mercado was incensed and pushed Quisumbing who, in turn, also pushed Mercado. It is, therefore, apparent that the proximate cause of the injury caused to Quisumbing was Quisumbing's own fault or negligence for having interfered with Mercado while trying to get the pitogo from another boy. (Art. 2179, Civil Code.)

After considering all the facts as found by the Court of Appeals, we find that none of the cases mentioned in Article 2219 of the Civil Code, which authorizes the grant of moral damages, was shown to have existed. Consequently, the grant of moral damages is not justified.

For the foregoing considerations, the decision appealed from is hereby reversed and the petitioner is declared exempt or free from the payment of moral damages. The award of P50 for medical expenses, however, is hereby affirmed. Without costs.

Paras, C. J., Bengzon, Montemayor, Barrera, and Gutierrez David, JJ., concur.

Bautista Angelo and Concepcion, JJ., concur in the result.

Reyes, J.B.L., and Endencia, JJ., took no part.

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