

THE RECEIVER FOR NORTH NEGROS SUGAR COMPANY, INC., PETITIONER, VS. PEDRO V. YBAÑEZ, ET AL., RESPONDENTS.

G.R. No. L-22183. August 30, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

A petition for review of the decision of the Court of Appeals, rendered on October 14, 1963, in CA-G. R. No. 28608-R, entitled "Pedro V. Ybañez, and Rosario V. Ybañez, represented by her legal guardian, Pedro V. Ybañez, plaintiffs-appellants, versus North Negros Sugar Company, Inc., Primitivo Gustilo, and Loreto Perez, defendants-appellees."

Plaintiffs-appellants Pedro V. Ybañez and Rosario V. Ybañez, named respondents in the instant petition[1], are the brother and sister, respectively, and immediate heirs of Cesar V. Ybañez who was one of two persons who died as a result of the collision between the car, where said Cesar V. Ybañez was riding and being driven by Gil Dominguez, and train No. 5, owned by the North Negros Sugar Company, Inc., in the evening of August 31, 1937 in the railroad intersection at Hacienda Santa Teresa, Manapla, Occidental Negros, while the car was on its way from Bacolod City to Cadiz. Criminal prosecution for double homicide and serious physical injuries through reckless imprudence was instituted against Gil Dominguez, driver of the car, and Primitivo Gustilo and Loreto Perez, operator and brakeman, respectively, of the locomotive. The offended parties reserved their right to institute separate civil actions for damages. Primitivo Gustilo and Loreto Perez were tried together and acquitted of the crime charged. Gil Dominguez was also acquitted in a separate trial.

Thereafter, a civil action based on culpa aquiliana was instituted, on May 15, 1940, in the Court of First Instance of Negros Occidental by Pedro V. Ybañez and Rosario V. Ybañez against Primitivo Gustilo, Loreto Perez, and their employer, North Negros Sugar Company, Inc., docketed as Civil Case No. 8367, seeking to re-cover damages for the death of the deceased. In their answer, defendants interposed as special defense the previous acquittal of defendants Primitivo Gustilo and Loreto Perez in the criminal case, and prayed for the dismissal of the complaint.

At the pre-trial, on August 5, 1940, the parties agreed to reproduce in the civil case all the evidence submitted in the criminal case, as well as the decision in and the transcript of the stenographic notes taken during the trial of, the criminal case. Defendants filed a motion for summary judgment, praying for the dismissal of the civil case. The trial court, without any further hearing, considered the case submitted, and rendered a decision dismissing the case. Appeal was taken by the plaintiffs to the Court of Appeals, but the appeal was certified to this Court on the ground that the appeal merely involved questions of law. This Court, in G. R. No. L-6790, on March 28, 1955, reversed the decision of the lower court and remanded the case for further proceedings.

During the pendency of the case in the lower court, plaintiff Rosario V. Ybañez died, leaving as her only heir, co-plaintiff Pedro V. Ybañez, to continue the case. On the other hand, the North Negros Sugar Company, Inc. was dissolved and was accordingly substituted by its receiver Dr. Claudio R. Luzurriaga. One of the defendants,

Loreto Perez, also died in the interim and the case against him was dismissed.

After having deceived additional evidence, the Court of First Instance of Negros Occidental rendered judgment, on July 23, 1958, dismissing the case anew. Appeal was taken by plaintiff Pedro V. Ybañez to this Court, docketed as G. R. No. L-14849, but because questions of fact were involved, and the amount involved was less than P200,000, the case was certified, on August 25, 1960, to the Court of Appeals and docketed in the latter court as Case No. CA-G.R. No. 28608-R.

The Court of Appeals, on October 14, 1963, reversed the judgment of the lower court and held the North Negros Sugar Company, Inc. liable for the death of Cesar V. Ybañez, ordering it to pay plaintiff-appellant Pedro V. Ybañez damages consisting of P9,600.00 as compensatory damages for lost earnings of the deceased; P6,000.00 for death indemnity; P1,000.00 for funeral expenses; P5,000.00 "as moral damages for the mental anguish suffered by the heir"; P5,000.00 "for attorney's fees, considering the years and extensive work - the protracted litigation had taken;"[2] and costs. A motion for reconsideration filed by defendant North Negros Sugar Company, Inc., upon the grounds, among others, that the awards of moral damages and attorney's fees were not warranted under the law and the circumstances attending the litigation, was denied. Hence this petition for review.

In this appeal, or petition for review, petitioner limits itself to questioning the correctness of the decision of the Court of Appeals in so far as it awards moral damages and attorney's fees. In its brief, petitioner contends that the Court of Appeals erred:

1. "in ordering petitioner to pay P5,000 'as moral damages for mental anguish suffered' by plaintiffs who were brother and sister of the deceased"; and

2. "in awarding attorney's fees in the sum of P5,000 to the heirs of the deceased."[3]

1. In support of the first assignment of error, petitioner cites paragraph 3 of Article 2206 of the new Civil Code, which provides that in case of death caused by a crime or quasi-delict only the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Petitioner urges that in the instant case the heirs of the deceased Cesar V. Ybañez, being his brother, Pedro V. Ybañez, and his sister, Rosario V. Ybañez (now deceased), are not among those entitled to moral damages; consequently, the award to them of moral damages was not authorized by law.

Respondent Pedro V. Ybañez, on the contrary, contends that the law applicable is in the old Civil Code, and not Article 2206 of the new Civil Code, because the accident that caused the death happened in 1937, and the case was filed in 1940. Said respondent maintains that the award of moral damages is authorized particularly under Articles 1902, 1903, 1103, 1104, 1105 and 1107 of the old Civil Code and as ruled by this Court in the decisions in *Lilius vs. Manila Railroad*[4]; *Gutierrez vs. Gutierrez*[5]; and *Castro v. Acro Taxicab Inc.*[6]. Moral damages, respondent urges, should be paid to the injured person; but if the injured person died as a consequence of the culpable act and the victim left no descendants or ascendants, the damages must be paid - taking into consideration the principles of the general law on damages, of the law on succession, and the fact that under the old Civil Code no specific persons are indicated to be the only ones entitled to recover moral damages - to the heirs or next of kin of the victim. Respondent further cites the rulings of this Court in the cases of *Bernal vs. House, et al.*,[7]; *Astudillo vs. Manila Electric Co.*[8]; and *Manzanares vs. Moreta*[9], wherein the fact of heirship, as viewed from the general principle of succession of the deceased victim, was taken into consideration in determining who would be paid the indemnity for damages.

In reply, petitioner points out that although the cases cited by respondent show that moral damages were awarded even before the new Civil Code took effect, in none of the cases cited, however, were moral damages award-ed to

a brother or sister of the deceased, but only to either the victim himself, the surviving spouse, the children or the parents.

To resolve the issue, we have to determine what law is applicable - whether the provisions of the old Civil Code or of the new Civil Code. We believe that the old Civil Code is the law applicable to the case at bar, subject to such modifications as are suggested, or are warranted, under the transitional provisions of the new Civil Code, as we may show at the later part of this opinion. This is so, because the acts and events that gave rise to the instant action took place in 1937, and the action was commenced in 1940. Article 2253 of the new Civil Code, provides:

"The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime; even though this Code may regulate them in a different manner, or may not recognize them"

The pertinent provisions of the old Civil Code are Articles 1902 and 1903. The first article provides:

"Art. 1902. Any person who by act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

and the second article in part, provides:

"Art. 1903. The obligation imposed by the next preceding article is enforceable, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

x x x x x

"Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on the occasion of the performance of their duties."

This Court said: "Article 1902 of the Civil Code declares that any person who by an act or omission, characterized by fault or negligence, causes damage to another shall be liable for the damage done . . . a person is liable for damage done to another by any culpable act; and by culpable act is meant any act which is blame-worthy when judged by accepted legal standards. The idea thus expressed is undoubtedly broad enough to include any rational conception of liability for the tortious acts likely to be developed in any society." [10] The word "damage" in said article, comprehending as it does all that are embraced in its meaning, includes any and all damages that a human being may suffer in any and all the manifestations of his life: physical or material, moral or psychological, mental or spiritual, financial, economic, social, political, and religious. [11]

It is particularly noticeable that Article 1902 stresses the passive subject of the obligation to pay damages caused by his fault or negligence. The article does not limit or specify the active subjects, much less the relation that must exist between the victim of the culpa aquiliana and the persons who may recover damages, thus warranting the inference that, in principle, anybody who suffers any damages from culpa aquiliana, whether a relative or not of the victim, may recover damages from the person responsible therefor. This Court had granted moral damages not only to the person who himself was injured, [12] but also to the legitimate children and heirs of the deceased. [13] Parents, even natural, have also been awarded damages for the death of their children. [14]

We have not come across, and herein respondent has not cited, any case in this jurisdiction where a brother and/or sister of the victim of culpa aquiliana was awarded moral damages. In our search for persuasive authority, however, we came across decisions by the courts of France whose Civil Code, in its article 1383, provides substantially the same as article 1902 of the Civil Code of Spain, as follows:

"Cada uno es responsable del daño que ha causado no solamente por su hecho, sino tambien por su negligencia

o por su imprudencia." (Ripert and Boulanger, Tratado de Derecho Civil, Vol. V, 2nd part, p. 50)

On the basis of the above-quoted article, in France, moral damages for mental anguish (sentimientos afectivos) have been awarded not only to parents, children and spouse, of the victim of culpa aquiliana but also to brothers and sisters, natural grandparents, and godchildren.[15]

We thus see that a provision in the Civil Code of France which is substantially similar to the provision of the Civil Code of Spain, relating to culpa aquiliana, is so applied by the courts of France as to hold a person guilty of culpa aquiliana liable for moral damages to the person injured, or to his spouse, children, parents, brothers and sisters, and even to godchildren. If the provision of our old Civil Code - which was itself the Civil Code of Spain of 1889 - relating to culpa aquiliana were to be applied as it had been applied in France, then the person guilty of culpa aquiliana under our old Civil Code would be liable for moral damages to the person injured, or to his spouse, children, parents, brothers and sisters and even to his godchildren. This would mean that under our old Civil Code the liability for moral damages for mental anguish due to culpa aquiliana was to more persons than what our new Civil Code now provides in its Article 2206 which limits the liability for moral damages to the spouse and legitimate and illegitimate descendants and ascendants of the deceased. And so, under the new Civil Code, a less severe sanction - at least as regards the persons entitled to moral damages - is provided for, than under the old Civil Code.

Article 2257 of the new Civil Code - one of the transitional provisions - provides as follows:

"Art. 2257. Provisions of this Code which attach a civil sanction or penalty or a deprivation of rights to acts or omissions which were not penalized by the former laws, are not applicable to those who, when said laws were in force, may have executed the act or incurred in the omission forbidden or condemned by this Code.

"If the fault is also punished by the previous legislation, the less severe sanction shall be applied."

x x x x

(Underscoring supplied.)

It may well be said that culpa aquiliana, or quasi delict, is punished both by the old Civil Code - the previous legislation - and by the new Civil Code. But, as we have pointed out, a less severe sanction, or penalty, for culpa aquiliana is provided for in the new Civil Code. It follows, therefore, that Article 2206 of the new Civil Code - which provides that only the spouse, legitimate and illegitimate descendants and ascendants may demand moral damages for mental anguish by reason of the death of the deceased caused by quasi-delict - should be applied in the instant case. Hence, petitioner herein, who claims moral damages for the death of his brother Cesar V. Ybanez caused by quasi-delict, is not entitled to, and should not have been awarded, moral damages, by the Court of Appeals.[16]

2. Regarding the second error assigned, petitioner argues that the Court of Appeals had no special reason for awarding attorney's fees because the petitioner had not acted in gross and evident bad faith in resisting respondent's claims for damages, and the claims of respondent herein could not be characterized as "plainly valid, just and demandable" claims as contemplated under paragraph (5) of Article 2208 of the new Civil Code; considering that the two employees, for whose alleged negligent acts herein petitioner is made to answer, were acquitted in the criminal case, and the civil case for damages was dismissed by the trial court.

Respondent, on the other hand, argues that the Court of Appeals gave as reason for the award of attorney's fees: "considering the years and extensive work -- the protracted litigation had taken." Respondent also maintains that the award must have been based by the Court of Appeals on Article 2208 (11) and Article 2253 of the new Civil Code.

But petitioner urges that the issue is whether or not attorney's fees might be recovered, and not the amount of attorney's fees in the determination of which the long years of litigation given as reason by the Court of Appeals would be pertinent.

Respondent's argument that the award of attorney's fees was justified under Article 2208 (11) of the new Civil Code is untenable, because the instant case was filed on May 15, 1940, or before the effectivity of the new Civil Code. This Court, in the case of *Bureau of Lands vs. Samia, et al.*,^[17] held:

"That portion of the decision which awards P10,000 to respondents as attorney's fees is untenable. Although courts have, under paragraph (11) of Article 2208 of the Civil Code, authority to award attorney's fees whenever it may be 'just and equitable,' said provision is inapplicable to the present case, the same having been instituted before the effectivity of the said Code."

The refusal of herein petitioner to pay the damages asked, although the case was finally decided against it, cannot be said to have been caused by bad faith. In the case of *George Edward Koster Inc. vs. Zulueta*,^[18] this Court said:

"At common law, the successful party usually has no right to have the fees of his attorney, as such, taxed against his opponent (14 L.ed. 181). The Court will not ordinarily allow counsel fees to the successful party. Each party to the action must pay his own lawyer * * *. Counsel fees paid in prior action have been allowed * * * (where) the conduct of the party against whom they were allowed, so directly and certainly caused the expenditure for this purpose, that the loss of the amount so paid was easily within such causal relations to the defendant's wrong as to warrant the assessment of the damages in compensation for it (*Sears vs. Inhabitants of Nahant*, 102 N. E. 491.). Our rulings before the New Civil Code took effect (the present case having arisen before) have been as follows:

'It is not sound public policy to place a penalty on the right to litigate. To compel the defeated party to pay the fees of counsel for his successful opponent would throw wide the door of temptation to the opposing party and his counsel to swell the fees to undue proportions, and to apportion them arbitrarily between those pertaining properly to one branch of the case from the other.

'This Court has already placed itself on record as favoring the view taken by those courts which hold that attorney's fees are not a proper element of damages.' (*Tan Ti vs. Alvear*, 26 Phil. 566; *The Borden Co. vs. Doctors Pharmaceuticals, Inc.*, 90 Phil. 500).

'* * * Counsel fees, other than those fixed in the rules as costs, are not an element of recoverable damages.' (*Jesswani vs. Masaran Daldas*, G. R. No. L-4651, May 12, 1952)."

WHEREFORE, the decision of the Court of Appeals sought to be reviewed should be, as it is hereby, modified by eliminating therefrom the award of P5,000.00 for moral damages for mental anguish suffered by the heir, and the award of P5,000.00 for attorney's fees. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Properly the only respondent is Pedro V. Ybañez because Rosario V. Ybañez died leaving as her only heir her brother Pedro V. Ybañez.

[2] Words in quotation marks are as quoted from the decision of the Court of Appeals.

- [3] As quoted from the assignment of errors.
- [4] 50 Phil. 768.
- [5] 56 Phil. 177.
- [6] 82 Phil. 359.
- [7] 54 Jur. 349, 352.
- [8] 55 Jur. 457, 461, 462.
- [9] 38 Jur. 874, 893, 894.
- [10] Daywalt vs. Corporacion de PP Agustinos Recoletos, et al., 39 Phil. 587.
- [11] Castro vs. Acro Taxicab Co., 82 Phil. 359, 381.
- [12] Lilius vs. Manila Railroad Co., 59 Phil. 768 (1934).
- [13] Alcantara vs. Surro and Manila Electric Co., 93 Phil. 473, wherein the death occurred on Nov. 24, 1945.
- [14] Manzanares v. Moreta, 38 Phil. 821; Astudillo v. Manila Electric Co., 55 Phil. 427.
- [15] See Ripert and Boulanger, "Tratado de Derecho Civil", op. cit., p. 97 for dates of decision.
- [16] Heirs of Gervacio D. Gonzales vs. Arcadio Alegarbes G. R. No. L-7821, May 25, 1956.
- [17] G. R. No. L-8068, August 25, 1956; 99 Phil. 1060.
- [18] 99 Phil. 945.

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