

HEIRS OF RAYMUNDO CASTRO, PETITIONER, VS. APOLONIO BUSTOS, RESPONDENT.

G.R. No. L-25913. February 28, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the Court of Appeals.

Respondent Apolonio Bustos was charged in the Court of First Instance of Pampanga on October 26, 1962 with the crime of murder for the killing of Ray-mundo Castro, whose heirs are now the petitioners. The trial court found Bustos guilty only of homicide and, crediting him with two mitigating circumstances, namely, passion or obfuscation and voluntary surrend-er, sentenced him to an indeterminate prison term of 2 years, 4 months and 1 day of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, and to indemnify the petitioners, who were re-presented in the case by a private prosecutor, in the sum of six thousand pesos (P6,000) "without prejudice to whatever the accused (respondent), is entitled from the Government Service Insurance System (GSIS) for his services of around twenty-six (26) years as a public school teacher, prior to October 20, 1962." Both respondent and petitioners appealed to the Court of Appeals, respondent asking that that appellate court acquit him and petitioners praying, on the other hand, that respond-ent be convicted of murder, that the portion regarding what said respondent will receive from the GSIS be de-leted and that he be ordered to pay petitioners "the aggregate sum of P50,764.00 as indemnity and actual, moral, temperate and exemplary damages." For the pur-poses of their appeal, petitioners even filed unneces-sarily a printed record on appeal. On October 18, 1965, the Court of Appeals rendered judgment modifying that of the trial court in so far as it concerned (1) the amount of damages to be awarded petitioners thus:

"x x x Aside from the P6,000 indemnity awarded by the trial court, which we uphold, we feel justified, in the exercise of our discretion, to award to the heirs of the de-ceased moral damages in the amount of P6,000 plus P13,380.00 to com-pensate for the loss of earning of the decedent at the annual salary of P2,676.00 x x x."

and (2) the mitigating circumstance of "obfuscation", appreciated as such by the trial court, which was changed to "vindication of a grave offense", but affirm-ing it in all other respects. Upon motion, however, of respondent for the reconsideration of said decision, re-iterating his plea for acquittal, or, in the alternative, praying for the elimination of the award of moral and compensatory damages, the Court of Appeals promulgated on November 13, 1965, an amended decision, the pertinent portions of which are:

"The arguments interposed by the appellant in his Motion for reconsi-deration to support the complete re-versal of the judgment appealed from, have been considered and passed upon in our decision, and we see no reason to alter the same in so far as the appellant's guilt of the crime is concerned. On the other hand, we agree with the appellant that in the interest of justice and equity and in view of the presence of two mitigating circumstances, without any aggravating one to offset them, the award of moral and compensatory damages should be eliminated.

"WHEREFORE, the decision pro-mulgated October 18, 1965, is hereby amended by eliminating therefrom the

award of P6000.00 representing moral damages, and of P13,380.00 representing the decedent's loss of earnings."

From this amended decision, only petitioners have appealed to Us. The prayer in their petition for certiorari asks for nothing more than that the amended decision of the Court of Appeals be revoked and reversed, and its original decision be affirmed in toto in so far as the award of indemnity and damages is concerned. Since We find the grounds of the appeal meritorious, We grant fully the prayer in the petition.

This case affords this Court as appropriate an opportunity, as any other, to restate, in a more comprehensive way, the law regarding the items of damages that are recoverable in cases of death caused by a crime, whether the claim therefor is made in the criminal proceedings itself or in a separate civil action. In the instant case, recovery of such damages is being sought in the criminal proceedings, but even if it were claimed otherwise, the indemnity and damages would be the same, for generally, the items of damages are identical in both procedures, except with respect to attorney's fees and expenses of litigation which can be awarded only when a separate civil action is instituted. (Art. 2208, Civil Code) With the clarifications We are making herein, at least the writer of this opinion expects that litigations regarding the aspects of the law herein passed upon may be minimized.

As a start, it is to be noted that in the matter of damages, the original decision of the Court of Appeals, while correct in making a particularization in the award of indemnity and damages, nonetheless, still failed to comply strictly with the constitutional requirement that all decisions of courts of record must state both the facts and the law on which they are based. (Sec. 12, Art. VIII, Constitution) In said original decision, the Court of Appeals held:

"Coming now to the damages asked by the heirs of the deceased: Aside from the P6,000.00 indemnity awarded by the trial court which we uphold, we feel justified, in the exercise of our discretion, to award to the heirs of the deceased moral damages in the amount of P6,000 plus P13,380.00 to compensate for the loss of earning of the decedent at the annual salary of P2,676.00 (Exh. V; p. 42 t.s.n. Vergara).

"WHEREFORE, the appealed judgment is modified as above indicated in so far as it concerns the amount of indemnity and damages to be awarded to the heirs of the deceased, and the mitigating circumstance of vindication of a grave offense which takes the place of the circumstance of obfuscation appreciated by the trial court; and affirmed in all other respects. Costs against the appellant."

As can be seen, no legal or factual basis is stated therein for the award of indemnity and damages to petitioners; worse, the impression is given that the said award is purely a matter of discretion on the part of the court. Clearly, this is not in accordance with the law. Indeed, it must have been this failure to refer to the pertinent legal provisions which induced the appellate court, at the mere invocation by respondent of Art. 2204 of the Civil Code, to commit the error of readily eliminating in the amended decision the items on moral damages and compensation for loss of earning of the decedent which its original decision had correctly contained. Having held that it had discretion in the premises, the court easily yielded to the argument that simply because it had credited the respondent with two mitigating circumstances, it was already justified in eliminating the items of damages already adverted to, presumably having in mind said Art. 2204 which provides, that:

"In crimes, the damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances."

Of course, this was clear error, inasmuch as construed literally or otherwise, the quoted provision does not warrant a complete deletion of said items of damages. In any event, the court evidently failed to take into account that several other provisions can come into play considering the circumstances in this case.

When the commission of a crime results in death, the civil obligations arising therefrom are governed by the penal

laws, "x x x subject to the provisions of Art. 2177, and of the pertinent provisions of Chapter 2, Preliminary Title on Human Relations, and of Title XVIII of this Book (Book IV) regulating damages." (Art. 1161, Civil Code)

Thus, "every person criminally liable for a felony is also civilly liable." (Art. 100, Revised Penal Code) This civil liability, in case the felony involves death, includes indemnification for consequential damages (Art. 104, id.) and said consequential damages in turn include "x x x those suffered by his family or by a third person by reason of the crime." (Art. 107, id.) Since these provisions are subject, however, as above indicated, to certain provisions of the Civil Code, We will now turn to said provisions:

The general rule in the Civil Code is that:

"In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant." (Art. 2202)

When, however, the crime committed involves death, there is Art. 2206 which provides thus:

"The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) 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."

The amount of P3,000 referred to in the above article has already been increased by this Court first, to P6,000.00 in *People v. Amansec*, 80 Phil. 426, and lately to P12,000.00 in the case of *People v. Pantoja*, G. R. No. L-18793, promulgated October 11, 1968, and it must be stressed that this amount, as well as the amount of moral damages, may be adjudicated even without proof of pecuniary loss, the assessment of the moral damages being "left to the discretion of the court, according to the circumstances of each case." (Art. 2216)

Exemplary damages may also be imposed as a part of this civil liability when the crime has been committed with one or more aggravating circumstances, such damages being "separate and distinct from fines and shall be paid to the offended party," (Art. 2230). Exemplary damages cannot however be recovered as a matter of right; the court will decide whether or not they should be given. (Art. 2233)

In any event, save as expressly provided in connection with the indemnity for the sole fact of death (1st par., Art. 2206) and in cases wherein exemplary damages are awarded precisely because of the attendance of aggravating circumstances, (Art. 2230) "x x x damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances," (Art. 2204) but "the party suffering the loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question." (Art. 2203) "Interest as a part of the damages, may, in a proper case, be adjudicated in the discretion of the Court." (Art. 2211) As to attorneys' fees and expenses of litigation, the same may be recovered only when exemplary damages have been granted (Art. 2208, par.1) or, as We have already stated, when there is a

separate civil action.

Stated differently, when death occurs as a result of a crime, the heirs of the deceased are entitled to the following items of damages:

1. As indemnity for the death of the victim of the offense --- P12,000.00, without the need of any evidence or proof of damages, and even though there may have been mitigating circumstances attending the commission of the offense.
2. As indemnity for loss of earning capacity of the deceased --- an amount to be fixed by the court according to the circumstances of the deceased related to his actual in-come at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a mat-ter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused. If the deceased was obliged to give support, under Art. 291, Civil Code, the recipient who is not an heir, may de-mand support from the accused for not more than five years, the exact duration to be fixed by the court.
3. As moral damages for mental anguish, --- an amount to be fixed by the court. This may be recovered even by the illegitimate descendants and ascendants of the de-ceased.
4. As exemplary damages, when the crime is attended by one or more aggravating cir-cumstances, --- an amount to be fixed in the discretion of the court, the same to be considered separate from fines.
5. As attorney's fees and expenses of litiga-tion, --- the actual amount thereof, (but only when a separate civil action to reco-ver civil liability has been filed or when exemplary damages are awarded).
6. Interests in the proper cases.
7. It must be emphasized that the indemnities for loss of earning capacity of the de-ceased and for moral damages are recover-able separately from and in addition to the fixed sum of P12,000.00 corresponding to the indemnity for the sole fact of death, and that these damages may, however, be respectively increased or lessened accord-ing to the mitigating or aggravating cir-cumstances, except items 1 and 4 above, for obvious reasons.

In the light of the foregoing discussion, it is clear that the Court of Appeals erred in eliminating in its amended decision, the items of moral damages and compensation for loss of earning capacity of the deceased. Indeed, as to the award of moral damages in case of death, this Court has already held in *Mercado v. Lira, etc.*, G. R. Nos. L-13328-29, September 29, 1961, that once the heirs of the deceased claim moral damages and are able to prove they are entitled thereto, it be-comes the duty of the court to make the award. We held:

"Art. 2206 states further that 'In addition' to the amount of at least P3,000.00 to be awarded for the death of a passenger, the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages as a consequence of the death of their deceased kin, which simply means that once the above-mention-ed heirs of the deceased claim compensation for moral damages and are able to prove that they are entitled to such award, it becomes the duty of the court to award moral damages to the claimant in an amount commensurate with the mental anguish suffered by them."

This doctrine was reiterated in *Maranan v. Perez*, G. R. No. L-22272, June 26, 1967:

"In connection with the award of damages, the court a quo granted only P3,000 to plaintiff-appellant. This is the minimum compensatory da-mages amount recoverable under Art. 1764 in connection with Art. 2206 of the Civil Code when a breach of con-tract results in the passenger's death. As has been the policy fol-lowed by this Court, this minimal award should be increased to P6,000 x x x Still, Arts. 2206 and 1764 award moral damages in addition to compensatory damages, to the parents of the passenger killed to compensate for the mental anguish they suffered. A claim therefor, having been properly made, it becomes the court's duty to

award moral damages. Plaintiff demands P5,000 as moral damages; however, in the circumstances, We consider P3,000 moral damages, in addition to the P6,000 damages aforesaid, as sufficient. Interest upon such damages are also due to plaintiff-appellant."

Likewise, in the matter of the compensatory damages for the loss of earning capacity of the deceased, We also held in the case of *Daniel Bulante v. Chu Liente*, G. R. Nos. L-21583 and L-21591-92, May 20, 1968 that:

"The next item objected to refers to the damages awarded to the heirs of the deceased passengers for loss of earning capacity, separately from the indemnities by reason of death. The ground for the objection is that loss of earning capacity was not specifically pleaded or claimed in the complaint. This item, however, may be considered included in the prayer for 'actual damages' and for other 'just and equitable reliefs,' especially if taken in the light of Art. 2206, in connection with Art. 1764, of the Civil Code, which allows, in addition to an indemnity of at least P3,000 by reason of death, recovery for loss of earning capacity on the part of the deceased, the same to be paid to his heirs 'in every case x x x unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death.'"

To be sure, these cases of *Mercado v. Lira*, *Maranan v. Perez* and *Bulante v. Chua Liente*, from which We have quoted, were actions based on contracts of common carriers. But the above-mentioned doctrines are equally applicable to civil liability *ex delicto* because, after all, Art. 2206 of the Civil Code which was applied in said cases is precisely the provision pertinent to liability arising from crimes (and quasi-delicts). No doubt, said Article must have been relied upon by the court in the above cases only because Art. 1764 of the Civil Code provides that said "Art. 2206 shall also apply to the death of a passenger caused by the breach of contract of a common carrier." Accordingly, the interpretation given to said article in those cases are applicable to the case at bar. In other words, this must be so because under the Civil Code, the same rules on damages are generally to be observed, whether death results from a crime or a quasi-delict or a breach of the contract of common carriage.

As to the amount of the indemnity for moral damages and loss of earning capacity of the deceased in the present case, the original decision of the Court of Appeals awarding them, does not afford sufficient basis for Us to increase the amounts fixed by said court, as prayed for by appellants. As has already been stated, the said decision failed to follow the Constitution, not only in not stating the law on which it is based but also in not making the necessary findings of fact on which it based its discretion in fixing the respective amounts it awarded for moral and compensatory damages. Legally, therefore, We can, if We wish to, return this case to that court for it to supply these constitutional omissions. We opt, however, to save time and further difficulties for, and damages to, the petitioners. Extant in the records before Us is the fact that the respondent has never disputed that petitioners are the widow and seven children of the deceased, three of whom were still minors at the time of his death, nor that the said deceased was a public school teacher, 56 years old, and earning P2,276.00 a year. These facts appear to have been repeatedly asserted in the briefs of petitioners in the Court of Appeals and in this Court. No denial was ever made by the respondent. When respondent moved for the reconsideration of the original decision of the Court of Appeals, (Annex E of Petition for Certiorari) he only argued that in view of the mitigating circumstances credited to him by said court, petitioners were not entitled to moral damages and to indemnity for loss of earning capacity of the deceased; the amounts fixed therefor by said court - he never questioned. When petitioners filed their motion for reconsideration of the amended decision of the Court of Appeals, these facts (relationship, earnings, etc.) were reiterated. (Annex G, *id.*) Respondent did not file any answer to said motion despite the resolution requiring him to do so. (Par. 12, Petition for Certiorari) Neither has respondent filed any brief in the present instance, notwithstanding repeated requests on his part for extension to file the same, which, incidentally, were all granted. Under these circumstances, We feel justified in brushing aside strict technicalities of procedure in order to accomplish substantial justice more expeditiously. Anyway, as We said at the outset, petitioners are asking Us, in the prayer of their petition for certiorari, for nothing more than to affirm "in toto" the original

decision of the Court of Appeals, and in their lone assignment of error in the present instance, their only claim is that "the Court of Appeals erred when it issued the amended decision eliminating the award of P6,000 moral damages and the award of P13,380.00 loss of earnings of the deceased Raymundo Castro." In these circumstances, even if We should award the amounts of damages just mentioned, in spite of the absence of the pertinent findings of fact by the Court of Appeals, We would not have to reach beyond amounts that are undisputed by the respondent.

We, therefore, overrule the prayer for additional damages in petitioners' brief and We hold that, on the basis of the facts not questioned by respondent, they are entitled only to the P6,000.00 as moral damages and the P13,380.00 as compensatory damages for the loss of earning capacity of the deceased awarded in the original decision of the Court of Appeals in addition, of course, to the indemnity for death fixed also by said court at P6,000.00. This amount of P6,000.00 We cannot increase to P12,000.00, as allowed in *People v. Pantoja*, supra, and the subsequent cases, (*People v. Mongaya*, G. R. No. L-23708, October 31, 1968, and *People v. Ramos*, G. R. No. L-19143, November 29, 1968) because in the instant suit, neither party has appealed in relation thereto. This case is now before Us on appeal by the offended party only as to specific portions of the civil indemnity to be paid by the respondent. It would have been different if the whole criminal case were up for our review because then, even without any appeal on the part of the offended party, We could have still increased the said liability of the accused, herein respondent. (See *Mercado v. Lira*, supra.)

At this juncture, for the guidance of parties similarly situated as petitioners herein, and so that there may be no useless expenses in appeals by offended parties in regard to the civil aspect of a criminal case when no separate civil action has been filed by them, it should be made clear that when there is no such separate civil action and the claim for civil indemnity is joined with the criminal case, no record on appeal, whether printed, typewritten or mimeographed, is necessary, except perhaps when formal pleadings raising complicated questions are filed in connection therewith, and still, this would be purely optional on the appellant because anyway the whole original record of the case is elevated in appeals in criminal cases. It is already settled that appeals relating to the civil aspects of a criminal case should follow the procedure for appeal required by the rules of criminal procedure. (*People v. Lorredo*, 50 Phil. 209, 220-221; *People v. Villanueva*, G. R. No. L-18769, May 27, 1966)

WHEREFORE, the amended decision of the Court of Appeals is modified as hereinabove indicated, in so far as the civil liability of respondent is concerned, with costs against him in this instance.

Concepcion, C.J., Reyes, J.B.L., and Sanchez, JJ., in the result.

Dizon, Makalintal, Zaldivar, Fernando, and Teehankee, JJ., concur.

Capistrano, J., concurs in a separate opinion.

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CONCURRING OPINION

CAPISTRANO, J.:

I concur, and take this opportunity to express my views on certain points not covered by the majority opinion.

1. In the criminal action for death by crime, as murder, homicide, and homicide through reckless imprudence, it is

the duty of the Fiscal, unless the heirs reserve their right to file a separate civil action, to demand payment, for the benefit of the heirs of the deceased, of the damages ordained in Articles 2206 and 2230 of the Civil Code. This duty is apparent from the following considerations: (a) A crime is an offense against both the State and the offended party. This is so because before the State intervened in its punishment, a crime was an offense purely against the injured party calling for private vengeance. It was only after "the period of private vengeance" in the history of criminal law that the State decided to intervene in the punishment of crime for reasons of social defense. (b) The civil liability in crime is generally determined in the criminal action pursuant to the basic principle that "every person criminally liable is civilly liable." Since the Fiscal has full control of the criminal action, he is the only one who may demand payment therein of the civil indemnity for the benefit of the heirs of the deceased. (c) In case the Fiscal does not demand payment of the civil indemnity in the criminal action and the judgment does not order its payment, said judgment will constitute a bar to a future civil action to recover the civil indemnity. (d) Most of the injured parties in crime are poor or ignorant. For this reason, the intervention of a private prosecutor, hired by the heirs of the deceased, in the criminal action, is rare. (e) The trial court usually awards only the amount of P12,000 as damages for the death unless the other items of damages specified in Articles 2206 and 2230 of the Civil Code are demanded by the Fiscal. The failure of the Fiscals throughout the country to make such demand in the criminal actions has resulted in the law (Art. 2206, except par. 1, and Art. 2230) having fallen into disuse for a period of more than 18 years (from 1950 when the New Civil Code took effect, until now), contrary to the great expectations of the Code Commission and the Legislature. Said failure has also resulted in great injustice to the countless heirs of the victims of murder, homicide and homicide through reckless imprudence during said period of 18 years.

2. Accordingly, unless the heirs reserve their right to file a separate civil action, the Fiscal should also allege in the information all the items of damages recoverable for the benefit of the heirs of the deceased as follows: (a) P12,000 for the death of the victim; (b) the amount constituting loss of the earning capacity of the deceased; (c) the amount of monthly support to be given by the accused for the period not exceeding five years in case the deceased was obligated to give support under Article 291 of the Civil Code to a recipient who is not an intestate heir of the deceased; (d) that moral damages are demanded by and on behalf of the surviving spouse, legitimate and illegitimate descendants, and ascendants of the deceased for mental anguish by reason of the death of the deceased, the amount of award to each of them individually to be determined in the discretion of the court on proof of mental anguish and the depth or intensity of the same; and (e) exemplary damages in the amount to be determined by the court to be paid to the heirs of the deceased in case of the presence of one or more aggravating circumstances in the commission of the crime.

3. Where a private prosecutor hired by the heirs of the deceased, intervenes in the criminal action, as in the case at bar, the heirs may also demand and recover reasonable attorney's fees and expenses of litigation. This is just. From the provision of Article 2208(9) of the Civil Code which allows recovery of attorney's fees and expenses of litigation in case of a separate civil action to recover civil liability arising from a crime, it does not follow that the converse is true. Whether the heirs recover the civil liability through a private prosecutor in the criminal action or through counsel in a separate civil action, they are entitled to attorney's fees and expenses of litigation. What is important is not in what action the civil liability is recovered, but the fact that in either action the heirs have paid attorney's fees and expenses of litigation.

4. The heirs entitled to the civil indemnity are the intestate heirs of the deceased in the order of intestate succession. The Fiscal should therefore give in the information the names and personal circumstances of the heirs entitled to the civil indemnity in accordance with the law of intestate succession so that the trial court may make the award in their names. This will avoid further or subsequent litigation on who, among several claimants, are really the heirs entitled to the civil indemnity. The practice of the trial courts in awarding the civil indemnity

to "the heirs of the deceased," does not satisfy the law and should be abandoned.

Does the term "heirs" include testamentary heirs? An affirmative answer is proper. According to Manresa, "Donde la ley no distingue, no debemos distinguir." The heirs, whether testate or intestate, are a continuation of the juridical personality of the decedent. The law has a tender regard for the will of the testator expressed in his last will and testament on the ground that any disposition made by the testator is better than that which the law can make. For this reason, intestate succession is nothing more than a disposition based upon the presumed will of the decedent.

5. The award of moral damages to the surviving spouse, legitimate and illegitimate descendants, and ascendants of the deceased, should be made to each of them individually and in varying amounts depending upon proof of mental anguish and the depth or intensity of the same. Where it is shown that one or some did not suffer mental anguish or could not have suffered the same, no award of moral damages should be made to him or to them. For example: The evidence shows that the surviving widow, who had a paramour, when informed of the death of her husband, said: "Ma-buti nga. Ngayon maaari na akong pakasal kay Pepe." Another example: The evidence shows that three legitimate children (or grandchildren) were aged one, two and four at the time their father was killed. In the very nature of things these children (or descendants) could not have suffered mental anguish. In these examples there should be no award of moral damages to the widow and the infant children.

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