

**SPS. EDNA S. AGUIRRE & AMADOR S. AGUIRRE,
PLAINTIFFS-APPELLANTS, VS. KALESA CAFE COMPLEX, INC.,
DEFENDANT-APPELLEE.**

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

This appeal[1] seeks to modify the Decision[2] dated 4 March 2010 rendered by the Regional Trial Court of Biñan, Laguna, Fourth Judicial Region, Branch 24 in Civil Case No. B-5456. The assailed Decision held defendant-appellee liable for the death of Jonathan Aguirre albeit reducing its liability due to the contributory negligence attributed to the parents of the decedent, herein plaintiffs-appellants.

FACTS

The instant case arose from the Amended Complaint[3] for damages filed by plaintiffs-appellants against defendant-appellee, on account of the demise of their minor son, Jonathan Aguirre.

On 11 April 1999, plaintiff-appellant Edna S. Aguirre went to Kalesa Cafe Complex, Inc. with her four (4) children, namely: Donna May, Joanna, Jonathan and Amari.

Allegedly, Jonathan was escorted by a male employee of defendant-appellee to the adults' pool because the children's pool was crowded during that time. He was then accompanied by her older sister, Donna May, while their mother was at the cottage attending to their things.

Shortly thereafter, Donna May was heard shouting “Mama, lumulutang po si Jonathan.” There were neither lifeguards nor first aide attendants available within the area. Jonathan was only rescued by a foreigner and was brought to Balibago Polyclinic. However, he was pronounced dead on arrival.

In Answer,[4] defendant-appellee asseverated the following: that lifeguards were permanently assigned to and were always present at the pools; that there were no alarming signs that Jonathan was drowning; that when the latter dove into the pool, there was no physical indication that he was in distress; that when he surfaced unconscious, lifeguards rushed to rescue him and conducted mouth to mouth resuscitation but, nonetheless, failed to revive him; and that plaintiff-appellant Edna S. Aguirre was to be blamed for allowing her son to swim in the pool without observing ordinary precaution.

Meanwhile, defendant-appellee's proprietor, Eduardo C. Bascon, died[5] on 1 April 2002.

Thereafter, trial ensued. On 4 March 2010, the court a quo rendered the assailed Decision[6], the pertinent portion of which reads:

“The plaintiffs in this case succeeded in proving that defendants [sic.] failed to take the necessary precaution to protect the life of the minor victim, Jonathan Aguirre, by not placing ring buoy, towing line, saving kit, resuscitator near the swimming pool and competent employees who may render help on the occasion minor Jonathan Aguirre was drowning.

The record also shows that there were no signs indicating the depths of the water printed on the wall and the absence of a full-time physician, or nurse ready to administer and operate oxygen resuscitator if the need should arise and display in a conspicuous place certain rules and regulations, one of which prohibits the swimming in the pool alone or without any attendant.

On the other hand, the plaintiffs failed to prove that they exercised the diligence of a good father of the family when the drowning of the minor child took place in their absence or away from their immediate company.

The diligence of a good father of a family required by law in a parent and child relationship consists, to a large extent, of instruction and supervision of the child. This includes the duty and responsibility in monitoring and knowing the activities of their children (*Libi vs. IAC*, 214 SCRA 16).

Plaintiffs' negligence can be considered contributory under the circumstances when the mother went to the cottage - - a place where she could not easily check her child's safety; when the mother allowed the child to get near the swimming pool which is obviously an attractive nuisance without taking into consideration that child did not know the risk he was facing. Plaintiff Edna Aguirre is [sic.] remiss in failing to foresee the risk that could result in allowing her child to have access in the swimming pool intended for the use of adult guests.

Indeed, the bereaved family of the minor, Jonathan Aguirre, deserves sympathy for the loss of their only son but the contributory negligence of the plaintiffs may result in the reduction of the liability.

WHEREFORE, premises considered the defendant is hereby ordered to compensate the suffering of the plaintiffs in the following sum:

- Php 50,000.00 as moral damages;
- Php 50,000 as actual and compensatory damages;
- Php 30,000 as attorney's fees; and
- Php 25,000 as exemplary damages.

SO ORDERED.”[7]

Plaintiffs-appellants moved for reconsideration of the above-mentioned Decision, questioning the contributory negligence imputed to them.[8] The lower court found no cogent reason to depart from its earlier pronouncement and accordingly denied the said motion.[9]

Dissatisfied with the lower court's ruling, plaintiffs-appellants interposed the instant appeal, assigning the following grounds as errors:

ISSUES

I

THE COURT A QUO ERRED IN ITS FINDING THAT THERE WAS CONTRIBUTORY NEGLIGENCE ON THE PART OF PLAINTIFFS-APPELLANTS; and

II

THE COURT A QUO ERRED IN AWARDING DAMAGES WAY TOO LOW THAN THAT ALLOWED BY THE LAW AND THE JURISPRUDENCE.

OUR RULING

Taking into consideration that defendant-appellee did not interpose an appeal, the lower court's decision with regard to its finding of defendant-appellee's liability remains and must not be disturbed.

The issues left to be addressed by this Court are the contributory negligence ascribed to plaintiffs-appellants and the amount of damages awarded.

Contributory negligence, as defined under Article 2179 of the Civil Code, reads as follows:

“When the plaintiff’s negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant’s lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.”

Plaintiffs-appellants, in insisting that they are not guilty of contributory negligence, aver the following: that it was defendant-appellee which allowed Jonathan to have access to the adults' pool because the children's pool was crowded; that Jonathan was accompanied by his older sister, Donna May, and a male employee of defendant-appellee; that Jonathan knew how to swim; that the swimming pool was just 3 to 7 meters away from the cottage where plaintiff-appellant Edna S. Aguirre was, close enough for her to see Jonathan.

We are not persuaded.

The mishap could have been avoided altogether should plaintiff-appellant Edna S. Aguirre chose to accompany her son, Jonathan, instead of staying in the cottage or should not have allowed him to swim, at all, in the adults' pool. Even if the latter knew how to swim, she should have considered the perils her minor son was exposed to in a pool intended for the use of adult guests. She should not have been complacent that Jonathan was to be accompanied by his sister and defendant-appellee's employee. Noteworthy to mention is the fact that Donna May was likewise a minor at the time of the unfortunate incident. Under these circumstances, plaintiff-appellant Edna S. Aguirre failed to exercise the diligence of a good father of a family required by law in a parent and child relationship.

Thus, the contributory negligence of plaintiffs-appellants shall serve to mitigate the liability of defendant-appellee and accordingly reduce the damages they may recover from the latter.[10] The determination of the mitigation of the defendant's liability varies depending on the circumstances of each case.[11]

As correctly pointed out by plaintiffs-appellants, the lower court failed to award civil indemnity for the death of their son, Jonathan Aguirre, as guaranteed by Article 2206 of the Civil Code.[12] Under prevailing jurisprudence, the amount has been fixed at P50,000.00.[13]

The above is separate and distinct from actual damages. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement.[14]

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.[15] Credence can be given only to claims which are duly supported by receipts.[16]

In the case at bar, plaintiffs-appellants posit that the sum of P50,000.00 awarded as actual damages was not even enough to cover the expenses defrayed for the burial of their son. To substantiate their claim for actual damages, they submitted the following: Exhibit “I”[17] which is a breakdown of expenses for food and transportation in the amount of P61,200.00; and Exhibit “J”[18] which is an official receipt for the purchase of a burial lot in the amount of P53,500.00. The former did not have receipts attached to it, hence, We are constrained to only grant the sum of P53,500.00 as actual damages.

Paragraph 3 of Article 2206 of the Civil Code provides that moral damages for mental anguish by reason of death

caused by a crime or quasi-delict can be awarded to the heirs of the victim by proof alone of such fact of death. Incapable of exact pecuniary estimation, the assessment of such damages is left to the discretion of the court.[19] Pursuant to current jurisprudence[20] involving contributory negligence, We sustain the award of moral damages in the amount of P50,000.00.

In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence,[21] such as the present case. Since this kind of damages is merely imposed, by way of example or correction for the public good,[22] the amount of P25,000.00 is appropriate.

On the matter of attorney's fees, well-settled is the rule that the reasons or grounds for the award thereof must be set forth in the decision of the court and not in the dispositive portion only.[23] For lack of any factual or legal justification for the award of attorney's fees in the body of the court a quo's decision, the same should have been deleted. However, in view of the award of exemplary damages, attorney's fees may still be recovered, in consonance with Article 2208(1) of the Civil Code.[24] The amount of P30,000.00 is just and reasonable under the circumstances.

We deem it proper to impose legal interest on the amounts awarded. In the case of *Nacar vs. Gallery Frames*,[25] the Supreme Court summarized the guidelines laid down in the landmark case of *Eastern Shipping Lines*, as modified by BSP-MB Circular No. 799, to wit:

"I. 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.

II. 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:

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.

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.

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." (Emphasis Supplied)

Following jurisprudence, defendant-appellee shall pay the interest rate of 6% per annum on all sums awarded counting from 4 March 2010, when the court a quo rendered the assailed Decision. From the time the judgment becomes final and executory, the legal interest rate of 6% per annum shall be imposed on the amounts adjudged as well as the interest earned up to that date, until wholly paid.

WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. Accordingly, the assailed Decision is hereby AFFIRMED with MODIFICATIONS. As modified, defendant-appellee is ordered to pay plaintiffs-appellants the following:

- (1) P50,000.00 as indemnity for the death of Jonathan Aguirre;
- (2) P53,300.00 as actual damages;
- (3) P50,000.00 as moral damages;
- (4) P25,000.00 as exemplary damages; and
- (5) P30,000.00 as attorney's fees.

In addition, defendant-appellee is ordered to pay legal interest of 6% per annum on the total amount from the date of the promulgation of the Decision dated 4 March 2010, rendered by the Regional Trial Court of Biñan, Laguna, Fourth Judicial Region, Branch 24, and 6% per annum on all sums awarded plus interest earned from the finality of this Decision until their full satisfaction.

SO ORDERED.

Pizarro, N.B., Chairperson, and, [*]Galapate-Laguilles, Z.T., JJ., concur.

[*] Acting Junior Member, per Office Order No. 15-15-ABR, dated January 20, 2015.

[1] Rollo, pp. 33-57

[2] Rollo, pp. 58-64

[3] Records, pp. 75-77

[4] Records, pp. 88-96

[5] Records, p. 146

[6] Supra, Note No. 2

[7] Rollo, p. 64

[8] Records, pp. 720-724

[9] Records, p. 750

[10] Article 2214, Civil Code

[11] Lambert vs. Heirs of Ray Castillon, G.R. No. 160709, February 23, 2005

[12] Art. 2206. 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. x x x

[13] Philippine Hawk Corporation vs. Lee, G.R. No. 166869, February 16, 2010 citing Guillang vs. Bedania, G.R. No. 162987, May 21, 2009

[14] OMC Carriers, Inc. vs. Sps. Nabua, G.R. No. 148974 citing B.F. Metal Corporation vs. Sps. Lomotan, G.R. No. 170813, April 16, 2008

[15] Ibid. citing People vs. Dela Cruz, G.R. No. 168173, Decmeber 24, 2008

[16] Supra, Note No. 14

[17] Records, p. 188

[18] Records, p. 189

[19] People vs. Hapa, G.R. No. 125698, July 19, 2001 citing People vs. Dianos, G.R. No. 119311, October 7, 1998

[20] Supra, Note No. 11

[21] Article 2231, Civil Code

[22] Article 2229, Civil Code

[23] Heirs of Jose Marcial K. Ochoa vs. G & S Transport Corporation, G.R. No. 170071, July 16, 2012 and G & S Transport Corporation vs. Heirs of Jose Marcial K. Ochoa, G.R. No. 170125, July 16, 2012 citing Mercury Drug Corporation vs. Banking, G.R. No. 156037, May 25, 2007

[24] Tan, et al. vs. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011

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

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