

**EMERITO M. CALICA AND LOLITA B. CALICA,
PLAINTIFF-APPELLANTS, VS. COLEGIO DE SAN LORENZO, INC. AS
REPRESENTED BY CIRILO V. BALGAN, ARIEL V. FLORES, ANNETE F.
BALGAN AND ADORACIO...**

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/688ae6ce60d3/>

REYES, J.:

This is an appeal from the Decision dated 05 December 2003 of the Regional Trial Court of Quezon City, Branch 88, the decretal text of which reads:

“IN VIEW OF THE FOREGOING, the complaint filed by plaintiffs against defendants is dismissed for lack of evidence. The counterclaim of defendants against plaintiffs is likewise dismissed for the same reason.

SO ORDERED”. (Original Record, p. 174)

The pertinent facts of the case:

Plaintiff-appellants Spouses Emerito and Lolita both surnamed Calica (Spouses Calica” for brevity) are the parents of a ten year old boy named Elmer B. Calica (“Elmer” for brevity) who was enrolled at Colegio De San Lorenzo for the remedial classes in English (8:00 a.m. – 10:00 a.m.) and Math (10:00 a.m.-12:00 noon) from 20 April 1999 until 07 May 1999. (Decision, Id. at p. 187)

On 22 April 1999, Elmer’s class was dismissed at around 11:30 a.m., earlier than the usual schedule. Plaintiff-appellants Spouses Calica contend that while their son Elmer was still in the school premises and within its protective custody, he was allowed by the school authorities at around 11:45 a.m. to go out of the school unaccompanied by a school official and neither by his parents nor by an authorized representative who was responsible for fetching him. (Id. at p. 187)

Plaintiff-appellants Spouses Calica pointed out to the school’s negligence when it allowed their son - Elmer to cross the busy street of Congressional Avenue wherein he was sideswiped by a speeding vehicle and caused his death. (Id. at p. 187)

Hence, a complaint for “Damages” was filed by Spouses Calica against Colegio de San Lorenzo, Inc. (“school” for brevity) represented by Cirilo V. Balgan, Ariel V. Flores, Annete F. Balgan and Adoracion Francisco before the Regional Trial Court of Quezon City, Branch 88, docketed as Civil Case No. Q-99-38572. In their complaint they prayed inter alia for moral and exemplary damages in the respective amount of P500,000.00; attorney’s fees in the sum of P50,000.00 and P2,500.00 per court appearance. (Id. at pp. 1-7)

On the other hand, defendant-appellee school asseverates that the schedule of Elmer’s English class is from 8:00 to 9:30 a.m. with a break time from 9:30 to 10:00 a.m.; and his Math class is from 10:00 a.m. to 11:30 a.m. Hence, it is contrary to plaintiff-appellees Spouses Calica’s claim that Elmer’s class ends at 12:00 noon. (Decision, supra at pp. 167-168)

On 22 April 1999, defendant-appellee school maintained that Elmer's Math teacher dismissed the class at around 11:35 a.m. or at about 11:40 a.m. due to some unfinished classroom activities. It likewise contended that the guard on duty at the exit gate for the grade school students where Elmer had exited narrated that the latter was allowed to go out of the school because the private school service vehicle that was authorized to fetch him was already at the school gate as early as 11:30 a.m. The guard reported that a certain Mr. Mario Tolentino, brother of the operator of the transport service who serves Elmer was in fact at the gate. Elmer even placed his bag at the outside service area near the service vehicle as what he had been normally doing for two days prior to the accident. Defendant-appellee school maintained that at the time of the accident, Elmer was already under the care and custody of his fetcher which is the transport service owned by Mr. Brigido Tolentino. (Id. at p. 168)

It was about lunchtime when the school principal received the information from Elmer's English teacher, Mrs. Geronimo that an unidentified boy was hit by a mini truck along Congressional Avenue. The principal instructed the two teachers, namely, Mmes. Manansala and Gomez to verify the whereabouts of the boy at the nearest hospital - Veterans Memorial Hospital. It was almost 12:20 p.m. when the two teachers learned that the victim was Elmer Calica. Immediately, Mrs. Francisco contacted Elmer's mother and relayed to her the sad news. Defendant-appellee school denies plaintiff-appellants Spouses Calica's accusation regarding the former's callousness over the latter's grief for the loss of their son as it stood (school) firm on its claim that it did all its best in assisting plaintiff-appellants Spouses Calica and affirmed its presence from the time of the accident in the hospital up to the time of the wake. It (school) further affirmed that more than forty (40) teachers and school personnel were in attendance to the prayer vigils and final mass in the burial grounds. Its gesture of sympathy was even manifested when it drew a check of benevolence worth P5,000.00 but remained unencashed for reasons known only to plaintiff-appellants Spouses Calica. (Id. at p. 168)

Defendant-appellee school felt aggrieved over the false accusations of plaintiff-appellants Spouses Calica in the complaint and thus, interposed its compulsory counterclaims in the form of moral and exemplary damages in the respective amount of two million pesos (P2,000,000.00); two hundred thousand pesos (P200,000.00) as attorney's fees plus three thousand pesos (P3,000.00) per court appearance. (Id. at p. 168)

Pre-trial and trial on the merits ensued. Thereafter, a decision was rendered by the court a quo dismissing plaintiff-appellants Spouses Calica's complaint for lack of evidence. (Id. at p. 170)

Disgruntled, plaintiff-appellants Spouses Calica sought the reconsideration thereof (Original Record, supra at pp. 173-186) and to which defendant-appellant school filed its Opposition. (Id. at pp. 196-200) Likewise, plaintiff-appellants Spouses Calica filed their Comment thereto (Id. at pp. 205-207) and after which an Order dated 09 March 2004 was issued by the court denying the motion for reconsideration. (Id. at pp. 108-109)

Hence, this recourse, wherein plaintiff-appellants Spouses Calica raised the following assigned errors, to wit:

I.

"THE COURT A QUO DESPITE REplete EVIDENCE UTTERLY FAILED TO RECOGNIZE THAT THE ACTS OR OMISSIONS OF THE SCHOOL SPECIFICALLY THEIR FAILURE TO ENACT MEASURES TO PROTECT THE LIFE OF THE CHILD WHO WAS UNDER THEIR CUSTODY AND FAILURE TO ACT DECISIVELY AND PROMPTLY ON SAFETY AND SECURITY CONCERNS ALREADY CONVEYED TO THEM, CONSTITUTED GROSS AND INEXCUSABLE NEGLIGENCE".

II.

"THE COURT A QUO ERRED IN FAILING TO RECOGNIZE THAT THE UNTIMELY DEATH OF THE STUDENT UNDER CUSTODY OF THE SCHOOL CONSTITUTED AN ACTIONABLE BREACH OF CONTRACT. THE COURT A QUO SIMILARLY ERRED IN SELECTIVELY CONCLUDING THAT

SUFFICIENT MEASURES WERE TAKEN BY THE SCHOOL FOR THE PROTECTION OF ITS STUDENTS IN LIGHT OF THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE”.

III.

“THE COURT A QUO ERRED IN CONCLUDING THAT THE GROSS NEGLIGENCE COMMITTED BY DEFENDANT-APPELLEE WHICH SERVED AS THE ROOT CAUSE FOR THE LOSS INCURRED BY PLAINTIFF-APPELLANTS WAS INSUFFICIENT TO WARRANT AN AWARD OF MORAL AND EXEMPLARY DAMAGES, ATTORNEY’S FEES AND COSTS OF SUIT”. (Rollo, pp. 28-29)

The appeal is meritorious.

For purposes of facility, we shall intertwinely discuss the aforequoted errors.

It had been established on record that the victim (Elmer) was enrolled for the summer classes in English (8:00 –9:30 a.m.) and Math (10:00-11-30 a.m.) (Exhs. “11” –“11-c”, Original Record, supra at p. 159) from 20 April 1999 until 07 May 1999.

On 22 April 1999, Elmer’s class in Math was dismissed a little bit late from the scheduled time at around 11:35 a.m. or 11:40 a.m. due to some unfinished classroom activities. (Exh. “14”, Id. at p. 165). Thereafter, the victim (Elmer) went out of the school premises unnoticed and unaccompanied by an authorized adult and crossed the Congressional Avenue and thereat met a vehicular accident at around 11:45 a.m. which caused his death. (Police Report, Exh.”2”, Id. at p. 154)

The school failed to establish the precautionary measures in order to ensure the safety of the schoolchildren (including the herein victim Elmer) by laying down school policies concerning the students of tender years other than its self-serving declaration that there is a school policy being enforced which prohibits students from Grades 1 to 4 from leaving the school gates unattended. There was no concrete evidence submitted to substantiate such alleged policy; neither was there written memorandum, school record or any form of documented instructions that would guide the school personnel in the implementation of school policies to ensure the safety of the school children. In fact, the testimony of Adoracion Francisco, principal of defendant-appellee school only proves one thing, i.e. that they failed to lay down concrete school policies. Her testimony, reads:

“Atty. Carado:

Q: Okey. You testified on page 24 that you have a policy on allowing the students. And you mentioned that for small kids, they cannot leave without their fetchers. And for Grades V, VI and VII, they can leave?

Witness:

A: Yes, sir.

Atty. Carado:

Q: But how would the Security Guard know that the person or the student is indeed Grade V, VI or VII?

A: Well, it is very easy because the uniforms of the grade school students are different from the uniform of the other levels, that is why.

Q: But this was remedial classes, Madam Witness?

A: Yes.

Atty. Carado:

Q: Do they have school uniforms during remedial classes?

Witness:

A: No, sir. But nonetheless, the guards would know exactly because of the size also of the kids?

Q: You only based it on the size of the kids?

A: Yes, sir. Because we only offer summer classes for Grade IV until high school.

Q: You said, a grade IV student would not be allowed to leave the school without the fetcher. But what if he is a big kid, would he be allowed?

Witness:

A: No, sir.

Q: Because you said, that it depends on the size of the students?

A: Well, it is a general comment probably sir. x x x x". (TSN dated July 27, 2001, pp. 47-50, Italics supplied)

Assuming *ex gratis argumenti* that there is indeed a policy which in effect prohibits the students from Grades 1 to 4 from leaving the school premises unaccompanied by adult, such implementation thereof was practically left to the discretion of the security guard on duty using his visual judgment as to whether a certain student belongs to Grades 1 to 4 depending upon the size of the students. (TSN dated July 27, 2001, p. 49) And considering that the students who were undergoing remedial classes were not required to wear their school uniform, the school should have adopted measures that could properly identify what particular grade a particular student is, in order to properly aid the school and/or the security guard manning the gate in determining whether a particular student could go out unaccompanied by a fetcher or an adult right after classes; however, the defendant-appellee school failed to do so. The defendant-appellee school in the exercise of its parental authority should have established a concrete written policy concerning the protection and preservation of the physical and mental well-being of the students but it did not. It likewise failed to observe the required diligence of a good father of a family when it opened the gate manned by only one guard who is probably new to his post. (TSN dated November 23, 2000, p. 12) Having prior information that school children are able to leave the school gate unattended is a serious security concern (TSN dated June 29, 2000, p. 82) especially that there was a prior vehicular accident involving another student on the same place (along Congressional Avenue) where Elmer was hit; unfortunately, defendant-appellee school failed to address the situation and for which it should be held accountable for Elmer's death.

On the day following Elmer's accident, defendant-appellee school implemented a new policy, this time ensuring the safety of the schoolchildren. The service bus operator, Brigido Tolentino, testified in this manner, to wit:

"Atty. Carado:

Q: On the following day following the incident, do you have any recollection of what transpired a day after?

x x x x x x x x x x COURT:

Alright, answer.

Atty. Carado:

Q: The day following the incident, to your recollection, did you notice anything to the school?

A: Yes, sir. I noticed the changes in their procedure. The following day, the day after the incident, I noticed that upon dismissal of the children, the teachers themselves will accompany the children up to the service bus and there were additional guards posted at the entrance and exit gate because there is only one gate serving both as entrance and exit of the children, sir". (TSN dated June 29, 2000, pp. 74-77)

These changes could have been easily implemented right after the previous accident happened or right after the school bus service operators raised their concern, i.e. the school children going out of the school premises unnoticed and unaccompanied by adult. However, defendant-appellee school waited for another accident to

happen before implementing the aforementioned policy. Clearly, defendant-appellee school was negligent. Educational institutions have the responsibilities which cannot be equated with those of the ordinary employer or business establishment. Such institutions, particularly the primary and secondary schools, hold the tremendous responsibility of exercising supervision over young children. Too often, such schools avoid liabilities, as in the instant case, *x x x x*. It is about time that such schools realize that theirs is not a mere money-making entity or one impersonally established for the sole task of teaching the rudimentary skills of "reading, writing and 'rithmetic." They must consider that their students are children of tender years who are in need of adequate care, continuing attention and guidance. (emphasis ours) (*St. Francis High School vs. CA*, 194 SCRA 341, 358, *Italics supplied*)

Defendant-appellee school tried to pinpoint an accusing finger upon Elmer's school bus operator – Brigido Tolentino. It (school) contends that the liability should solely rests upon Elmer's school bus service operator – Brigido Tolentino since the latter's brother - Mario Tolentino who was in the school at that time of the accident had already the custody of Elmer.

We dissent.

While it appears that at the time of the accident at around 11:45 a.m., Elmer was already dismissed from his Math class; nonetheless, the latter's custody remains with the school.

Admittedly, Mario Tolentino, brother of Elmer's school bus service operator was in the school premises on April 22, 1999 from 8:00 a.m. to 12:00 a.m. for the purpose of answering the queries of parents who would want to avail of their bus service. However, the school children's custody was not yet transferred to him since at that time, the school service had not yet arrived and the students should have waited at the waiting area within the lobby of the school where a security guard is posted primarily to prevent grades one to four students from going out without any adult companion. His testimony, is very enlightening, to wit:

“Q: So did you notice anything unusual on or about that time 11:30 in the morning?

A: There was an accident, sir.

Q: So how did you come to know about the accident, while you were inside the school?

A: I noticed the commotion outside, sir.

Q: And what did you do upon noticing the commotion?

Witness:

A: I tried to find out, what was happening, sir.

Q: Did you come to know whom the victim was at that time, when you went out?

A: No, sir.

Q: So, was your service vehicle already in the school premises at that time, when you went out of the gate?

A: Not yet there, Sir.

Q: And what did you do after looking at the commotion?

A: I looked outside, and when I noticed that some of my students were also trying to go out, I shoved them inside the gate, and so I also I went inside the gate, Sir.

Q: Went inside the gate?

A: Yes, Sir”. (TSN dated November 23, 2000, pp. 17-19)

“Q: Okey, you mentioned also that as early as 11:30, there were already some students that were there in your meeting place?

A: Yes, sir.

Q: Sometimes, you said , there is one, sometimes there are two, sometimes there are three already dismissed at 11:30. What do you tell them? Or did you tell them anything when they come to you? What do you tell them?

A: I always tell them that the service is not yet around. So, we will wait here. (referring to the waiting area)

Q: And where is the waiting area that you designated for them?

A: At the lobby, sir. Inside the lobby where there is a guard and I will tell them to stay there for a moment, sir.

x x x x x x x x x x

Q: So you do not notice if there are, sometimes, because you were interviewing the parents, you are talking to them, you do not notice really, who are coming in and going out of the school premises, and who among your students were there already waiting?

A: Yes, Sir. Hindi naman po ako ang sisita don. Ang inaabatan ko lang po, pagkanakikita kong lumalabas na bata na sakay ko. Iyon ang tinatawag ko. It was not my concern to watch those students who are coming out, sir.

Q: But is it not your duty too, as a conductor and fetcher, that the moment the student is already there, you are already responsible for them?

Witness :

A: No sir. Because once the students saw that the service is already there, the driver and me, as conductor, that is the only time that they will go out and it was also the time that we are responsible for them, sir.”. (TSN dated December 7, 2000, pp. 8-13, italics supplied)

Veritably, the mere presence of Mario Tolentino does not mean for the security guard to allow the students to go out (TSN dated 9/14/2000, p. 23) considering that the school bus service had not yet arrived. The students who avail of the school bus service are allowed to stay in the waiting area which is the lobby of the school where the guard is posted. Unfortunately, there were no notices/instructions posted thereat which serve as precautionary measures for the school children not to go out of the school premises unattended. And when Elmer left the school unnoticed and unaccompanied by an adult companion, the defendant-appellee school should be held liable since it had still the custody of Elmer when the accident happened. It failed to observe the required diligence of a good father of a family, i.e. by allowing Elmer to go out of the school premises unaccompanied by an adult. Defendant-appellee school should be held liable for damages for failing to observe the provision of Article 218 of the Family Code of the Philippines.

“Article 218. The school, its administrators and teachers or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction and custody.

x x x x x x x x x x.”

When an academic institution accepts students for enrollment, there is established a contract between them, resulting in bilateral obligations which both parties are bound to comply with. For its part, the school undertakes to provide the student with an education that would presumably suffice to equip him with the necessary tools and skills to pursue higher education or a profession. On the other hand, the student covenants to abide by the school’s academic requirements and observe its rules and regulations. x x x x Necessarily, the school must ensure

that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof. (Philippine School of Business Administration vs. CA, 205 SCRA 729, 733-734)

While this court is not unmindful of the attendant difficulties posed by the obligation of schools, x x x x for conceptually school like a common carrier, cannot be an insurer of its students against all risks. x x x x the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence, here statutorily defined to be the omission of that degree of diligence which is required by the nature of the obligation and corresponding to the circumstances of persons, time and place. (Philippine School of Business Administration vs. CA, 205 SCRA, supra) Liability from tort may exist even if there is a contract, for the act that breaks the contract may be also a tort. (Austro-America S.S. Co. vs. Thomas, 248 Fed. 231, as cited in the case of PSBA vs. CA, 205 SCRA) A contractual relation is a condition sine qua non to the school's liability. The negligence of the school cannot exist independently on the contract, x x x x (PSBA vs. CA, Id.)

All told, justice and equity dictate that plaintiff-appellants Spouses Calica be compensated for the negligence committed by the school which caused the loss of their son.

Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. Moral damages are not intended to enrich a complainant at the expense of a defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral sufferings he has undergone by reason of the defendant's culpable action. The award of moral damages must be proportionate to the sufferings inflicted (Metropolitan Bank and Trust Company vs. Wong, 359 SCRA 608, 619) which we opine that an award of P150,000.00 as moral damages is reasonable and fair under the circumstances. This court commiserates with plaintiff-appellants Spouses Calica for the loss of a loved one, which no amount of money could alleviate their suffering; however, it is our considered view that they should be rightly compensated for such loss. Likewise, we are convinced that the award of exemplary damages should be in the sum of P150,000.00. Such damages are imposed not to enrich the claimant and impoverish the defendant but to serve as a deterrent against, or as a negative incentive to curb, socially deleterious actions. (Lamis vs. Ong, 466 SCRA 510, 519-520)

It is readily apparent that plaintiff-appellants Spouses Calica needed the services of a lawyer to argue their cause even to the extent of elevating the matter to this court; thus, an award of P50,000.00 is considered sufficient. Attorney's fees may be awarded when a party is compelled to litigate or expenses to protect his interest by reason of an unjustified act of the other party. (Lamis vs. Ong, 466 SCRA, Id. at p. 520)

WHEREFORE, premises considered, the appealed decision dated 05 December 2003 is perforce reversed and set aside. Accordingly, judgment is hereby rendered declaring defendant-appellee Colegio de San Lorenzo, Inc, represented by Cirilo V. Balgan, Ariel V. Flores, Annete F. Balgan and Adoracion Francisco liable for damages and ordering it to pay plaintiff-appellants Spouses Emerito and Lolita both surnamed Calica the following sum, to wit:

- 1) P150,000.00 as moral damages;
- 3) P150,000.00 as exemplary damages; and
- 4) 3P50,000.00 as attorney's fees.

SO ORDERED.

Reyes, Jr. and Lanzanas, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.