

SPOUSES HORACIO MARCOS MORDENO & JEAN MANGARON-MORDENO, PLAINTIFFS-APPELLEES, VS. BUKIDNON SECOND ELECTRIC COOPERATIVE (BUSECO),DEFENDANT-APPELLANT.

Ponente: PEREZ, J.

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PEREZ, J.:

This is an ordinary appeal from the Decision[1] of the Regional Trial Court (RTC) of Malaybalay City, Branch 8, dated 17 August 2009, with defendant-appellant Bukidnon Second Electric Cooperative (BUSECO) decrying the award of damages in favor of the spouses Horacio and Jean Mordeno for negligently causing a fire that razed the latter's residence on 26 June 2004.

The Facts

Appellant BUSECO is an electric cooperative and public utility providing electric power in the province of Bukidnon. Appellees are residents of Airport Village, Casisang, Malaybalay City.

As part of its distribution system, appellant BUSECO installed a main powerline that traversed by Airport Village and near the vicinity of the house of the appellees, where also grew an African tulip tree that tower up towards the powerline.[2]

The immediately preceding events that led to the fire that destroyed appellee's residence is narrated by appellant itself as follows –

Upon investigation, it was found out that the fire was caused by a fortuitous event when a big branch of an African tulip tree, about ten(10) inches in diameter, broke and fell on one of the two(2) primary distribution power lines owned by Appellant BUSECO as a result of strong winds during that morning of June 26, 2004. These two (2) primary lines, also known as a two (2) phase line, carry the main sources of transformed energy from the substation of Appellant BUSECO to its distribution poles for eventual distribution to its residential consumers, such as Appellees in this case. These primary lines are high voltage lines which are further transformed to lower voltage by a transformer which is attached in the upper portion of the distribution pole.

The lower transformed voltage, ordinarily ranging from 210 to 240 volts and averaging 220 volts, is the one that enters the residential consumers' houses through a service drop wire connected to the distribution pole. This service drop wire is also known as the secondary line.

In the case under review, when the branch of the African tulip tree broke, it fell into one of the two (2) primary lines of Appellant BUSECO, and the affected primary line was cut. When the primary line was cut, one end of it that carried live electricity hit and rested on the galvanized iron roof of one of the two houses of MR. AGRIPINO MANGARON, the father of Appellee JEAN C. MANGARON-MORDENO and father in law of Appellee HORACIO MARCOS C. MORDENO. MR. AGRIPINO MANGARON has two houses in the area, both of which were duly registered as consumers of Appellant BUSECO under Account Number 0729-0980 with meter number 144790 for Residence A and Account Number 0929-0970 with meter number 91599315 for

Residence B.[3]

Appellee testified that this is a mere recurrence of similar close calls in the past. Sometime in 2003 and on 15 May 2004, a branch of one of such trees fell on the electrical mainline causing an electrical short-circuit and power interruption. Due to the apparent danger posed by the nearby trees, the appellees called the attention of BUSECO regarding the situation. However, BUSECO failed to act on the matter,[4] although the appellant claimed that they had trimmed the intruding trees but could not cut the tulip tree because the tree owner would not let them.

Appellee spouses then recalled that on 26 June 2004, after a branch of a tree fell again upon the powerline, they heard a loud buzzing sound and soon after electrical sparks flew and partly burned the tree branch. Consequently, the electrical and electronic appliances inside the house of appellees began to “short-circuit”, and smoke started to billow from their electric outlets and appliances.[5]

Appellee Horacio and his brother-in-law immediately made an urgent call to BUSECO Area Office in Malaybalay City, Patrol 117, and the local fire station, and informed the latter of the situation. They requested BUSECO to immediately cut off the power source so as to prevent the imminent fire. Despite repeated requests by the appellees made to BUSECO to cut off power, no action was made by BUSECO and the electrical power continued to run.[6]

The appliances began to melt and burn under intense heat, while fire started to spread to the electrical wirings. When the firemen arrived, they were prevented from extinguishing the worsening fire situation because electric current was still on, posing danger of electrocution to anyone who approached. The firemen were even forced back when they attempted to douse water on the fire. After nearly an hour after the initial emergency call to BUSECO, electrical power remained running, which prevented the firemen from pumping water into the fire and the appellees from taking personal belongings out of the burning house. At past 12:00 noon, the fire coupled with explosions razed the Mordeno house to the ground.[7]

Subsequently, appellees made a letter-demand to Engineer Rudy Agustin, Officer-In-Charge, General Manager of BUSECO on 27 September 2004, for reimbursement of the things they lost during the fire. Their claims were ignored by BUSECO. Thus, appellees filed a case for Damages against BUSECO on 24 October 2004 assigned to the court a quo.

On 13 December 2009, the trial court rendered a Decision,[8] finding BUSECO liable for damages in favor of the appellees. The dispositive portion of the Decision reads:

WHEREFORE, court finds the defendant BUSECO liable for damages and Judgment is hereby issued as follows:

- Ordering defendant BUSECO to compensate plaintiffs for actual damages caused to plaintiffs in the amount of One Million Four Hundred Thirty-Eight Thousand Nine Hundred Thirty-Five Pesos (Php 1,438,000.00) Philippine currency;
- Ordering defendant to compensate plaintiffs for moral damages in the amount of one million pesos (P1,000,000.00); and for exemplary damages in the amount of One million pesos (P1,000,000.00);
- Ordering Defendants to pay to the Honorable Court the filing fees and cost of litigation and to reimburse plaintiffs the expenses incurred during the litigation in the amount of P500.00 for fare and food; and P2,000.00 per appearance of counsel.

Appellant’s motion for reconsideration of the above Decision was denied by the court a quo in an Order[9] dated 22 September 2009.

Aggrieved, defendant-appellant assigns the following errors:

THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN NOT FINDING THAT THE APPELLEES WERE USING AN ILLEGAL CONNECTION WHICH IS NOT SANCTIONED BY THE APPELLANT NOR BY THE REGULATORY AGENCY TASKED TO REGULATE THE POWER INDUSTRY, THE ENERGY REGULATORY COMMISSION;

THE LOWER COURT GROSSLY ERRED IN FINDING THAT APPELLANT IS GUILTY OF NEGLIGENCE AS A PUBLIC UTILITY PROVIDER;

THE LOWER COURT GRAVELY ABUSED ITS DISCRETION IN CITING AND USING EVIDENCE TO SUPPORT ITS CONCLUSION WHICH ARE PURE HEARSAY AND IN ADMITTING EVIDENCE NOT FORMALLY OFFERED;

THE LOWER COURT GRAVELY ERRED IN AWARDING ACTUAL DAMAGES AND EXEMPLARY DAMAGES WHICH WERE NOT SUPPORTED BY EVIDENCE AND ALSO CONTRARY TO ESTABLISHED JURISPRUDENCE; AND

THE CASE CITED BY THE LOWER COURT AS SUPPORT OF ITS LEGAL CONCLUSION IS NOT APPLICABLE TO THE CASE UNDER REVIEW.

The Court's Ruling

The appeal is without merit.

We find no cogent reason to deviate from the findings of the court a quo that appellant BUSECO failed to exercise the requisite diligence as a power utility company and is thus liable for damages in favor of the appellees on account of the fire which destroyed their residence.

Appellant's negligence, established

BUSECO's principal defense against appellee's claim is that the loss is the result of an accident or a fortuitous event. Appellant states this defense in this wise –

...Appellee's house was burned because of an accident. The accident being that a branch of a tulip tree fell and cut the primary line. The cause why the branch fell was due to strong winds at the time. Appellant cannot control the wind. It was an act of nature...[10]

For more than eighty years in this jurisdiction, a high degree of care and diligence has been expected of electric power companies considering the dangerous nature of electricity as a commodity. That standard has not been diluted or lowered even as fail-safe safety and emergency equipments and protocols are now available to modern power companies including those solely engaged in distribution like appellant precisely to prevent unintended damage to persons and property.

In *Astudillo v. Manila Electric Company*, [11] the Supreme Court, sitting en banc, set this prevailing high standard of care and caution and said:

It is well established that the liability of electric light companies for damages for personal injuries is governed by the rules of negligence. Such companies are, however, not insurers of the safety of the public. But considering that electricity is an agency, subtle and deadly, the measure of care required of electric companies must be commensurate with or proportionate to the danger. The duty of exercising this high degree of diligence and care extends to every place where persons have a right to be. [Emphasis Supplied]

It is true that a tree is a divine creation and the wind on occasion an irrepressible act of nature. But when a company that deals with the treacherous commodity of electricity strings and maintains a main power line where

high voltage current runs every second in fair or foul weather at a place where a tree may fall when the wind changes direction or blows more forcefully, one cannot with cavalier attitude simply ascribe fault for any resulting injury to an uncaring God or uncontrollable nature.

The preponderant evidence on record supports the conclusion that appellant is liable under Article 2176[12] of the Civil Code by failing to exercise the due care and diligence required in the conduct of its business when it did not foresee and did not effectively act to prevent the imminent danger posed by trees underneath BUSECO's main powerline.

In finding BUSECO liable for appellee's losses, We quote with approval the court a quo's conclusions:

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The negligence comes from the act of the BUSECO. It had prior knowledge and information of the danger posed by the tree but did not take preventive action particularly by cutting the tree at its instance. Also from the records it was established that there was unreasonable delay in the shutting down of the electric power which restrained firemen from dousing extinguishing (sic) water into the blaze; the court is convinced that the primary or proximate cause of the fire was not a fortuitous event or a force majeure but the failure of the defendant BUSECO to observe and exercise extra ordinary diligence in the conduct of its business and to immediately act on the imminent danger posed under the circumstances to prevent the fire and thus cause damage.[13]

As commonly defined, negligence is conduct which naturally or reasonably creates undue risk or harm to others. It is the failure to observe that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury, or the omission to do something which a prudent and reasonable man, guided by considerations which ordinarily regulate the conduct of human affairs, would do.[14] Its application depends upon the situation of the parties and the reasonable degree of care and vigilance which the surrounding circumstances reasonably impose. Where the danger is great, a high degree of care is necessary and the failure to observe it is a want of ordinary care.[15]

It is true that power companies are not insurers of public safety, and injuries cannot be prevented at all times despite maximum care and caution. With more reason therefor that power utility companies should exert greater diligence to be situationally aware and ready to foreclose any injury that can be foreseen and anticipated before the danger even occurs.

The risk posed by the uncut branch of the tree which fell on BUSECO's powerline was not only foreseeable prior to the fire incident, but was actually foreseen. BUSECO had prior knowledge and information of the danger posed by the tree. As such, the fire that engulfed appellee's house could have been prevented had appellant observed the degree of care and vigilance expected of a power company. Inasmuch as an electric company is required to anticipate all eventualities that may result in the falling of a tree or its limb and thereby striking its wires, a fortiori, should it be held accountable for its inaction despite having prior knowledge of the danger posed by the uncut branches of the tree above its main powerline.

The records give basis for the conclusion that prior to the occurrence of the fire, the appellees had warned BUSECO of the impending danger posed by the location of its powerlines in relation to its proximity to the uncut branches of trees. BUSECO, through its Area Manager Jose Chito Ebora (Ebora), admitted before the 27 July 2004 Bukidnon Provincial Session that they have long been requesting the owner to cut the tree under the powerline since it has been the frequent cause of brownouts in the area.[16] Appellant's defense that the owner of the tree prevented them from cutting it is futile in view of the imminent danger it poses, which should have prompted BUSECO to exert the necessary effort in ensuring the safety of the residents in the area by clearing the

same despite the alleged resistance of the owner. BUSECO's prior knowledge of the danger posed by said tree and their failure to take the necessary preventive action by clearing it manifest appellant's negligence and lack of care under the given circumstances.

It is beyond cavil, as it stands undisputed, that the primary cause of the fire was the falling of the tree branch which cut into the appellant's primary powerline, instantaneously causing an electrical shortcircuit and burning the house of the appellees.

The doctrine of proximate cause finds application in the case at bar. The proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately affecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[17]

The appellant's negligence even before the happening of the incident by not acting on the request made by the appellees to clear the tree, and for not securing its powerlines as well as its protective devices, became the proximate cause of the fire. Appellant's inaction set into motion the happening of the event that led to appellee's loss of their residence. In *Teague v. Fernandez*, [18] the Court ruled that there was negligence per se on petitioner's part when it violated Section 491 of the Revised Ordinances of the City of Manila consisting in the fact that it did not comply with the required number of stairways, bringing about injuries and death. In considering the violation of the ordinance as the proximate cause of the injury, the Supreme Court racionated in this wise:

It is true that the petitioner's non-compliance with the ordinance in question was ahead of and prior to the other events in point of time, in the sense that it was coetaneous with its occupancy of the building. But the violation was a continuing one, since the ordinance was a measure of safety designed to prevent a specific situation which would pose a danger to the occupants of the building. That situation was undue overcrowding in case it should become necessary to evacuate the building, which, it could be reasonably foreseen, was bound to happen under emergency conditions if there was only one stairway available. It is true that in this particular case there would have been no overcrowding in the single stairway if there had not been a fire in the neighborhood which caused the students to panic and rush headlong for the stairs in order to go down. But it was precisely such contingencies or event that the authors of the ordinance had in mind, for under normal conditions one stairway would be adequate for the occupants of the building.[19]

Curiously, appellant makes the argument that it is a non-profit and non-stock electric cooperative suggesting that unlike power companies for profit with vast more resources, the duty it owes to public safety may be tempered by its financial condition.

We cannot subscribe to this novel view.

Electric cooperatives are held fast to the same standard of care, safety and diligence as private utility companies engaged in the power business. As an electric cooperative tasked with the delivery of a public utility, BUSECO has the obligation to discharge its functions with utmost care and diligence, and meet the basic standards of service including quality, reliability, security and public safety. Under the National Electrification Administration Reform Act of 2013, all electric cooperatives, whether stock or non-stock, are subject to the same requirements relative to their operations as electric distribution utilities.[20] It is thus impressed with certain obligations towards its consumers as any electric distribution cooperative or company, and any omission on its part to perform such duties would be prejudicial to its interest, being an electric utility vested with vital public interest. Add to this is BUSECO's failure to act when the danger had occurred as it was also established that BUSECO

was delayed in cutting off the electric current during the occurrence of the fire. Again, Ebor, the then Area Manager of BUSECO, admitted before the 27 July 2004 Bukidnon Provincial Session that after receiving notice of the said fire, their response was delayed and their Electronic Protective Relay Device installed in their substation did not function that time.[21] It was also shown in the Incident Report[22] of BUSECO dated 5 July 2004 that their protective apparatus (Electric Protective Relay Device) failed to operate during the fire. In *Davao Light v. Opena*,[23] the Supreme Court stressed that failure of Davao Light as a public utility provider “to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein,” constitute gross negligence on its part. Had the appellant responded earlier or had their protective equipment properly functioned, the burning of the appellees’ house could have been prevented or at least limited the damage caused therein.

Appellant’s negligent omission was not only with respect to the cause of the fire but also with the spread and worsening of the situation. Having failed to meet the required measure of care, appellant is justly liable for the damages incurred by the appellees on account of its negligence.

Illegal electrical connection of appellees, not established

To negate its liability, appellant directs judicial attention to the use by appellees of an illegal connection, and asserting that had appellees not illegally tapped their electrical connection, then their house would not have been burned.[24]

Appellant asserts that the burned residence of the appellees is one of three houses in a cluster. Agripino Mangaron owns two of those houses, which appellant identifies as Residence A and Residence B. Appellee Jean Mangaron-Mordeno is Agripino’s daughter, who is married to appellee Horacio Marcos-Mordeno. The appellee’s residence is the third house in the cluster, and appellant claims that while Agripino’s two residences are its registered customers, appellees illegally tapped its power through a flying connection to one of Agripino’s houses and not directly from the service drop wire of appellant.[25]

As culled from the evidence, no sufficient basis exists to show that the appellees maintained an illegal electric connection. On the contrary, what is substantially proven is the fact that they were legitimate consumers of the appellant’s services.

We accord credence in the court a quo’s appreciation of the facts and findings, to wit:

Defendant omits the fact that there are two accounts: Account Number 07-0729-0970 and Account Number 07-0729-0980. Plaintiffs’ household was paying for Account Number 07-0729-0970 and Agripino Mangaron’s family is paying for Account Number 07-0729-0980.

Records showed that plaintiffs’ latest payment for Account Number 07-0729-0970 was made on 10 June 2004 in the amount of Two Hundred Eighty Four Centavos (P283.84) for electric consumption for the period 04 April 2004 to 20 May 2004, as reflected in Official Receipt No. 40481 issued by defendant. It is clear that plaintiffs were using another separate electric connection and not the same connection being used by Agripino Mangaron’s family. It is thus incorrect for defendant to claim that plaintiffs were using an illegal connection and installation which they allegedly tried to hide by refusing entry to BUSECO workers. Defendant omits the fact or is unaware of the fact that the burned house of plaintiffs and the fact that the electric meter of Agripino Mangaron is attached to the wall of the veranda of his house and there is necessarily another electric meter for the connection used by plaintiffs. Defendant’s meter readers or inspectors have always had free access even before the conflagration and until now to enter the premises of Agripino Mangaron and the plaintiffs for defendant BUSECO to get the monthly readings of power consumption, thus defendant could not say that plaintiffs were surreptitiously using illegal connections as alleged in its Answer.

The fact that the plaintiffs were using an electric meter for their own power consumption separate from that of the family of Agripino Mangaron disproves any and all imputation that plaintiffs engaged in such surreptitious act. There is no dispute that from the location of plaintiffs' burned house and the house of Agripino Mangaron, there is no way for either household to install illegal connection without being discovered by BUSECO meter readers who regularly go inside the premises to take the monthly readings of electrical consumption.[26]

We also find unexplained why appellant did not take any measure against the appellees' electric connection had it indeed been illegal, when they had every opportunity to do so. What can be deduced from the records is that the appellees' house was part of the store where one of the two authorized electric meters was located,[27] which were then both under the account of appellee Jean Mordeno's father Agripino Mangaron. As testified by appellee Horacio, the electric connection in their house came from the store.[28] The fact that the appellees had their own electric meter for their power consumption only goes to prove that there was nothing secret or unlawful in their electric connection and consumption as vehemently ascribed by BUSECO. The Fire Investigator himself testified that he saw the burned safety box of the electric meter of appellees in the remnants of the fire.[29] Even so, BUSECO is estopped from escaping liability for its negligence after it had benefited itself in the collections it made against the appellees. In fact, appellant's witness, a meter reader of BUSECO, averred that the appellees were paying directly to the office of BUSECO.[30]

In any case, We are unable to agree to appellant's proposition that the power connection of appellees to their father's residence is the proximate cause without which the fire would not have destroyed the appellee's residence. In the absence of proof of this defense, We find it to be pure speculation on BUSECO's part. There is no convincing scientific or technical evidence on record that will explain why Agripino's residences were spared by the fire, and the conclusion that the uncontrolled current would contain itself and affect only the alleged illegally connected house of the appellee's and not those with lawful connections.

Evidence adduced by both parties point towards appellant's culpability

Appellant's asseveration that the trial court relied on hearsay evidence and evidence not formally offered deserves scant consideration. The totality of the evidence adduced by both parties sufficiently proved that the cause of the fire was the negligent omissions by BUSECO in not clearing the tree which posed a clear danger to its powerline and in not ensuring the feasibility of its protective measures and devices.

In particular, appellant assails the reliance by the trial court on the testimony of BUSECO Area Manager Jose Eborá (Eborá) before the 27 July 2004 Bukidnon Provincial Session. Even if Eborá was not able to testify in court as to some relevant matters he testified during the provincial session, the same is inconsequential in view of adequate evidence showing that BUSECO was fully aware of the danger posed by the tree on its powerline and the inconvenience it has brought to the neighborhood, as well as to the fact that BUSECO's response was delayed and their protective device did not function during the onset of the fire.

Appellees' witness Alan Managaron testified that prior to the fire incident on 26 June 2004, they had previously called the attention of BUSECO to cut the tree as it had caused electric shortcircuit and power interruption in the area, and that as a matter of fact, the personnel of BUSECO would immediately respond after the electricity will be put off.[31] Appellant itself admitted that it acceded to the demand of the consumers in the area in several occasions, in order to attempt to cut the tree, which they, however, were unable to do because of the owner's refusal to have it cut.[32] BUSECO's failure to act immediately during the fire is verified by their Incident Report[33] dated 5 July 2004 indicating therein that their protective apparatus (Electric Protective Relay Device) failed to operate during the fire.

Moreover, the Progress Investigation Report itself,[34] as duly identified and testified to by Fire Investigator

Felipe Ceniza, showed that a branch of a tree beside the primary electric powerline of BUSECO was cut down by strong wind and fell into the primary power line that caused electrical short circuit, and eventually, burning the house of the appellees.[35] The aforesaid report, having been submitted by a fire investigator and officer in the performance of his duties on the basis of his own personal observation of the facts reported, and very descriptive of the circumstances surrounding the occurrence of the fire, evidently supports the appellees' cause of action.

In sum, there is sufficient evidence to support the trial court's finding that appellant's negligent omissions caused the burning of appellees' house, even if we discount Ebora's attestations.

Temperate damages in lieu of actual damages; Moral damages, reduced; Exemplary damages, deleted

Appellees' claim for actual damages arising from the damage they incurred by the burning of their house, various household appliances and other personal effects was not substantiated by evidence. Our basic law provides that there must be pleading and proof of actual damages suffered. As instructed by the Supreme Court in *Viron Transportation Co., Inc. v. Delos Santos*:[36]

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.

Appellees merely submitted a list[37] of the things they lost during the fire with their corresponding value, as well as the estimated cost of their house. In view of the fact that it is improbable for them to be able to produce the receipts and other documents which could prove the monetary value of the damage they incurred, as they claim that all these were lost in the fire,[38] no actual damages can be awarded to the appellees based thereon.

Nonetheless, the Court has allowed in many cases the award of temperate damages in the absence of any competent proof on the actual damages suffered and the Court is convinced that the aggrieved party suffered some pecuniary loss. The amount thereof is usually left to the sound discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be "more than nominal but less than compensatory." [39] As defined in Article 2224 of the Civil Code:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

The photographs[40] the appellees presented as evidence show the extent of the damage done to the house, the appliances, equipment and other personal things, albeit they are not enough to establish the amount of the loss with certainty. Considering the concomitant circumstances prevailing in this case, We find the amount of P 500,000.00 as a fair and sufficient award by way of temperate damages.

Anent the award of moral damages, the records are replete with showing that the appellees suffered the same. Article 2217 of the New Civil Code provides:

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

An award of moral damages must be anchored on a clear showing that the party claiming the same actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury.[41] In the case at bar, there is no gainsaying that the appellees suffered any of these manifestations especially the

children, wherein one of them even experienced traumatic reactions classified as Post Traumatic Stress Disorder.[42] However, this Court finds it reasonable to reduce the amount of the award to P100,000.00.

As to the award of exemplary damages, we find that to be without basis and hereby deletes the award. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[43]

We find that appellant did not act with gross negligence, or negligence of such character as to evince an utter and irresponsible disregard for the safety of appellees' lives and properties.

WHEREFORE, the 17 August 2009 Decision of the Regional Trial Court of Malaybalay City, Branch 8, is hereby **AFFIRMED** with **MODIFICATIONS**.

As modified, the awards of actual and exemplary damages are **DELETED**. Appellant BUSECO is **ORDERED** to pay the appellees temperate damages in the amount of P500,000.00 and moral damages in the amount of P100,000.00.

SO ORDERED.

Camello, J.,Ch., and Inting, JJ., concur.

[1] Records, pp. 266-291.

[2] Records, p. 267.

[3] Rollo, pp. 11-13.

[4] Records, p. 267.

[5] Ibid.

[6] Ibid.

[7] Records, p. 268.

[8] Supra note 1.

[9] Records, pp. 319-322.

[10] Rollo, p. 32.

[11] G.R. No. L-33380, 17 December 1930.

[12] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

[13] Records, p. 290.

[14] Southeastern College v. Court of Appeals, G.R. No. 126389, 10 July 1998.

[15] De leon. 2012. Comments and Cases on Torts and Damages, p. 170.

[16] Folder of Exhibits, Ex. "D-5-A", p. 11.

- [17] Ramos v. COL Realty Corporation, G.R. No. 184905, 28 August 2009.
- [18] G.R. No. L-29745, 4 June 1973.
- [19] Ibid.
- [20] Republic Act No. 10531. An Act Strengthening the National Electrification Administration, Further Amending For The Purpose Presidential Decree No. 269, As Amended, Otherwise Known As The “National Electrification Administration Decree”.
- [21] Folder of Exhibits, Ex. “D-4-A”, p. 10.
- [22] Folder of Exhibits, Ex. “2”, p. 30.
- [23] G.R. No. 129807, 9 December 2005.
- [24] Rollo, p. 23.
- [25] Id. at 13.
- [26] Records, pp. 285 -286.
- [27] TSN, 5 November 2008, pp. 12-15; TSN, 17 January 2007, p. 31, 33; TSN, 25 June 2008, pp. 23-25; TSN, 15 November 2006, p. 26.
- [28] TSN, 17 January 2007, p. 33.
- [29] TSN, 15 November 2006, pp. 36-37.
- [30] TSN, 25 June 2008, p. 24.
- [31] TSN, 27 September 2006, pp. 10-14.
- [32] Appellant’s Brief, p. 32. Records, Memorandum For The Defendant, p. 250.
- [33] Folder of Exhibits, Ex. “2”, p. 30.
- [34] Folder of Exhibits, Ex. “C”, p. 4.
- [35] TSN, 15 November 2006, p. 10.
- [36] G.R. No. 138296, 22 November 2000.
- [37] Folder of Exhibits, Ex. “F”, “F-1”, “F-2”, and “F-3”, pp. 23-26.
- [38] TSN, 17 January 2007, pp. 43-46.
- [39] International Container Terminal Services, Inc., G.R. No. 195031, 26 March 2014.
- [40] Folder of Exhibits, Ex. “B-1”, “B-2”, “B-3” and “B-4”, p. 3.
- [41] Supra note 29.
- [42] TSN, 17 January 2004, pp. 25-26. Folder of Exhibits, Ex. “G”, p. 27.
- [43] Tan v. OMC Carriers, Inc., G.R. No. 190521, 12 January 2011.

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