

**SPS. EDGARDO CERRUDO AND FE CERRUDO,
PLAINTIFFS-APPELLEES, VS. SPOUSES ANALISA DUAMAN YTOC,
PORFIRIO YTOC AND ABNER ABILONG, DEFENDANTS-APPELLANTS.**

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

In this appeal, defendants Spouses Porfirio S. Ytoc, Jr., and Analisa Duaman-Ytoc (“Spouses Ytoc”) and Abner P. Abilong (“Abilong”) assail the Decision[1] dated July 4, 2011 of the Regional Trial Court of Cataingan, Masbate[2] (“RTC”) in Civil Case No. 242, entitled “Spouses Edgardo and Fe Cerrudo, Plaintiffs versus Spouses Analisa Duaman Ytoc, Porfirio Ytoc and Abner Abilong, Defendants,” the dispositive portion of which reads:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING PREMISES, judgment is hereby rendered in favor of the plaintiffs and against the defendants who are hereby ordered to pay the plaintiffs the following:

- The amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as moral damages to the plaintiffs or at P75,000.00 for each of them.
- The amount of FIFTY THOUSAND PESOS (P50,000.00) as temperate damages.
- The amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity.
- The amount of TEN THOUSAND PESOS (P10,000.00) as litigation expenses.

The counterclaim filed by the defendants is hereby DENIED for lack of merit.

SO ORDERED.”[3]

The Facts

This case stems from an action for Damages[4] filed by Spouses Edgardo and Fe Cerrudo (“Spouses Cerrudo”) against defendants Porfirio Ytoc and his wife, Analisa Duaman-Ytoc together with their driver, Abner Abilong, for the death of their son, Edgar Brian Cerrudo, in a tricycle accident. The allegations in their complaint were summarized by the RTC, as follows:

“xxx [T]hat about 7:55 o’clock in the morning on May 18, 1996, their ten[-]year old son Edgar Brian Cerrudo (victim, for brevity) who came from their house in Crossing, Cataingan, Masbate boarded a tricycle owned by the defendants, to go to his grandmother’s house at Rizal Street, Cataingan, Masbate; that when the tricycle reached its destination at Rizal Street, it stopped for the victim to get off; that as the victim was getting out of the tricycle and before he had completely landed his feet on the ground to disembark from the vehicle, the driver suddenly sped off, causing the victim to lose his balance and he fell to the ground with his head hitting the pavement rendering him unconscious; that a relative of the victim who was just nearby saw the incident and he rushed to the victim’s aid, and brought him to the Cataingan District Hospital but the victim died there a few hours later. They also alleged that the driver was not a duly licensed driver. Hence, this case was filed

with the plaintiff asking for the following damages, to wit: P54,500.00 for funeral expenses; P200,000.00 for moral damages; P50,000.00 for loss of life; P50,000.00 for exemplary damages and P10,000.00 litigation expenses for a total of P364,500.00.”[5] (emphasis Ours)

Defendants Spouses Ytoc, on the other hand, denied liability thereon, viz.:

“The defendants Mr. Porferio Ytoc and his wife Analisa, posit that they are not liable to any damages in this case on the ground that the tricycle that they were operating that was involved in the accident was duly franchised to them, and their driver Abner Abilong was a duly licensed driver whom they accepted to drive their tricycle because they knew him personally being their neighbor, and because they have observed him to be a good tricycle driver.”[6] (emphasis Ours)

Presented as witnesses for the plaintiffs are the plaintiffs themselves, Edgardo and Fe Cerrudo; Dr. Judy Lee, the physician who conducted the medical examination on the victim; and eyewitness Efren Cerrudo. Only defendant Porferio Ytoc was presented as witness for the defense.

On July 4, 2011, the RTC rendered its herein assailed Decision, viz.:

“The plaintiffs filed this case for damages against the defendants – the owners of the tricycle on which the victim was a passenger. And based on the record, the victim boarded defendants’ tricycle with Plate No. 8121, from the victim’s house at Crossing, Cataingan, Masbate going to Rizal Street, Cataingan, Masbate to visit his grandmother. Upon reaching the place, and as the victim was getting out of the vehicle to disembark but before being completely alighted from it, the driver Abner Abilong accelerated the tricycle causing the victim to lose his balance and fell down with his head hitting the pavement which resulted to his death.

During the trial, the defendant Porferio Ytoc admitted ownership of the tricycle and that they hold a franchise to carry passengers. He also admitted that the tricycle driver Abner Abilong was their employee and possessed a valid license to drive a tricycle. (Page 334 the witness saying he bought the tricycle from Norkis Trading)

Based on the admission of Porferio Ytoc that he has a franchise to operate tricycle and to carry passengers, he is considered a common carrier. And as such, the laws on common carriers that are applied to taxi operators or passenger bus operators are equally applicable to him as tricycle operator.

One such law is Article 1756 of the New Civil Code which provides that in case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they proved that they have observed the extraordinary diligence prescribed in Articles 1733 and 1755.

Another law says that if a passenger on a common carrier suffers an injury because of the negligence of the driver, he can avail of the following remedies, such as:

- The passenger can file a criminal case against the driver under Article 365 of the Revised Penal Code. The civil aspect, maybe presented in the same criminal case and if the driver is found guilty and liable for damages, the carrier’s liability is subsidiary.
- The passenger can file a criminal case as above, but can choose to prosecute the civil aspect separately as an independent civil action under Article 33 of the New Civil Code which will proceed independently of the outcome of the latter. But he cannot recover damages, twice (Art. 2177 New Civil Code).
- The passenger can also institute a civil case based on the violation of the contract of carriage (Culpa Contractual) against the common carrier. If the common carrier is held liable to pay and he pays the plaintiff, reimbursement of the amount maybe sought from the negligent driver.

In our case, it is clear that the plaintiffs chose the third remedy under the principle of ‘culpa contractual’ against the defendants, as the record does not show they filed any criminal case against the driver of the tricycle.

However, it is pointed out that a suit for damages based on culpa contractual, is prosecuted only against the employer who are presumed to have been negligent, without including the errant employee. If the employer is made to pay damages, he can recover it from the employee in another case. For this reason, the driver Abner Abilong need not have been included in the complaint.

It must be noted also that the law and jurisprudence in culpa contractual cases is to the effect that the defendant-employer can only avoid payment of damages to the plaintiff, if it can prove that it has observed the diligence of a good father of a family in the selection and supervision of its employee or if it can prove that the proximate cause of the injury or death of the victim was due to force majeure.

In the present case, the defendant Porferio Ytoc did not prove during the trial that he has exercised due diligence in the selection and supervision of his tricycle driver, nor did he show that the proximate cause of the death of the victim was due to force majeure. It appears that his defense is anchored solely on his claim that he has a duly issued franchise on his tricycle and that his driver Abner Abilong was a duly licensed driver.

The question that arises now is: Whether or not the defendants under the circumstances of the case, are liable for damages for the death of the victim in this case?

We answer the question in the affirmative. Yes, the defendant Porferio Ytoc who is a common carrier under the law is liable in damages together with his wife Analisa Duaman Ytoc for the death of Edgar Bryan Cerrudo who was a passenger in their tricycle, because of the negligence of their driver as we said above.

In the case of case [sic] [MERCADO vs. LIRA, et. al., 3 SCRA 124], the Supreme Court enunciated the ruling saying that: 'A breach of contract of carriage creates against the carrier a presumption of liability, by simple proof of injury, relieving the injured passengers of the duty to establish the fault of the carrier or of his employees; and placing on the carrier the burden to prove that it was due to an unforeseen event or to force majeure.' And in the case of [DAVILA et. al. vs. PHILIPPINE AIR LINES, 49 SCRA 497], the Court ruled that in an action for damages against the common carrier for the death or injury to a passenger, the question is not whether the claimant has adduced sufficient evidence to show the fault or negligence of the carrier, but whether the carrier presented the required quantum of proof to overcome the presumption that it was at fault or that it acted negligently in the performance of its duty.

And based upon the said pronouncements of the Court, the plaintiffs in this case are not even required to prove the fault or negligence of the carrier or the tricycle driver. All that the plaintiffs need to do to be entitled to damages from the carrier is simply prove the injury of the victim.

Hence, in the case under consideration, and based on the testimony and the demonstration in court of the incident given by the witness Efren Cerrudo above, we are convinced that the tricycle driver accelerated his vehicle and speeded off unaware that his passenger the victim, has not yet fully alighted from the vehicle at the time. And like we already said earlier, it was grossly negligent of the driver to have done so. The grossly negligent act of speeding off before the victim had completely disembarked from the tricycle was the proximate cause of his death.

Therefore, if the law says that all that the plaintiff needs to show is his injury to be able to recover damages in culpa contractual cases because the carrier or his employee is presumed negligent, with more reason that the plaintiffs in this case could recover damages because not only that they have proved the injury sustained by the victim, but they also have proved during the trial the negligence of the tricycle driver.

But what about the claim of the defendant Porferio Ytoc that he has a franchise to operate a tricycle and that his tricycle driver was duly licensed to drive?

The law is specific that in culpa contractual cases, the employer or Mr. Porferio Ytoc in our case, can escape liability by way of damages only if he is able to show that he had observed the diligence of a good father of a family in the selection and supervision of his employee, or that he is able to show that the proximate cause of

the injury or the death of the passenger was due to fortuitous event or a force majeure. However, during the trial, all that the defendant could show or tried to show was that he was a franchise holder and that his driver was properly licensed to drive a tricycle and yet he believed he is not liable for the death of the victim.

Our conclusion is that he mistakes his possession of a franchise and the possession of a license to drive by his driver whom he had observed to be a good tricycle driver, as equivalent or synonymous to the diligence of a good father of a family in the selection and supervision of his employees. But he is seriously misinformed because the standard of diligence that the law requires of employers in the selection and supervision of an employee is not complied with by securing a franchise to operate a tricycle and getting a driver with a valid license to drive and who was observed by him to be a good tricycle driver, as Mr. Ytoc testified during the trial (Page 332 of the record).

Of course[,] a valid driver's license and a good driving ability are important requirements for the driver but it does not stop there as far as the defendant here is concerned. Due diligence[,] according to the Supreme Court, in the selection and supervision of employees, requires the formulation of rules and regulations for the guidance of the employees and the issuance of proper instructions as well as the implementation and monitoring by the employer of the consistent compliance of the employee with the rules. The defendant obviously failed to do this. Thus, the next question that arises is whether the plaintiffs are entitled to the amount of damages they were asking for in their complaint, such as: the amount of P54,500.00 funeral services; P200,000.00 for moral damages; P50,000.00 for loss of life and P10,000.00 for litigation expenses? Or simply stated, how much are they liable for? But let us take this up one by one.

- The P200,000.00 claim for moral damages. Can the plaintiffs claim this amount?

Under Article 2206 of the Civil Code, it provides that the 'spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish for the death of the deceased.' The reason for the grant of moral damages according to Prof. Cesar Sangco in his book on Torts and Damages is that: '...the award of damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity for the affection for him and bears no relation whatsoever with the wealth or means of the offender.' [Cesar Sangco, Torts and Damages, 1994 Edition, p. 986.]

And in a case analogous to the instant case, the Court succinctly stated 'that truly the pain of the sudden loss of one's offspring, especially of a son who was in the prime of his youth, and hold so much promise waiting to be fulfilled is indeed a wellspring of intense pain which no parent should be made to suffer. While it is true that there can be no exact or uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by a precise mathematical calculation, we hold that the award of moral damages of P100,000.00 each to the spouses... for the death of their son is in full accord with prevailing jurisprudence.' [Philtranco Service Enterprises v. Court of Appeals, et. al., G.R. No. 120553, 17 June 1997, 273 SCRA 562].

Thus, guided by the above-cited rulings of the Supreme Court, but also taking into consideration the fact that the common carrier in the instant case is a tricycle operator and not a big company like Philtranco, this court believes that the amount of P150,000.00 is reasonable, and maybe granted to the plaintiffs or at P75,000.00 to each of them.

- The claim of P54,500.00 as funeral expenses. The law classifies it as actual or compensatory damages and it is allowed. However, it is required that the claim for actual damages is properly supported by receipts. In the instant case, the plaintiffs although they have submitted receipts for the expenses that they have incurred because of the death of their son, but they failed to present in court the persons who issued them, for the defendants to cross-examine the issuer. Besides[,] this court had noticed it during trial that most of the receipts presented were not official receipts. Hence, and although we ruled to accept them when these documents were offered in evidence, we could not give it probative value because of the valid objection of the defendants.

The fact remains, however, that the plaintiffs indeed incurred expenses because of the death of their son particularly during the wake, the expenses for the purchase of a cemetery lot, the tomb and the coffin among others, and it is unfair if they are denied recovery of such expenses simply because they were not able to present proper receipts for the same. The court resolves this problem by applying the provisions of Articles 2224 and 2225 of the Civil Code on temperate damages. Article 2224 provides: 'Temperate or moderate damages, which are more than nominal but less than compensatory damages, maybe recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty. Article 2225 says: Temperate damages must be reasonable under the circumstances. And based on the facts of this case, the amount of P50,000.00 by way of temperate damages, is found reasonable.

- As regards the claim of P50,000.00 for the victim's death, we say it is legally demandable and this is awarded under what the law denominates as civil indemnity.

- On the claim of P50,000.00 as exemplary damages, this court submits that such award has no basis in this case. This award is justified where there is a showing of wanton negligence on the part of the defendant. The factual circumstances of this case do not show that the defendants have been wantonly negligent in the selection and supervision of their tricycle driver.

- In connection with the amount of P10,000.00 that is being claimed by the plaintiffs as litigation expenses, we find it reasonable and maybe granted.”[7] (emphasis Ours)

Hence, this appeal.

Issues:

In their Brief,[8] defendants-appellants argued:

“1.

The court a quo erred in finding that appellant's driver was at fault.

2.

The court a quo erred in awarding actual damages based on the receipts that are hearsay and their due execution and authenticity are not established.

3.

The court a quo erred in awarding temperate damages in addition to the award of actual damages.

4.

The court a quo erred in awarding civil indemnity.

5.

The court a quo erred in awarding litigation expense[s].”[9],

and submitted the following questions as issues for Our resolution:

“1.

Is the appellants' driver negligent?

2.

Are there factual and legal basis for the [sic] awarding damages to the appellees?”[10]

OUR RULING

Regarding the first issue, We firstly have to stress that as aptly held by the court a quo, defendants-appellants Spouses Ytoc – who admit that they are the lawful owners and operators of the tricycle driven by defendant-appellant Abilong – is considered a common carrier. As such, they were bound to carry plaintiffs-appellees' child, Edgar Bryan, safely to his destination as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.[11] Sadly, however, Edgar Bryan was not able to reach his destination safely as he died during the course of the travel.

In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured.[12] There is even no need for the court to make an express finding of fault or negligence on the part of the common carrier,[13] and such statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence.[14] Unfortunately, defendants-appellants failed to overcome this presumption.

It is clear from the records that Edgar Bryan fell from the subject tricycle while alighting therefrom and this happened because its driver, defendant-appellant Abilong miserably failed to exercise extraordinary diligence and caution to avoid the accident. The lone eyewitness, Efren Cerrudo, categorically testified that he - being about twenty (20) meters away from the place of the accident – actually saw the child fall from the tricycle, and this prompted him to immediately go near the child. Worse, while Efren Cerrudo, a mere bystander, felt the need of bringing Edgar Bryan to the hospital,[15] defendant-appellant Abilong, the tricycle driver, who was supposed to “exercise extraordinary diligence” as regards his own passenger, simply sped off, ran away and did not provide any assistance to the poor boy.[16]

We thus find no cogent reason to disturb the trial court's finding that the accident which led to Edgar Bryan's death was due to the reckless driving and gross negligence of defendant-appellant Abilong in providing assistance to his passenger. Such recklessness makes defendants-appellants Spouses Ytoc, the owners and operators of the common carrier, solidarily liable to plaintiffs-appellees Spouses Cerrudo, the parents of Edgar Bryan, for damages as a result of their negligence in the operation of said motor vehicle.

Anent the second issue, We sustain the trial court's award of P50,000.00 as civil indemnity for Edgar Bryan's death pursuant to prevailing jurisprudence which pegs civil indemnity for a death caused by a quasi-delict, at P50,000.00.[17] Such is automatically awarded without need of further evidence other than the fact of the victim's death.[18]

Moral damages, on the other hand, is also awarded to plaintiffs-appellees, as heirs of Edgar Bryan, taking into consideration the pain and anguish they suffered as parents of the deceased. Under Article 2206 of the Civil Code, the "spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish for the death of the deceased." This award of moral damages is aimed at restoring within the limits possible, of the spiritual status quo ante. Being so, it must be proportionate to the suffering inflicted.[19] They are not intended to enrich a plaintiff at the expense of the defendant but are awarded to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted.[20]

In awarding temperate damages in lieu of actual damages, the court a quo did not err, because plaintiffs-appellees were definitely shown to have sustained substantial pecuniary losses. There is no question that Article 2224 of the Civil Code expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages, viz.:

“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.” (emphasis Ours)

Hence, when the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proved with certainty, temperate damages may be recovered.[21] Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.[22] As aptly held in *Philtranco Services, Inc. vs. Paras*,[23] it would be a travesty of justice if the court a quo were now to be held bereft of the discretion to calculate moderate or temperate damages, and thereby leave plaintiffs-appellees without redress from the wrongful acts of defendants-appellants.

We also find it proper to award exemplary damages if only to render effective the desired example needed for the public good. Defendants-appellants have to be vigorously reminded that as operators of a common carrier, it is their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again.[24] More so that in quasi-delicts, exemplary damages may be granted if the driver acted with gross negligence.[25] In this case, defendant-appellant Abilong was grossly negligent in speeding away the subject tricycle at a time when the victim, Edgar Bryan was still alighting therefrom. To serve as an example for the public good, We have no choice but to award plaintiffs-appellees exemplary damages in the amount of P50,000.00.

Finally, we affirm the court a quo's award of litigation expenses in the amount of P10,000.00. Under Article 2208 of the Civil Code, attorney's fees or litigation expenses may be recovered when, as in this case, exemplary damages are awarded.

WHEREFORE, the appeal is DENIED. The Decision dated July 4, 2011 of the Regional Trial Court of Cataingan, Masbate, Branch 49 in Civil Case No. 242 is however MODIFIED to read as follows:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING PREMISES, judgment is hereby rendered in favor of the plaintiffs and against the defendants who are hereby ordered to pay the plaintiffs the following:

- The amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as moral damages to the plaintiffs or at P75,000.00 for each of them.
- The amount of FIFTY THOUSAND PESOS (P50,000.00) as temperate damages.
- The amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity.
- The amount of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages.
- The amount of TEN THOUSAND PESOS (P10,000.00) as litigation expenses.

The counterclaim filed by the defendants is hereby DENIED for lack of merit.

SO ORDERED.”

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Records, pages 409-418.

[2] Branch 49.

[3] Records, page 418.

- [4] Ibid., pages 1-3.
- [5] Records, page 409.
- [6] Ibid., page 413.
- [7] Records, pages 413-418.
- [8] Rollo, pages 35-52.
- [9] Ibid., page 39.
- [10] Ibid., page 42.
- [11] Heirs of Ochoa vs. G&S Transport Corp., G.R. Nos. 170071 & 170125, March 9, 2011, citing CIVIL CODE, Article 1755.
- [12] Ibid., citing Diaz v. Court of Appeals, G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.
- [13] Ibid.
- [14] Ibid.
- [15] Transcript of Stenographic Notes dated September 27, 2007, pages 4-5.
- [16] Ibid., page 6.
- [17] Guillang vs. Bedania, G.R. No. 162987, May 21, 2009, citing Lambert v. Heirs of Castillon, G.R. No. 160709, 23 February 2005, 452 SCRA 285; Pestaño v. Spouses Sumayang, 400 Phil. 740 (2000).
- [18] People vs. Reynes, G.R. No. 134607, December 12, 2001, citing People vs. Salcedo, 273 SCRA 473 (1997).
- [19] Spouses Hernandez vs. Spouses Dolor, G.R. No. 160286, July 30, 2004, citing Cesar Sangco, Torts and Damages, 1994 edition, p. 986.
- [20] Ibid., citing Philtranco Service Enterprises v. Court of Appeals, et al., G.R. No. 120553, 17 June 1997, 273 SCRA 562.
- [21] Premiere Development Bank v. Court of Appeals, G.R. No. 159352, April 14, 2004, 427 SCRA 686, 699 cited in Philtranco Services, Inc. vs. Paras, G.R. No. 161909, April 25, 2012.
- [22] Ibid.
- [23] G.R. No. 161909, April 25, 2012.
- [24] Spouses Pereña vs. Spouses Zarate, G.R. No. 157917.
- [25] Guillang vs. Bedania, supra. citing CIVIL CODE, Article 2232.

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