

SPS. GERRY AND ANNALYN FERNANDEZ, FOR THEMSELVES AND IN THEIR CAPACITY AS PARENTS/NATURAL GUARDIAN OF THE MINOR JERRAH KLOE FERNANDEZ, PLAINTIFFS-APPELLANTS, VS. MERCURY DRUG CO...

Ponente: DACUDAO, J.

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DACUDAO, J.:

Appeal from the Decision[1] of the Regional Trial Court of Cavite, Branch 16, in Civil Case No. N-7233, the dispositive portion of which reads:

“WHEREFORE, premises considered, defendants Michelle Nastor and Mercury Drug Corporation are hereby ordered to pay plaintiff, jointly and severally, the following:

- “1. Actual damages in the amount of P449,967.55;
- “2. Moral damages in the amount of P50,000;
- “3. Exemplary damages in the amount of P50,000.00;
- “4. Attorney’s fees in the amount of P10,000.00; and Costs.

“SO ORDERED.

“Given at Cavite City, this 6th day of May 2004.

“(SGD)MANUEL A. MAYO

“Judge”

Gleaned from the records of the case are these material operative facts:

On March 7, 2002, the spouses Gerry and Annalyn Fernandez filed a complaint for Damages[2] against the Mercury Drug Corporation, Catherine De la Cruz and Michelle Nastor. The complaint alleged, amongst others, that on December 10, 2001, the plaintiff Annalyn C. Fernandez ordered for and purchased 10 vitamin tablets (Thiamine) from the defendant Mercury Drug Corporation, at Rosario, Cavite by delivering to the latter’s employees the prescription issued by a dermatologist for her 2-year old daughter, Jerrah Kloe; that the employees of the defendant Mercury Drug, who were later identified as the defendants Michelle Nastor and Catherine de la Cruz, delivered and sold to the plaintiff Annalyn 10 tablets; that believing the medicine to be the vitamin stated in the prescription, the plaintiff Annalyn paid the amount asked of her and was issued a printed official receipt therefor; that not being familiar with the names of drugs, and having relied on the reputed reliability of the defendant Mercury Drug as seller/dispenser of genuine medicine and other pharmaceutical products, the plaintiff Annalyn did not check anymore the name of the tablets sold and delivered to her by the defendant employees; that on December 12, 2001, after her very young daughter Jerrah Kloe had taken in and ingested one of the tablets sold to the plaintiff Annalyn by defendants, said child cried continuously, complaining of burning sensation in her mouth; that, after a few minutes, the child lapsed into “sleep” with saliva coming out of her mouth; that it was only when they saw the foregoing condition of their child that the plaintiff spouses checked the receipt covering

such purchase, and they found out that what was sold to them were Thorazine tablets, 200 mg, classified as an anti-psychotic drug, and not Thiamine (Vitamin B) tablets called for in the doctor's prescription; that the child Jerrah Kloe was immediately brought to the De La Salle University Medical Center in Dasmariñas, Cavite, where she was admitted as an emergency case, and was subjected to a series of tests to determine the effect on the said 2-year old child of the Thorazine 200 mg that she ingested; that the result of the test on the urine-sample of the said child, conducted by the U.P. College of Medicine, Department of Pharmacology, confirmed the child's ingestion of the anti-psychotic drug, Thorazine; that the child stayed in the De La Salle University Medical Center from December 12 to December 15, 2001; that when the child was discharged, her attending physician advised the plaintiff spouses to bring her for regular weekly, and later monthly check-ups, to monitor possible complications in her case; that the plaintiff spouses demanded indemnification from the defendant Mercury Drug for the damages they suffered due to the recklessness or negligence of its employees; that despite receipt of the letter of the plaintiff spouses' counsel, the defendants failed to make a reply thereto; that the reckless negligence of the defendant employees of the defendant Mercury Drug, in selling and delivering to the plaintiff Annalyn "Thorazine 200 mg" tablets instead of "Thiamine 200 mg" tablets as stated in the prescription sheet presented to them, has caused and is causing physical pain and injury to said 2-year old child; that for the hospital confinement and treatment of Jerrah Kloe Fernandez from December 12 to December 15, 2001, and her required regular medical check-up up to the present, the plaintiff spouses incurred expenses, and were compelled to forego their usual work and occupation just to be with their said child, thereby causing them to suffer actual damages; that the foregoing recklessness and negligence of defendant employees in delivering an anti-psychotic medicine to the plaintiff Annalyn, instead of the vitamin tablets prescribed by the physician, had endangered and almost cost the life of the 2-year old child; that the uncertainty of the effect of the ingestion of Thorazine on the health of their said child, had caused and are causing the plaintiff spouses mental anguish, serious anxiety, and distress, for which physical pain and emotional suffering the plaintiff spouses' child and her parents should be entitled to moral damages that can be quantified at no less than P500,000.00; that in view of the defendants' failure to exercise the degree of care and diligence required of them by the nature of their occupation and business, which directly affect the lives and health of their customers, they should also be held jointly and severally liable to pay to the plaintiffs exemplary damages, to serve as example for the public good; and that due to defendants' cavalier attitude and unjustified refusal, amounting to bad faith and malice, to heed plaintiffs request for relief for the damage and injury caused by their reckless negligence, plaintiffs were compelled to engage the services of a lawyer to enforce their rights and protect their interest, and thereby incur necessary litigation expenses and costs. The plaintiffs concluded their complaint with a prayer that, after due proceedings, the Court render judgment sentencing the defendants jointly and severally to pay them actual damages in the sum of at least P80,000.00; moral and exemplary damages of not less than P500,000.00; attorney's fees of P100,000.00, plus appearance fee of P3,000.00 per hearing; and litigation expenses of at least P20,000.00.

Whereupon the defendants filed a Motion to Dismiss,[3] while the plaintiff spouses filed a motion to declare defendants in default,[4] both of which were by the trial court denied in its Order of May 28, 2002.[5]

On June 7, 2002, defendants filed their answer⁶ raising as special and affirmative defenses the following:

- "1. Defendants did not sell Plaintiffs a wrong medicine.
- "2. Defendant corporation has implemented rules and procedure for its staff's strict compliance in order to avoid dispensing of wrong medicine and/or similar errors.
- "3. Plaintiffs were negligent for not checking the medicines allegedly purchased from defendants before taking them, which negligence is the proximate cause of his alleged suffering;
- "4. Defendant Corporation exercised due care in the selection and supervision of its employees. It exercised

the diligence required of a drug retailer and did not act with reckless, imprudent or wanton attitude nor in violation of provisions of the Civil Code.”

Both parties were thereafter ordered to submit their respective pre-trial briefs.[7]At the pre-trial conference, it was agreed that the issues to be resolved were:

“a) Whether or not defendant committed gross and reckless negligence in selling and delivering anti-psychotic drug to the plaintiff.

“b) Whether or not defendant are liable to pay damages as claimed by the plaintiff.

“c) Whether or not defendant corporation exercised due care and have direct supervision to (sic) their employee.”[8]

In amplification of the complaint, the plaintiffs offered in evidence the testimony of the plaintiff wife and those of the witnesses Dr. Wilhelmina Maniquis and Dr. Antonio Rebosa. The trial court’s summary of their testimonies:

“Annalyn Fernandez is the mother of minor Jerrah Kloe Fernandez who, at the time of the incident under consideration, was two (2) years old. On December 10, 2001, Annalyn brought Jerrah Kloe to Dr. Wilhelmina Maniquis, a dermatologist because her baby was suffering from an allergy on her body. The doctor gave medicine to be applied to her skin and prescribed vitamins (Exhibit ‘A’). (TSN, September 30, 2002, pp. 5 – 9).

“The next day, on December 11, 2001, plaintiff Annalyn Fernandez went to Mercury Druz- Rosario, Cavite branch and presented the prescription issued by Dr. Wilhelmina Maniquis. (Ibid., p. 10) Said prescription was handed by said plaintiff to defendant Catherine De la Cruz. Because Defendant De la Cruz could not understand the handwriting of Dr. Maniquis she went to the prescription Section of the store and handed the same to defendant Michelle Nastor, who was the Pharmacist on duty. (TSN, June 9, 2003, pp. 41 – 42) Upon receipt of the said prescription defendant Nastor read the medicine written on it as ‘Thorazine 200 mg.’ But, since defendant De la Cruz could not understand the handwriting, defendant Nastor tried to contact through the phone Dr. Maniquis but to no avail. Using her knowledge and understanding about medicines and its preparation, defendant Nastor dispensed ten (10) Thorazine 200 mg. Tablets. (TSN, June 23, 2003, p. 12) Defendant De la Cruz then forwarded the money and said medicines to the cashier and gave the same to plaintiff Annalyn Fernandez. The latter, on the other hand, counted the change and immediately put the medicines in her bag and left the drugstore. (TSN, September 30, 2002, p. 15; June 9, 2003, p.43)

“The following day, December 12, 2001, plaintiff Annalyn Fernandez dissolved one tablet in water and, with the assistance of plaintiff Gerry Fernandez, made her child, Jerrah Kloe Fernandez drink the preparation. After drinking the medicine, her child cried continuously. Worried about what caused her child to cry indifferently, plaintiff called Dr. Maniquis. The latter asked what was given to plaintiff’s child. Plaintiff looked again on the box of medicine and answered ‘Thorazine’. Since Dr. Maniquis was unfamiliar of said medicine, she requested plaintiff to call Mercury Drug-Rosario, Cavite branch. When she called, she learned from the one who answered the phone that the drug was anti-hiccup and she was told to proceed to the drugstore for the refund of her money and to bring with her the receipt. Upon reaching defendant drugstore and presenting the receipt, the latter told plaintiff to bring her child to a hospital. (TSN, September 30, 2002, pp. 15 – 21)

“Annalyn then immediately went home and brought her child to the Our Savior Hospital in Rosario, Cavite, where she was advised to bring her to the De la Salle Medical Center. Jerrah Kloe, who was then asleep with saliva coming out of her mouth and snoring loudly, was admitted at the said medical center and was confined there from December 12 to December 15. Upon advice, the urine of Jerrah Kloe was tested at the Philippine General Hospital and the result was positive for Thorazine in her body (Exhibit ‘C’). Annalyn was also advised to bring her daughter for a regular monthly check-up upon her discharge. The plaintiffs spent P128,000.00 for the hospitalization and have incurred around P20,000.00 additional expenses for monthly

check-up spent for consultation, medicines and transportation. According to the doctor there is no definite time as to when the continuous check-up would last and since Jerrah Kloe is only three (3) years old there is no way of knowing the side effect of the medicine she had ingested until she grows old. Annalyn could not work in their family corporation where she earns P30,000.00 a month because of what happened. The lawyer whom they engaged for P100,000.00 and appearance fee of P3,000.00 per hearing, sent an indemnification letter to the drugstore but there was no answer. (Ibid., pp. 22 – 35)

“Dr. Wilhelmina Maniquis is a Fellow of the Philippine Dermatological Society and a NR Fellow of the American Academy of Dermatology. She has been in the practice of dermatology since completing her training in 1988. In December of 2001, Jerrah Kloe was her patient for rashes and allergic insect bites reaction with secondary bacterial infection. Aside from giving her the usual medicine for skin disorder, she also gave her vitamin B-1 which is Thiamine and is usually given to kids with insect bite reaction. The prescription was in writing and done on her prescription pad dated December 10, 2001 (Exhibit ‘A’). (TSN, December 2, 2002, pp. 6 – 9)”[9]

In addition to these testimonies, the plaintiffs submitted the following documentary evidence: prescription slip dated 12/10/01 of Dr. Wilhelmina Asuncion-Maniquis; Official Receipt dated 12/10/01 of WM Skin Clinic; machine-printed official receipt of the Mercury Drug Corporation, Rosario Cavite Branch, dated 12/11/01; result of test conducted by the Department of Pharmacology, U.P. College of Medicine, on the urine sample of Jerrah Fernandez; Certificate of Live Birth of Jerrah Kloe Fernandez; demand letter dated February 4, 2002; Medico Legal Report issued by Dr. Antonio Rebosa; Hospital and Medical Receipts dated December 13, 2001 to October 26, 2002; and receipts for legal services.

The defendants on the other hand presented the following evidence: the testimonies of Michelle Nastor, Katherine Ramos and Dante Yulo; a portion of Mercury Drug Corporation’s Employees Manual; Memorandum dated December 29, 2001; portions of the Book Better Pharmacy; and several memorandums issued by the Dangerous Drugs Board.

The trial court summed up the testimonies of the defendants’ witnesses, thus--

“On the same date, December 12, 2001, the incident was relayed to Mr. Dante Yulo, Branch Manager of Mercury Drug-Rosario, Cavite branch. Mr. Yulo, together with defendants De la Cruz and Nastor tried locating plaintiffs’ whereabouts to clarify some matters and to offer assistance. Defendants called Mr. Maniquis and asked for plaintiffs’ address, which was divulged to them to be residing at Iglesia ni Kristo Compound, Rosario, Cavite. Defendants immediately went to said place but they only found the caretaker of the house and they were told that plaintiffs do not want to talk to them. Hence, defendants sought the help of an Iglesia ni Kristo Minister named Ka Edwin who resides in Kawit, Cavite. There Ka Edwin advised defendants to first cool thing and wait for the right time. Thereafter, the next day, defendants went to plaintiffs’ parents, Ka Popoy and Ka Linda, at Aguinaldo Highway, Bacoor, Cavite but defendants were not able to talk with them properly because they were in a hurry and did not allow them to visit plaintiffs in the hospital. Hence, the following day, defendants went to the residence of plaintiff wherein they were able to talk to plaintiff Gerry Fernandez. Defendants offered their apologies. However, plaintiffs merely told defendants that they will file a case against them. (TSN, June 9, 2003, pp. 11 – 22)

“Defendant Mercury Drug Corporation conducted an investigation on the incident. Defendant Nastor explained that she dispensed Thorazine 200 mg. instead of Thiamine 200 mg because it could be readily seen on the prescription that it was Thorazine 200 mg. since there is no single preparation of Thiamine 200 mg. in the whole pharmaceutical market. However, since there was a complaint and the mere fact that wrong medicine was taken by a customer, defendant company issued her a first warning. After eleven months, defendant Nastor gave birth to a six-month old child but died afterwards due to prematurity. This poignant event caused defendant Nastor to resign from defendant corporation. (TSN, June 30, 2003, pp. 12 – 40)”¹⁰

On May 6, 2004, the trial court gave judgment for the plaintiffs and ruled that:

“Any person who willfully or negligently causes damage to another, shall indemnify the latter for the same (Article 20, Civil Code) The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. If the law or contract does not state the diligence which is to be observed in the performance of the obligation, that which is expected of a good father of a family shall be required. (Article 1173, Civil Code)

“In the instant case, it is the finding of the Court that the defendant Nastor was grossly negligent in the performance of her duties as a pharmacist of defendant corporation. The circumstances of the persons dictated extra-ordinary diligence on the part of Nastor in dispensing the drug Thorazine to the plaintiff.

“It will be recalled that defendant De la Cruz (or Katherine Ramos who admitted that plaintiff filed a complaint against her) received the prescription from the plaintiff Annalyn across the counter but she did not immediately fill the order because she could not read the prescription. This prompted her to go to the prescription department and thereafter the pharmacist issued her the medicine which she gave to Annalyn after the cashier punched the amount of the purchase.

“It will also be recalled that Nastor testified that she called the prescribing physician because she could not read the prescription and thought that on first glance it was Thorazine but she failed to get in touch with her. She did not call again for a second time but dispensed Thorazine 200 mg., an anti-psychotic drug for behavioral disorder, instead of Thiamine which is for skin disorder as prescribed by Dr. Maniquis. Such action taken by Nastor amounts to negligence which is wanting under the surrounding circumstances and may be characterized as gross and wanton.

“Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. (Fernando v. Sandiganbayan, G.R. No. 96183, 19 August 1992, 212 SCRA 680, citing Ballantine’s Law Dictionary, 3d Ed., p. 537.)

“It has not escaped the Court’s attention that (the) prescription pad issued by Dr. Maniquis bears her specialization as a dermatologist. Nastor was fully aware that thorazine is a drug related psychotic disorder while thiamine is prescribed for skin problems. Had she exercised sufficient care and diligence in filling-up the prescription she could not have made the mistake complained of.

“Incidentally, when the same prescription was shown to her in court and when she was made to read what was prescribed, she answered, ‘Thiamine’. (TSN, June 30, 2003, p. 17)

“However, the liability is not demanded from Nastor alone. It is also demandable from the owner of the enterprise where she is employed as a pharmacist. (Article 2180, Civil Code) For this reason, the Court finds the defendant Mercury Drug store jointly and solidarily liable with Nastor for the damages suffered by plaintiffs. (Article 2194, *ibid.*) Defendant Mercury Drug Store may not escape liability by pleading that it has exercised due care and diligence in the selection and supervision of its employees. As Nastor has testified, she was mere (sic) given a corrective memorandum for the mistake she committed in dispensing the drug and the type of offense under which it falls is Type C which warrants a mere sanction for the first offense or first warning. Such could not be equated to diligent supervision of its employees.

“Thus, the liability for the negligent act under consideration may be assessed against defendants Nastor and Mercury Drug Store, jointly and severally, but not against defendant De la Cruz or Ramos to whom no negligent act may be imputed.

“In order that actual damages may be recovered it is essential that the amount of loss must not only be capable

of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or (the) best evidence obtainable. (Bernardo v. Court of Appeals, 275 SCRA 413) This was undertaken by plaintiffs and the evidence presented more than sufficiently proves that they have suffered actual damages in the amount of P449,967.55 (P453,658.05 less P3,690.50 for food and transportation) as of October 16, 2002.

“Exemplary damages are imposed by way of example or correction for the public good in addition to moral, temperate, liquidated or compensatory damages. It is awarded as a deterrent to socially deleterious actions. In quasi-delict, exemplary damages are awarded when the act or omission which caused injury is attended by gross negligence. (Art. 2231, Civil Code.) P50,000.00 is sufficient deterrence for the deleterious act complained of.

“It is settled that moral damages are not intended to enrich the complainant but to serve to obviate his/her spiritual suffering by reason of the culpable action of the defendant. Its award is aimed at the restoration of the spiritual status quo ante, and it must be commensurate to the suffering inflicted. For having to endure the sight of their daughter’s convulsion after ingesting Thorazine 200 mg. the award of P50,000.00 damages is awarded.

“Having been compelled to litigate their cause of action, plaintiffs are awarded attorney’s fees in the (amount of) P10,000.00 plus costs.”¹¹

Upon these facts, the Court decretally disposed of the case in the manner elsewhere quoted.

Taking exception thereto, the defendants appealed, assigning in support thereof these errors:

“I.

“WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN FINDING DEFENDANT MICHELLE NASTOR GROSSLY NEGLIGENT IN THE PERFORMANCE OF HER DUTIES AS PHARMACIST OF DEFENDANT MERCURY DRUG CORPORATION.

“II.

“WHETHER OR NOT THE COURT A QUO COMMITTED SERIOUS ERROR IN FINDING THAT DEFENDANT MERCURY DRUG CORPORATION FAILED TO EXERCISE DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES.

“III.

WHETHER OR NOT DEFENDANTS ARE LIABLE FOR THE AMOUNT OF P449,967.55 AS ACTUAL DAMAGES.

“IV.

WHETHER OR NOT DEFENDANTS ARE LIABLE FOR THE AMOUNT OF P50,000.00 AS MORAL DAMAGES.

“V

“WHETHER OR NOT DEFENDANTS ARE LIABLE FOR THE AMOUNT OF P50,000.00 AS EXEMPLARY DAMAGES.

“WHETHER OR NOT DEFENDANTS ARE LIABLE FOR THE AMOUNT OF P10,000.00 AS ATTORNEY’S FEES, AND FOR THE COSTS OF SUIT.”^[12]

The appeal is partly meritorious.

The defendant Michelle Nastor admitted to dispensing ten (10) tablets of Thorazine 200 mg to plaintiff-appellee

Annalyn. According to the defendant Nastor, when the pharmacy assistant, Catherine Ramos, showed her the prescription, she called up Dr. Wilhelmina Maniquis' clinic, but the phone was busy. The defendant Nastor did not contact Dr. Maniquis again. Instead, she dispensed ten (10) tablets of Thorazine 200 mg because, as far as she knows, there is no single preparation for Thiamine.[13]

In the premises, it is quite evident that the defendant Nastor was grossly negligent in dispensing the medicine Thorazine 200 mg. Although she did not directly admit that she had a hard time reading the prescription, the fact that she attempted to contact Dr. Maniquis showed that she had some doubts as to what was written in the prescription. And, when she was not able to get a confirmation of the needed information from Dr. Maniquis, she had settled an option in her mind that just because there is no single preparation for Thiamine, she ought to dispense, as indeed she did dispense, Thorazine instead.

Under the given circumstances, a reasonably prudent person would have taken the care and precaution to contact the prescribing physician, or at the very least, ask the customer what the prescription was for, say for example, "for kids?," "for cough?," in order to have an idea whether he/she has read the prescription accurately. In this case, the defendant-appellant Michelle Nastor failed to exercise due care and precaution in the performance of her duties although she had ample time to double check the prescription, and simply decided to dispense Thorazine 200 mg.

The defendants-appellants' contention that it was plaintiff-appellee's own negligence that caused the injury suffered by the child is not only preposterous and absurd but a lame and implausible excuse to avoid liability. The plaintiff-appellee Annalyn cannot be faulted for administering the wrong medicine to her child. Neither can she be blamed for not reading the label before giving the medicine to her child. To begin with, she cannot be expected to be familiar with the names of drugs, unlike the defendant-appellant Michelle Nastor who is a licensed pharmacist. This is precisely the reason why physicians like Dr. Wilhelmina Maniquis needed to issue prescriptions to their patients.[14] In fact, when the plaintiff-appellee Annalyn called Dr. Maniquis over the phone, the former was asked what medicine was administered to the child, and in reply, the former read the label of the medicine and said "Thorazine" so casually; this is clearly indicative of the fact that she was completely unaware that she gave the wrong medicine. Moreover, it is significant to note that the medicine did not have a "package insert" for the plaintiff-appellee Annalyn to read, as the medicine was simply placed inside a small box with a Mercury Drug label.[15]

In sum, we agree with the findings of the trial court that the defendant Michelle Nastor was grossly negligent in dispensing ten (10) tablets of Thorazine 200 mg to plaintiff Annalyn.

Case law teaches that if an employee is found negligent, it is presumed that the employer was negligent in selecting and/or supervising him for it is hard for the victim to prove the negligence of such employer.[16] Thus, the burden of proof that such diligence was observed devolves upon the employer who formulated the rules and procedures for the selection and hiring of his employees.[17]

To prove that the employer exercised the diligence of a good father of a family in the selection and supervision of his employee, the employer must not merely present testimonial evidence that he observed the diligence of a good father of a family in the selection and supervision of his employee; but he must also support such testimonial evidence with concrete or documentary evidence in order to obviate the biased nature of the employer's testimony or that of his witnesses.[18]

Witness Dante Yulo, Branch Manager of Mercury Drug, Rosario Poblacion Branch, Cavite testified that employees are hired by the main office in Libis, Quezon City; that before they are hired, the applicants must first pass the physical examinations and the IQ tests; that once hired, they are required to attend selling/training

courses, where they would know how to dispense the prescription and how to read prescriptions; and that aside from the seminars the employees still have to undergo a six-month training.[19]

However, except for the Rules on Employee Discipline, the defendant Mercury Drug failed to present any concrete or documentary evidence to show that defendant Michelle Nastor has complied with, or has undergone, all the tests, seminars and trainings. Having failed to overthrow or rebut the presumption, the defendant-appellant Mercury Drug must be held solidarily liable to plaintiffs-appellees.

The trial court's finding as to the amount of damages and attorney's fees to be awarded is hereby affirmed, except as to the amount of actual damages which must be reduced, as the duly documented receipts add up to only to Php44,733.00. Plaintiffs-appellees' claim for additional expenses for monthly check-up and other medicines must be disallowed for lack of receipts to support the same. Furthermore, the counsel's acceptance fee of Php100,000.00 should not be included in the computation for actual damages.

The award of moral damages of Php50,000.00 arising from the mental anguish suffered by the plaintiffs appears reasonable. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate results of the defendant's wrongful act or omission. In this case, defendants' act or omission, which amounted to gross negligence, was precisely the cause of the suffering that plaintiffs had to experience.

Considering that defendants-appellants were found guilty of gross negligence, the grant of exemplary damages is justified under Art. 2231 of the Civil Code of the Philippines.[20] Exemplary or corrective damages are imposed by way of example or correction for the public good.[21] Also, attorney's fees are allowed when exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest.[22]

And so we reiterate the oft-repeated rule that findings of fact of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because the trial court is in a better position to observe the demeanor of the witnesses while testifying.[23]

WHEREFORE, modified as thus indicated, the judgment appealed from is in all other respects AFFIRMED. Costs shall be assessed against the defendants-appellants.

SO ORDERED.

Carandang and Arevalo-Zenarosa, JJ., concur.

[1] Records, pp. 228 – 250.

[2] Id., pp. 1 – 5.

[3] Id., pp. 17 – 19.

[4] Id., pp. 21 – 23.

[5] Id., pp. 31 – 32.

[6] Id., pp. 33 – 36.

[7] Id., pp. 38 – 40; pp. 42 – 44.

[8] Id., pp. 46 – 48.

[9] Id., pp. 229 – 236.

[10] Id., pp. 236 – 238.

[11] Id., pp. 241 – 249.

[12] Rollo, p. 52.

[13] TSN dated June 23, 2003, pp. 11 –12; TSN dated June 30, 2003, pp. 11 – 12.

[14] See TSN dated December 2, 2002, pp. 20 - 21.

[15] TSN dated September 30, 2002, pp. 12 – 13.

[16] YHT Realty Corporation vs. Court of Appeals, G.R. No. 126780, February 17, 2005, 451 SCRA 638.

[17] Perla Compania De Seguros, Inc. v. Sarangaya III, G.R. No. 147746, October 25, 2005, 474 SCRA 191, 201.

[18] Secosa v. Heirs of Erwin Suarez Francisco, G.R. No. 160039, June 29, 2004, 433 SCRA 273.

[19] TSN dated June 9, 2003, pp. 7 – 9.

[20] Art. 2231 provides:

“Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.”

[21] Chan, Jr. v. Iglesia ni Cristo, G.R. No. 160283, October 14, 2005, 473 SCRA 177.

[22] Paguyo v. Astorga, G.R. No. 130982, September 16, 2005. 470 SCRA 33, 55.

[23] Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation, G.R. No. 141715, October 12, 2005, 472 SCRA 445.

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