

ROGELIO VILLANUEVA AND PLEBIA T. VILLANUEVA, PLAINTIFFS-APPELLEES, VS. ARTHUR DY GUANI, DEFENDANT,

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is an appeal from the Decision[1] dated December 29, 2005 rendered by the Regional Trial Court of Cebu City, Branch 15 in Civil Case No. CEB-18511.

Factual and Procedural Antecedents

On August 22, 1995, at about 11:00 in the morning, seventeen-year old Jim Tecson Villanueva, youngest child of plaintiffs-appellees Rogelio and Plebia Villanueva, went to St. Paul Bakery in Barangay Pitalo, San Fernando, Cebu to buy bread.

At about the same time, Estanislao Manlosa, who was then at the vicinity of the said St. Paul Bakery, saw a white Toyota Corolla with plate number GDW-677 zigzagging its way from Cebu City going southbound until it smashed through the bakeshop hitting Jim Tecson Villanueva. Manlosa would later learn that the driver of the white Toyota Corolla was one Cesar Baba after the latter surrendered at the San Fernando Police Station.

Jim's father, the plaintiff-appellee Rogelio Villanueva, immediately went to the site upon hearing of the road mishap and saw his son being carried by two men towards a vehicle. Rogelio and the two men then brought Jim to a hospital in Minglanilla but due to its inadequate facilities, they were told to proceed to Southern Islands Hospital (now Vicente Sotto Memorial Medical Center) in Cebu City. However, when they reached Southern Islands, Jim was pronounced dead on arrival.

Meanwhile, SPO1 Thaddeus Manlunas Gorgonia, traffic officer of the San Fernando Police proceeded to the scene of the accident in Barangay Pitalo, after he was informed by an unidentified concerned citizen about the road mishap. When he reached the location, SPO1 Gorgonia was unable to speak with any of the witnesses to the road accident, except for the sales girl of St. Paul Bakery – a certain “Rosini”. The driver was no longer at the scene of the road mishap, but, upon his return to the police station, SPO1 Gorgonia met one Cesar Baba, who claimed to be the driver of the white Toyota Corolla involved in the road mishap. As per his investigation, SPO1 Gorgonia learned from defendant-appellant Baba that the road mishap happened when someone crossed the road suddenly hesitated forcing the driver, Baba, to maneuver to the left side of the road and in the process, plow through St. Paul Bakery and hit Jim Villanueva. SPO1 Gorgonia entered the details of his investigation into the San Fernando Police Blotter but did not sign the same, as per the station's standard operating procedure.

On March 13, 1996 the plaintiffs-appellees filed a complaint for damages and attorneys fees against defendant Arthur Dy Guani, the registered owner of the white Toyota Corolla bearing Plate No. GDW-677 and the defendant-appellant Cesar Baba.

In their complaint[2], the spouses Villanueva alleged, that:

- They are the parents of the late Jim Tecson Villanueva who died on August 22, 1995;

- Defendant Arthur Dy Guano is the registered owner of a white Toyota Corolla bearing Plate No. GDW-677, which is a public utility vehicle for hire and operating as such on August 22, 1995;
- On August 22, 1995, at around 11:00 in the morning, said automobile was driven by defendant Guano's authorized driver, the defendant-appellant Cesar Baba, who was driving said car within the scope of his authority, when Baba hit and ran over the late Jim Tecson Villanueva after the former drove the said vehicle in a most reckless and imprudent manner, in wanton disregard of traffic rules and regulations, at a very fast clip without observing any reasonable precaution;
- The negligent act of the defendant-driver shows that the registered owner of the motor vehicle, the defendant Arthur Dy Guani, did not observe the extraordinary diligence required of an employer in the selection of his employee and as such, makes him solidarily liable with defendant-appellant Baba to indemnify the heirs of the deceased Jim Tecson Villanueva;
- After the death and during the wake and burial of the plaintiffs' deceased son, the defendant Guani did not extend assistance expected from an owner of a vehicle whose driver was responsible for the death of the plaintiffs' son;
- By reason of the untimely death of their youngest child, the plaintiffs-appellees suffered from serious anxiety, sleepless nights, and unbearable nightmare and incurred actual expenses for the wake and burial of their son as well as incurred expenses in the engagement of counsel

The plaintiffs-appellees prayed that the defendants Guani and Baba be made to pay plaintiffs jointly and severally the amount of One Million Pesos (P1,000,000.00) in moral damages; Fifty Thousand Pesos (P50,000.00) in actual damages; and exemplary damages, attorney's fees, and litigation expenses.

In his Special and Affirmative Defenses[3], defendant Guani denied any liability for the death of Jim Tecson Villanueva since Baba is not an employee of Guani-Rent-A Car -- the car rental service owned by defendant Guani -- and thus, was not under the supervision and control of the latter. Defendant Guani alleged that on August 22, 1995, defendant-appellant Cesar Baba leased or rented a car from Guani Rent-A-Car. Baba and Guani executed a Lease Contract which provides that Baba will be the one to drive the rented car and that the lessee shall be responsible for all traffic violations. Defendant Guani further alleged that he extended financial assistance to the plaintiffs-appellees by paying St. Anne Funeral Parlor in the sum of P10,000.00. In his Cross Claim, defendant Guani prayed for reimbursement and indemnification from defendant-appellant Baba for whatever monies adjudged against him by the Court in favor of the plaintiffs.

Defendant-appellant Baba likewise denied liability stating that although he was the one who rented the car from Guani, he was not the one driving the car when the road mishap occurred. In his Special and Affirmative Defenses[4], he alleged that on August 22, 1995, he and three other new acquaintances hired a vehicle from Guani-Rent-A-Car for their intended travel to Barili in Southern Cebu. Baba claims that when the accident happened, he was seated in the front passenger seat of the car driven by an American named Alan whom he just met the day before.

The trial court conducted pre-trial conference[5] on April 12, 1999. Thereafter, trial on the merits ensued.

Plaintiff-appellee presented the testimonies of the following witnesses:

1)

Estanislao Manlosa, who was present when the deceased Jim Villanueva was hit by the car supposedly driven by Cesar Baba in Barangay Pitalo, San Fernando, Cebu;

2)

SPO1 Thaddeus Manlunas Gorgonia, the traffic officer of San Fernando, Cebu, who investigated the road mishap that killed Jim Tecson Villanueva;

3)

Plaintiffs spouses Rogelio and Plebia Villanueva who testified on the damages they suffered due to the loss of their youngest child;

4)

Atty. Delano Tecson, the plaintiffs-appellees' former counsel, who had custody over but lost the various receipts covering the actual expenses incurred by the plaintiffs-appellees for the wake and burial of the deceased Jim Tecson Villanueva that was entrusted to him by the plaintiffs-appellees – Atty. Tecson's former clients.

Plaintiffs-appellees rested their case without offering their documentary exhibits.

The defendant-appellant Cesar Baba presented the plaintiff-appellee, Rogelio Villanueva as hostile witness, who admitted having filed against Baba, Criminal Case No. 2973 for Obstruction of Justice. The defendant-appellant Baba presented in evidence an Affidavit Complaint (Exhibit 1 - "Baba")[6] executed by plaintiff-Rogelio Baba in the aforementioned criminal case, which states:

COMPLAINT-AFFIDAVIT

For Viol. Of Sec. 1 (B) and © of PD 1829

I, ROGELIO VILLANUEVA, of legal age, married and a resident of Pitalo, San Fernando, Cebu, after being sworn to in accordance with law hereby depose and say:

X x x

8) That it was BABA who drove the vehicle while they were still in Cebu City and after passing Mananga Bridge, in Talisay, BABA allowed POST who was not a licensed driver, to drive the vehicle by himself;

9) That when they reached Pitalo, San Fernando, Cebu ALLAIN POST, who was not acquainted with the road in Pitalo, and is not a licensed driver, hit and bumped several persons including my son, JIM T. VILLANUEVA, who instantly died as a result of the fatal injuries he sustained;

10) That BABA knowing fully well that he was the one driving the vehicle when it hit and killed my said son, knowingly, deliberately, and maliciously mislead the police authorities of San Fernando, Cebu by voluntarily surrendering himself to the San Fernando Police Station, and falsely claiming to be the driver of the erring vehicle, when in truth and in fact he was not, a copy of the pertinent extract from the Police Blotter of the San Fernando Police Station is hereto attached and marked as Annex "A", forming an integral part hereof; That BABA's willful and malicious misrepresentation facilitated the escape of the erring driver, and American national and a tourist, thus obstructing and frustrating the apprehension and prosecution of the said criminal offender, ALLAIN DONAN POST;

11) That after the incident, POST immediately returned home to the United States of America, a free man courtesy of the malicious misrepresentation of BABA;

12) The foregoing facts and circumstances were admitted by BABA under oath when he was presented as a witness in Criminal Case No. 2652, entitled People of the Philippines vs. Cesar Baba, for Homicide, Multiple

Physical Injuries and Damage to Property Through Reckless Imprudence.

X x x”[7]

Meanwhile, on July 7, 2003, the defendant Guani no longer presented his intended hostile witness, his co-defendant Cesar Baba, after the latter admitted the existence and due execution of a “Self-Drive Contract Customer Information Sheet; the Self-Drive Rates; and the Extract from the Police Blotter of San Fernando Police detailing the results of the investigation over the subject incident that killed Jim Tecson Villanueva.”[8] However, these pieces of evidence were no longer formally offered in court, since on May 18, 2004, the defendant Guani and the plaintiffs-appellees agreed to amicably settle this case and submitted a Compromise Agreement[9], which was duly approved by the trial court thus ending the controversy between the plaintiffs-appellees herein and the defendant Guani.

Findings of the Regional Trial Court

On December 29, 2005, the trial court rendered its decision finding the appellant Baba liable to pay the plaintiffs damages, attorney's fees and litigation costs. The ratio decidendi and the dispositive portion of the assailed decision are as follows:

“Based on the testimonial and documentary evidence presented by the parties it was duly proven that plaintiffs have a cause of action defendant Cesar A. Baba, he being the driver who hit and bumped the victim, Jim Tecson Villanueva causing his death. Defendant Arthur Dy Guani proved that his co-defendant, Cesar A. Baba was not his employee but a lessees of a motor vehicle of his rent-a-car business on 22 August 1995. Since defendant Baba was not an authorized driver or employee of co-defendant Guani, there is no need to discuss whether or not Guani complied with the degree of diligence required by law in the selection and supervision of co-accused Baba to prevent damage.

Witness Estanislao Manlosa positively identified defendant Cesar A. Baba as the one driving the vehicle when the accident took place. This testimony was further affirmed by SPO1 Thaddeus Manlunas Gorgonia who investigated the vehicular incident. Defendant Cesar Baba's act of driving the vehicle in a reckless manner causing the instantaneous death of Jim Tecson Villanueva is the proximate cause of the death of the latter. Therefore, he should be made liable for the death of Jim Tecson Villanueva for his negligent act of irresponsible driving.

A person is responsible for all the natural consequences of his act. Article 20 of the New Civil Code provides: 'Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.'

Article 2176 of the same code further provides: 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 x x x.”

To sustain a claim based on quasi-delict, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of the defendant; and, (c) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff” (FGU Insurance Corporation vs. Court of Appeals, 287 SCRA 718).

WHEREFORE, finding the preponderance of evidence to be in favor of the PLAINTIFFS and against defendant Cesar A. Baba, judgment is rendered in their favor and the Court hereby orders defendant, Cesar A. Baba:

1. To pay plaintiffs the sum of Eighty Four Thousand (P=84,000.00) Pesos as actual expenses;
2. To pay plaintiffs the sum of Ten Thousand (P=20,000.00) (sic) Pesos as attorney's fees and another sum of

Fifteen Thousand (P=15,000.00) Pesos as litigation expenses;

3. To pay plaintiffs the sum of Three Hundred Thousand (P=300,000.00) Pesos as moral damages and to pay the costs of this suit.

SO ORDERED.”[10]

The Appeal

Aggrieved by the trial court's decision, the defendant-appellant Baba filed a Notice of Appeal[11], which was given due course by the trial court per its Order dated April 17, 2006[12].

This Court received the records of this case on January 20, 2006[13]. However, this case languished in the completion stage after several portions of the records and the transcript of stenographic notes transmitted to this Court were found to be incomplete[14]. Then on March 30, 2012, after having completed the missing portions of the records of this case, this Court issued a Notice to File Brief[15]. The appellant Baba submitted his brief on July 6, 2012[16].

On February 14, 2014, the Judicial Records Division of this Court reported that no brief has been filed by the plaintiffs-appellees despite the lapse of the period to file the same.[17] Thus, on June 16, 2014, this case was declared submitted for decision sans appellees' brief[18].

Assignment of Errors

- The court a quo gravely erred in finding herein defendant-appellant liable for the damages and attorney's fees claimed by plaintiffs-appellees in the light of the compromise agreement entered into by them with defendant Arthur Dy Guani whereby they accepted the sum of P100,000 as “full and complete settlement of plaintiffs' claim”.
- The court a quo gravely erred in finding herein defendant-appellant liable for the damages and attorney's fees claimed by plaintiffs-appellees in the light of the sworn declaration of plaintiff Rogelio Villanueva admitting that it was a certain Allain Post, a foreigner, who was then the actual driver of the vehicle which caused the death of the plaintiffs' son.

Argument for the Appellant

The appellant submits that in their complaint, the plaintiffs-appellees asserted that defendants Arthur Dy Guani and Cesar A. Baba be held jointly and solidarily liable for the damages – actual, exemplary, moral, attorney's fees and litigation expenses --prayed for by the plaintiffs-appellees.

Appellant contends that by asserting a joint and solidary obligation on the part of the defendants, plaintiffs-appellees were bound by Art. 1217 of the New Civil Code whereby the compensation by one of the joint and solidary obligors, extinguishes the obligation.

Appellant argues that when the plaintiffs-appellees entered into a compromise agreement with the defendant Guani and expressly agreed therein that the money they received was for the “full and complete settlement of all plaintiffs' claims” , by express provision of law, plaintiffs are now estopped from further pursuing compensation of their claims against defendant-appellant Baba.

The appellant also points out that the decision of the court a quo finding appellant liable for damages is anchored on a finding that it was the appellant Baba who was the driver of the vehicle that caused the death of the plaintiffs' son at the time of the incident. However, appellant contends that this finding is proven false by plaintiff Rogelio Villanueva's own admission in his complaint affidavit¹⁹, which states that appellant was not the one who drove

the vehicle that killed the plaintiffs' son but a certain Allan Post. This judicial admission, the appellant argues, makes the judgment finding appellant liable for the damages claimed by plaintiffs-appellees devoid of any legal or factual basis.

Ruling of this Court

This appeal is devoid of merit.

This case for damages now before Us is clearly covered by the law on quasi[20] delicts there being no pre-existing contractual relation between the plaintiffs-appellees and the defendant-appellant Baba. Art. 2176 of the New Civil Code provides that “whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done x x x”.

To sustain a claim based on quasi delicts, the following requisites must concur: (1) damage suffered by the plaintiff; (2) fault or negligence of the defendant; and, (3) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff[21].

In this case, the undisputed facts are as follows: (a) that Jim Tecson Villanueva died on August 22, 1995; (b) that the deceased Villanueva was killed in a road mishap in Barangay Pitalo, San Fernando, Cebu; (c) the motor vehicle involved in the said road mishap was a white Toyota Corolla with Plate No. GDW-677 owned by Guani-Rent-A-Car; (d) that said motor vehicle was leased by the defendant-appellant Baba from Guani.

The defendant-appellant Baba denies any responsibility for the death of the young Villanueva, stating that it was his companion, the American national Allain Post, who was driving the vehicle at the time of the incident; and that this fact is bolstered by the plaintiff-appellee's own declaration in an affidavit-complaint for Obstruction of Justice[22] filed by plaintiff-appellee Rogelio Villanueva against defendant-appellant Cesar Baba[23].

However, the Court notes that there is on record the eyewitness account of witness Estanislao Manlosa who positively identified the appellant Baba as the one driving the white Toyota Corolla[24]. The pertinent portions of Manlosa's testimony are as follows:

“Atty. D. Quilaquil: Do you know who was driving that car?

Manlosa: Cesar Baba.

Q: If Cesar Baba is around, Can you point at him.

Court Interpreter: The witness is pointing to a man wearing a striped t-shirt and when asked if he was Cesar Baba, he answered yes.

Atty. D. Quilaquil: Why do you know that the driver was accused Cesar Baba?

Manlosa: Because he surrendered at the Police station.

Q: What police station are you referring to?

A: San Fernando Police Station.

Q: How do you know that he surrendered to the police station of San Fernando?

A: Because we went to the police station.

Q: From whom did you know that the driver was a certain Cesar Baba?

A: From the police.

Q: When for the first time you came to know the name of this defendant was Cesar Baba?

A: At the police station.”[25]

The trial court correctly ruled when it gave more credence in positive testimony of Manlosa, who was right there on the scene of the road mishap and saw the appellant Baba driving the white Toyota Corolla that killed Jim Tecson Villanueva.

First, the appellant's reliance on a declaration made by the plaintiff-appellee Villanueva in his complaint-affidavit cannot override the positive testimony of Manlosa who saw the appellant Baba driving the vehicle, considering that appellee Villanueva's Affidavit-Complaint in the Obstruction of Justice case was based not on an actual eyewitness account as he was not on the scene when his son was killed, but based on a supposed testimony made by the defendant-appellant Baba in Criminal Case No. 2652, to wit:

COMPLAINT-AFFIDAVIT

For Viol. Of Sec. 1 (B) and (C) of PD 1829

I, ROGELIO VILLANUEVA, of legal age, married and a resident of Pitalo, San Fernando, Cebu, after being sworn to in accordance with law hereby depose and say:

X x x

12) The foregoing facts and circumstances were admitted by BABA under oath when he was presented as a witness in Criminal Case No. 2652, entitled People of the Philippines vs. Cesar Baba, for Homicide, Multiple Physical Injuries and Damage to Property Through Reckless Imprudence.

X x x"[26]

Second, there is on record the defendant-appellant's admission/ stipulation of facts made through counsel on July 7, 2003 admitting the existence and due execution of a "Self-Drive Contract Customer Information Sheet; the Self-Drive Rates" executed by defendants Baba and Guani covering the use of the leased white Toyota Corolla; and the Extract from the Police Blotter of San Fernando Police detailing the results of the investigation over the subject incident indicating the appellant Baba as the driver of the vehicle that killed the young Villanueva.[27]

Third, the appellant's claim that while he was the lessee of the rented car it was the American, Allain Post, who was actually driving when the deceased was hit by the rented white Toyota Corolla, is largely unsupported by evidence, thus remains to be a gaping hole in the appellant's supposed narrative of what transpired on August 22, 1995. The court notes that appellant Baba did not bother to take the witness stand and explain before the trial court how and why the Ameracan, Post, took over the wheels of the vehicle that was under the name and care of the appellant Baba being the lessee thereof.

The defendant-appellant Baba's argument that his liability for the death of the young Villanueva, if any, had been extinguished after the plaintiffs-appellees and the defendant Guani entered into a Compromise Agreement is specious.

Applying the ruling of the Supreme Court in FGU Insurance Corp. v. Court of Appeals, 351 Phil. 219, 225 (1998), where it was held that a rent-a-car company is not liable for the damages caused by the negligence of its lessee, who drove the subject vehicle there being a clear absence of *vinculum juris* as employer and employee, then there can be no joint and solidary liability between the defendants Guani and Baba for the death of Jim Tecson Villanueva. Had this case not been amicably settled between Guani and the Spouses Villanueva, the liability would have rested solely on the shoulders of the defendant-appellant Baba being the lessee and driver of the white Toyota Corolla that killed the plaintiffs' son on August 22, 1995.

Granting for the sake of argument that the responsibility of two or more persons who are liable for quasi delict is solidary[28], and the sharing as between such solidary debtors is pro-rata[29], the release of one tortfeasor does

not operate to release the others.

Under American Jurisprudence, three rules have developed which deal with the question of whether the release of one joint tortfeasor releases other tortfeasors who are not parties to or named in the release. The first is the ancient common-law rule that a release of one joint tortfeasor releases all other parties jointly liable, regardless of intent of the parties. The second, otherwise known as the “First Restatement rule,” states that a release of one co-conspirator normally releases all others unless the plaintiff expressly reserves his right against the others. The third provides that the effect of the release upon co-conspirators shall be determined in accordance with the intentions of the parties. In *Zenith Radio Corp. vs. Hazeltine Research, Inc.*, the Supreme Court of the United States adopted the third rule. The Court observed that “to adopt the ancient common-law rule would frustrate partial settlement and thereby promote litigation, while adoption of the First Restatement rule would create a trap for unwary plaintiffs’ attorneys.”[30]

However, this Court finds it proper to modify the monetary judgment awarded by the trial court. This Court finds the award of actual damages in the amount of Eighty Four Thousand Pesos (P84,000.00) to be without any evidentiary basis considering the failure of the plaintiffs-appellees to present the receipts covering the expenses for the wake and burial of Jim Tecson Villanueva. The testimony of appellees’ former counsel, Atty. Delano Tecson, only serves to confirm the inability of the plaintiffs-appellees inability to prove their claim for actual expenses precisely because their former counsel lost the receipts.

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[31]. Therefore, the award of actual damages in favor of plaintiffs-appellees in the amount of Eighty Four Thousand Pesos (P84,000.00) must be deleted.

Still, despite the deletion of the actual damages, the defendants-appellants must not be allowed to totally escape liability for the death of Jim Tecson Villanueva, and the loss and suffering it caused upon plaintiffs-appellees, the Spouses Villanueva, who lost their youngest son. In *Heirs of Ramon C. Gaite, et. al. vs. The Plaza, Inc., et. al.*[32] the Supreme Court affirmed the deletion of actual damages for lack of evidence and upheld the Court of Appeals ruling awarding, in its stead, temperate damages under Art. 2224 of the Civil Code.

“As to temperate damages, Article 2224 of the Civil Code provides that 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 rationale behind temperate damages is precisely that from the nature of the case, definite proof of pecuniary loss cannot be offered. When the court is convinced that there has been such loss, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant’s wrongful act. Petitioners’ contention that such award is improper because The Plaza could have presented receipts to support the claim for actual damages, must fail considering that Rhogen never denied the delivery of the owner-furnished materials which were under its custody at the jobsite during the work stoppage and before it terminated the contract. Since Rhogen failed to account either for those items which it had caused to be withdrawn from the premises, or those considered damaged or lost due spoilage, or disappeared for whatever reason – there was no way of determining the exact quantity and cost of those materials. Hence, The Plaza was correctly allowed to recover temperate damages.”[33]

Even if the plaintiffs-appellees could have proffered more competent evidence to establish actual damages, an award of temperate damages is not precluded. The grant of temperate damages is drawn from equity to provide relief to those definitely injured. Therefore, it may be allowed so long as the court is convinced that the aggrieved party suffered some pecuniary loss[34].

Temperate or moderate damages “are more than nominal but less than compensatory damages”[35] In determining the amount of temperate damages, this Court is guided by the Civil Code provision governing the

award of temperate and moderate damages and the long line of jurisprudence which applied the same. In heirs of Ramon Gaite, et. al. vs. The Plaza, et. al.[36], the Supreme Court deleted the award of actual damages in the amount of P525,422.73 and in lieu thereof, awarded temperate damages in the amount of P300,000.00 or fifty-seven (57%) percent of the original award. In Reno R. Gonzales vs. Camarines Sur II Electric Cooperative, Inc.[37] the Supreme Court deleted the award of actual damages in the amount of P5,000.00 and in lieu thereof, awarded temperate damages in the amount of P3,000.00 or sixty (60%) percent of the original award. In this case, the Court deems it fair to award plaintiffs-appellees temperate damages in the amount of Fifty Thousand Pesos (P50,000.00) to be more apropos and in accordance with law and jurisprudence.

WHEREFORE, this appeal is hereby DENIED for lack of merit. However, the Decision[38] dated December 29, 2005 rendered by the Regional Trial Court of Cebu City, Branch 15 in Civil Case No. CEB-18511 is hereby MODIFIED to include the award of Fifty Thousand Pesos (P50,000.00) as temperate damages. The award of Eighty Four Thousand Pesos (P84,000.00) in actual damages is hereby DELETED for lack of evidentiary basis.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

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- [1] Page 417, original records.
 - [2] Pages 1-6, original record.
 - [3] Pages 12-22, original record.
 - [4] Pages 30-35, original record.
 - [5] Pre-Trial Order, pp. 96-98.
 - [6] Pages 206-207, original record.
 - [7] Exhibit 1, 1-E, 1-D, pp. 206-207, rollo.
 - [8] See Order dated July 7, 2003, page 262, original record.
 - [9] Page 284, original record.
 - [10] Pages 303-312, original record.
 - [11] Page 315-318, original record.
 - [12] Page 319, original record.
 - [13] Page 2, rollo.
 - [14] Page 2, rollo.
 - [15] Page 33, rollo.
 - [16] Pages 38-52, rollo.
 - [17] See back of page 68, rollo.
 - [18] See Resolution dated June 16, 2014, page 69, rollo.
 - [19] Exh. 1 - Baba

[20] Art. 2176 of the New Civil Code provides: "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".

[21] *Andamo v. Intermediate Appellate Court*, G.R. No. 74761, 6 November 1990, 191 SCRA 195.

[22] COMPLAINT-AFFIDAVIT

For Viol. Of Sec. 1 (B) and © of PD 1829

I, ROGELIO VILLANUEVA, of legal age, married and a resident of Pitalo, San Fernando, Cebu, after being sworn to in accordance with law hereby depose and say:

X x x

8) That it was BABA who drove the vehicle while they were still in Cebu City and after passing Mananga Bridge, in Talisay, BABA allowed POST who was not a licensed driver, to drive the vehicle by himself;

9) That when they reached Pitalo, San Fernando, Cebu ALLAIN POST, who was not acquainted with the road in Pitalo, and is not a licensed driver, hit and bumped several persons including my son, JIM T. VILLANUEVA, who instantly died as a result of the fatal injuries he sustained;

10) That BABA knowing fully well that he was the one driving the vehicle when it hit and killed my said son, knowingly, deliberately, and maliciously mislead the police authorities of San Fernando, Cebu by voluntarily surrendering himself to the San Fernando Police Station, and falsely claiming to be the driver of the erring vehicle, when in truth and in fact he was not, a copy of the pertinent extract from the Police Blotter of the San Fernando Police Station is hereto attached and marked as Annex "A", forming an integral part hereof; That BABA's willful and malicious misrepresentation facilitated the escape of the erring driver, and American national and a tourist, thus obstructing and frustrating the apprehension and prosecution of the said criminal offender, ALLAIN DONAN POST;

11) That after the incident, POST immediately returned home to the United States of America, a free man courtesy of the malicious misrepresentation of BABA;

12) The foregoing facts and circumstances were admitted by BABA under oath when he was presented as a witness in Criminal Case No. 2652, entitled *People of the Philippines vs. Cesar Baba, for Homicide, Multiple Physical Injuries and Damage to Property Through Reckless Imprudence*.

X x x"

[23] Exhibit 1, 1-E, 1-D, pp. 206-207, rollo.

[24] See paragraph 4, page 9 of the Decision dated December 29, 2005, page 311 of original record.

[25] TSN, April 29, 1999, pp. 7-9.

[26] Exhibit 1, 1-E, 1-D, pp. 206-207, rollo.

[27] See Order dated July 7, 2003, page 262, original record.

[28] Art. 2194, New Civil Code.

[29] *Singapore Airlines Limited vs. Court of Appeals, et. al.*, G.R. No. 107356, March 31, 1995.

[30] *Republic vs. Sandiganbayan, et. al.*, G.R. No. 92594, March 4, 1994.

[31] *Sanitary Steam Laundry, Inc. vs. Court of Appeals*, 300 SCRA 20 (1998).

[32] G.R. No. 177685, January 26, 2011.

[33] Ibid.

[34] *Reno R. Gonzales, et. al. vs. Camarines Sur Electric Cooperative, Inc., et. al.*, G.R. No. 181096, March 6, 2013, citing *an v. OMC Carriers, Inc.*, G.R. No. 190521, 12 January 2011, 639 SCRA 471, 482.

[35] Art. 2224, Civil Code.

[36] G.R. No. 97412 July 12, 1994.

[37] G.R. No. 181096, March 6, 2013.

[38] Page 417, original records.

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