

FARIDAH CABUGATAN, HADJI NASSER CABUGATAN, FAISAL CABUGATAN, FAROUK CABUGATAN, JAVIER CABUGATAN, MOHAMAD CAB UGATAN, HADJI CASAN USMAN AND JUNAID SULO, PLAINTIFFS-APELLEES, VS. ...

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SANTOS, J.: [1]

This is an appeal from the Amended Decision[2] dated 22 July 2010 of the Regional Trial Court of Lanao del Norte, Branch 03, Iligan City, 12[th] Judicial Region (trial court), in Civil Case No. 6299, directing defendant-appellant National Power Corporation (NPC) to pay to the plaintiffs-appellees just compensation for their damaged rice and corn fields, and fish ponds, plus attorney's fees.

The Antecedents

On 16 May 2003, plaintiffs-appellees filed before the trial court a complaint for damages against defendant-appellant NPC, which case was docketed as Civil Case No. 02437.[3] It contains the following averments, viz.:

Plaintiff-appellee Faridah Cabugatan (Faridah) is allegedly the registered owner and possessor of a parcel of land administered by her father, plaintiff-appellee Hadji Nasser Cabugatan (Nasser), located at Dimasuba, Adapun Ali, Balo-i, Lanao del Norte, identified as Lot No. 201, Pls-546, covered by Transfer Certificate of Title (TCT) No. T-11,027,[4] with an area of 85,286 square meters. She declared the property in her name for tax purposes. The Declaration of Real Property states that the property is a corn land, with an assessed value of Php 5,320.00 and a market value of Php 13,290.00. Said property was allegedly tilled and cultivated by plaintiffs-appellees Faisal, Farouk, Mohamad and Javier, all surnamed Cabugatan, including plaintiff-appellee Nasser.[5]

Plaintiffs-appellees aver that because of the construction of defendant-appellant NPC's hydroelectric plant along the Agus River, inundation and flash flooding at the Balo-i Plains, which included Barangay Adapun Ali where the subject property is located, occurred twice or thrice a year. Every time there is flooding, the affected area allegedly remains inundated for several months even without rain, thereby causing damage to the crops, fishponds and other properties therein.⁶

Further, they claim that previously, particularly in June and July 1999, defendant-appellant NPC paid for the damages caused by the flashflooding in the Balo-i Plains.[7] However, for the damages that ensued from the flashfloods in the same area during three (3) different periods, i.e., (a) from September to October 1999; (b) February to March 2000; and (c) April 2001, defendant-appellant NPC, despite repeated demands, refused to pay plaintiffs-appellees for the damages to their crops and fish ponds.[8]

Plaintiffs-appellees estimated the total value of the damage to their rice and corn fields, allegedly based on the valuation of the Provincial Appraisal Committee of Lanao del Norte, to be in the amount of Php 879,542.00, while that to the fishponds in the amount of Php1,088,472.80.[9] Negotiations and dialogues with defendant-appellant NPC were in vain as the latter allegedly undertook to pay a minimal amount by way of

financial assistance, instead of the actual damages demanded by plaintiffs-appellees. [10]

In its Answer, defendant-appellant NPC pointed out that TCT No. T-11027 which supposedly covers the subject property is in the name of the Development Bank of the Philippines (DBP), not in the name of plaintiffs-appellees, thereby rendering the latter not the real parties-in-interest in the case. Further, it avers that if indeed there were incidents of flooding in the area, the same could have been due to natural causes, hence are deemed “damnum absque injuria.” It also denied the allegation that it had paid for damages during the flood from June and July 1999 as the same was by way of monetary assistance only. For alleged failure of plaintiffs-appellees to set forth the act of negligence, fraud and deceit or omission on the part of defendant-appellant NPC, the latter resists the claim for damages. Instead, it posits that the construction of the hydroelectric plants is authorized under Republic Act (RA) No. 6395. [11] Moreover, it also has allegedly maintained the water elevation of Lake Lanao to not exceed 702 meters above sea level as proven by the Tabulations of Lake Lanao Elevation from 1979 up to June 2003. [12]

After the hearing on the affirmative defenses of defendant-appellant NPC, the trial court issued an Order, pertinent portions of which read:

For resolution is a motion to hear defendant’s affirmative defenses filed by defendant, National Power Corporation, praying that this case be dismissed for failure to state the cause of action considering that the plaintiffs are not the real parties in interest, not being the registered owner of the land but the Development Bank of the Philippines, Iligan City Branch.

However, the Court is of the view that the subject matter of this case is not the land but the damages on the crops belonging to the plaintiffs due to the flash flooding and inundation of the land where the crops were planted, which inundation was caused by the defendant, National Power Corporation, Hydroelectric Plant, situated along the Agus River.

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The Court does not agree, since the complaint alleges that this inundation and flash flooding occurred repeatedly, implying that the defendant, National Power Corporation, did not endeavour to prevent the repetition of said inundation and flash flooding. For that matter, there could be an actionable wrong.

WHEREFORE, finding the motion to dismiss not to be sufficiently impressed with merits (sic), the same is hereby denied.

SO ORDERED.[13]

Defendant-appellant NPC moved for reconsideration of the said Order.[14] In their Vigorous Opposition to the Motion for Reconsideration,[15] plaintiffs-appellees attached a copy of the Deed of Absolute Sale executed between plaintiff-appellee Faridah and the DBP over the subject property.[16] Then, in the Order[17] dated 12 October 2004, the trial court denied defendant-appellant NPC’s Motion for Reconsideration.

At the trial, plaintiff-appellee Nasser testified that he is the father of all his co-plaintiffs-appellees, except for Hadji Casan Usman (Casan) and Junaid Sulog (Junaid), although the latter is his son-in-law. His daughter, plaintiff-appellee Faridah, acquired ownership of the subject property, which has an area of more than 8 hectares, through purchase from DBP as evidenced by a Deed of Sale dated 28 December 1987. [18] He attested that the rice and corn fields, and the fishponds of his children within the said property were damaged by the flash floods in September and October 1999, February and March 2000, June and July 2000, and April 2001. The damage sustained by his rice crop was in the amount of P86,400.00. As for his co-plaintiffs, the damage sustained by Faisal was valued at P260,976.00; P168,109.00 for Farouk; P214,575.00 for Javer; and P149,482.00 for

Mohamad. The said amounts were allegedly computed on the basis of the computation by the provincial assessor as contained in Resolution No. 2001-01.[19] He further averred that since 1978, 1986, 1994, 1995 and 1996, defendant-appellant NPC has been paying them for the crops damaged as a result of the construction of the hydroelectric project of NPC.[20] Thus, for the damages sustained in September and October 1999, February and March 2000, June and July 2000, and April 2001, they made demands for payment from defendant-appellant NPC but to no avail, hence they were compelled to file a case in court.[21] The subject property is about 3 kilometers away from defendant-appellant's hydroelectric plant, yet the latter has not stopped them from introducing improvements on the property.[22] According to plaintiff-appellee Nasser, they blamed the NPC because the latter's hydroelectric power plant caused the damage for they were the ones controlling the flow of the water. He stated that the flood was caused by defendant-appellant NPC "because it was the one which constructed the hydro-electric power plant." [23] For the flooding in June 1999, they were paid damages by defendant-appellant NPC.[24]

Another witness for the plaintiffs-appellees was Barangay Captain Motrika Baraacor who testified that he has been a resident of Barangay Adapun Ali, Balo-i, since birth, and was elected as a barangay chairman in 1997 up to 2002. He allegedly knows all of the plaintiffs-appellees to be residents of Barangay Adapun Ali, and was aware of their claims against defendant-appellant NPC. At the time of the flooding, he, along with the officers of 5 other affected barangays, informed NPC of the damages that allegedly ensued from the flashfloods "caused by the installation of the hydroelectric plants made by the NPC." [25] He further averred that "since the time of the installation of the hydroelectric plants that was the beginning of the flash flooding." [26] In his incumbency, what he remembers is that flash flooding occurred in the Balo-i Plains four (4) times.[27] There were dialogues between defendant-appellant NPC and the claimants where it was agreed that the price assessed by the Municipal Assessor shall be used in computing the damages, but NPC did not pay the same.[28] According to him, flash floods also took place in 1996 and 1999 and defendant-appellant NPC paid the claimants.[29]

Plaintiff-appellee Faridah also testified in this wise: Plaintiff-appellee Nasser is her father while all the other plaintiffs-appellees with the surname of Cabugatan are her brothers; Casan is her uncle while Junaid is her brother-in-law. [30] The subject property is hers, having repurchased the same from the DBP after her mother had mortgaged it to said bank. She already made full payment of the property and declared it in her name for taxation purposes but its title was not transferred to her name yet.[31] Her brothers started cultivating the land since the 1980s and they gave her share of the income from the harvest.[32] However, due to the overflowing of the water, her brothers could not farm thus, experienced loss of income. Their claims with defendant-appellant NPC were not paid in full but only in the form of financial assistance.[33] After 2001, her brothers were already discouraged from cultivating the land, leaving it vacant. Other tenants began to cultivate it in 2004.[34]

Another witness was plaintiff-appellee Javier Cabugatan who testified that his rice and corn plants were damaged for the first time in September to October 1999, again, in February and March 2000, June and July 2000, and in April 2001.[35] After they reported to defendant-appellant NPC, the latter allegedly agreed to pay for the damages to their crops as they did in the previous years, the last one being in June and July 1999. Defendant-appellant, however, did not pay them.[36] Sometimes, the flood would last for more than a month even during the dry season, the longest being the one in the year 2000 when the water subsided only after three (3) months.[37] Although there was also flooding before the construction of the hydroelectric plant, the water would subside after the rain.[38]

For defendant-appellant NPC, it presented Evelyn Carrero as its witness. She is the Principal Engineer of the Dams, Reservoirs and Waterways Management Division of defendant-appellant NPC, and is in charge of the monitoring of the water discharge from Agus 2 at Saguilaran, Lanao del Sur, to the Agus 4 at Balo-i, Lanao del

Norte.[39] She presented and identified the Lake Lanao Monthly Average Outflow from 1999 to 2001 showing that the maximum water releases from Agus 2 to Agus 4 did not exceed the maximum level during the periods claimed by plaintiffs-appellees.[40]

After the parties filed their respective Memoranda,[41] the trial court rendered a Decision dated 10 August 2009, the dispositive portion of which reads:

WHEREFORE, premises considered, the court renders judgment ordering:

1. Defendant to pay plaintiffs the following compensatory damages:

- a) Nasser Cabugatan, P6,916.34 x 4 seasons = P27,665.36 (Exh. "L");
- b) Faisal Cabugatan, P5,528.25 x 4 seasons = P22,113.00 (Exh. "L-1");
- c) Farouk Cabugatan, P8,505.00 x 4 seasons = P34,020.00 (Exh. "L-2");
- d) Mohamad Cabugatan, P6,366.15 x 4 seasons = P25,464.60 (Exh. "L-3"); e) Javier Cabugatan, P9,513.26 x 4 seasons = P38,053.04;

2. Defendant to pay plaintiffs P20,000.00 as and for attorney's fees P2,000.00 for appearance fee.

SO ORDERED.[42]

Aggrieved, defendant-appellant NPC filed a Notice of Appeal on 24 September 2009.[43]

On their part, plaintiffs-appellees filed a Motion for Reconsideration/Modification on the ground that the just compensation awarded by the trial court for their damaged rice and cornfields was allegedly contrary to the facts and evidence, citing that the trial court erred in basing the same on defendant-appellant NPC's previous payments to them as reflected in the vouchers on record as the figures therein allegedly represented partial payments only. [44] On 22 July 2010, the trial court issued an Order[45] granting plaintiffs-appellees' Motion for Reconsideration/Modification based on the following reasoning, viz.:

From the foregoing findings, the court is convinced that the basis for the computation of damages should be the aforecited appraisal of the Provincial Appraisal Committee. This is so because they are the most competent persons to appraise the damage done by the Flood Control overflow of the National Power Corporation under the circumstances obtaining at that time. This fact is even recognized by the defendant National Power Corporation itself as it was defendant, through its project manager, which requested for the appraisal of the said damages.

On the damages of the plaintiffs' fishponds and the fish contained therein, plaintiffs' evidence consist[s] of their testimonies which were corroborated by the Barangay Captain of Adapun Ali, Baloi, Lanao del Norte. Considering that these evidence were not rebutted by defendant's evidence, the court feels that these pieces of evidence are deemed admitted. Hence, the court reconsiders its decision on this issue.

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WHEREFORE, premises considered, the Motion for Reconsideration is granted. The Decision of this court dated August 10, 2009 is hereby reconsidered as prayed for.

SO ORDERED.[46]

Thereafter, the trial court rendered an Amended Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- Ordering defendant to pay to the following plaintiffs the amounts stated opposite their respective names as just compensation of their damaged rice and corn fields, to wit:

Name of Claimants	Areas Affected	Amount for each season	Total Amount for 4 seasons
Hadji Nasser Cabugatan	5,400 sq. m.	P16,000.00	P64,800.00
Faisal Cabugatan Including the area Previously cultivated by Noro Sabdullah	16,311 sq. m. (Ricefield, upland)	P48, 933.00	P195,732.00
Faisal Cabugatan Including the area Previously cultivated by Noro Sabdullah	16,311 sq. m. (Ricefield, upland)	P48, 933.00	P195,732.00
Farouk Cabugatan Including the area Previously cultivated by Macapangcat Solaiman	13,342 sq. m.	P42,027.30	P168, 109.20
Javer Cabugatan	15,125 sq.m. (Cornfield) 1,500 sq.m. (Ricefield, upland)	P 47,643.75 4,500.00	P190,575.00 18,000.00
Mohamad Cabugatan	13,284 sq. m. (Cornfield)	P 41,844.60	P167,378.40
GRAND TOTAL			P 804,594.60

- Ordering the defendant to pay to the following plaintiffs the amounts stated opposite their respective names as just compensation of their damaged fish ponds and the loss of the fish contained therein, to wit:

Name of Claimants

Areas

Amounts

Javer Cabugatan

840 sq. m.

P 287,875.80

Farouk Cabugatan

840 sq. m.

287,875.80

Mohamad Cabugatan

600 sq. m.

205,497.00

Junaid Sulog

560 sq. m.

191,914.00

Hadji Casan Usman

300 sq. m.

115,311.00

TOTAL

P1,088,472.80

- Ordering the defendant to pay the sum of at least One Hundred Thousand (P100,000.00) Pesos as Attorney's fees and appearance fees.

SO ORDERED.[47] (Tabular form supplied)

Consequently, defendant-appellant NPC reiterated its previously-filed Notice of Appeal in its Notice of Appeal filed on 13 September 2010,[48] which the trial court gave due course to. Hence, the present appeal before this Court.

Assignment of Errors

Defendant-appellant NPC's appeal is anchored on the following assigned errors, viz.:

I. [The trial court erred in h]olding the defendant-appellant liable for the alleged damages and/or losses allegedly sustained by plaintiffs-appellees;

II. [The trial court erred in m]aking an award of damages without any determination of whether or not

negligence or wrongful acts can be attributed to defendant-appellant;

III. [The trial court erred in f]ixing the amount of damages without any clear and competent proof therefor.

This Court's Ruling

Defendant-appellant NPC ascribes error upon the trial court for holding it liable for damages despite the latter's failure to make a definite finding of its negligence or wrongful act in light of plaintiffs-appellees' failure to indubitably prove their cause of action.[49]

This Court is not persuaded.

As a general rule, floods due to heavy rains, is a fortuitous event.[50] It falls within the definition of an act of God or force majeure which is an extraordinary event that is not foreseeable or avoidable, an event that could not be anticipated, or which, though foreseen, is inevitable. [51] An exception from that general rule is when in the occurrence of a fortuitous event or an act of God, a corresponding fraud, negligence, delay or violation or contravention on the part of the obligor has been committed, resulting in loss or damage. In such a case, the obligor cannot escape liability for damages notwithstanding the happening of a fortuitous event.[52]

In other words, in order for the "act of God" doctrine to be available to defendant-appellant NPC, it is strictly required that the act must be occasioned solely by the violence of nature. NPC v. Court of Appeals[53] elucidates, as follows, viz.:

x x x Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.

So generally it cannot be said that damage, injury or loss is due to an act of God where it was caused merely by excessive or heavy rainfall, storms and to weather conditions which are not unusual in character, those which could have been reasonably anticipated or where the injury complained of is due rather to the negligence or mismanagement of man than to the disturbance of the elements or where such damage, injury or loss might have been mitigated or prevented by diligence exercised after the occurrence. (citations omitted)

Therefore, the main issue to be determined in the instant case is whether the flashfloods alleged to have taken place in the years being claimed by plaintiffs-appellees, i.e., September and October 1999, February and March 2000, June and July 2000, and April 2001, were attributable to any fault or negligence on the part of defendant-appellant NPC so as to render the latter liable for the damages allegedly incurred by the plaintiffs-appellees.

Article 2176 of the Civil Code provides that "[w]hoever 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."

In order to sustain a claim based on quasi-delict, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by the plaintiff.[54]

Going over the parties' pleadings and the evidence on record, this Court is convinced that there is basis to conclude that indeed there were floods that occurred in the periods alleged by plaintiffs-appellees that resulted in loss and damage to properties in the area. For one, defendant-appellant NPC never disputed that allegation. Also, the testimonial evidence of plaintiffs-appellees that floods occurred was sufficiently corroborated by the following

documentary evidence, viz.:

a)

The follow-up letter dated 08 January 2001 of plaintiffs-appellees' counsel addressed to defendant-appellant NPC on the subject of "Damaged Crops, Fishpond and Vegetable Cultivations of Balo-I Plains Farmers;"[55]

b)

Resolution No. 2001-01 dated 26 February 2001 of the Provincial Appraisal Committee containing the appraisal and valuation of the crops damaged by the overflow of the Agus River which appears to have been made upon the letter- request dated 19 May 2000 of NPC's Project Manager, Engr. Dante G. Gorospe, to appraise the market value of the damaged crops;[56] and

c)

Letter dated 29 December 1999 of plaintiff-appellee Nasser informing defendant-appellant NPC of the destruction of his cornfield along the Agus River allegedly "due to the opening of Agus I & II Hydro Electric Power Dam resulted too much overflowing of Agus River at Baloi Plains occurred last September 2, 1999 and November to December 27, 1999."[57]

The records are also replete with proof that defendant-appellant NPC had previously made payments to plaintiffs-appellees for the damages to their crops in 1996 and 1999. Although the former insists that such was in the form of financial assistance only, the latter claims that the same was for the damages to their crops and property thereby, entitling them again to be paid for the damages incurred for the subsequent periods as being claimed herein. A perusal of the letter dated 18 September 2000 of NPC's Vice-President Silvano C. Zanolina addressed to the plaintiffs-appellees reveals that indeed the payments made were for "damage claims due to flooding." Said letter, in its entirety, reads:

HADJI NASSER CABUGATAN et al.

Landowner

Somiorang, Adapun Ali

Baloi, Lanao del Norte

Subject: Claims for Damages due to alleged flooding at the Balo-I Plains)

Gentlemen:

This refers to your letter-complaint on the subject.

The authority given by the National Power Board for us to pay damage claims due to flooding was only for those affected during the CY 1999 flooding, and only for those who were paid in the CY 1996 incident.

We are still in the process of acquiring additional data to validate claims outside of the CY 1996 list. We will conduct topographic survey along the Balo-i Plains to identify which are flood prone[d] areas, as well as potential claimants. With this as our basis, we can have a permanent list of potentially damaged areas whenever flooding occurs. This should facilitate the release of a budget to pay actual damages.

In this aspect, we are seeking your assistance in providing security for the survey group in our area. Thank you and more power to you.

Yours truly,

SILVANO C. ZANORIA

Vice President & Head GenCo5[58](emphasis omitted)

From the foregoing, it is clear that the payments previously made by defendant-appellant were for the damage claims arising from the flooding, contrary to its claim that the same were merely monetary assistance. Furthermore, it also showed that the flooding had taken place several times in the past, and is expected to take place again several times in the future as the letter speaks of “a permanent list of potentially damaged areas whenever flooding occurs.”[59]

Another evidence showing that defendant-appellant NPC had made payments to plaintiffs-appellees for the damage caused by the floods are the copies of the checks and vouchers uniformly dated 17 January 2000, payable to some of the plaintiffs-appellees, namely: Nasser, Faisal, Farouk, Mohamad and Javer.[60] Significantly, the vouchers uniformly state that the payment represented “the final amount of damages caused by the 1999 Balo-I Plains flashfloods xxx.”

Thus, the trial court cannot be faulted for ruling that “[b]y paying damages in 1996 and 1999 for [the] damage[d] crops of defendants and other claimants, the defendant admitted liability for the damages caused to the plaintiffs and other claimants. Admission needs no proof. xxx By admitting liability, negligence is presumed.”[61] Thus, defendant-appellant NPC can no longer evade liability for the damage caused to plaintiffs-appellees because the former’s previous actuations reveal that it had already admitted the latter’s allegations and claims.

Even assuming for the sake of argument that there was no such admission on the part of defendant-appellant NPC, its defense anchored on the alleged failure of plaintiffs-appellees to prove with clear and convincing evidence that it had been at fault or was negligent does not hold water.

It may be true that plaintiffs-appellees were not able to clearly prove the basis for claiming that the floods that damaged their property was attributable to defendant-appellant NPC, in other words, they failed to indubitably establish the fact of negligence and the causal relation between such negligence to the damage incurred. At best, all that plaintiffs-appellees managed to proffer as proof of defendant-appellant NPC’s negligence can be categorized as indirect proof or circumstantial in nature, e.g., a) since defendant-appellant NPC was the one controlling the flow of the water and was the one which constructed the hydro-electric power plant, hence, it caused the floods;[62] b) the flashfloods began to take place only after the installation of the hydroelectric plants;[63] and c) although there was also flooding before the construction of the hydroelectric plant, the water would subside after the rain, unlike after the hydroelectric plant was constructed when the flood would last for more than a month even during the dry season.[64] Therefrom, plaintiffs-appellees’ difficulty in proving their cause of action, particularly to prove the fault or negligence on the part of defendant-appellant NPC and its causal relationship to the flooding that damaged their properties, is apparent.

Be that as it may, this Court rules that the circumstances obtaining in the instant case call for the shifting of the onus probandi to prove negligence from plaintiffs-appellees to defendant-appellant NPC pursuant to the concept of *res ipsa loquitur*, a Latin phrase which literally means “the thing or the transaction speaks for itself.”[65] For one, plaintiffs-appellees are not expected to have easy access to the evidence that can prove defendant-appellant NPC’s negligence, aside from the fact that the same may even be too technical and complex to be clearly grasped by ordinary laymen like them. The circumstantial and indirect proof of negligence described above, however, constitutes enough basis for a finding of *prima facie* negligence or presumption of negligence on the part of defendant-appellant NPC under the doctrine of *res ipsa loquitur*.

Res ipsa loquitur is a rule of necessity which applies where evidence is absent or not readily available. The principle recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the

principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or otherwise, is practically accessible to the defendant but inaccessible to the injured person. [66] Application of the doctrine, therefore, has the effect of shifting the burden of proving due care and absence of negligence at the time in question to the defendant.

The doctrine can be invoked only when under the circumstances, direct evidence is absent and not readily available. The principle is partly based upon the theory that the defendant in charge of the instrumentality which causes the damage or injury either knows the cause of what happened or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and, therefore, is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence.

The said doctrine is further elucidated in *D.M. Consunji, Inc. v. Court of Appeals*, [67] viz.:

As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.[20]

The concept of *res ipsa loquitur* has been explained in this wise:

While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.

One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available. x x x

It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The *res ipsa loquitur* doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some court add to the three prerequisites for the application of the *res ipsa loquitur* doctrine the further requirement that for the *res ipsa loquitur* doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.

Such is the scenario in the instant case where defendant-appellant NPC, who was in charge of the operation of the hydroelectric plant and in control of the flow of the water in the area, knew the cause of the flood or has the technical knowledge to ascertain its cause, while plaintiffs-appellees, on the other hand, do not have such access

to that information or know-how hence, can only impute negligence in an indirect manner and in general terms, relying only upon the fact of flooding to infer the negligence they ascribe upon defendant-appellant NPC. Accordingly, this Court holds that the concept of *res ipsa loquitur* finds application in the instant case.

Notably, in the case of *NPC v. Court of Appeals*[68] where what was involved was a claim for damages ensuing from the flooding in 1986 when the water level of Lake Lanao escalated due to defendant-appellant NPC's refusal to release more water to the Agus River through the dam, it was found therein that "before the construction of the Agus Regulation Dam across the Agus River just beyond the Marawi City Bridge, no report of damages to landowners around the lake was ever heard. After its construction and when it started functioning in 1978, reports and complaints of damages sustained by landowners around the lake due to overflowing became widespread." Such was found to be sufficient basis to apply the doctrine of *res ipsa loquitur*.

Similarly, in the present case, plaintiffs-appellees claim that prior to the construction of the hydroelectric plant, there were no flashfloods;[69] and that prior to the installation of the hydroelectric plant, the water would right away subside after the rain unlike with the hydroelectric plant when the flood would last for more than a month even during the dry season.[70] This then leads to the inference that there is a connection between the occurrence of the floods and the existence and operation of the hydroelectric plant. Since, in the normal course of things and prior to the construction of the plant, there were no floods, it is clear that the hydroelectric plant, or the operation thereof, has some impact on the surrounding areas. Because some adverse effects such as floods were experienced only after the hydroelectric plant was put into place, there could be some fault or negligence in relation to it which could be ascribed upon the one exclusively in charge thereof, in this case, defendant-appellant NPC. The latter being undeniably with the sole access and the technical expertise to determine the cause of the flood, the only one equipped with the ability to dispute or validate that perceived negligence, defendant-appellant NPC cannot deny that upon its shoulders rest the burden of proof to overcome that presumption of negligence. Unfortunately, it failed to satisfactorily carry out such burden of proof.

Defendant-appellant NPC cannot take refuge in the Lake Lanao Monthly Average Outflow from 1999 to 2001 allegedly showing that the maximum water releases from Agus 2 to Agus 4 did not exceed the maximum level during the periods claimed by plaintiffs-appellees in order to debunk negligence on its part. Such line of argument to resist the imputation of negligence had already been found insufficient by the Supreme Court in the previously-cited case of *NPC v. CA*[71] especially in light of the applicability of the doctrine of *res ipsa loquitur*, as is true in the case at bar. *NPC v. CA* explains, thus:

With respect to its job to maintain the normal maximum level of the lake at 702 meters, the Court of Appeals, echoing the trial court, observed with alacrity that when the water level rises due to the rainy season, the NPC ought to release more water to the Agus River to avoid flooding and prevent the water from going over the maximum level. And yet, petitioner failed to do so, resulting in the inundation of the nearby estates. The facts, as unraveled by the trial court from the evidence on record, established that before the construction of the Agus Regulation Dam across the Agus River just beyond the Marawi City Bridge, no report of damages to landowners around the lake was ever heard. After its construction and when it started functioning in 1978, reports and complaints of damages sustained by landowners around the lake due to overflowing became widespread. The factual findings of the trial court rightly support its conclusions on this respect -

...Lake Lanao has only one outlet, the Agus River which in effect is the natural regulator. When the Lake level is high, more water leaves the lakes towards the Agus River. Under such a natural course, overflowing is remote because excess in water level of the lake, there is a corresponding increase in the volume of water drain down towards the Agus River and vice versa.

In order to achieve its goal of generating hydroelectric power, defendant NPC constructed the Intake Regulation Dam, the purpose of which being to control and regulate the amount of water discharged into the

Agus River. With this dam, defendant NPC is able to either increase or decrease the volume of water discharged into the Agus River depending on the amount of power to be generated. When the lake level rises, specially during rainy days, it is indispensable to wide open the dam to allow more water to flow to the Agus River to prevent overflowing of the lakeshore and the land around it. But the NPC cannot allow the water to flow freely into its outlet – the Agus River, because it will adversely affect its hydroelectric power plants. It has to hold back the water by its dam in order to maintain the volume of water required to generate the power supply. As a consequence of holding back the water, the lands around the lake are inundated.

x x x

Petitioner adduced in evidence its company records to bear out its claim that the water level of the lake was, at no point in time, higher than 702 meters. The trial court and the Court of Appeals, however, did not lend credence to this piece of evidence. Both courts below held that the data contained in petitioner's records collapse in the face of the actual state of the affected areas. xxx [72](emphasis in the original)

In all, therefore, defendant-appellant failed to overcome the prima facie negligence imputed by plaintiffs-appellees against it, hence, as matters stand, the presumption of negligence against it remains.[73] Besides, there is no need to belabor this point because as already discussed, the evidence on record pointing that defendant-appellant NPC had previously paid plaintiffs-appellees' claims for damages due to the flashfloods in 1996 and June 1999 amount to an admission of liability for the damages that would be subsequently incurred, as are now being claimed for the periods from September and October 1999, February and March 2000, June and July 2000, and April 2001. Defendant-appellant NPC failed to show why, after paying for damages in the previous years, the damages for the subsequent years should be treated any differently. In other words, it failed to overcome the disputable presumption that the amounts it paid to the plaintiffs-appellees for the prior years were legally due to the latter. [74] Thus, the trial court was correct in holding it liable for the damages borne by plaintiffs-appellees.

This Court, however, finds it necessary to revisit the trial court's award of damages.

In its Amended Decision, the trial court ordered defendant-appellant NPC to pay to the plaintiffs-appellees what it denominated as "just compensation of their damaged rice and corn fields" and "just compensation of their damaged fish ponds and the loss of the fish contained therein." [75] This Court, however, cannot subscribe to the use of the term "just compensation" as the latter is more appropriately used in relation to eminent domain or expropriation where it refers to the full and fair equivalent of the property taken from its owner by the expropriator.[76] Since the instant case is one for quasi-delict and does not involve the taking of plaintiffs-appellees' property as would be in expropriation, the use of the term "just compensation" is inappropriate, if not confusing. The trial court's use of the said term in this case, apparently in its loose sense of being amounts intended to compensate plaintiffs-appellees for their damaged property, has no place in a legal treatise such as a judicial decision where use of the legal parlance is expected to be in their exact and correct meaning and context.

What the trial court actually awarded to plaintiffs-appellees are in the concept of compensatory or actual damages which are defined under Article 2199 of the Civil Code as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

They are actual or compensatory damages because the amounts were intended to be compensation for the pecuniary loss suffered by plaintiffs-appellees as a result of their damaged rice and corn fields, and fishponds.

Plaintiffs-appellees' claims for their damaged crops are allegedly based on the appraisal made by the Provincial

Appraisal Committee which the latter supposedly arrived at after “considering the payment of labor, price of materials, seeds, fertilizer, insecticide, etc.”[77] The results of the appraisal were contained in Resolution No. 2001-01 which contains assigned values per square meter of land for each kind of crop in accordance with their stage of maturity at the time of destruction. To illustrate:

For Corn Crops (Native) – 1[st] month old – P1,037/sqm.

2[nd] month old – 1,105/sqm.

3[rd] month old – 1,171/sqm.

4[th] month old – 2,625 sqm.

(Maturity to harvest)

xxx.[78]

Resolution No. 2001-01 could have sufficiently replaced the need for plaintiffs-appellees to prove the value of their monetary loss for their damaged crops had they proffered evidence as to the level of the maturity of their crops at the time of the destruction and the measurement of the areas cultivated by each of them. For with those data, the actual value of the pecuniary loss could be derived by simply multiplying the appropriate appraisal value for a particular level of maturity of the crops by the corresponding area cultivated by each plaintiff-appellee, as was done by the trial court. Unfortunately, however, save for plaintiff-appellee Nasser who testified on the level of maturity of his crops and the area he cultivated,[79] there is no proof on record of the areas and the level of maturity of the crops corresponding to the other plaintiffs-appellees who supposedly cultivated the subject land and were awarded damages by the trial court, i.e., Faisal, Farouk and Mohamad. Although plaintiff-appellee Javier testified as to the measurement of the area he cultivated,[80] he failed to adduce proof of the level of maturity of his crops.

Considering that actual and compensatory damages need to be proven by concrete and tangible evidence,[81] this Court cannot sustain the awards by the trial court which are supposedly in the concept of actual damages when the same were merely based on the plain unsubstantiated allegations of plaintiffs-appellees Faisal, Farouk, and Mohamad in the complaint, and the incomplete proof adduced by Javier. There being want of data as to the area cultivated and the maturity level of the crops so as to determine the appraisal values in the Resolution appropriate to compute the award of damages due the mentioned plaintiffs-appellees, the trial court erred in awarding actual damages to them. Hence, with regard to the latter, this Court holds that temperate damages should instead be awarded pursuant to Article 2224[82] of the Civil Code for the loss suffered.

When pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. 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. [83] This Court holds that temperate damages instead should be awarded to the above-mentioned plaintiffs-appellees in the following amounts:

Faisal Cabugatan – P120,000.00;

Farouk Cabugatan – P100,000.00;

Mohamad Cabugatan – P100,000.00; and

Javer Cabugatan – P114,000.000 (Corn)

P11,000.00 (Rice)

However, with regard to the award to plaintiff-appellee Nasser of actual damages in the amount of P64,800.00 as the Total Amount for 4 Seasons for damaged rice/corn crops, this is erroneous since the Amount for Each Season is at P16,000.00. Hence, multiplying the latter by four (4) would yield P64,000.00 only, and not P64,800.00. The award should be corrected accordingly.

In summary, the award of damages for the destroyed rice and corn fields of plaintiffs-appellees are the following:

Name of Plaintiff-Appellee

Award of Damages

Hadji Nasser Cabugatan

P 64,000.00 (actual)

Faisal Cabugatan

P120,000.00 (temperate)

Farouk Cabugatan

P100,000.00 (temperate)

Mohamad Cabugatan

P100,000.00 (temperate)

Javer Cabugatan

P 125,000.00 (temperate)

TOTAL

P 509,000.00

With regard to the award of actual damages for the damaged fishponds, this Court cannot agree with the trial court's rationalization for accepting in toto the figures stated in the Complaint simply because they were testified on by plaintiffs-appellees which were allegedly not rebutted by defendant-appellant NPC.[84] Nothing in the records shows how the amounts stated in the Complaint as damages for the fishponds were arrived at, much less, what they consist of, hence, the same cannot be sustained. To rule otherwise would run contrary to what actual or compensatory damages should be which are required to be proved by concrete and tangible evidence.[85] Thus, temperate damages should instead be awarded.

Accordingly, temperate damages are awarded in the following amounts:

Name of Claimants

Amounts

Javer Cabugatan

P 170,000.00

Farouk Cabugatan

P 170,000.00

Mohamad Cabugatan

P 120,000.00

Junaid Sulog

P 115,000.00

Hadji Casan Usman

P 60,000.00

TOTAL

P 635,000.00

As to attorney's fees which the trial court increased in the Amended Decision to the amount of P100,000.00[86] from the P20,000.00 in the original Decision[87] for reason that "the amount of compensation involved is now greater than the original amount granted by the court,"[88] considering that the award of damages has been reduced in this Decision, this Court holds that the award of P40,000.00 is reasonable under the premises.

WHEREFORE, the appeal is hereby DENIED and the Amended Decision dated 22 July 2010 of the Regional Trial Court of Lanao del Norte, Branch 03, Iligan City, 12[th] Judicial Region, in Civil Case No. 6299, is AFFIRMED with the following MODIFICATIONS:

- The award of damages for the damaged crops should be in the following amounts:

Name of Plaintiff-Appellee

Award of Damages

Hadji Nasser Cabugatan

P 64,000.00 (actual)

Faisal Cabugatan

P117,000.00 (temperate)

Farouk Cabugatan

P100,000.00 (temperate)

Mohamad Cabugatan

P100,000.00 (temperate)

Javer Cabugatan

P 124,800.00 (temperate)

TOTAL

P 509,000.00

- Temperate damages are hereby awarded for the damaged fishponds in lieu of actual damages in the following amounts:

Name of Claimants

Amounts

Javer Cabugatan

P 170,000.00

Farouk Cabugatan

P 170,000.00

Mohamad Cabugatan

P 120,000.00

Junaid Sulog

P 115,000.00

Hadji Casan Usman

P 60,000.00

TOTAL

P 635,000.00

- As for attorney's fees, the same is hereby reduced to P40,000.00.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

[1] The case was unloaded to the undersigned ponente pursuant to the equalization of cases on 10 July 2014.

[2] Rollo, pp. 48-53; Penned by Presiding Judge Albert B. Abragan.

[3] Records, p. 1.

[4] Records, p. TCT No. T-11,027 is registered in the name of Development Bank of the Phils.

[5] Id. at 2, 12-13.

[6] Id. at 2-3.

[7] Id. at 3.

[8] Id. at 3-4.

[9] Id. at 4-5.

[10] Id. at 6.

[11] "An Act Revising the Charter of the National Power Corporation."

[12] Records, pp. 28-33, Answer of NPC.

[13] Id. at 49-50.

[14] Id. at 51-52.

[15] Id. at 69-71.

- [16] Id. at 72-73.
- [17] Id. at 76-77.
- [18] TSN, 03 August 2005, pp. 3-5.
- [19] Id. at 9-13.
- [20] Id. at 13-14.
- [21] Id. at 15, 21-22.
- [22] Id. at 24-26.
- [23] Id. at 25-27.
- [24] Id. at 36.
- [25] TSN, 05 October 2005, pp. 4-7.
- [26] Id. at 8.
- [27] Id.
- [28] Id. at 9-11.
- [29] Id. at 15.
- [30] TSN, 30 November 2005, pp. 4-5.
- [31] Id. at 5-15.
- [32] Id. at 17, 22-23.
- [33] Id. at 23-25.
- [34] Id. at 25-28.
- [35] TSN, 14 February 2005, pp. 4-6.
- [36] Id. at 10-11.
- [37] Id. at 12.
- [38] Id. at 14.
- [39] TSN, 10 March 2008, pp. 3-11.
- [40] Id. at 15-20.
- [41] Id. at 208-228, 234-253.
- [42] Rollo, p. 47 or Records, p. 257.
- [43] Records, pp. 259-260.
- [44] Id. at 262-269.
- [45] Id. at 279-281.
- [46] Id. at 281.

- [47] Id. at 286-287.
- [48] Id. at 289-291.
- [49] Rollo, pp. 32-42.
- [50] *Sia v. Court of Appeals*, G. R. No. 102970, 13 May 1993.
- [51] *NAPOCOR v. Court of Appeals*, G.R. No. 96410, 03 July 1992.
- [52] Article 1170, Civil Code.
- [53] G.R. No. 96410, 03 July 1992.
- [54] *Guillang v. Bedania*, G.R. No. 162987, 21 May 2009.
- [55] Folder of Exhibits, p. 17.
- [56] Id. at 13-14.
- [57] Id. at 15.
- [58] Id. at 16.
- [59] Id.
- [60] Id. at 18-22.
- [61] Records, p. 283.
- [62] TSN, 03 August 2005, pp. 25-27.
- [63] TSN, 05 October 2005, p. 8.
- [64] TSN, 14 February 2006, pp.12,14.
- [65] *Macalinao v. Ong*, G.R. No. 146635, 14 December 2005.
- [66] Id.
- [67] G.R. No. 137873, 20 April 2001.
- [68] G.R. No. 124378, 08 March 2005.
- [69] TSN, 03 August 2005, pp. 25-27.
- [70] TSN, 14 February 2006, pp.12,14; TSN, 05 October 2005, p. 8.
- [71] *Supra*, at Note 68.
- [72] Id.
- [73] *Malayan Insurance Co., Inc. v. Alberto*, G..R. No. 194320, 01 February 2012.
- [74] Rule 131, Section 3 (f), Rules of Court.
- [75] Records, pp. 286-287.
- [76] *Republic v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, 25 January 2012.
- [77] Resolution No. 2001-01, Folder of Exhibits, p. 15.

[78] Id.

[79] TSN, 03 August 2005, pp. 30-32.

[80] TSN, 14 February 2006, pp. 4-5, 13-14.

[81] De Guzman v. Tumolva, G.R. No. 188072, 19 October 2011.

[82] 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.

[83] De Guzman, *supra* at Note 81.

[84] Records, p. 285.

[85] De Guzman, *supra* at Note 81.

[86] Records, p. 285.

[87] Id. at 257.

[88] Id. at 285.

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