

**SPOUSES RENATO S. ONG AND FRANCIA N. ONG, PETITIONERS, VS.
COURT OF APPEALS, INLAND TRAILWAYS, INC. AND PHILTRANCO
SERVICE ENTERPRISE, INC., RESPONDENTS.**

G.R. No. 117103. January 21, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Evidence not formally offered during the trial cannot be used for or against a party litigant. Neither may it be taken into account on appeal. Furthermore, actual and moral damages must be proven before any award thereon can be granted.

The Case

Before us is a Petition for Review on Certiorari of the Decision dated May 20, 1993 and the Resolution dated June 8, 1994, both promulgated by the Court of Appeals[1] in CA-GR CV No. 33755, modifying the Decision of the trial court in an action for damages filed by spouses Renato and Francia Ong (petitioners herein) against Philtranco Service Enterprise, Inc. and Inland Trailways, Inc. (respondents herein, hereafter referred to as “Philtranco” and “Inland,” respectively).

The assailed Decision disposed as follows:[2]

“WHEREFORE, the appealed decision is hereby MODIFIED by ordering INLAND TRAILWAYS, INC. to pay [petitioners] P3,977.00 for actual damages, P30,000.00 as moral damages and ten (10) percent as contingent attorney’s fees and to pay the costs of the suit.”

Reconsideration was denied in the assailed Resolution:[3]

“WHEREFORE, IN VIEW OF THE FOREGOING, both motions for reconsideration filed by [petitioners] and xxx Inland Trailways, Inc. are hereby DENIED.”

The Facts

On February 9, 1987, petitioners boarded as paying passengers Bus No. 101 with Plate No. EVB-508 (“Inland bus,” for convenience), which was owned and operated by Inland Trailways under a Lease Agreement with Philtranco. It was driven by Calvin Coronel.[4] Around 3:50 in the morning of said date, when the Inland bus slowed down to avoid a stalled cargo truck in Tiaong, Quezon, it was bumped from the rear by another bus, owned and operated by Philtranco and driven by Apolinar Miralles. Francia sustained wounds and fractures in both of her legs and her right arm, while Renato suffered injuries on his left chest, right knee, right arm and left eye.[5] They were brought to the San Pablo City District Hospital for treatment and were confined there from February 9 to 18, 1987.[6]

On December 22, 1988, petitioners filed an action for damages against Philtranco and Inland. [7] In their Complaint, they alleged that they suffered injuries, preventing Francia from operating a sari-sari store at Las Piñas, Metro Manila, where she derived a daily income of P200; and Renato from continuing his work as an

overseas contract worker (pipe welder) with a monthly salary of \$690. Stating that they incurred P10,000 as medical and miscellaneous expenses, they also claimed moral damages of P500,000 each, exemplary and corrective damages of P500,000 each, and compensatory damages of P500,000 each plus 35 percent thereof as attorney's fees. In addition to their testimonies, petitioners also presented the following documentary evidence:

Exhibit 'A' -

Philtranco Bus Ticket No. 333398

'B' - Philtranco Bus Ticket No. 333399

'C' - Certification dated February 12, 1987

'D' - Medical Certificate of Francis Ong dated February 18, 1987

'E' - Medical Certificate of Renato S. Ong dated February 18, 1987

'F' - Statement of Account of Francia N. Ong in the amount of P1,153.50

'G' - Statement of Account of Renato S. Ong in the amount of P1,973.50

'H' - Receipt dated February 9, 1987

'I' - Receipt dated March 3, 1987

'J' - Receipt dated February 18, 1987

'K' - Receipt dated February 24, 1987

'L' & - Picture of face of Renato S. Ong

'L'-1'

'M' & - Picture of face of Renato S. Ong

'M-1'

'N' - Payroll Summary for [period ending] November 1986

'O' - Payroll Summary for [period ending] December, 1986"

Philtranco answered that the Inland bus with Plate No. EVB-508 (which had transported petitioners) was registered and owned by Inland; that its driver, Calvin Coronel, was an employee of Inland; that Philtranco was merely leasing its support facilities, including the use of its bus tickets, to Inland; and that under their Agreement, Inland would be solely liable for all claims and liabilities arising from the operation of said bus. Philtranco further alleged that, with respect to its own bus (which bumped the Inland bus), it exercised the diligence of a good father of a family in the selection and supervision of its drivers, and that the proximate cause of the accident was the negligence of either the cargo truck or the Inland bus which collided with said cargo truck.

Inland answered that, according to the Police Report, it was Apolinar Miralles, the driver of the Philtranco bus, who was at fault, as shown by his flight from the situs of the accident; that said bus was registered and owned by Philtranco; and that the driver of the Inland bus exercised extraordinary diligence as testified to by its passengers. Inland and Philtranco filed cross-claims against each other.

Both respondents moved to submit the case for decision without presenting further evidence. Consequently, the trial court, in its Order dated July 5, 1989, resolved:[8]

“When this case was called for continuation of presentation of plaintiff’s evidence, over objections from counsels for defendants, plaintiff’s counsel was allowed to recall his first witness, Renato S. Ong, for some additional direct questions[;] and after cross-examination by defendant Inland Trailways, Inc., adopted by defendant Philtranco Service Enterprise, Inc., plaintiff presented his second witness, [Francia] Ong, whose testimony on direct, cross and redirect was terminated[;] and as prayed for, counsel for the plaintiffs shall have five (5) days from today within which to submit his formal offer of evidence, furnishing copies thereof to defendants who shall have five (5) days from their receipt within which to submit comments after which the same shall be deemed submitted for resolution.

“By agreement, considering the stipulations of parties made of record regarding factual issues except as to whether or not the bus is included in the lease, counsels for the two (2) defendants are given a period of ten (10) days from today within which to submit simultaneous offer[s] of admission and denials not only on the above exception but on any other relevant matter.

“Considering that the documents are admitted, there is no necessity of any formal written offer of evidence and, therefore, after all the foregoing, the case shall be deemed submitted for decision upon simultaneous memoranda of the parties and upon submission of complete transcripts.”

Thereafter, the trial court rendered its May 7, 1991 Decision, which disposed as follows:[9]

“IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the [petitioners] absolving Inland Trailways, Inc., from any liability whatsoever, and against xxx Philtranco Service Enterprise, Inc., ordering the latter to pay the [petitioners]—

- 1) P10,000.00 as actual damages for medical and miscellaneous expenses;
- 2) P50,000.00 as compensatory damages for the [diminution] of the use of the right arm of [petitioner]-wife;
- 3) P48,000.00 as unrealized profit or income;
- 4) P50,000.00 as moral damages;
- 5) 25% of the foregoing as contingent attorney’s fees; and
- 6) the costs.”

According to the trial court, the proximate cause of the accident was “the bumping from behind by the Philtranco bus with Plate No. 259 driven by Apolinar Miralles” based on the Police Report and the affidavits of passengers, to which Philtranco did not object. As it failed to prove that it exercised due diligence in the selection and supervision of its employees under Article 2176 of the Civil Code, Philtranco was held liable based on culpa aquiliana.

Ruling of the Court of Appeals

On appeal, the Court of Appeals (CA) resolved that Philtranco’s liability for damages could not be predicated upon the Police Report which had not been formally offered in evidence. The report was merely annexed to the answer of Inland, and petitioner did not adopt or offer it as evidence. Consequently, it had no probative value and, thus, Philtranco should be absolved from liability.

Instead, the appellate court found that petitioners sufficiently established a claim against Inland based on culpa contractual. As a common carrier, Inland was required to observe extraordinary diligence under Articles 1735 and 1750 of the Code. Its liability arose from its failure to transport its passengers and cargo safely, and a finding of fault or negligence was not necessary to hold it liable for damages. Inland failed to overcome this presumption of negligence by contrary evidence; thus, it was liable for breach of its contractual obligation to petitioners under

Article 2201 of the Civil Code.

The liability of Inland for medical and miscellaneous expenses was reduced, as the evidence on record showed that petitioners spent only P3,977. Deemed self-serving was Francia's testimony that the use of her right arm was diminished and that she lost income. Thus, the award for unearned income was disallowed and the amount of moral damages was reduced to P30,000.

Hence, this petition.[10]

The Issues

In their Memorandum,[11] petitioners raise the following issues:[12]

“[I]

Whether or not public respondent committed grave abuse of discretion in completely reversing the decision of the Regional Trial Court, ordering Philtranco to indemnify petitioners and in lieu thereof, order[ing] Inland to pay petitioners for their damages.

[II]

Whether or not public respondent committed grave abuse of discretion in disallowing the P50,000.00 awarded to petitioner, Francia Ong for the diminution of the use of her right arm and the P48,000.00 representing unrealized income.

[III]

Whether or not public respondent committed grave abuse of discretion in reducing the award for actual and miscellaneous expenses from P10,000.00 to P3,977.00; the award of P50,000.00 moral damages to P30,000.00; and the 25% contingent attorney's fees to 10% thereof.”

Simply stated, the main issues raised are: (1) whether the Police Report, which was not formally offered in evidence, could be used to establish a claim against Philtranco based on culpa aquiliana; and (2) whether the reduction in the amounts of damages awarded was proper.

The Court's Ruling

The petition is devoid of merit.

First Issue:

Requirement of Formal Offer of Evidence

Petitioners take exception to the rule requiring documents to be formally offered in evidence before they can be given any probative value, arguing that the parties agreed to submit the case for resolution based on the July 5, 1989 Order of the trial court. Because of the agreement, petitioners assumed that all the pieces of documentary evidence, including the Complaint and its Annexes, as well as those in the respective Answers of the private respondents, were deemed admitted.

We disagree. Section 34, Rule 132 of the Rules of Court, provides that “[t]he court shall consider no evidence which has not been formally offered.” A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.[13]

In adhering to this rule, the appellate court cannot be faulted with reversible error, as it held:[14]

“xxx [T]he burden of proof lies with the plaintiff in establishing fault or negligence on the part of the defendant (Ong vs. Metropolitan Water). This, however, plaintiff-appellees failed to establish. Albeit, there was a police investigation report finding the driver of PHILTRANCO negligent which became the basis of the court a quo [for] holding PHILTRANCO liable, this piece of evidence was merely attached as Annex ‘1’ of INLAND’s answer, nothing more. It was not presented and even offered as evidence by INLAND nor utilized by plaintiffs-appellees. Thus, even assuming arguendo that the same had been identified in court, it would have no evidentiary value. Identification of documentary evidence must be distinguished from its formal offer as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and not before. The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to offer it if it believes this will advance the cause, and then again it may decide not to do so at all (People vs. Santito, Jr., 201 SCRA 87).

“In the case at bar, the defendant INLAND and plaintiffs-appellees did not identify the said Annex ‘1’ or the Police Investigation Report as evidence. Thus, under Section 35 of Rule 132 of the Revised Rules on Evidence, the court shall consider no evidence which has not been formally offered. Corollary, the Police Investigation Report of Annex ‘1’ cannot be given any evidentiary value.

“Absen[t] Annex ‘1’ which was the basis of the trial court in finding PHILTRANCO liable, the latter is thus exonerated from liability.”

Petitioners similarly erred in presuming that said Annex was admitted in evidence by virtue of the Order of July 5, 1989. Their presumption has no basis. The Order required counsel for the petitioners to “submit his formal offer of evidence, furnishing copies thereof to defendants who shall have five (5) days from their receipt within which to submit comments after which the same shall be deemed submitted for resolution.”[15] In compliance, petitioners filed a written offer of evidence on July 12, 1989.[16] Such offer led the trial court, in its Order of August 2, 1989, to formally admit in evidence Exhibits “A”-“O.”[17] Clearly, the Police Report was neither offered by the petitioners nor admitted by the trial court.

Moreover, the petitioners’ allegations in their Complaint did not establish a cause of action against Philtranco. They similarly failed to make any reference to said Police Report during the presentation of their case. This is precisely why Respondent Philtranco opted not to present further evidence. A document or an article is valueless unless it is formally offered in evidence, and the opposing counsel is given an opportunity to object to it and to cross-examine any witness called to present or identify it.[18] Evidence not formally offered before the trial court cannot be considered on appeal, for to consider them at such stage will deny the other parties their right to rebut them.[19]

There is no agreement to submit the case based on the pleading, as contended by the petitioners. The parties had no such intention, nor did said Order evince such an agreement.

Second Issue:

Damages Require Evidence

Petitioners aver that there was grave abuse of discretion when the amount of actual damages awarded was reduced from P10,000 to P3,977, even if the original amount did not even include the medical expenses that Francia continued to incur; and when the award of P48,000 as unrealized income was deleted despite her testimony which was given credence by the trial court.

The Court disagrees. Granting arguendo that there was an agreement to submit the case for decision based on the pleadings, this does not necessarily imply that petitioners are entitled to the award of damages. The fundamental

principle of the law on damages is that one injured by a breach of contract (in this case, the contract of transportation) or by a wrongful or negligent act or omission shall have a fair and just compensation, commensurate with the loss sustained as a consequence of the defendant's acts. Hence, actual pecuniary compensation is the general rule, except where the circumstances warrant the allowance of other kinds of damages.

Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as he has duly proven.

To be recoverable, actual damages must be pleaded and proven in Court. In no instance may the trial judge award more than those so pleaded and proven. Damages cannot be presumed. The award thereof must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof. Article 2199 of the Civil Code expressly mandates that "[e]xcept 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."

The lack of basis for such award was patent in the trial court Decision:

"The records will show that from the documentary evidence, [petitioners] have jointly spent the sum of P3,977.00. [Respondent] Philtranco has not presented any evidence that it has advanced any amount for medicine, hospitalization and doctor's fees, but on the contrary, [petitioners] have testified that they paid for their expenses except at the initial stage wherein a representative of [respondent] Philtranco went to the hospital to get the receipts of medicines only and paid (t.s.n.- June 29, 1989, p. 6). Considering the claim of the [petitioners], as alleged in their complaint they spent P10,000.00 representing medical and miscellaneous expenses[;] considering that they have gone for consultation to at least two (2) different doctors, this Court may take judicial notice of the fact that miscellaneous expenses [are] bound to be incurred to cover transportation and food, and therefore, finds the amount of P10,000.00 as actual damages to be reasonable."

Damages, after all, are not intended to enrich the complainant at the expense of the defendant.[20]

Moral Damages and Diminution of Use of Francia's Arm

Petitioners protest the deletion of the amount of P50,000 earlier awarded by the trial court because of the diminution of the use of Francia's right arm, arguing that she stated during direct examination that it could no longer perform its normal functions,[21] and that private respondents impliedly admitted this matter when they failed to present controverting evidence.

A person is entitled to the physical integrity of his or her body, and if that integrity is violated, damages are due and assessable. However, physical injury, like loss or diminution of use of an arm or a limb, is not a pecuniary loss. Indeed, it is not susceptible of exact monetary estimation.

Thus, the usual practice is to award moral damages for physical injuries sustained. In *Mayo v. People*,[22] the Court held that the permanent scar on the forehead and the loss of the use of the right eye entitled the victim to moral damages. The victim, in said case, was devastated by mental anguish, wounded feelings and shock, which she experienced as a result of her false eye and the scar on her forehead. Furthermore, the loss of vision in her right eye hampered her professionally for the rest of her life.

In the case at bar, it was sufficiently shown during the trial that Francia's right arm could not function in a normal

manner and that, as a result, she suffered mental anguish and anxiety. Thus, an increase in the amount of moral damages awarded, from P30,000 to P50,000, appears to be reasonable and justified. Renato also suffered mental anxiety and anguish from the accident. Thus, he should be separately awarded P30,000 as moral damages.

In some instances, the Court awards the cost of medical procedures to restore the injured person to his or her former condition. However, this award necessitates expert testimony on the cost of possible restorative medical procedure. In *Gatchalian v. Delim*,^[23] the Court, reasoning that a scar resulting from the infliction of injury on the face of a woman gave rise to a legitimate claim for restoration to her *conditio ante*, granted P15,000 as actual damages for plastic surgery. It bears emphasis that the said amount was based on expert testimony.^[24]

In another case, the Court granted actual or compensatory damages in the sum of P18,000 for the surgical intervention necessary to arrest the degeneration of the mandible of a young boy. Again, there was an expert testimony that such medical procedure would cost P3,000 and would have to be repeated several times to restore him to nearly normal condition.^[25]

In the case at bar, petitioner failed to present evidence regarding the feasibility or practicability and the cost of a restorative medical operation on her arm. Thus, there is no basis to grant her P48,000 for such expense.

Unrealized Income

Protesting the deletion of the award for Francia's unrealized income, petitioners contend that Francia's injuries and her oral testimony adequately support their claim. The Court disagrees. Although actual damages include indemnification for profits which the injured party failed to obtain (*lucro cesante* or *lucrum cesans*),^[26] the rule requires that said person produce the "best evidence of which his case is susceptible."^[27]

The bare and unsubstantiated assertion of Francia that she usually earned P200 a day from her market stall is not the best evidence to prove her claim of unrealized income for the eight-month period that her arm was in plaster cast. Her testimony that it was their lessor who filed their income tax returns and obtained business licenses for them does not justify her failure to present more credible evidence of her income. Furthermore, after her ten-day confinement at the San Pablo Hospital,^[28] she could have returned to her work at the public market despite the plaster cast on her right arm, since she claimed to have two nieces as helpers.^[29] Clearly, the appellate court was correct in deleting the award for unrealized income, because of petitioner's utter failure to substantiate her claim.

Attorney's Fees

Counsel for petitioner deeply laments the reduction in the award of attorney's fees. He alleges that he had to use his own money for transportation, stenographic transcriptions and other court expenses, and for such reason, avers that the award of 25 percent attorney's fees made by the trial court was proper.

Under the Civil Code, an award of attorney's fees is an indemnity for damages ordered by a court to be paid by the losing party to the prevailing party, based on any of the cases authorized by law.^[30] It is payable not to the lawyer but to the client, unless the two have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The Court has established a set of standards in fixing the amount of attorney's fees:^[31]

"(1) [T]he amount and character of the services rendered; (2) labor, time and trouble involved; (3) the nature and importance of the litigation or business in which the services were rendered; (4) the responsibility imposed; (5) the amount of money or the value of the property affected by the controversy or involved in the employment; (6) the skill and experience called for in the performance of the services; (7) the professional character and social standing of the attorney; (8) the results secured, it being a recognized rule that an attorney may properly charge a much larger fee when it is contingent than when it is not."

Counsel's performance, however, does not justify the award of 25 percent attorney's fees. It is well-settled that such award is addressed to sound judicial discretion and subject to judicial control.[32] We do not see any abuse thereof in the case at bar. In fact, the appellate court had been generous to petitioners' counsel, considering that the nature of the case was not exceptionally difficult, and he was not required to exert Herculean efforts. All told, his handling of the case was sorely inadequate, as shown by his failure to follow elementary norms of civil procedure and evidence.

WHEREFORE, the assailed Decision is AFFIRMED with the MODIFICATION that Renato and Francia Ong are separately awarded moral damages in the amount of P30,000 and P50,000, respectively. The ten percent (10%) attorney's fees shall be based on the total modified award.

SO ORDERED.

Romero (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Ninth Division, composed of JJ. Manuel C. Herrera, chairman & ponente; and Asaali S. Isnani and Ricardo P. Galvez (now solicitor general), members, concurring..

[2] CA Decision, pp. 6-7; rollo, pp. 72-73.

[3] CA Resolution, p. 3; rollo, p. 86.

[4] Sometimes referred to in the records as "Calvin P. Coner" or "Comer."

[5] TSN, June 29, 1989, p. 13.

[6] Annexes "4" & "5"; rollo, pp. 54-55.

[7] Docketed as Civil Case No. 56801 and raffled to the Regional Trial Court of Pasig, Branch 154, presided by Judge Ramon R. Buenaventura.

[8] RTC Records, pp. 99-100.

[9] RTC Decision, p. 11; CA rollo, p. 62.

[10] This case was deemed submitted for decision upon receipt by this Court of Inland's Memorandum on November 21, 1997.

[11] Signed by Atty. Leopoldo A. Balguma.

[12] Rollo, p. 114.

[13] *Candido v. Court of Appeals*, 253 SCRA 78, 82-83, February 1, 1996; *Republic v. Sandiganbayan*, 255 SCRA 438, 456, March 29, 1996; *Vda. de Alvarez v. Court of Appeals*, 231 SCRA 309, 317-318, March 16, 1994; *Veran v. Court of Appeals*, 157 SCRA 438; *People v. Cariño, et al.*, 165 SCRA 664, 671, September 26, 1988; *People v. Peralta*, 237 SCRA 218, 226, September 28, 1994; Also see, *De los Reyes v. Intermediate Appellate Court*, 176 SCRA 394, 401-402, August 11, 1989 and *People v. Matte*, 103 SCRA 484, 493, March 27, 1981.

[14] Rollo, pp. 70-71.

[15] Resolution, p. 2; rollo, p. 85.

[16] RTC Records, pp. 101-103.

[17] RTC Records, p. 106.

[18] Vicente J. Francisco, *The Revised Rules of Court: Evidence*, Vol. III, Part II, 1973 ed., p. 495 citing 5 Ency. of Evidence, 469.

[19] *Servicewide Specialists, Inc. v. Court of Appeals*, 257 SCRA 643, 655, June 26, 1996; *Vda. de Alvarez v. CA*, *supra*.

[20] *Prudenciano v. Alliance Transport System, Inc.*, 148 SCRA 440, 449, March 16, 1987; *R & B Surety & Insurance Co., Inc. v. Intermediate Appellate Court*, 129 SCRA 736, 745, June 22, 1984; *Grand Union Supermarket, Inc. v. Espino Jr.*, 94 SCRA 953, 966, December 28, 1979; and *Pangasinan Transportation Company, Inc. v. Legaspi*, 12 SCRA 592, 598, December 23, 1964.

[21] Francia testified:

“Q- Nagagamit mo ba yung kanan?

A- Kapag kumakain po, paatras ang kamay ko, hindi katulad noon. Ngayon, hindi masyadong makapagdadala[.] [N]gayon, kung ako ay kumain, ginagamit ko ang aking kaliwang kamay[.]” (TSN, July 5, 1989, p. 12)

[22] 204 SCRA 642, 651-652, December 5, 1991.

[23] 203 SCRA 126, 137-138, October 21, 1991.

[24] The expert testified in 1974 that the cost would probably be between P5,000 and P10,000. Taking inflation into account, the Court awarded P15,000 in its 1991 Decision.

[25] *Araneta v. Areglado*, 104 Phil. 529, 531-533, September 9, 1958.

[26] Article 2205 of the Civil Code provides:

“ART. 2205. Damages may be recovered:

(1) For loss or impairment of earning capacity in cases of temporary or permanent injury;

x x x x x x x x.”

[27] *GA Machineries, Inc. v. Yaptinchay*, 126 SCRA 78, 87-88, November 29, 1983, per Gutierrez, J.; *Central Bank of the Philippines v. Court of Appeals*, 63 SCRA 431, 457, April 22, 1975; *De la Cruz v. Asociación Zanjera Casilian*, 83 Phil 214, 232, March 30, 1949; and *Cerreno v. Tan Chuco*, 28 Phil. 312, 398, August 1, 1918.

[28] TSN, July 5, 1989, p. 17.

[29] *Ibid.*, pp. 23-24.

[30] “ART. 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant’s act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable."

[31] *Ramos v. Bidin*, 161 SCRA 566, May 28, 1988, per Feliciano, J.; *De Guzman v. Visayan Transit Co.*, 68 Phil 643, 647, September 30, 1939; *Martinez v. Banogon*, 7 SCRA 916, 917, April 20, 1963; *Research & Services Realty, Inc. v. Court of Appeals*, 266 SCRA 731, 746, January 27, 1997.

These factors approximate those enumerated in Rule 20.01 of the Code of Professional Responsibility:

"Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

a)

The time spent and the extent of the services rendered or required;

b)

The novelty and difficulty of the questions involved;

c)

The importance of the subject matter;

d)

The skill demanded;

e)

The probability of losing other employment as a result of acceptance of the proffered case;

f)

The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;

g)

The amount involved in the controversy and the benefits resulting to the client from the service;

h)

The contingency or certainty of compensation;

i)

The character of the employment, whether occasional or established; and

j)

The professional standing of the lawyer.”

[32] *Sesbreño v. CA*, 245 SCRA 30, 35, June 8, 1995; and *Roldan v. Court of Appeals*, 218 SCRA 713, 716, February 9, 1993.

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