BENGUET ELECTRIC COOPERATIVE, INC., PETITIONER, VS. COURT OF APPEALS, CARIDAD O. BERNARDO AS GUARDIAN AD LITEM FOR MINORS JOJO, JEFFREY AND JO-AN, ALL SURNAMED BERNARDO, AND GU...

G.R. No. 127326. December 23, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This case involves a review on certiorari of the Decision of the Court of Appeals[1]affirming with modification the decision of the Regional Trial Court of Baguio City, and ordering petitioner Benguet Electric Cooperative Inc. (BENECO) to pay Caridad O. Bernardo, as guardian ad litem of the three (3) minor children of the late Jose Bernardo P50,000.00 as indemnity for his death, with interest thereon at the legal rate from February 6, 1985, the date of the filing of the complaint, until fully paid, P100,000.00 for moral damages, P20,000.00 for exemplary damages, another P20,000.00 for attorney's fees, P864,000.00 for net income loss for the remaining thirty (30) years of the life expectancy of the deceased, and to pay the costs of suit.

The appellate court dismissed for lack of merit the counterclaim of BENECO against the Bernardos and its third party complaint against Guillermo Canave, Jr., as well as the latter's counterclaim.

For five (5) years up to the time of his death, Jose Bernardo managed a stall at the Baguio City meat market. On 14 January 1985 at around 7:50 in the morning, Jose together with other meat vendors went out of their stalls to meet a jeepney loaded with slaughtered pigs in order to select the meat they would sell for the day. Jose was the very first to reach the parked jeepney. Grasping the handlebars at the rear entrance of the vehicle, and as he was about to raise his right foot to get inside, Jose suddenly stiffened and trembled as though suffering from an epileptic seizure. Romeo Pimienta who saw Jose thought he was merely joking but noticed almost in disbelief that he was already turning black. In no time the other vendors rushed to Jose and they discovered that the antenna of the jeepney bearing the pigs had gotten entangled with an open electric wire at the top of the roof of a meat stall. Pimienta quickly got hold of a broom and pried the antenna loose from the open wire. But shortly after, Jose released his hold on the handlebars of the jeep only to slump to the ground. He died shortly in the hospital. Cause of his death was "cardio-respiratory arrest secondary to massive brain congestion with petheccial hemorrhage, brain bilateral pulmonary edema and congestion and endocardial petecchial hemorrhage and dilation (history of electrocution)."

On 6 February 1985 Caridad O. Bernardo, widow of Jose Bernardo, and their minor children, Jojo, Jeffrey and Jo-an, all surnamed Bernardo, filed a complaint against BENECO before the Regional Trial Court of Baguio City for a sum of money and damages arising from the electrocution of Jose Bernardo. In the same civil action, BENECO filed a third-party complaint against Guillermo Canave, Jr., the jeepney owner.

In its decision dated 15 August 1994, the trial court ruled in favor of the Bernardos and ordered BENECO to pay them damages.[2] Both petitioner and private respondents herein appealed to the Court of Appeals. On 5

November 1996 the appellate court promulgated its Decision which BENECO now assails contending inter alia that the appellate court gravely erred in ordering BENECO to pay damages in light of the clear evidence that it was third-party defendant Canave's fault or negligence which was the proximate and sole cause, or at least the principal cause, of the electrocution and death of Jose Bernardo.

First, BENECO questions the award of damages by respondent court notwithstanding a clear showing that the electrocution and death of Jose Bernardo were directly attributable to the fault and negligence of jeepney owner Guillermo Canave, Jr.

The records of the case show that respondent court did not commit any reversible error in affirming the findings of the trial court that BENECO was solely responsible for the untimely death of Jose Bernardo through accidental electrocution. According to the trial court, which we find substantiated by the records -[3]

> Through Virgilio Cerezo, a registered master electrician and presently the Chief Electrical Building Inspector of the General Services Division of the City of Baguio, who was tasked to investigate the electrocution of Bernardo, the plaintiffs adduced proof tending to show that the defendant BENECO installed a No. 2 high voltage main wire distribution line and a No. 6 service line to provide power at the temporary meat market on Hilltop Road. It put up a three-inch G.I. pipe pole to which the No. 2 main line was strung on top of a stall where a service drop line was connected. The height of the electrical connection from the No. 2 line to the service line was barely eight (8) to nine (9) feet (Exhibit "E"; See Exhibit "D-1") which is in violation of the Philippine Electrical Code which requires a minimum vertical clearance of fourteen (14) feet from the level of the ground since the wiring crosses a public street. Another violation according to Cerezo, is that the main line connected to the service line was not of rigid conduit wiring but totally exposed without any safety protection (Ibid). Worse, the open wire connections were not insulated (Ibid); See Exhibits "D-6", "D-6-A", "D-7"). The jeep's antenna which was more than eight (8) feet high (Exhibit "D-9") from the ground (It is about six to seven feet long and mounted on the left fender which is about three feet above the ground) got entangled with the open wire connections (Exhibit "D-8"), thereby electrically charging its handlebars which Bernardo held on to enter the vehicle resulting in his electrocution.
>
> While Vedasto Augusto, an electrical engineer and the line superintendent in the electrical department of the defendant BENECO, admitted that the allowable vertical clearance of the service drop line is even 15 feet from the ground level and not only 14 feet, he and Jose Angeles, then an instrument man or surveyor of the BENECO, insisted that BENECO installed (they do not know by whom in particular) from the Apollo Building nearby a service drop line carrying 220 volts which was attached to a G.I. pipe pole (Exhibits "1" and "1-A"). The vertical clearance of the point of attachment of the service drop line on the G.I. post to the ground is 15.5 feet (Exhibit "1-B"), which is more than the allowable 15-foot clearance. To this service drop line was connected the service entrance conductor (Exhibit "1-D") to supply power inside the premises to be serviced through an electric meter. At the lower portion of the splicing or connecting point between the service drop line and the service entrance conductor is a three to four-inch bare wire to serve as a ground. They saw the bare wire because the splicing point was exposed as it was not covered with tape (Exhibit "1-E"). The antenna of the jeep which electrocuted Bernardo got entangled with this exposed splicing point.
>
> Augusto claimed that it was not BENECO's job to splice or connect the service entrance conductor to the service drop line but rather the owner of the premises to be serviced whose identity they did not, however, determine.
>
> Significantly, on cross-examination, Augusto admitted that the service drop line that BENECO installed did not end at the point to which it is attached to the G.I. post. Rather, it passed through a spool insulator that is attached to the post (Exhibit "1-F") and extended down to where the service entrance conductor is spliced with the result that the exposed splicing point (Exhibit "1-E") is only about eight (8) feet from the ground level.

There is no question that as an electric cooperative holding the exclusive franchise in supplying electric power to

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the towns of Benguet province, its primordial concern is not only to distribute electricity to its subscribers but also to ensure the safety of the public by the proper maintenance and upkeep of its facilities. It is clear to us then that BENECO was grossly negligent in leaving unprotected and uninsulated the splicing point between the service drop line and the service entrance conductor, which connection was only eight (8) feet from the ground level, in violation of the Philippine Electrical Code. BENECO's contention that the accident happened only on January 14, 1985, around seven (7) years after the open wire was found existing in 1978, far from mitigating its culpability, betrays its gross neglect in performing its duty to the public.[4] By leaving an open live wire unattended for years, BENECO demonstrated its utter disregard for the safety of the public. Indeed, Jose Bernardo's death was an accident that was bound to happen in view of the gross negligence of BENECO.

BENECO theorizes in its defense that the death of Jose Bernardo could be attributed to the negligence of Canave, Jr., in parking his jeepney so close to the market stall which was neither a parking area nor a loading area, with his antenna so high as to get entangled with an open wire above the Dimasupil store.[5] But this line of defense must be discarded. Canave's act of parking in an area not customarily used for that purpose was by no means the independent negligent act adverted to by BENECO in citing Manila Electric Co. v. Ronquillo.[6] Canave was well within his right to park the vehicle in the said area where there was no showing that any municipal law or ordinance was violated nor that there was any foreseeable danger posed by his act. One thing however is sure, no accident would have happened had BENECO installed the connections in accordance with the prescribed vertical clearance of fifteen (15) feet.

Second. BENECO avers that the Court of Appeals gravely erred in awarding P864,000.00 as net income loss for the thirty (30) years remaining of the life expectancy of the deceased Jose Bernardo, albeit the trial court found no firm basis for awarding this item of damages.

We recall that the trial court disallowed the award for net loss income in view of the alleged contradictory and untrustworthy testimony of the deceased's surviving spouse Caridad Bernardo. Thus -

> As to lost earnings. The court finds the allegations of the plaintiffs, particularly Caridad Bernardo contradictory and untrustworthy. While in the complaint, which she herself verified, she asseverated that at the time of his death on January 14, 1985, her late husband was earning no less than P150.00 daily after deducting personal expenses and household and other family obligations; at the trial she bloated this up to P3,000.00 gross daily or P300.00 profit a day or a net income of P200.00 daily after deducting personal and household expenses. But inexplicably she could not present the income tax return of her husband for 1983 and 1984 although she stated that he had been filing such returns. What she submitted are his income tax returns for 1981 and 1982 showing a much lower annual gross income of P12,960.00 and P16,120.00, respectively. The Court, therefore, finds no firm basis for awarding this item of damages.

In modifying the decision of the trial court, the Court of Appeals relied on the testimony of Rosita Noefe, sister of the deceased, that her brother started as her helper in the several meat stalls she operated until 1982 when she allowed Jose to operate one of her stalls as his own and gave him an initial capital of P15,000.00 to add to his own. She explained that her brother sold from 100 to 150 kilos of pork and 30 to 50 kilos of meat a day earning an income of about P150.00 to P200.00 pesos daily. After deducting his personal expenses and family obligations, Jose earned a daily net income between P70.00 and P80.00. Jose Bernardo died of electrocution at the age of thirty-three (33). Following the ruling in Villa Rey Transit v. Court of Appeals[7] and Davila v. PAL[8]his life expectancy would allow him thirty and one third (30-1/3) years more. Assuming on the basis of his P80.00 daily net income translated to P2,400.00 monthly or P28,800.00 yearly, the net income loss for the thirty (30) years remaining of his life expectancy would amount to P864,000.00.[9]

While we are of the opinion that private respondent Bernardo is entitled to indemnity for loss of earning capacity

of her deceased husband we however find that a modification is in order. The amount corresponding to the loss of earning capacity is based mainly on two factors: (a) the number of years on the basis of which the damages shall be computed; and, (b) the rate at which the losses sustained by the widow and her children should be fixed.[10]

We consider that the deceased was married with three (3) children and thirty-three (33) years old at the time of his death. By applying the formula: 2/3 x (80 - 33) = Life Expectancy, the normal life expectancy of the deceased would be thirty-one and one-third (31-1/3) years and not thirty (30) as found by the respondent court. By taking into account the nature and quality of life of a meat vendor, it is hard to conceive that Jose would still be working for the full stretch of the remaining thirty-one (31) years of his life; and therefore it is but reasonable to make allowances and reduce his life expectancy to twenty-five (25) years.[11]

Anent the second factor, we are of the view that the Court of Appeals was correct in relying on the unrebutted testimony of Rosita Noefe concerning the income of Jose, thus providing a basis for fixing the rate of damages incurred by the heirs of the deceased. Rosita clarified as follows:

> Q:
>
> Now you said that you brother's stall is just very near, about 4 to 5 meters away from your stall. Do you know more or less how your brother was earning by way of income because the stall belongs also to you and your husband?
>
> A:
>
> Yes, sir (italics supplied).
>
> Q:
>
> How much more or less would you say was his daily income from the stall, if you know?
>
> A:
>
> P150 to P200 more, sometimes more than P200.
>
> Q:
>
> What is this? Monthly, daily, or what?
>
> A:
>
> Daily sir.
>
> Q:
>
> Now, when you said that he earns sometimes 150 or 200 in a day can (sic) you tell this court more or less how many in terms of net or in terms of kilos that he can sell with that amount daily?
>
> A:
>
> More than one hundred (100) kilos, sir, or one hundred fifty kilos (150).
>
> Q:
>
> By the way what was your brother selling also in that meat stall?
>
> A:
>
> Pork and beef, sir.

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Q:

In terms of how many slaughter(ed) pigs would that be if you know? 100 to 150 kilo

A:

Two (2) pigs, sir.

Q:

Is this... How about meat, I mean, aside from pigs?

A:

About thirty (30) to fifty (50) kilos for beef.

Q:

Now, will you tell this court why you know more or less that this is his daily income?

A:

I know it because I experienced it and I only transferred this stall to him.

Q:

And his income, you said, of 150 daily to 200 for the sale of pork and meat will you know what are his family expenses being your brother and is living with you in the same place at the slaughter house?

A:

About P70.00 to P80.00 a day.

Q:

And what are the other income that your brother derive (sic) aside from the meat stall after spending these daily expenses?

A:

None, sir.

Contrary to the assertion of BENECO, there is ample basis for the fixing of damages incurred by the heirs of the deceased. Notwithstanding the failure of private respondent Bernardo to present documentary evidence to support her claim, the unrebutted testimony of Rosita Noefe supplied this deficiency. Indeed, there is no reason to doubt the veracity of Rosita's testimony considering that she owned the very same stall that Jose was operating and managing before his death. Her testimony on the earning capacity of Jose is enough to establish the rationale for the award.

The discrepancy between private respondent Bernardo's claims regarding her husband's income as contained in the complaint, where she alleged that Jose was earning no less than P150.00 a day, and her testimony during trial that he earned P300.00 daily, could not obviate the fact that at the time of his death Jose was earning a living as a meat vendor. Undoubtedly, his untimely death deprived his family of his potential earnings. The allegation in the complaint fixing his income at P150.00 a day was corroborated by the unqualified declaration of Rosita Noefe that he was earning P150.00 to P200.00 a day. Obviously the bloated figure of P300.00 given by private respondent Bernardo was an afterthought perhaps impelled by the prospect of being awarded a greater sum.

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We now fix Jose's daily gross income at P150.00 or his annual gross income at P54,000.00. After deducting personal expenses, household and other family obligations, we can safely assume that his annual net income at the time of death was P27,000.00 or 50% of his yearly gross earnings of P54,000.00.[12]

Accordingly, in determining the indemnity for the loss of earning capacity, we multiply the life expectancy of the deceased as reduced to twenty-five (25) years by the annual net income of P27,000.00 which gives us P675,000.00. Therefore, we deduce that his net earning capacity is P675,000.00 computed as follows:[13] Net Earning Capacity = Life Expectancy x Gross Annual Income - Necessary Living Expenses. Reduced to simpler form:

Net Earning =

Life x Gross Annual -

Necessary

Capacity

Expectancy Income

Living Expenses

= 2 (80 - 33) x (P54,000 -

P27,000)

3

= 31-1/3

(reduced to 25) x 27,000 = 675,000.00

=P675,000.00 NET INCOME LOSS (as reduced)

Third. BENECO contends that exemplary damages should not be awarded as the amount claimed was not specified in the body nor in the prayer of the complaint, in contravention of the mandate in Rule 11 of the Interim Rules and Guidelines implementing BP 129 which requires the amount of damages to be specifically alleged apparently for the purpose of computing the docket fees.

BENECO's contention deserves no merit. The amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be fixed by the court as the evidence may warrant and be awarded at its own discretion.[14] In fact, the amount of exemplary damages need not be proved because its determination is contingent upon or incidental to the amount of compensatory damages that may be awarded to the claimant. Moreover, this Court in a number of occasions ruled that the amount of docket fees to be paid should be computed on the basis of the amount of the damages stated in the complaint. Where subsequently however the judgment awarded a claim not specified in the pleading, or if specified, the same was left for the determination of the court, an additional filing fee therefor may be assessed and considered to constitute a lien on the judgment.[15]

We are not unaware of the principle laid down in Tacay v. Regional Trial Court of Tagum[16]where the trial court was ordered to either expunge the unspecified claim for exemplary damages or allow the private respondent to amend the complaint within a reasonable time and specify the amount thereof and then pay the corresponding docket fees. However, we prefer not to expunge the claim for exemplary damages and pursue the Tacay lead, for

to delete the claim for exemplary damages would be to give premium to BENECO's gross negligence while to order the amendment of the complaint would be to unjustly delay the proceedings and prolong further the almost fifteen-year agony of the intended beneficiaries.

Exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. It is awarded as a deterrent to socially deleterious actions. In quasi-delict, exemplary damages are awarded when the act or omission which caused injury is attended by gross negligence.[17] Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected.[18]

In the instant case, there is a clear showing of BENECO's gross negligence when it failed to detect, much less to repair, for an inexcusably long period of seven (7) years the uninsulated connection which caused the death of Jose Bernardo. The gravity of its ineptitude was compounded when it installed the service drop line way below the prescribed minimum vertical clearance of fifteen (15) feet. Again, precautionary measures were not taken in wanton disregard of the possible consequences. Under these circumstances, we find no reason to disturb the finding of respondent court awarding exemplary damages to private respondent Bernardo in the amount of P20,000.00.

Finally, BENECO questions the grant of moral damages and attorney's fees on the same ground of non-culpability. It is settled that moral damages are not intended to enrich the complainant but to serve to obviate his/her spiritual suffering by reason of the culpable action of the defendant. Its award is aimed at the restoration of the spiritual status quo ante, and it must be commensurate to the suffering inflicted. As a result of the accidental death of Jose, his widow Caridad and their three (3) minor children had to scrounge for a living in order to keep their heads above water. Caridad had to depend on the generosity of her relatives which came intermittently and far between and augment whatever she received from them with her meager income from her small business. She must have agonized over the prospect of raising her three (3) small children all by herself given her unstable financial condition. For the foregoing reasons, we sustain the award of moral damages by respondent court except as to the amount thereof. In the instant case, we are of the opinion that moral damages in the amount of P50,000.00 are more in accord with the injury suffered by private respondent and her children.

As for attorney's fees, we find no legal nor factual basis to overturn the ruling of respondent court on the matter; accordingly, the grant of P20,000.00 attorney's fees to private respondent Bernardo is adopted.

WHEREFORE, the assailed Decision of the Court of Appeals dated 5 November 1996 ordering petitioner Benguet Electric Cooperative, Inc., to pay private respondent Caridad O. Bernardo as guardian ad litem for the minors Jojo, Jeffrey and Jo-an, all surnamed Bernardo, P20,000.00 as exemplary damages, another P20,000.00 for attorney's fees, and P50,000.00 as indemnity for the death of Jose Bernardo, is AFFIRMED with the MODIFICATION that the P864,000.00 as net income loss is reduced to P675,000.00 and the P100,000.00 as moral damages is also reduced to P50,000.00.

Costs against petitioner.
SO ORDERED.
Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] CA-G.R. CV No. 4857, promulgated on 5 November 1996 by Justice Salome A. Montoya, ponente, concurred in by Justices Godardo A. Jacinto and Maximiano C. Asuncion.

[2] Decision penned by Judge Salvador J. Valdez, Jr., RTC Br.-4, Baguio City, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendant Benguet Electric Cooperative, Inc., ordering the latter to pay the former the following amounts: (a) P30,000.00 as compensation for the death of the late Jose Bernardo, with interest thereon at the legal rate from February 6, 1985, the date of the filing of the complaint, until fully paid; (b) P100,000.00 for moral damages; (c) P20,000.00 for and as attorney's fees; and, (d) costs of the suit.

The counterclaim of the defendant against the plaintiffs and its third-party complaint against Guillermo Canave, Jr., as well as the latter's counterclaim, are dismissed for lack of merit.

[3] See Note 2, Original Records, p. 109.

[4] Rollo, p. 87.

[5] Id., p. 35.

[6] 99 Phil. 125 (1956).

[7] No. L-25499, 18 February 1970, 31 SCRA 511.

[8] No. L-28512, 28 February 1973, 49 SCRA 497.

[9] Rollo, p. 13.

[10] See Note 7.

[11] See Note 8.

[12] People v. Estepano, G.R. No. 126283, 28 May 1999.

[13] Ibid. See also Villa-Rey Transit, Inc. v. Court of Appeals, No. L-25499, 18 February 1970, 31 SCRA 511; Negros Navigation Co. Inc. v. Court of Appeals, G.R. No. 110398, 7 November 1997, 281 SCRA 534; Metro Manila Transit Corporation v. Court of Appeals, G.R. No. 116617, 16 November 1998.

[14] Philippine Airlines, Inc. v. Court of Appeals, G.R. Nos. 50504-05, 13 August 1990, 188 SCRA 460.

[15] Ayala Corporation v. Madayag, G.R. No. 88421, 30 January 1990, 181 SCRA 687; Ng Soon v. Alday, G.R. No. 85879, 29 September 1989, 178 SCRA 221.

[16] G.R. Nos. 88075-77, 20 December 1989, 180 SCRA 433.

[17] Art. 2231, Civil Code.

[18] Fernando v. Sandiganbayan, G.R. No. 96183, 19 August 1992, 212 SCRA 680, citing Ballantine's Law Dictionary, 3d Ed., p. 537.

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