

PHILIPPINE TELEGRAPH & TELEPHONE CORPORATION AND LOUIE CABALIT, PETITIONERS, VS. HON. COURT OF APPEALS AND LOLITA SIPE ESCARA, RESPONDENTS.

G.R. No. 139268. September 03, 2002

Ponente: VITUG, J.

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VITUG, J.:

Assailed in the instant petition of the Philippine Telegraph & Telephone Corporation (“PT&T”) and Louie Cabalit is the judgment of the Court of Appeals in CA G.R. CV No. 48313, promulgated on 15 March 1999, which has affirmed with modification the decision of the Regional Trial Court of Makati awarding damages to respondent Lolita Sipe Escara.

The facts were synthesized by the appellate court in its decision under review.

“On July 13, 1990, Felicitas B. Sipe, a resident of Surallah, South Cotabato, remitted to her sister-in-law, Lolita Sipe Escara, two telegraphic money orders through the facilities of Philippine Telegraph and Telephone Company (PT&T, for brevity). The money orders, one for P2,000.00 and the other for P1,000.00, originated from Marbel, South Cotabato, and were transmitted to the Cubao branch of PT&T. Plaintiff was then studying for a doctoral degree in Education at the University of the Philippines (U.P., for brevity), Diliman, Quezon City and was residing in one of its dormitories, the Ipil Residence Hall. According to the plaintiff, the money was sent for the purpose of paying for her tuition fee for one semester at the U.P.; paying for her fare to go back to Cotabato to enable her to complete the requirements for a job promotion; and paying for the cost of the medical consultation of her son who is sick of diabetes.

“On July 22, 1990, plaintiff’s husband sent her a telegram advising her to inform him if she has received a remittance of P3,000.00. She made several phone calls to PT&T to inquire about the money but was told that no money was transmitted in her favor. On August 10, 1990, plaintiff sent her husband a telegram to inform him of her non-receipt of the money. On August 18, 1990, plaintiff’s husband again sent her a telegram instructing her to claim at the PT&T Cubao branch the money transmitted on July 13, 1990.

“On August 20, 1990, plaintiff went to the PT&T office to inquire about the remittance in her favor. Since Louie Cabalit, the branch cashier, was not around, plaintiff was constrained to return the next day. It was only in the afternoon of August 21, 1990, that she was able to talk to Louie Cabalit about the remittance. Cabalit looked into his records, after which, the branch security guard informed plaintiff that no money was transmitted to her. Upon plaintiff’s request, Cabalit issued a certification that no telegraphic money order in favor of plaintiff was received from Surallah by PT&T. Nevertheless, Cabalit told her that he would re-examine his records to determine whether a remittance was made in her name.

“Subsequently, Cabalit informed plaintiff that the money being claimed by her did not come from Surallah but from Marbel, South Cotabato. On August 22, 1990, an attempt was made by PT&T to deliver the telegraphic money order at plaintiff’s dormitory but she was not around. On September 10, 1990, plaintiff received from PT&T two checks representing the amount remitted to her. However, plaintiff was not able to encash the checks at once because the bank did not have a clearance from PT&T. Finally, on September 14, 1990,

plaintiff was able to encash the checks.”

“Aggrieved by the delay in the delivery of the remittance, plaintiff filed a complaint for damages against PT&T and Louie Cabalit. In her complaint, she alleged that the delay was the cause of her failure to enroll for one semester at the U.P.; to complete her requirements for a job promotion; and to bring her son to the doctor for medical consultation. On November 29, 1994, the lower court rendered the questioned decision, the dispositive portion of which reads:

“WHEREFORE, this Court renders judgment in favor of the plaintiff and against the defendants, ordering the defendants, jointly and severally, to pay the plaintiff:

1. The sum of P100,000.00 in actual/compensatory damages;
2. The sum of P50,000 in moral damages;
3. The sum of P10,000.00 in exemplary damages;
4. No attorney’s fees awarded being a pro bono publica case; and
5. To pay costs of suits.”[1]

Petitioners appealed the decision of the trial court to the Court of Appeals. The appellate court affirmed the decision with modification. Finding to be inadequate the evidence submitted by respondent Lolita Sipe Escara to prove pecuniary loss suffered by her, the Court of Appeals deleted the award of actual damages. The appellate court, however, sustained the award of moral and exemplary damages in favor of private respondent, ratiocinating thusly:

“Article 1170 of the Civil Code provides that ‘those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.’ In the case at bar, appellant PT&T, for a fee, undertook to send plaintiff two telegraphic money orders in the sum of P3,000.00. Appellant, however, failed to deliver the money to plaintiff immediately after the money order was transmitted to its Cubao branch. It was only on September 14, 1990, or almost two months from transmittal that plaintiff was finally able to have her money.

“We find PT&T negligent when it did not take steps to ensure the prompt delivery of the money to plaintiff from the time the checks were issued in her favor. It is quite clear that PT&T did not act with any sense of urgency but with indifference and nonchalance with respect to plaintiff’s case. First of all, after Louie Cabalit endorsed the two checks to the dispatch section of PT&T and subsequently took an emergency leave, the personnel at the Cubao branch did not exert enough effort to effect the delivery of the money. In fact, the Cubao branch wired its Marbel branch only on August 3, 1990 to request for the complete address of the recipient from the sender. Apparently, it took them eighteen days to realize that the address of the recipient was insufficient.

“Furthermore, the claim of PT&T that it made several attempts to deliver the money between July 17, 1990 and August 3, 1990 is open to doubt because there is no proof showing to what extent PT&T endeavored to locate the plaintiff. Francisco Dumlao, administrative officer of the Registrar’s Office of U.P., testified that the addressee of letters or telegrams labeled only as ‘U.P. Diliman,’ is located by referring to the records of currently enrolled students under the active file or to the records of its alumni under the inactive file. It appears that PT&T did not attempt to inquire from the Registrar’s Office regarding plaintiff’s whereabouts since it obviously failed to draw the inference that the University of the Philippines is a school with facilities that can be of assistance in locating its own students.”[2]

In the instant appeal, petitioners would strongly urge that the appellate court be reversed in awarding moral and exemplary damages to respondent Lolita Escara with the latter’s failure to present evidence that she had suffered

wounded feelings, serious anxiety, and mental anguish or that the act she had ascribed to petitioners was done in bad faith, or in wanton, fraudulent, oppressive or malevolent manner. Private respondent, however, would insist that the clearly established culpable conduct of petitioners warranted the award of both moral and exemplary damages.

There is merit in the petition.

The breach of an obligation because of fraud, negligence or delay or of a contravention by any means of the tenor of that obligation does open the defaulting obligor to possible liability for damages. The right to those damages and the extent of their recovery would depend on the kind and nature of the damages and the manner in which the injury causing it is brought about.

The Court of Appeals was correct in deleting the award made by the trial court of actual damages where proof of pecuniary loss, in an action based on culpa contractual, is essential. Finding the evidence to be wanting in this respect, the appellate court did not err in its judgment.

In the case of moral damages, recovery is more an exception rather than the rule. Moral damages are not punitive in nature but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. In order that an award of moral damages can be aptly justified, the claimant must be able to satisfactorily prove that he has suffered such damages and that the injury causing it has sprung from any of the cases listed in Articles 2219[3] and 2220[4] of the Civil Code.[5] Then, too, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must establish the factual basis of the damages and its causal tie with the acts of the defendant. In fine, an award of moral damages would require, firstly, evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code. In culpa contractual or breach of contract, particularly, moral damages may be recovered when the defendant has acted in bad faith or is found to be guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation.[6]

In the case at bar, the appellate court itself did not see any clear indication of bad faith or gross negligence amounting to bad faith on the part of petitioners. It would be error to make an award of moral damages to private respondent merely because petitioner corporation was unable to effect immediate delivery of the money sent through it in two money orders, one for P2,000.00 and the other for P1,000.00. Indeed, it would appear that the address given by the sender was merely and vaguely stated to be "U.P. Diliman Quezon City." So, also, when private respondent went to the office of petitioner PT&T to inquire about the "money order" she erroneously mentioned it to have been sent from Surallah, South Cotabato. It was only upon verification made by petitioners that the latter were able to discover that the money transfers did originate, not, however, from Surallah, but from Marbel, South Cotabato. Given all the circumstances found by the appellate court, the delay of less than two months in the remittance to private respondent of the amounts due her could hardly be said as being constitutive of bad faith or gross negligence amounting to bad faith.

Neither can the award of exemplary damages be sustained. Exemplary damages are not recoverable as a matter of right.[7] Although such damages need not be proved, plaintiff must first show that he is entitled to moral, temperate, or compensatory damages before a court can favorably consider an award of exemplary damages.[8] In contracts and quasi-contracts, specifically, exemplary damages may be justified if the defendant is shown to have

acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[9] Petitioner corporation might have been remiss in the prompt delivery of the sums sent through it to respondent; however, the Court would be hardput to say that such delay under the facts obtaining can be described as being wanton, fraudulent, reckless, or oppressive in character.

Still, of course, petitioner corporation is not totally free from liability. It may have had good reasons, but it has not been able to overcome thereby its burden to prove a valid excuse, for the breach of agreement such as by proving, among other possible legal grounds, fortuitous event to account for its failure. The breach would have justified a recovery of actual damages but, there being no adequate proof of pecuniary loss found by the appellate court, such damages cannot be awarded. Neither moral nor exemplary damages have been justified, as hereinbefore explained, as to warrant any recovery thereof. The Court thus is left with two alternative possibilities – an award of temperate or moderate damages or an award of nominal damages.

Temperate or moderate damages may only be given if the “court finds that some pecuniary loss has been suffered but that its amount cannot, from the nature of the case, be proved with certainty.”[10] The factual findings of the appellate court that respondent has failed to establish such pecuniary loss or, if proved, cannot from their nature be precisely quantified precludes the application of the rule on temperate or moderate damages. The result comes down to only a possible award of nominal damages. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[11] The court may award nominal damages in every obligation arising from any source enumerated in article 1157 of the Civil Code or, generally, in every case where property right is invaded.

In the instant case, for the violation of the right of private respondent to receive timely delivery of the money transmitted through petitioner corporation an award of nominal damages is appropriate. An amount of P20,000.00 by way of nominal damages, considering all that private respondent has had to go through, is in the Court’s view reasonable and fair.

There is, however, neither enough factual nor adequate legal basis to hold petitioner Louie Cabalit, PT&T’s branch cashier, solidarily liable with petitioner corporation.

WHEREFORE, the instant petition is GRANTED. The appealed decision is reversed and set aside and, in its stead, petitioner Philippine Telegraph & Telephone Corporation is ordered to pay respondent Lolita Sipe Escara the sum of P20,000.00 by way of nominal damages. Costs against petitioner corporation.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, and Carpio, JJ., concur.

[1] Rollo, pp. 27-29.

[2] Rollo, pp. 31-32.

[3] ART. 2219 – Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;

- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- 8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[4] ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[5] Industrial Insurance Company, Inc. vs. Bondad, 330 SCRA 706.

[6] Expert Travel & Tours, Inc. vs. Court of Appeals, 309 SCRA 141; see also Integrated Packaging Corporation vs. Court of Appeals, 333 SCRA 170; Magat, Jr. vs. Court of Appeals 337 SCRA 298; Go vs. Court of Appeals, 272 SCRA 752; Del Rosario vs. Court of Appeals, 267 SCRA 158; Octot vs. Ybañez, 111 SCRA 79; Ace Haulers Corporation vs. Court of Appeals, 338 SCRA 572; Macalino, Jr. vs. People, 340 SCRA 11.

[7] Art. 2233, Civil Code.

[8] See Art. 2234, Civil Code; Philippine National Bank vs. Court of Appeals, 266 SCRA 136.

[9] “J” Marketing Corporation vs. Sia, Jr., 285 SCRA 580; Xentrex Automotive, Inc. vs. Court of Appeals, 291 SCRA 66; Art. 2234 of the Civil Code provides:

ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[10] ART. 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 can not, from the nature of the case, be proved with certainty.

[11] Article 2221, Civil Code of the Philippines; Sumalpong vs. Court of Appeals, 268 SCRA 764.

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