

OSCAR VENTANILLA, PLAINTIFF AND APPELLANT VS. GREGORIO CENTENO, DEFENDANT AND APPELLEE.*G.R. No. 14333. January 28, 1961*

Ponente: PADILLA, J.

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This is an action to recover damages claimed to have been suffered by the plaintiff due to the defendant's neglect in perfecting within the reglementary period his appeal from an adverse judgment rendered by the Court of First Instance of Manila in civil case No. 18833, attorney's fees and costs (civil No. 2063, Court of First Instance of Nueva Ecija). After trial, the Court rendered judgment in favor of the plaintiff and against the defendant, ordering the latter to pay the former the sum of P200 as nominal damages and the costs. The plaintiff appealed to the Court of Appeals, which certified the case to this Court on the ground that only questions of law are raised. The defendant did not appeal.

The facts, as found by the trial court, are:

In civil case No. 18833 of the Court of First Instance of Manila, entitled Oscar Ventanilla vs. Edilberto Alejandrino and Aida G. Alejandrino, plaintiff retained the service of Atty. Gregorio Centeno to represent him and prosecute the case. Civil Case No. 18833 was an action for the recovery of P4,000.00 together with damages. Decision unfavorable to the plaintiff was received by Atty. Gregorio Centeno on July 21, 1955, and a notice of appeal was filed by Atty. Centeno on July 25, 1955. On July 30, 1955, Atty. Centeno wrote to the plaintiff the letter, Exhibit A, enclosing copies of the decision and that notice of appeal, and stating that he was not conformable to the decision and had not hesitated to file the notice of appeal; Plaintiff Oscar Ventanilla after receiving the letter and copy of the decision went to see Atty. Centeno in his Office in Manila about August 5, 1955; Atty. Centeno informed him that he intended to appeal and plaintiff agreed. Plaintiff however, did not have with Atty. Centeno at that time the amount for the appeal bond. About the middle of August 1955, Atty. Centeno wrote a letter to the plaintiff enclosing therein forms for an appeal bond. The plaintiff Ventanilla, however, instead of executing an appeal bond, and because of his reluctance to pay the premium on the appeal bond, decided to file a cash appeal bond of P60.00. He went to the office of Atty. Centeno at about 4 o'clock on August 18, 1955, but was informed by the clerk, Leonardo Sanchez, that Atty. Centeno was in Laguna campaigning for his candidacy as member of the Provincial Board. Plaintiff then issued the check Exhibit 1, for P60.00 as appeal bond, and delivered the same to Leonardo Sanchez with instruction to give the same to Atty. Centeno upon his arrival. The Court does not believe plaintiff's testimony that Sanchez had contacted Atty. Centeno by telephone and that he issued the check upon instruction of Atty. Centeno. Leonardo Sanchez had informed the plaintiff that Atty. Centeno was in Laguna, and if he were in Manila, Sanchez could not have known the whereabouts of Atty. Centeno. It was, therefore improbable that he could contact Atty. Centeno that afternoon. On August 17, Atty. Centeno prepared the motion for extension of time to file the record on appeal, Exhibit D, which was filed only on August 20, 1955. Atty. Centeno returned to Manila and went to his office at about 10 o'clock in the morning of August 22. He cashed the check, Exhibit 1, with the Marvel Building Corporation, and then went to the office of the Clerk of Court to file the appeal bond. According to Atty. Centeno it was not accepted because the period of appeal had already expired, and that it was only at that time he came to know that the period of appeal had expired. The Court does not likewise

believe the testimony of Atty. Centeno. Neither the Clerk of Court, or any of the employees had the right to refuse an appeal bond that is being filed, for it is not in his power to determine whether or not the appeal bond has been filed within the time prescribed by law. In fact the record on appeal was accepted and filed on September 5, 1955, but no appeal bond has been filed by Atty. Centeno. The fact that the record on appeal was admitted for filing is the best evidence that Atty. Centeno had not in fact filed any appeal bond. The record on appeal was disapproved because it was filed out of time and no appeal bond had been filed by the plaintiff, (pp. 33-36, rec. on app.)

The appellant claims that the trial court erred in not ordering the appellee to pay him actual or compensatory, moral, temperate or moderate, and exemplary or corrective damages; in ordering the appellee to pay the appellant only the sum of P200, and not P2,000 as nominal damages; and in not ordering the appellee to pay the appellant the sum of P500 as attorney's fee.

Article 2199 of the new Civil Code provides:

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.

He who claims actual or compensatory damages must establish and prove by competent evidence actual pecuniary loss.[1] The appellant's bare allegation that by reason of the appellee's indifference, negligence and failure to perfect within the reglementary period his appeal from an adverse judgment rendered in civil case No. 18833, by not paying the appeal bond of P60, he lost his chance to recover from the defendants therein the sum of P40,000 and moral and actual damages, which he could have recovered if the appeal had duly been perfected, indicates that his claim for actual or compensatory damages is highly speculative. Hence he is not entitled to such damages.

The appellant claims that he suffered mental anguish upon learning that his appeal had not been perfected within the reglementary period due to the appellee's negligence; serious anxiety upon learning that his adversary had won by a mere technicality; besmirched reputation for losing the opportunity to substantiate his claim made while testifying in open court that he was entitled to collect the sum of P4,000 and damages from the defendants in civil case No. 18833; and wounded feelings for the appellee's failure to remain faithful to his client and worthy of his trust and confidence. The provisions of the new Civil Code on moral damages state:

ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

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.

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.

Moral damages are recoverable only when physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury are the proximate result of a criminal offence resulting in physical injuries, quasi-delicts causing physical injuries, seduction, abduction, rape, or other lascivious acts, adultery or concubinage, illegal or arbitrary detention or arrest, illegal search, libel, slander or any other form of defamation, malicious prosecution, disrespect for the dead or wrongful interference with funerals, violation of specific provisions of the Civil Code on human relations, and willful injury to property. To this we may add that where a mishap occurs resulting in the death of a passenger being transported by a common carrier, the spouse, descendants and ascendants of the deceased passenger are entitled to demand moral damages for mental anguish by reason of the passenger's death.[2] In *Malonzo vs. Galang*, supra, this Court categorically stated that—

* * * Art. 2219 specifically mentions "quasi-delicts causing physical injuries," as an instance when moral damages may be allowed thereby implying that all other quasi-delicts not resulting in physical injuries are excluded (*Strebel vs. Figueras*, 96 Phil., 321) excepting of course, the special torts referred to in Art. 309 (par. 9, Art. 2219) and in Arts. 21, 26, 27, 28, 29, 30, 32, 34 and 35 on the chapter on human relations (par. 10, Art. 2219).[3]

Since the appellant's cause of action for recovery of moral damages is not predicated upon any of those specifically enumerated, the trial court did not err in declining to award moral damages to him.

Concerning temperate or moderate damages claimed by the appellant, considering that he is not entitled to actual or compensatory damages but has been awarded nominal damages by the trial court, such award precludes the recovery of temperate or moderate damages,[4] and so the trial court did not err in refusing to award temperate or moderate damages to the appellant.

As regards exemplary or corrective damages also claimed by the appellant, since it cannot be recovered as a matter of right and the court will decide whether or not they be adjudicated,[5] if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner,[6] the trial court has judiciously, wisely and correctly exercised its discretion in not awarding them to the appellant. Relative to the sufficiency of the sum of P200 as nominal damages awarded by the trial court to the appellant, article 2221 of the new Civil Code provides:

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.

The assessment of nominal damages is left to the discretion of the court, according to the circumstances of the case.[7] Considering the circumstances, as found by the trial court, and the degree of negligence committed by the appellee, a lawyer, in not depositing on time the appeal bond and filing the record on appeal within the extension period granted by the court, which brought about the refusal by the trial court to allow the record on appeal, the amount of P200 awarded by the trial court to the appellant as nominal damages may seem exiguous. Nevertheless, considering that nominal damages are not for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded; and that even if the appeal in civil case No. 18833 had been duly

perfected, it was not an assurance that the appellant would succeed in recovering the amount he had claimed in his complaint, the amount of P2,000 the appellant seeks to recover as nominal damages is excessive. After weighing carefully all the considerations, the amount awarded to the appellant for nominal damages should not be disturbed.

As regards attorney's fees, since the appellant's claim does not fall under any of those enumerated in article 2208, new Civil Code, the appellee may not be compelled to satisfy it.

The judgment appealed from is affirmed, without special pronouncement as to costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] Malonzo vs. Galang, 109 Phil., 16.

[2] Necesito vs. Paras, (104 Phil., 75; 56 Off. Gaz., [23] 4023), resolution on motion for reconsideration, 11 September 1958; Fores vs. Miranda, (105 Phil, 266; 57 Off. Gaz., [44] 7938); Rex Taxicab vs. Bautista, 109 Phil., 714.

[3] See also Mercado vs. Court of Appeals, 108 Phil., 414.

[4] In view of the provision of article 2224, new Civil Code, which provides that "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

[5] Article 2233, new Civil Code.

[6] Article 2232, same Code.

[7] Article 2216, same Code; Del Castillo vs. Guerrero, 108 Phil., 985.

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