QUEZON CITY GOVERNMENT AND ENGINEER RAMIR J. TIAMZON, PETITIONERS, VS. FULGENCIO DACARA, RESPONDENT.

G.R. NO. 150304. June 15, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The review of cases under Rule 45 of the Rules of Court is limited to errors of law. Unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous, this Court will not analyze or weigh evidence all over again. Under the circumstance, the factual findings and conclusions of the Court of Appeals affirming those of the trial courts will be conclusive upon the Supreme Court. Furthermore, well-entrenched is the rule that points of law, theories, issues and arguments not brought to the attention of the trial court cannot be raised for the first time on appeal or certiorari. Finally, this Court reiterates the principle that moral damages are designed to compensate the claimant for actual injury suffered, not to impose a penalty on the wrongdoer. Hence, absent any definite finding as to what they consist of, the alleged moral damages suffered would become a penalty rather than a compensation for actual injury suffered.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the February 21, 2001 Decision[2] and the October 9, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 29392. The challenged Decision disposed as follows:

> "WHEREFORE, premises considered, the Decision dated June 29, 1990 in Civil Case No. Q-88-233 should be AFFIRMED, with costs against the appellants."[4]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

The CA summarized the facts in this manner:

> "Sometime on February 28, 1988 at about 1:00 A.M., Fulgencio Dacara, Jr., son of Fulgencio P. Dacara, Sr. and owner of '87 Toyota Corolla 4-door Sedan with Plate No. 877 (sic), while driving the said vehicle, rammed into a pile of earth/street diggings found at Matahimik St., Quezon City, which was then being repaired by the Quezon City government. As a result, Dacarra (sic), Jr. allegedly sustained bodily injuries and the vehicle suffered extensive damage for it turned turtle when it hit the pile of earth.
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> "Indemnification was sought from the city government (Record, p. 22), which however, yielded negative results. Consequently, Fulgencio P. Dacara (hereinafter referred to as FULGENCIO), for and in behalf of his minor son, Jr., filed a Complaint (Record, p. 1) for damages against the Quezon City and Engr. Ramir Tiamzon, as defendants, before the Regional Trial Court, National Capital Judicial Region, Branch 101, Quezon City, docketed as Civil Case No. Q-88-233. FULGENCIO prayed that the amount of not less than

> P20,000.00 actual or compensatory damages, P150,000.00 moral damages, P30,000.00 exemplary damages, and P20,000.00 attorney's fees and costs of the suit be awarded to him.
>
> "In an Answer with Affirmative and/or Special Defenses (Record, p. 11), defendants admitted the occurrence of the incident but alleged that the subject diggings was provided with a moun[d] of soil and barricaded with reflectorized traffic paint with sticks placed before or after it which was visible during the incident on February 28, 1988 at 1:00 A.M. In short, defendants claimed that they exercised due care by providing the area of the diggings all necessary measures to avoid accident. Hence, the reason why Fulgencio Dacara, Jr. fell into the diggings was precisely because of the latter's negligence and failure to exercise due care."[5]

After trial on the merits, the Regional Trial Court (RTC), Branch 101, Quezon City, rendered its Decision[6] dated June 29, 1990. The evidence proffered by the complainant (herein respondent) was found to be sufficient proof of the negligence of herein petitioners. Under Article 2189 of the Civil Code,[7] the latter were held liable as follows:

> "WHEREFORE, premises above considered, based on the quantum of evidence presented by the plaintiff which tilts in their favor elucidating the negligent acts of the city government together with its employees when considered in the light of Article 2189, judgment is hereby rendered ordering the defendants to indemnify the plaintiff the sum of twenty thousand pesos as actual/compensatory damages, P10,000.00 as moral damages, P5,000.00 as exemplary damages, P10,000.00 as attorney's fees and other costs of suit."[8]

In their appeal to the CA, petitioners maintained that they had observed due diligence and care in installing preventive warning devices, and that it was in fact the plaintiff who had failed to exercise prudence by driving too fast to avoid the diggings. Moreover, the lower court allegedly erred in using Article 2189 of the Civil Code, which supposedly applied only to liability for the death or injuries suffered by a person, not for damage to property.

Ruling of the Court of Appeals

The CA agreed with the RTC's finding that petitioners' negligence was the proximate cause of the damage suffered by respondent.[9] Noting the failure of petitioners to present evidence to support their contention that precautionary measures had indeed been observed, it ruled thus:

> "x x x. Sadly, the evidence indicates that [petitioners] failed to show that they placed sufficient and adequate precautionary signs at Matahimik Street to minimize or prevent the dangers to life and limb under the circumstances. Contrary to the testimony of the witnesses for the [petitioners], namely Engr. Ramir Tiamzon, Ernesto Landrito and Eduardo Castillo, that there were signs, gasera which was buried so that its light could not be blown off by the wind and barricade, none was ever presented to stress and prove the sufficiency and adequacy of said contention."[10]

Further upholding the trial court's finding of negligence on the part of herein petitioners, the CA gave this opinion:

> "x x x. As observed by the trial court, the negligence of [petitioners] was clear based on the investigation report of Pfc. William P. Villafranca stating to the effect 'that the subject vehicle rammed into a pile of earth from a deep excavation thereat without any warning devi[c]e whatsoever and as a consequence thereof, Dacara, Jr. lost control of his driven car and finally turned-turtle causing substantial damage to the same.' As a defense against liability on the basis of quasi-delict, one must have exercised the diligence of a good father of a family which [petitioners] failed to establish in the instant case."[11]

Whether Article 2189 is applicable to cases in which there has been no death or physical injury, the CA ruled in the affirmative:

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> "x x x. More importantly, we find it illogical to limit the liability to death or personal injury only as argued by appellants in the case at bar applying the foregoing provisions. For, injury is an act that damages, harms or hurts and mean in common as the act or result of inflicting on a person or thing something that causes loss, pain, distress, or impairment. Injury is the most comprehensive, applying to an act or result involving an impairment or destruction of right, health, freedom, soundness, or loss of something of value."[12]

Hence, this Petition.[13]

Issues

Petitioners raise the following issues for our consideration:

> "1. The Honorable Court of Appeals decided a question of law/substance contrary to applicable law and jurisprudence when it affirmed the award of moral damage suit (sic) the amount of P10,000.00.
>
> 2. The Honorable Court of Appeals decided a question of law/substance contrary to applicable law and jurisprudence when it affirmed the award of exemplary damage sin (sic) the amount of P5,000.00 and attorney's fee in the [a]mount of P10,000.00.
>
> 3. The Honorable Court of Appeals gravely erred and/;or (sic) had acted with grave abuse of discretion amounting to lack and/or excess of jurisdiction when it refused to hold that respondent's son in the person of Fulgencio Dacara, Jr. was negligent at the time of incident."[14]

Because the issues regarding the liability of petitioners for moral and exemplary damages presuppose that their negligence caused the vehicular accident, we first resolve the question of negligence or the proximate cause of the incident.

The Court's Ruling

The Petition is partly meritorious.

First Issue:
Negligence

Maintaining that they were not negligent, petitioners insist that they placed all the necessary precautionary signs to alert the public of a roadside construction. They argue that the driver (Fulgencio Dacara Jr.) of respondent's car was overspeeding, and that his own negligence was therefore the sole cause of the incident.

Proximate cause is defined as any cause that produces injury in a natural and continuous sequence, unbroken by any efficient intervening cause, such that the result would not have occurred otherwise.[15] Proximate cause is determined from the facts of each case, upon a combined consideration of logic, common sense, policy and precedent.[16]

What really caused the subject vehicle to turn turtle is a factual issue that this Court cannot pass upon, absent any whimsical or capricious exercise of judgment by the lower courts or an ample showing that they lacked any basis for their conclusions.[17] The unanimity of the CA and the trial court in their factual ascertainment that petitioners' negligence was the proximate cause of the accident bars us from supplanting their findings and substituting these with our own. The function of this Court is limited to the review of the appellate court's alleged errors of law. It is not required to weigh all over again the factual evidence already considered in the proceedings below.[18] Petitioners have not shown that they are entitled to an exception to this rule.[19] They have not sufficiently demonstrated any special circumstances to justify a factual review.

That the negligence of petitioners was the proximate cause of the accident was aptly discussed in the lower

court's finding, which we quote:

> "Facts obtaining in this case are crystal clear that the accident of February 28, 1988 which caused almost the life and limb of Fulgencio Dacara, Jr. when his car turned turtle was the existence of a pile of earth from a digging done relative to the base failure at Matahimik Street nary a lighting device or a reflectorized barricade or sign perhaps which could have served as an adequate warning to motorist especially during the thick of the night where darkness is pervasive.
>
> "Contrary to the testimony of the witnesses for the defense that there were signs, gasera which was buried so that its light could not be blown off by the wind and barricade, none was ever presented to stress the point that sufficient and adequate precautionary signs were placed at Matahimik Street. If indeed signs were placed thereat, how then could it be explained that according to the report even of the policeman which for clarity is quoted again, none was found at the scene of the accident.
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> x x x x x x x x x
>
> "Negligence of a person whether natural or juridical over a particular set of events is transfixed by the attending circumstances so that the greater the danger known or reasonably anticipated, the greater is the degree of care required to be observed.
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> x x x x x x x x x
>
> "The provisions of Article 2189 of the New Civil Code capsulizes the responsibility of the city government relative to the maintenance of roads and bridges since it exercises the control and supervision over the same. Failure of the defendant to comply with the statutory provision found in the subject-article is tantamount to negligence per se which renders the City government liable. Harsh application of the law ensues as a result thereof but the state assumed the responsibility for the maintenance and repair of the roads and bridges and neither exception nor exculpation from liability would deem just and equitable."[20] (Emphasis supplied)

Petitioners belatedly point out that Fulgencio Jr. was driving at the speed of 60 kilometers per hour (kph) when he met the accident. This speed was allegedly well above the maximum limit of 30 kph allowed on "city streets with light traffic, when not designated 'through streets,'" as provided under the Land Transportation and Traffic Code (Republic Act 4136). Thus, petitioners assert that Fulgencio Jr., having violated a traffic regulation, should be presumed negligent pursuant to Article 2185[21] of the Civil Code.[22]

These matters were, however, not raised by petitioners at any time during the trial. It is evident from the records that they brought up for the first time the matter of violation of RA 4136 in their Motion for Reconsideration[23] of the CA Decision dated February 21, 2001. It is too late in the day for them to raise this new issue. It is well-settled that points of law, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal.[24] To consider their belatedly raised arguments at this stage of the proceedings would trample on the basic principles of fair play, justice, and due process.[25]

Indeed, both the trial and the appellate courts' findings, which are amply substantiated by the evidence on record, clearly point to petitioners' negligence as the proximate cause of the damages suffered by respondent's car. No adequate reason has been given to overturn this factual conclusion.

Second Issue:
Moral Damages

Petitioners argue that moral damages are recoverable only in the instances specified in Article 2219[26] of the Civil Code. Although the instant case is an action for quasi-delict, petitioners contend that moral damages are not recoverable, because no evidence of physical injury were presented before the trial court.[27]

To award moral damages, a court must be satisfied with proof of the following requisites: (1) an injury -- whether physical, mental, or psychological -- clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission of the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219.[28]

Article 2219(2) specifically allows moral damages to be recovered for quasi-delicts, provided that the act or omission caused physical injuries. There can be no recovery of moral damages unless the quasi-delict resulted in physical injury.[29] This rule was enunciated in Malonzo v. Galang[30] as follows:

> "x x x. Besides, Article 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, 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)."

In the present case, the Complaint alleged that respondent's son Fulgencio Jr. sustained physical injuries. The son testified that he suffered a deep cut on his left arm when the car overturned after hitting a pile of earth that had been left in the open without any warning device whatsoever.

It is apparent from the Decisions of the trial and the appellate courts, however, that no other evidence (such as a medical certificate or proof of medical expenses) was presented to prove Fulgencio Jr.'s bare assertion of physical injury. Thus, there was no credible proof that would justify an award of moral damages based on Article 2219(2) of the Civil Code.

Moreover, the Decisions are conspicuously silent with respect to the claim of respondent that his moral sufferings were due to the negligence of petitioners. The Decision of the trial court, which summarizes the testimony of respondent's four witnesses, makes no mention of any statement regarding moral suffering, such as mental anguish, besmirched reputation, wounded feelings, social humiliation and the like.

Moral damages are not punitive in nature, but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly inflicted on a person.[31] Intended for the restoration of the psychological or emotional status quo ante, the award of moral damages is designed to compensate emotional injury suffered, not to impose a penalty on the wrongdoer.

For the court to arrive upon a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before it. Essential to this approximation are definite findings as to what the supposed moral damages suffered consisted of; otherwise, such damages would become a penalty rather than a compensation for actual injury suffered.[32]

Furthermore, well-settled is the rule that moral damages cannot be awarded -- whether in a civil[33] or a criminal case[34] --in the absence of proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, or similar injury.[35] The award of moral damages must be solidly anchored on a definite showing that respondent actually experienced emotional and mental sufferings. Mere allegations do not suffice; they must be substantiated by clear and convincing proof.[36]Third Issue:
Exemplary Damages

Petitioners argue that exemplary damages and attorney's fees are not recoverable. Allegedly, the RTC and the CA "did not find that petitioners were guilty of gross negligence in the performance of their duty and responsibilities."[37]

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Exemplary damages cannot be recovered as a matter of right.[38] While granting them is subject to the discretion of the court, they can be awarded only after claimants have shown their entitlement to moral, temperate or compensatory damages.[39] In the case before us, respondent sufficiently proved before the courts a quo that petitioners' negligence was the proximate cause of the incident, thereby establishing his right to actual or compensatory damages. He has adduced adequate proof to justify his claim for the damages caused his car. The question that remains, therefore, is whether exemplary damages may be awarded in addition to compensatory damages.

Article 2231 of the Civil Code mandates that in cases of quasi-delicts, exemplary damages may be recovered if the defendant acted with gross negligence.[40] Gross negligence means such utter want of care as to raise a presumption that the persons at fault must have been conscious of the probable consequences of their carelessness, and that they must have nevertheless been indifferent (or worse) to the danger of injury to the person or property of others.[41] The negligence must amount to a reckless disregard for the safety of persons or property. Such a circumstance obtains in the instant case.

A finding of gross negligence can be discerned from the Decisions of both the CA and the trial court. We quote from the RTC Decision:

> "Sad to state that the City Government through its instrumentalities have (sic) failed to show the modicum of responsibility, much less, care expected of them (sic) by the constituents of this City. It is even more deplorable that it was a case of a street digging in a side street which caused the accident in the so-called 'premier city.'"[42]

The CA reiterated the finding of the trial court that petitioners' negligence was clear, considering that there was no warning device whatsoever[43] at the excavation site.

The facts of the case show a complete disregard by petitioners of any adverse consequence of their failure to install even a single warning device at the area under renovation. Considering further that the street was dimly lit,[44] the need for adequate precautionary measures was even greater. By carrying on the road diggings without any warning or barricade, petitioners demonstrated a wanton disregard for public safety. Indeed, the February 28, 1988 incident was bound to happen due to their gross negligence. It is clear that under the circumstances, there is sufficient factual basis for a finding of gross negligence on their part.

Article 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good. The award of these damages is meant to be a deterrent to socially deleterious actions.[45] Public policy requires such imposition to suppress wanton acts of an offender.[46] It must be emphasized that local governments and their employees should be responsible not only for the maintenance of roads and streets, but also for the safety of the public. Thus, they must secure construction areas with adequate precautionary measures.

Not only is the work of petitioners impressed with public interest; their very existence is justified only by public service. Hence, local governments have the paramount responsibility of keeping the interests of the public foremost in their agenda. For these reasons, it is most disturbing to note that the present petitioners are the very parties responsible for endangering the public through such a rash and reckless act.

WHEREFORE, the Petition is hereby PARTLY GRANTED. The Decision of the Court of Appeals is AFFIRMED, with the MODIFICATION that the award of moral damages is DELETED. No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

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* Although the Petition mentions "Fulgencio Dacara" as the respondent, the body of the Petition, as well as the records of the case, mentions "Fulgencio P. Dacara Sr." as the proper respondent.

[1] Rollo, pp. 10-30.

[2] Id., pp. 36-41. Third Division. Penned by Justice Mercedes Gozo-Dadole, with the concurrence of Justices Fermin A. Martin Jr. (Division chairman) and Portia Aliño-Hormachuelos (member).

[3] Id., pp. 53-54.

[4] Assailed Decision, p. 5; rollo, p. 40.

[5] CA Decision, pp. 1-2; id., pp. 36-37.

[6] Penned by Judge Pedro T. Santiago; rollo, pp. 55-62.

[7] "Art. 2189. Provinces, cities, and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision."

[8] RTC Decision, p. 8; rollo, p. 62.

[9] Assailed Decision, p. 5; rollo, p. 40.

[10] Id., p. 4; rollo, p. 39.

[11] CA Decision, pp. 4-5; id., pp. 39-40.

[12] Id., pp. 5 & 40.

[13] The case was deemed submitted for decision on May 20, 2004, upon this Court's receipt of respondent's delayed, anemic 4-page Memorandum, signed by Atty. Romulo R. Candoy. Petitioners' Memorandum, signed by Atty. Felixberto F. Abad, was received by this Court on March 5, 2003.

[14] Petitioners' Memorandum, pp. 14-15; rollo, pp. 107-108; all caps in the original.

[15] Raynera v. Hiceta, 306 SCRA 102, 108, April 21, 1999.

[16] Sangco, Torts and Damages (1993), Vol. I, p. 90.

[17] Tañedo v. CA, 252 SCRA 80, January 22, 1996; Engineering & Machinery Corporation v. CA, 252 SCRA 156, January 24, 1996.

[18] Kierulf v. CA, 269 SCRA 433, 442, March 13, 1997 (citing Gaw v. IAC, 220 SCRA 405, March 24, 1993).

[19] Regalado, Remedial Law Compendium (1999), Vol. I, pp. 542-543. Fuentes v. CA, 268 SCRA 703, 708-709, February 26, 1997; Solid Homes, Inc. v. CA; 275 SCRA 267, 279; July 8, 1997; Spouses Quisumbing v. Manila Electric Company, 380 SCRA 195, April 3, 2002.

[20] RTC Decision, pp. 6-8; rollo, pp. 60-62.

[21] "Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has

been negligent if at the time of the mishap, he was violating any traffic regulation."

[22] Petitioners' Memorandum, pp. 37-40; rollo, pp. 129-132.

[23] Petitioners' Motion for Reconsideration, pp. 6-8; rollo, pp. 47-49.

[24] Remman Enterprises, Inc. v. CA, 268 SCRA 690, February 26, 1997; Hufana v. Genato, 365 SCRA 385, September 17, 2001

[25] De Rama v. CA, 353 SCRA 94, 105, February 28, 2001 (citing San Juan Structural and Steel Fabricators, Inc. v. CA, 296 SCRA 631, 649, September 29, 1998).

[26] "Article 2219. Moral damages may be recovered in the following 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 [who was] 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."

[27] Petitioners' Memorandum, pp. 16-25; rollo, pp. 109-118.

[28] Expertravel & Tours, Inc. v. CA, 368 Phil. 444, 448, June 25, 1999.

[29] Strebel v. Figueras, 96 Phil. 321, 330, December 29, 1954; Expertravel Tours, Inc. v. CA, supra, p. 449.

[30] Malonzo v. Galang, 109 Phil. 16, 20, July 27, 1960, per Reyes, J.

[31] Expertravel & Tours, Inc. v. CA, supra (citing Dee Hua Liong Electrical Equipment Corp. v. Reyes, 145 SCRA 713, 719, November 25, 1986).

[32] Malonzo v. Galang, supra, p. 21.

[33] Dee Hua Liong Electrical Equipment Corp. v. Reyes, supra; Mahinay v. Velasquez, Jr., 419 SCRA 118, January 13, 2004; Malonzo v. Galang, supra.

[34] People v. Baydo, 273 SCRA 526, June 17, 1997; People v. Serzo Jr., 274 SCRA 553, June 20, 1997; People v. Teodoro, 280 SCRA 384, October 9, 1997; People v. Villanueva, 408 SCRA 571, August 11, 2003; People v. Escarlos, 410 SCRA 463, September 10, 2003.

[35] Art. 2217 of the New Civil Code.

[36] Mahinay v. Velasquez Jr., supra, p. 121.

[37] Petitioners' Memorandum, p. 27; rollo, p. 120.

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[38] Article 2233 of the New Civil Code.

[39] Article 2234, id.

[40] Article 2231, id.

[41] Amedo v. Rio Y Olabarrieta, Inc., 95 Phil. 33, 37, May 24, 1954; Benguet Electric Cooperative, Inc. v. CA, 378 Phil. 1137, 1151, December 23, 1999.

[42] RTC Decision, p. 7; rollo, p. 61.

[43] CA Decision, p. 4; rollo, p. 39.

[44] Petitioners' Memorandum, p. 20 (rollo, p. 113); RTC Decision, p. 3 (rollo, p. 57).

[45] Benguet Electric Cooperative, Inc. v. CA, supra, p. 1151.

[46] Civil Aeronautics Administration v. CA, 167 SCRA 28, November 8, 1988.

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