

ENDREO MAGBANUA, VALLACAR TRANSIT, INC., AND ITS PRESENT CORPORATE OFFICIAL RICARDO YANSON, PETITIONERS, VS. JOSE TABUSARES, JR., EVA T. LAFIGUERA, NONA C. TABUSARES, JUN C. TAB...*G.R. No. 152134. June 04, 2004*

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-152134/>**PUNO, J.:**

The case at bar arose from the complaint for damages filed by spouses Jose Tabusares, Sr. and Rebecca Tabusares against petitioners, Endreo A. Magbanua, Vallacar Transit, Inc., and/or its corporate officials for the tragic death of their son, Jury Tabusares, in a vehicular mishap involving a Ceres Liner Bus owned and operated by petitioners. The case was docketed as Civil Case No. 4654 before the Regional Trial Court of Negros Occidental, Branch 48, Bacolod City.

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

At about 4:30 o'clock in the afternoon of October 25, 1986, a Ceres Liner Bus No. 154 with Plate No. GVG 469, driven by Endreo Magbanua and owned and operated by Vallacar Transit, Inc., and an Amante Type Jeepney bearing Plate No. FBN 996, driven by Felipe Palacios and owned by Salvador Algara, Sr. figured in a vehicular accident along the national road at Hda. Mabuhay, Gil Montilla, Sipalay, Negros Occidental. The Ceres Liner Bus bumped the rear portion of the Amante Type Jeepney while both vehicles were running downhill on the same direction towards the town of Sipalay from the North. Due to the impact, several passengers of the Amante Type Jeepney were thrown out and ran over by the Ceres Liner Bus and died as a result of the injuries they sustained. (O)ne of those killed was Jury Tabusares, 27 years of age, single, an employee of the Maricalum Copper Mines as Oiler 2B and was then receiving P1,256.00 monthly salary plus P510.00 cost of living allowance (COLA) or a total monthly income of P1,766.00. Jury Tabusares was the son of the plaintiffs Jose Tabusares, Sr. and Rebecca Tabusares. Immediately before the bumping accident, the Ceres Liner Bus's driver, Endreo Magbanua, was trying to overtake the Amante Type Jeepney ahead of him and he said that he did not apply his brakes because he cannot overtake if he will slow down. The Amante Type Jeepney was overloaded with 35 passengers and some of them clinging on its sides and some were riding on the roof. While the Ceres Liner (B)us was about one and a half (1½) meters from the Amante Type Jeepney, the bus driver saw that the jeepney went zigzagging on the middle of the road and since he could not control the bus anymore it bumped the rear portion of the jeep.

After a careful perusal of the circumstances of the case, the (c)ourt finds that the Amante Type Jeepney, as testified to by its own driver, Felipe Palacios, was not a passenger jeepney but a private vehicle which is used by its owner Salvador Algara, Sr., who is an ambulant peddler in his peddling business. But, although not for passengers, it was carrying 35 passengers at the time of the bumping accident on October 25, 1986 as testified to by Traffic Investigator Pfc. Praxedes Campillanos of the Sipalay Police Command, Sipalay, Negros Occidental. This jeep had a seating capacity of only 16 passengers but it was made to accommodate passengers on its roof and some were clinging on its side. This act is not only gross negligence but it was violative of the

traffic rules and regulations. On the other hand, the (c)ourt also finds that the driver of the Ceres Liner Bus was driving his vehicle negligently and recklessly because Endreo Magbanua testified and admitted that while driving the bus downhill and following the Amante type Jeepney ahead of him, he did not apply his brakes because he was trying to overtake when he bumped the jeep on its rear portion. This act was negligent and reckless because Endreo Magbanua could have avoided the bumping of the jeepney had he applied his brakes considering that he has the last clear chance to prevent a collision by slowing down and reducing speed.[1]

The trial court found that the negligent acts of the drivers of both the jeepney and the Ceres Liner Bus combined in directly causing the death of Jury Tabusares. It therefore held both drivers solidarily liable for damages. The court ruled:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering and condemning the defendants Endreo A. Magbanua, Vallacar Transit, Inc., thru and represented by its corporate official Ricardo Yanson, Felipe T. Palacios and Salvador Algara, Sr. to pay jointly and severally to the plaintiffs, as follows:

- The sum of P50,000.00 as indemnity for the death of Jury Tabusares;
- The amount of P699,336.00 as indemnity for the loss of the earning capacity of the late Jury Tabusares;
- The amount of P27,600.00 as reimbursement for actual expenses in connection with the death and burial of the said deceased;
- The amount of P10,000.00 as moral damages; and
- The sum of P10,000.00 as reasonable attorney's fees.

The cross-claim of defendant Salvador Algara, Sr. against the defendants Endreo A. Magbanua and Vallacar Transit, Inc., represented by its corporate official Ricardo Yanson, is hereby allowed and defendants Endreo A. Magbanua and Vallacar Transit, Inc., represented by it (sic) corporate official Ricardo Yanson are hereby ordered to indemnify Salvador Algara, Sr. in such amount as he may be required to pay as damages to the herein plaintiffs.

The counterclaims of the defendants against the plaintiffs are hereby dismissed for lack or merit.

SO ORDERED.[2]

Petitioners appealed to the Court of Appeals. They prayed that the decision of the trial court be reversed insofar as their liabilities are concerned.[3]

During the pendency of the appeal, Jose Tabusares, Sr. and his wife, Rebecca, passed away. On May 18, 1999, the Court of Appeals approved the substitution of the late spouses by their heirs, namely: Jose Tabusares, Jr., Eva T. Lafiguera, Nona C. Tabusares, Jun C. Tabusares, Fe C. Tabusares and Jax C. Tabusares.[4]

On March 13, 2001, the Court of Appeals rendered its decision. It affirmed the factual findings of the trial court, but modified the award of damages, reducing the amount of lost earning to P374,392.00. It made the following computation:

In the case at bar, the victim Jury Tabusares was twenty- seven (27) years old at the time of death. With 65 years as the given life expectancy in the Philippines, the victim was expected to live for another thirty-eight (38) years. In respect of income, the victim was receiving the amount of P1,766.00 as total monthly income or a gross yearly income of P21,192.00. Multiplied by 38, the number of years the victim is expected to continue living, the amount arrived at is P748,784.00 using the formula $\frac{2}{3} \times [80-27] \times 21,192.00$. From the said figure must be deducted the reasonable amount of P374,392.00 or 50% thereof representing the living and other necessary expenses of the deceased had he continued to live. Hence, the lost earnings of the deceased should

be P374,392.00.[5]

Petitioners filed a partial motion for reconsideration of the decision of the Court of Appeals, praying for a reduction of the amount of damages for loss of earning capacity. The Court of Appeals denied the motion.[6] Hence, this petition.

Petitioners, while accepting the factual findings of the trial court and the appellate court, now assail the latter's computation of the award of damages for loss of earning capacity. They contend that there are varying computations used in the decisions of this Court. In *People vs. Lopez*, [7] the Court applied the following formula:

$$2/3 \times (80-27) \times P21,192.00 - 50\%$$

However, the following formula was employed in *People vs. Muyco, et al.*: [8]

$$2/3 \times (80 - 27) \times P21,192.00 - 80\%$$

The difference lies in the computation of the net income of the victim. In the *Lopez* case, net income was derived by deducting 50% of the gross annual income, while in the *Muyco* case, the amount deducted was 80% of the gross annual income. The Court of Appeals followed the computation in *People vs. Lopez* as it was "the prevailing case law at the time of the decision appealed from was promulgated and unmistakably more favorable to the heirs of the deceased xxx." [9] Petitioners argue that the instant case was decided by the Court of Appeals one year and six months after the promulgation of *People vs. Muyco*, therefore, the Court should apply the computation in the latter case. [10]

On the other hand, the respondents, in their comment, cite other cases decided after the *Muyco* case where the Court applied the formula in the *Lopez* case. They submit that the computation in *People vs. Lopez* should be applied in this case. [11]

The petition is devoid of merit.

Article 2205 of the New Civil Code allows the recovery of damages for "loss or impairment of earning capacity in cases of temporary or permanent personal injury." Such damages covers the loss sustained by the dependents or heirs of the deceased, consisting of the support they would have received from him had he not died because of the negligent act of another. The loss is not equivalent to the entire earnings of the deceased, but only that portion that he would have used to support his dependents or heirs. Hence, we deduct from his gross earnings the necessary expenses supposed to be used by the deceased for his own needs. The Court explained in *Villa Rey Transit, Inc. vs. Court of Appeals* [12] that:

(the award of damages for loss of earning capacity is) concerned with the determination of the losses or damages sustained by the private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, we must reckon with the 'necessary expenses of his own living', which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, 'less the necessary expense for his own living.' Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earnings are to be considered that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.

Aside from the loss sustained by the heirs of the deceased, another factor considered in determining the award of loss of earning capacity is the life expectancy of the deceased which takes into account his work, lifestyle, age and

state of health prior to the accident.[13]

Thus, the formula for the computation of unearned income is:

$$\frac{\text{Net life gross living Earning} - \text{annual less expenses}}{\text{Capacity income}}$$

Life expectancy is determined in accordance with the formula:

$$\frac{2}{3} \times [80 - \text{age of deceased}]$$

The bone of contention in this case is the amount of living expenses that should be deducted from the deceased's gross annual income -whether 50% or 80%.

A survey of more recent jurisprudence shows that the Court consistently pegged the amount at 50% of the gross annual income.[14] We held in *Smith Bell Dodwell Shipping Agency Corp. vs. Borja*[15] that when there is no showing that the living expenses constituted a smaller percentage of the gross income, we fix the living expenses at half of the gross income, thus:

In other words, only net earnings, not gross earnings, are to be considered; that is, the total of the earnings less expenses necessary in the creation of such earnings or income, less living and other incidental expenses. When there is no showing that the living expenses constituted a smaller percentage of the gross income, we fix the living expenses at half of the gross income. To hold that one would have used only a small part of the income, with the larger part going to the support of one's children, would be conjectural and unreasonable. (emphasis supplied)

There is no evidence in the case at bar whether the living expenses of the victim, *Jury Tabusares*, constituted a bigger or smaller percentage of his gross income. In such case, it is fair to assume that it is 50% of his gross annual income. Hence, we find that the Court of Appeals did not err in its computation of the award of loss of unearned income to petitioner.

IN VIEW WHEREOF, the petition is DENIED. The assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Decision penned by Judge Antonio E. Arbis, Civil Case No. 4654, pp. 11-12; Original Records, pp. 360-361.

[2] Decision, Civil Case No. 4654, pp. 12-13; Original Records, pp. 361-362.

[3] Appellants' Brief, CA Rollo, pp. 53-112.

[4] CA Rollo, p. 188.

[5] Decision dated March 13, 2001 penned by Justice Rebecca De Guia-Salvador, p. 9; Rollo, p. 33.

[6] Resolution dated January 18, 2002, Rollo, pp. 42-43.

[7] 312 SCRA 684 (1999).

[8] 331 SCRA 192 (2000).

[9] Resolution dated January 18, 2002, p. 2; Rollo p. 43.

[10] Petition, Rollo, pp. 15-20.

[11] Comment, Rollo, pp. 50-56.

[12] 31 SCRA 511 (1970).

[13] See *Pestaño vs. Sumayang*, 346 SCRA 870 (2000).

[14] See *People vs. Mataro*, 354 SCRA 27 (2001); *People vs. Laut*, 351 SCRA 93 (2001); *People vs. Aspiras*, 330 SCRA 497 (2000); *People vs. Cerbito*, 324 SCRA 304 (2000).

[15] 383 SCRA 341 (2002); See also *Negros Navigation Co., Inc. vs. Court of Appeals*, 281 SCRA 534 (1997).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.