

THE HEIRS OF GEORGE Y. POE, PETITIONERS, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

G.R. No. 156302. April 07, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The instant Petition for Review under Rule 45[1] of the Rules of Court assails the Decision[2] dated 26 June 2002 of the Court of Appeals in CA-G.R. SP No. 67297, which granted the Petition for Certiorari of respondent Malayan Insurance Company, Inc. (MICI) and recalled and set aside the Order[3] dated 6 September 2001 of the Regional Trial Court (RTC), Branch 73, of Antipolo City, in Civil Case No. 93-2705. The RTC, in its recalled Order, denied the Notice of Appeal of MICI and granted the Motion for the Issuance of a Writ of Execution filed by petitioners Heirs of George Y. Poe. The present Petition also challenges the Resolution[4] dated 29 November 2002 of the appellate court denying petitioners' Motion for Reconsideration.

Records show that on 26 January 1996 at about 4:45 a.m., George Y. Poe (George) while waiting for a ride to work in front of Capital Garments Corporation, Ortigas Avenue Extension, Barangay Dolores, Taytay, Rizal, was run over by a ten-wheeler Isuzu hauler truck with Plate No. PMH-858 owned by Rhoda Santos (Rhoda), and then being driven by Willie Labrador (Willie).[5] The said truck was insured with respondent MICI under Policy No. CV-293-007446-8.

To seek redress for George's untimely death, his heirs and herein petitioners, namely, his widow Emercelinda, and their children Flerida and Fernando, filed with the RTC a Complaint for damages against Rhoda and respondent MICI, docketed as Civil Case No. 93-2705.[6] Petitioners identified Rhoda and respondent MICI, as follows:

Defendant RHODA SANTOS is likewise of legal age, Filipino and a resident of Real Street, Pamplona, Las Piñas, Metro Manila where she may be served with summons and other court processes.

[Herein respondent] MALAYAN INSURANCE COMPANY, INC. (hereinafter "[MICI]" for brevity) is a corporation duly organized and existing under Philippine law with address at Yuchengco Bldg., 484 Q. Paredes Street, Binondo, Manila where it may be served with summons and other processes of this Honorable Court;

Defendant Rhoda Santos, who is engaged in the business, among others, of selling gravel and sand is the registered owner of one Isuzu Truck, with Plate No. PMH-858 and is the employer of Willie Labrador the authorized driver of the aforesaid truck.

[Respondent MICI] on the other hand is the insurer of Rhoda Santos under a valid and existing insurance policy duly issued by said [MICI], Policy No. CV-293-007446-8 over the subject vehicle owned by Rhoda Santos, Truck-Hauler Isuzu 10 wheeler with plate no. PMH-858, serial no. SRZ451-1928340 and motor no. 10PA1-403803. Under said insurance policy, [MICI] binds itself, among others, to be liable for damages as well as any bodily injury to third persons which may be caused by the operation of the insured vehicle.[7]

And prayed that:

[J]udgment issue in favor of [herein petitioners] ordering [Rhoda and herein respondent MICI] jointly and solidarily to pay the [petitioners] the following:

- Actual damages in the total amount of THIRTY SIX THOUSAND (P36,000.00) PESOS for funeral and burial expenses;
- Actual damages in the amount of EIGHT HUNDRED FIVE THOUSAND NINE HUNDRED EIGHTY FOUR (P805,984.00) PESOS as loss of earnings and financial support given by the deceased by reason of his income and employment;
- Moral damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS;
- Exemplary damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS;
- Attorney's fees in the amount of FIFTY THOUSAND (P50,000.00) PESOS and litigation expense in the amount of ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS for each court appearance;
- The costs of suit.

Other reliefs just and equitable in the premises are likewise prayed for.[8]

Rhoda and respondent MICI made the following admissions in their Joint Answer[9]:

That [Rhoda and herein respondent MICI] admit the allegations in paragraphs 2, 3 and 4 of the complaint;

That [Rhoda and respondent MICI] admit the allegations in paragraph 5 of the complaint that the cargo truck is insured with [respondent] Malayan Insurance Company, Inc. [(MICI)] however, the liability of the insured company attached only if there is a judicial pronouncement that the insured and her driver are liable and moreover, the liability of the insurance company is subject to the limitations set forth in the insurance policy.[10]

Rhoda and respondent MICI denied liability for George's death averring, among other defenses, that: a) the accident was caused by the negligent act of the victim George, who surreptitiously and unexpectedly crossed the road, catching the driver Willie by surprise, and despite the latter's effort to swerve the truck to the right, the said vehicle still came into contact with the victim; b) the liability of respondent MICI, if any, would attach only upon a judicial pronouncement that the insured Rhoda and her driver Willie are liable; c) the liability of MICI should be based on the extent of the insurance coverage as embodied in Rhoda's policy; and d) Rhoda had always exercised the diligence of a good father of a family in the selection and supervision of her driver Willie.

After the termination of the pre-trial proceedings, trial on the merits ensued.

Petitioners introduced and offered evidence in support of their claims for damages against MICI, and then rested their case. Thereafter, the hearings for the reception of the evidence of Rhoda and respondent MICI were scheduled, but they failed to adduce their evidence despite several postponements granted by the trial court. Thus, during the hearing on 9 June 1995, the RTC, upon motion of petitioners' counsel, issued an Order[11] declaring that Rhoda and respondent MICI had waived their right to present evidence, and ordering the parties to already submit their respective Memorandum within 15 days, after which, the case would be deemed submitted for decision.

Rhoda and respondent MICI filed a Motion for Reconsideration[12] of the Order dated 9 June 1995, but it was denied by the RTC in another Order dated 11 August 1995.[13]

Consequently, Rhoda and respondent MICI filed a Petition for Certiorari, Mandamus,[14] Prohibition and Injunction with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction, assailing the

Orders dated 9 June 1995 and 11 August 1995 of the RTC foreclosing their right to adduce evidence in support of their defense. The Petition was docketed as CA-G.R. SP No. 38948.

The Court of Appeals, through its Third Division, promulgated a Decision^[15] on 29 April 1996, denying due course to the Petition in CA-G.R. SP No. 38948. Rhoda and respondent MICI elevated the matter to the Supreme Court via a Petition for Certiorari,^[16] docketed as G.R. No. 126244. This Court likewise dismissed the Petition in G.R. No. 126244 in a Resolution dated 30 September 1996.^[17] Entry of Judgment was made in G.R. No. 126244 on 8 November 1996.^[18]

On 28 February 2000, the RTC rendered a Decision in Civil Case No. 93-2705, the dispositive portion of which reads:

Wherefore, [Rhoda and herein respondent MICI] are hereby ordered to pay jointly and solidarily to the [herein petitioners] the following:

- Moral damages amounting to P100,000.00;
- Actual damages for loss of earning capacity amounting to P805,984.00;
- P36,000.00 for funeral expenses;
- P50,000.00 as exemplary damages;
- P50,000.00 for attorney's fees plus P1,500 per court appearance; and
- Cost of suit.^[19]

Rhoda and respondent MICI received their copy of the foregoing RTC Decision on 14 March 2000.^[20] On 22 March 2000, respondent MICI and Rhoda filed a Motion for Reconsideration^[21] of said Decision, averring therein that the RTC erred in ruling that the obligation of Rhoda and respondent MICI to petitioners was solidary or joint and several; in computing George's loss of earning capacity not in accord with established jurisprudence; and in awarding moral damages although it was not buttressed by evidence.

Resolving the Motion of respondent MICI and Rhoda, the RTC issued an Order^[22] on 24 January 2001 modifying and amending its Decision dated 28 February 2000, and dismissing the case against respondent MICI.

The RTC held that:

After a careful evaluation of the issues at hand, the contention of the [herein respondent MICI] as far as the solidary liability of the insurance company with the other defendant [Rhoda] is meritorious. However, the assailed Decision can be modified or amended to correct the same honest inadvertence without necessarily reversing it and set aside to conform with the evidence on hand.

The RTC also re-computed George's loss of earning capacity, as follows:

The computation of actual damages for loss of earning capacity was determined by applying the formula adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality applied in *x x x Villa Rey Transit, Inc. v. Court of Appeals* (31 SCRA 521). Moral damages is awarded in accordance with Article 2206 of the New Civil Code of the Philippines. While death indemnity in the amount of P50,000.00 is automatically awarded in cases where the victim had died (*People v. Sison*, September 14, 1990 [189 SCRA 643]).^[23]

In the end, the RTC decreed:

WHEREFORE, in view of the foregoing consideration, the Decision of this Court dated 28 February 2000 is

hereby amended or modified. Said Decision should read as follows:

"Wherefore, defendant Rhoda Santos is hereby ordered to pay to the [herein petitioners] the following:

- Moral damages amounting to P100,000.00;
- Actual damages for loss of earning capacity amounting to P102,106.00;
- P36,000.00 for funeral expenses;
- P50,000.00 as death indemnity;
- P50,000.00 for attorney's fees plus P1,500.00 per court appearance;
- Costs of the suit.

The case against Malayan Insurance Company, Inc. is hereby dismissed."^[24]

It was petitioners' turn to file a Motion for Reconsideration^[25] of the 24 January 2001 Order, to which respondent MICI filed a "Vigorous Opposition to the Plaintiff's Motion for Reconsideration."^[26]

On 15 June 2001, the RTC issued an Order reinstating its Decision dated 28 February 2000, relevant portions of which state:

Finding the arguments raised by the [herein petitioners] in their Motion for Reconsideration of the Order of this Court dated January 24, 2001 to be more meritorious to [herein respondent's] Malayan Insurance Co., Inc. (sic) arguments in its vigorous opposition thereto, said motion is hereby granted.

Accordingly, the Order under consideration is hereby reconsidered and set aside. The decision of this Court dated February 28, 2000 is hereby reinstated.

Notify parties herein.^[27]

Respondent MICI received a copy of the 15 June 2001 Order of the RTC on 27 June 2001.

Aggrieved by the latest turn of events, respondent MICI filed on 9 July 2001 a Notice of Appeal^[28] of the 28 February 2000 Decision of the RTC, reinstated by the 15 June 2001 Resolution of the same court. Rhoda did not join respondent MICI in its Notice of Appeal.^[29]

Petitioners filed their Opposition^[30] to the Notice of Appeal of respondent MICI, with a Motion for the Issuance of Writ of Execution.

After considering the recent pleadings of the parties, the RTC, in its Order dated 6 September 2001, denied the Notice of Appeal of respondent MICI and granted petitioners' Motion for the Issuance of Writ of Execution. The RTC reasoned in its Order:

The records disclosed that on February 28, 2000 this Court rendered a Decision in favor of the [herein petitioners] and against [Rhoda and herein respondent MICI]. The Decision was said to have been received by MICI on March 14, 2000. Eight days after or on March 22, 2000, MICI mailed its Motion for Reconsideration to this Court and granted the same in the Order dated January 24, 2001. From this Order, [petitioners] filed a Motion for Reconsideration on February 21, 2001 to which MICI filed a vigorous opposition. On June 15, 2001 this Court granted [petitioners'] motion reinstating the Decision dated February 28, 2000. According to MICI, the June 15, 2001 order was received by it on June 27, 2001. MICI filed a Notice of Appeal on July 9, 2001 or twelve (12) days from receipt of said Order.

[Petitioners] contend that the Notice of Appeal was filed out of time while [respondent] MICI opposes, arguing

otherwise. The latter interposed that the Order dated June 15, 2001 is in reality a new Decision thereby giving it a fresh fifteen (15) days within which to file notice of appeal.

[Respondent] MICI's contention is not meritorious. The fifteen (15) day period within which to file a notice of appeal should be reckoned from the date it received the Decision on March 14, 2000. So that when MICI mailed its Motion for Reconsideration on March 22, 2000, eight (8) days had already lapsed, MICI has remaining seven (7) days to file a notice of appeal. However, when it received the last Order of this Court it took [respondent] MICI twelve (12) days to file the same. Needless to say, MICI's Notice of Appeal was filed out of time. The Court cannot countenance the argument of MICI that a resolution to a motion for a final order or judgment will have the effect of giving a fresh reglementary period. This would be contrary to what was provided in the rules of procedure.[31]

Accordingly, the RTC adjudged:

WHEREFORE, premises considered, [herein respondent] MICI's Notice of Appeal is hereby Denied for having filed out of time making the Decision of this Court dated February 28, 2000 as final and executory. Accordingly, the Motion for Issuance of Writ of Execution filed by [herein petitioners] is hereby Granted.

Notify parties herein.[32]

Respondent MICI filed a Petition for Certiorari[33] under Rule 65 of the Rules of Court before the Court of Appeals, which was docketed as CA-G.R. SP No. 67297. The Petition assailed, for having been rendered by the RTC with grave abuse of discretion amounting to lack or excess of jurisdiction, the following: (1) the Order dated 6 September 2001, denying the Notice of Appeal of respondent MICI and granting petitioners' Motion for the Issuance of Writ of Execution; (2) the Decision dated 28 February 2000, holding Rhoda and respondent MICI jointly and severally liable for George's death; and (3) the Order dated 15 June 2001, reinstating the Decision dated 28 February 2000.

The Court of Appeals granted the Petition for Certiorari of respondent MICI in a Decision dated 26 June 2000, ratiocinating thus:

Prescinding therefrom, we hold that the fifteen (15) day period to appeal must be reckoned from the time the [herein respondent] Malayan received the order dated 15 June 2001 reversing in toto the order of 24 January 2000 and reinstating in full the Decision dated 28 February 2000. Thus, [respondent] Malayan had until 12 July 2001 within which to file its notice of appeal. Therefore, when [respondent] Malayan filed its notice of appeal on 09 July 2001, it was well within the reglementary period and should have been given due course by the public respondent court.

It was therefore, an excess of jurisdiction on the part of the public respondent court when it reckoned the [respondent] Malayan's period to appeal on the date it received on 14 March 2000 the former's decision dated 28 February 2000. As earlier expostulated, the said decision was completely vacated insofar as the [respondent] Malayan is concerned when the public respondent court in its order dated 24 January 2001 dismissed the case against the former. Thus, to reckon the fifteen (15) days to appeal from the day the [respondent] Malayan received the said decision on 14 March 2000, is the height of absurdity because there was nothing for the [respondent] Malayan to appeal inasmuch as the public respondent court vacated the said decision in favor of the former.

The aforesaid conclusion finds support in *Sta. Romana vs. Lacson* (104 SCRA 93), where the court, relying on the case of *Magdalena Estate, Inc. vs. Caluag*, 11 SCRA 334, held that where the court of origin made a thoroughly (sic) restudy of the original judgment and rendered the amended and clarified judgment only after considering all the factual and legal issues, the amended and clarified decision was an entirely new decision which superseded (sic). For all intents and purposes, the court concluded the trial court rendered a new judgment from which the time to appeal must be reckoned.

In the instant case, what is involved is not merely a substantial amendment or modification of the original decision, but the total reversal thereof in the order dated 24 January 2000. Given the rationale in the aforementioned cases, it is only logical that the period of appeal be counted from 27 June 2001, the date that [respondent] Malayan received the order dated 15 June 2001 reversing in toto the order of 24 January 2000 and reinstating the Decision dated 28 February 2000.[34] (Emphasis supplied.)

The fallo of the Decision of the Court of Appeals reads:

WHEREFORE, in consideration of the foregoing premises, the petition for certiorari is partially GRANTED. Accordingly, the public respondent court's order dated 06 September 2001 is hereby RECALLED and SET ASIDE.

Public respondent court is hereby directed to approve the petitioner Malayan's notice of appeal and to refrain from executing the writ of execution granted on 06 September 2001.[35]

The Court of Appeals denied petitioners' Motion for Reconsideration in a Resolution dated 29 November 2002.

Understandably distraught, petitioners come before this Court in this Petition for Review, which raise the following issues:

I.

Whether or not the respondent Court of Appeals committed grave abuse of discretion when it ruled that private respondent could file a Petition for Certiorari even though its Motion for Reconsideration was still pending resolution with the lower court.

II.

Whether or not the respondent Court of Appeals committed grave abuse of discretion when it ruled that the private respondent had filed its Notice of Appeal with the trial court within the reglementary period.[36]

The Court first turns its attention to the primary issue for its resolution: whether the Notice of Appeal filed by respondent MICI before the RTC was filed out of time.

The period for filing a Notice of Appeal is set by Rule 41, Section 3 of the 1997 Rules of Court:

SEC. 3. Period of ordinary appeal. The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

It is clear under the Rules that an appeal should be taken within 15 days from the notice of judgment or final order appealed from.[37] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.[38]

Propitious to petitioners is *Neypes v. Court of Appeals*,[39] which the Court promulgated on 14 September 2005, and wherein it laid down the fresh period rule:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for

reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution. (Emphases ours.)

The fresh period of 15 days becomes significant when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment.[40] With the advent of the fresh period rule, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.[41]

The Court has accentuated that the fresh period rule is not inconsistent with Rule 41, Section 3 of the Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment or final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies.[42] Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the final order in the case.

Applying the fresh period rule, the Court agrees with the Court of Appeals and holds that respondent MICI seasonably filed its Notice of Appeal with the RTC on 9 July 2001, just 12 days from 27 June 2001, when it received the denial of its Motion for Reconsideration of the 15 June 2001 Resolution reinstating the 28 February 2000 Decision of the RTC.

The fresh period rule may be applied to the case of respondent MICI, although the events which transpired concerning its Notice of Appeal took place in June and July 2001, inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage. The Court notes that Neypes was promulgated on 14 September 2005, while the instant Petition was still pending before this Court.

Reference may be made to *Republic v. Court of Appeals*,[43] involving the retroactive application of A.M. No. 00-2-03-SC which provided that the 60-day period within which to file a petition for certiorari shall be reckoned from receipt of the order denying the motion for reconsideration. In said case, the Court declared that rules of procedure "may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."

Hence, the fresh period rule laid down in *Neypes* was applied by the Court in resolving the subsequent cases of *Sumaway v. Urban Bank, Inc.*,[44] *Elbiña v. Ceniza*,[45] *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*,[46] even though the antecedent facts giving rise to said cases transpired before the promulgation of *Neypes*.

In *De los Santos v. Vda de Mangubat*,[47] particularly, the Court applied the fresh period rule, elucidating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. The fresh period rule is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity without danger of violating anyone else's rights.

Since the Court affirms the ruling of the Court of Appeals that respondent MICI filed its Notice of Appeal with the RTC within the reglementary period, the appropriate action, under ordinary circumstances, would be for the Court to remand the case to the RTC so that the RTC could approve the Notice of Appeal of respondent MICI and respondent MICI could already file its appeal with the Court of Appeals.

However, considering that the case at bar has been pending for almost sixteen years,[48] and the records of the same are already before this Court, remand is no longer necessary.

Jurisprudence dictates that remand of a case to a lower court does not follow if, in the interest of justice, the Supreme Court itself can resolve the dispute based on the records before it. As a rule, remand is avoided in the following instances: (a) where the ends of justice would not be subserved by a remand; or (b) where public interest demands an early disposition of the case; or (c) where the trial court has already received all the evidence presented by both parties, and the Supreme Court is in a position, based upon said evidence, to decide the case on its merits.[49] In *Lao v. People*,[50] the Supreme Court, in consideration of the years that it had taken for the controversy therein to reach it, concluded that remand of the case to a lower court was no longer the more expeditious and practical route to follow, and it then decided the said case based on the evidentiary record before it.

The consistent stand of the Court has always been that a case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end the litigation once and for all. Verily, courts should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seed of future litigation.[51] Where the public interest so demands, the court will broaden its inquiry into a case and decide the same on the merits rather than merely resolve the procedural question raised.[52] Such rule obtains in this case.

The Court is convinced that the non-remanding of the case at bar is absolutely justified. Petitioners have already suffered from the tragic loss of a loved one, and must not be made to endure more pain and uncertainty brought about by the continued pendency of their claims against those liable. The case has been dragging on for almost 16 years now without the petitioners having been fully compensated for their loss. The Court cannot countenance such a glaring indifference to petitioners' cry for justice. To be sure, they deserve nothing less than full compensation to give effect to their substantive rights.[53]

The complete records of the present case have been elevated to this Court, and the pleadings and evidence therein could fully support its factual adjudication. Indeed, after painstakingly going over the records, the Court finds that the material and decisive facts are beyond dispute: George was killed when he was hit by the truck driven by Willie, an employee of Rhoda; and the truck is insured with respondent MICI. The only issue left for the Court to resolve is the extent of the liability of Rhoda and respondent MICI for George's death and the appropriate amount of the damages to be awarded to petitioners.

The Court now turns to the issue of who is liable for damages for the death of George.

Respondent MICI does not deny that it is the insurer of the truck. Nevertheless, it asserts that its liability is limited, and it should not be held solidarily liable with Rhoda for all the damages awarded to petitioners.

A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. In a joint obligation, each obligor answers only for a part of the whole liability and to each obligee belongs only a part of the correlative rights. Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.[54]

It is settled that where the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code;^[55] while that of the insurer arises from contract, particularly, the insurance policy. The third-party liability of the insurer is only up to the extent of the insurance policy and that required by law; and it cannot be held solidarily liable for anything beyond that amount.^[56] Any award beyond the insurance coverage would already be the sole liability of the insured and/or the other parties at fault.^[57]

In *Vda. de Maglana v. Consolacion*,^[58] it was ruled that an insurer in an indemnity contract for third-party liability is directly liable to the injured party up to the extent specified in the agreement, but it cannot be held solidarily liable beyond that amount. According to respondent MICI, its liability as insurer of Rhoda's truck is limited. Following *Vda. de Maglana*, petitioners would have had the option either (1) to claim the amount awarded to them from respondent MICI, up to the extent of the insurance coverage, and the balance from Rhoda; or (2) to enforce the entire judgment against Rhoda, subject to reimbursement from respondent MICI to the extent of the insurance coverage. The Court, though, is precluded from applying its ruling in *Vda. de Maglana* by the difference in one vital detail between the said case and the one at bar. The insurer was able to sufficiently establish its limited liability in *Vda. de Maglana*, while the same cannot be said for respondent MICI herein.

The Court highlights that in this case, the insurance policy between Rhoda and respondent MICI, covering the truck involved in the accident which killed George, was never presented. There is no means, therefore, for this Court to ascertain the supposed limited liability of respondent MICI under said policy. Without the presentation of the insurance policy, the Court cannot determine the existence of any limitation on the liability of respondent MICI under said policy, and the extent or amount of such limitation.

It should be remembered that respondent MICI readily admits that it is the insurer of the truck that hit and killed George, except that it insists that its liability under the insurance policy is limited. As the party asserting its limited liability, respondent MICI then has the burden of evidence to establish its claim. In civil cases, the party that alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove its claim or defense by the amount of evidence required by law.^[59] Regrettably, respondent MICI failed to discharge this burden.^[60] The Court cannot rely on mere allegations of limited liability sans proof.

The failure of respondent MICI to present the insurance policy - which, understandably, is not in petitioners' possession, but in the custody and absolute control of respondent MICI as the insurer and/or Rhoda as the insured - gives rise to the presumption that its presentation is prejudicial to the cause of respondent MICI.^[61] When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which, from its very nature, must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice and support the case of his adversary.^[62]

Respondent MICI had all the opportunity to prove before the RTC that its liability under the insurance policy it issued to Rhoda, was limited; yet, respondent MICI failed to do so. The failure of respondent MICI to rebut that which would have naturally invited an immediate, pervasive, and stiff opposition from it created an adverse inference that either the controverting evidence to be presented by respondent MICI would only prejudice its case, or that the uncontroverted evidence of petitioners indeed speaks of the truth. And such adverse inference, recognized and adhered to by courts in judging the weight of evidence in all kinds of proceedings, surely is not

without basis - its rationale and effect rest on sound, logical and practical considerations, viz:

The presumption that a man will do that which tends to his obvious advantage, if he possesses the means, supplies a most important test for judging of the comparative weight of evidence x x x If, on the supposition that a charge or claim is unfounded, the party against whom it is made has evidence within his reach by which he may repel that which is offered to his prejudice, his omission to do so supplies a strong presumption that the charge or claim is well founded; it would be contrary to every principle of reason, and to all experience of human conduct, to form any other conclusion." (Starkie on Evidence, p. 846, Moore on Facts, Vol. I, p. 544)

x x x x

The ordinary rule is that one who has knowledge peculiarly within his own control, and refuses to divulge it, cannot complain if the court puts the most unfavorable construction upon his silence, and infers that a disclosure would have shown the fact to be as claimed by the opposing party." (Societe, etc., v. Allen, 90 Fed. Rep. 815, 817, 33 C.C.A. 282, per Taft, C.J., Moore on Facts, Vol. I, p. 561).[63]

The inference still holds even if it be assumed, for argument's sake, that the solidary liability of respondent MICI with Rhoda is improbable, for it has likewise been said that:

Weak evidence becomes strong by the neglect of the party against whom it is put in, in not showing by means within the easy control of that party that the conclusion drawn from such evidence is untrue. (Pittsburgh, etc., R. Co. v. Callaghan, 50 Ill. App. 676, 681, Moore on Facts, Vol. I, p. 572).[64]

Given the admission of respondent MICI that it is the insurer of the truck involved in the accident that killed George, and in the utter absence of proof to establish both the existence and the extent/amount of the alleged limited liability of respondent MICI as insurer, the Court could only conclude that respondent MICI had agreed to fully indemnify third-party liabilities. Consequently, there is no more difference in the amounts of damages which petitioners can recover from Rhoda or respondent MICI; petitioners can recover the said amounts in full from either of them, thus, making their liabilities solidary or joint and several.

The Court now comes to the issue of the amounts of the damages awarded.

In its Decision dated 22 February 2000, the RTC awarded petitioners moral and actual damages, as well as funeral expenses and attorney's fees. Subsequently, in its Order dated 24 January 2001, the RTC reduced the amount of actual damages from P805,984.00 to P102,106.00, but additionally awarded death indemnity in the amount of P50,000.00. Its award of moral damages and funeral expenses as well as attorney's fees remained constant in its 28 February 2000 decision and was carried over to its 24 January 2001 Order.

The Court shall now proceed to scrutinize said award of damages.

As regards the award of actual damages, Article 2199 of the Civil Code provides that "[e]xcept 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 x x x."

The RTC awarded P36,000.00 for burial expenses. The award of P36,000.00 for burial expenses is duly supported by receipts evidencing that petitioners did incur this expense. The petitioners held a wake for two days at their residence and another two days at the Loyola Memorial Park.[65] The amount covered the expenses by petitioners for the wake, funeral and burial of George.[66]

As to compensation for loss of earning capacity, the RTC initially awarded P805,984.00 in its 28 February 2000 Decision, which it later reduced to P102,106.00 on 24 January 2001.

Article 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or

quasi-delict, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter, x x x." Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Hence, it is proper that compensation for loss of earning capacity should be awarded to the petitioners in accordance with the formula established in decided cases for computing net earning capacity, to wit:

The formula for the computation of unearned income is:

Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses).

Life expectancy is determined in accordance with the formula:

$2 / 3 \times [80 - \text{age of deceased at the time of death}]$ [67]

Jurisprudence provides that the first factor, i.e., life expectancy, shall be computed by applying the formula ($2/3 \times [80 - \text{age at death}]$) adopted in the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality.

The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The loss is not equivalent to the entire earnings of the deceased, but only such portion that he would have used to support his dependents or heirs. Hence, the Court deducts 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 v. Court of Appeals*[68]:

[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 necessary expense for his own living." Stated otherwise, the amount recoverable is not the 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, and 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."

Applying the aforesaid jurisprudential guidelines in the computation of the amount of award for damages set out in *Villa Rey*, the Court computes the award for the loss of George's earning capacity as follows:

Life expectancy = $2/3 \times [80 - \text{age of deceased at the time of death}]$

$2/3 \times [80 - 56]$

$2/3 \times [24]$

FORMULA - NET EARNING CAPACITY (NEC)

If:

Age at time of death of George Poe = 58[69]

Monthly Income at time of death = P6,946[70]

Gross Annual Income (GAI) = $[(6,946) (12)]$ = P83,352

Reasonable/Necessary Living Expenses (R/NLE) = 50%[71] of GAI = P41,676

NEC = $[2/3 (80-58)] [83,352-41,676]$

= $[2/3 (22)] [41,676]$

= $[14.67] [41,676]$

= P611,386.92

Therefore, George's lost net earning capacity is equivalent to P611,386.92

The RTC awarded moral damages[72] in the amount of P100,000.00. With respect to moral damages, the same are awarded under the following circumstances:

The award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual status quo ante. Moral damages 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 caused a person. Although incapable of pecuniary computation, they must be proportionate to the suffering inflicted. The amount of the award bears no relation whatsoever with the wealth or means of the offender.

In the instant case, petitioners' testimonies reveal the intense suffering which they continue to experience as a result of George's death.[73] It is not difficult to comprehend that the sudden and unexpected loss of a husband and father would cause mental anguish and serious anxiety in the wife and children he left behind. Moral damages in the amount of P100,000.00 are proper for George's death.[74]

The RTC also awarded P50,000.00 as death indemnity which the Court shall not disturb. The award of P50,000.00 as death indemnity is in accordance with current rulings of the Court.[75]

Finally, the RTC awarded attorneys fees to petitioners. Petitioners are entitled to attorney's fees. Under Article 2008 of the Civil Code, attorney's fees may be granted when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party.[76] In *Metro Manila Transit Corporation v. Court of Appeals*,[77] the Court held that an award of P50,000.00 as attorney's fees was reasonable. Hence, petitioners are entitled to attorney's fees in that amount.[78]

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. While the Court **AFFIRMS** the Decision, dated 26 June 2002, and Resolution, dated 29 November 2002, of the Court of Appeals in CA-G.R. SP No. 67297, granting the Petition for Certiorari of respondent Malayan Insurance Company, Inc., the Court, nonetheless, **RESOLVES**, in consideration of the speedy administration of justice, and the peculiar circumstances of the case, to give **DUE COURSE** to the present Petition and decide the same on its merits.

Rhoda Santos and respondent Malayan Insurance Company, Inc. are hereby ordered to pay jointly and severally the petitioners Heirs of George Y. Poe the following:

- (1) Funeral expenses P36,000.00;
- (2) Actual damages for loss of earning capacity P611,386.92;
- (3) Moral damages amounting to P100,000.00;
- (4) Death indemnity P50,000.00; and
- (5) Attorney's fees P50,000.00 plus P1,500.00 per court appearance.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio Morales, Nachura, and Peralta, JJ., concur.

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

[1] Appeal by certiorari to the Supreme Court.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam, concurring; rollo, p. 40-53.

[3] Rollo, p. 86.

[4] Id. at 54.

[5] At large (records, p. 258). Criminal case for reckless imprudence resulting to Homicide was also filed against him. Records are silent as to the status of this case. (Records, p. 194.)

[6] Rollo, p. 56.

[7] Records, pp. 1-2.

[8] Id. at 4-5.

[9] Rollo, p. 65.

[10] Records, p. 13.

[11] Id. at 109.

[12] Id. at 110.

[13] Id. at 115.

[14] Id. at 183.

[15] Id. at 140.

[16] Id. at 151.

[17] Id. at 201.

[18] Id. at 200.

[19] Id. at 271.

[20] Id. at 272.

[21] Id.

[22] Id. at 308.

[23] Id. at 309.

[24] Id. at 308-309.

- [25] Id. at 310.
- [26] Id. at 346.
- [27] Id. at 355.
- [28] Id. at 356.
- [29] Id. at 361.
- [30] Id. at 360.
- [31] Id. at 371-372.
- [32] Id. at 372.
- [33] CA rollo, p. 2.
- [34] Rollo, pp. 51-52.
- [35] Id. at 52-53.
- [36] Id. at 282-283.
- [37] Nuñez v. GSIS Family Bank, G.R. No. 163988, 17 November 2005, 475 SCRA 305, 319.
- [38] PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc., G.R. No. 161110, 30 March 2006, 485 SCRA 632, 649.
- [39] G.R. No. 141524, 14 September 2005, 469 SCRA 633, 644-645.
- [40] Id.
- [41] Active Realty and Development Corporation v. Fernandez, G.R. No. 157186, 19 October 2007, 537 SCRA 116, 129.
- [42] Neypes v. Court of Appeals, supra note 39 at 645-646.
- [43] 447 Phil. 385, 393-394 (2003).
- [44] G.R. No. 142534, 27 June 2006, 493 SCRA 99, 105-106.
- [45] G.R. No. 154019, 10 August 2006, 498 SCRA 438, 443.
- [46] G.R. No. 154034, 5 February 2007, 514 SCRA 223, 226-227.
- [47] G.R. No. 149508, 10 October 2007, 535 SCRA 411, 422.
- [48] The accident occurred on 26 January 1993 and the Complaint (Civil Case No. 93-2705) for Damages was filed on 26 May 1993. (Records, p. 1.)
- [49] Gokongwei, Jr. v. Securities and Exchange Commission, 178 Phil. 266, 292 (1979).
- [50] G.R. No. 159404, 27 June 2008, 556 SCRA 120, 128-129.
- [51] Monteroso v. Court of Appeals, G.R. No. 105608, 30 April 2008, 553 SCRA 66, 109.
- [52] Latchme Motoomull v. Dela Paz, G.R. No. 45302, 24 July 1990, 187 SCRA 743, 754.
- [53] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, 6 February 2007, 514 SCRA 537, 555-556.

[54] Industrial Management International Development Corporation v. National Labor Relations Commission, 387 Phil. 659, 666 (2000).

[55] ART. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Emphasis supplied.)

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[56] Metro Manila Transit Corporation v. Court of Appeals, 359 Phil. 18, 42-43 (1998).

[57] See Government Service Insurance System v. Court of Appeals, 368 Phil. 36, 46 (1999); Metro Manila Transit Corporation v. Court of Appeals, id.

[58] G.R. No. 60506, 6 August 1992, 212 SCRA 218.

[59] Rule 131 section 1 of the Rules of Court, cited in Co v. Admiral United Savings Bank, G.R. No. 154740, 16 April 2008, 551 SCRA 472, 480.

[60] Northwest Airlines, Inc. v. Chiong, G.R. No. 155550, 31 January 2008, 543 SCRA 308, 321.

[61] Veterans Security Agency, Inc. v. Gonzalvo, Jr., G.R. No. 159293, 16 December 2005, 478 SCRA 298, 306.

[62] Metropolitan Bank and Trust Company v. Court of Appeals, 388 Phil. 880, 888 (2000); Manila Bay Club Corporation v. Court of Appeals, G.R. No. 110015, 13 October 1995, 249 SCRA 303, 306.

[63] Metropolitan Bank and Trust Company v. Court of Appeals, id.; Manila Bay Club Corporation v. Court of Appeals, id. at 305-306.

[64] Manila Bay Club Corporation v. Court of Appeals, supra note 62 at 307.

[65] Records, p. 254.

[66] Id. at 253.

[67] Candano Shipping Lines, Inc. v. Sugata-on, G.R. No. 163212, 13 March 2007, 518 SCRA 221, 235.

[68] G.R. No. L-25499, 18 February 1970, 31 SCRA 511; Magbanua v. Tabusares, Jr., G.R. No. 152134, 4 June 2004, 431 SCRA 99, 104-105; Candano Shipping Lines, Inc. v. Sugata-on, id.

[69] Records, p. 261.

[70] Id. at 241.

[71] In computing the third factor, the necessary living expense, a survey of more recent jurisprudence shows that this Court consistently pegged the amount at 50% of the gross annual income. We held in *Smith Bell Dodwell Shipping Agency Corp. v. Borja* (432 Phil. 913, 925 [2002]), that when there is no showing that the living expenses constituted the smaller percentage of the gross income, we fix the living expenses at half of the gross income. (*Candano Shipping Lines, Inc. v. Sugata-on*, supra note 67 at 237.)

[72] *Metro Manila Transit Corporation v. Court of Appeals*, supra note 56.

[73] Records, p. 254.

[74] *B.F. Metal (Corporation) v. Lomotan*, G.R. No. 170813, 16 April 2008, 551 SCRA 618, 628, citing *Victory Liner, Inc. v. Heirs of Malecdan*, 442 Phil. 784, 795 (2002); *People v. Ortiz*, 413 Phil. 592, 617-618 (2001); *People v. Cortez*, 401 Phil. 887, 902 (2000); *People v. Tambis*, 370 Phil. 459, 471 (1999).

[75] *Metro Manila Transit Corporation v. Court of Appeals*, supra note 56; *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, 25 November 2004, 444 SCRA 355, 373.

[76] *Mercury Drug Corporation v. Huang*, G.R. No. 172122, 22 June 2007, 525 SCRA 427, 439-443.

[77] Supra note 56.

[78] *Victory Liner, Inc. v. Heirs of Andres Malecdan*, supra note 74 at 527-528.

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