

VICTORY LINER, INC., PETITIONER, VS. ROSALITO GAMMAD, APRIL ROSSAN P. GAMMAD, ROI ROZANO P. GAMMAD AND DIANA FRANCES P. GAMMAD, RESPONDENTS.

G.R. No. 159636. November 25, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Assailed in this petition for review on certiorari is the April 11, 2003 decision[1] of the Court of Appeals in CA-G.R. CV No. 63290 which affirmed with modification the November 6, 1998 decision[2] of the Regional Trial Court of Tuguegarao, Cagayan, Branch 5 finding petitioner Victory Liner, Inc. liable for breach of contract of carriage in Civil Case No. 5023.

The facts as testified by respondent Rosalito Gammad show that on March 14, 1996, his wife Marie Grace Pagulayan-Gammad,[3] was on board an air-conditioned Victory Liner bus bound for Tuguegarao, Cagayan from Manila. At about 3:00 a.m., the bus while running at a high speed fell on a ravine somewhere in Barangay Baliling, Sta. Fe, Nueva Vizcaya, which resulted in the death of Marie Grace and physical injuries to other passengers.[4]

On May 14, 1996, respondent heirs of the deceased filed a complaint[5] for damages arising from culpa contractual against petitioner. In its answer,[6] the petitioner claimed that the incident was purely accidental and that it has always exercised extraordinary diligence in its 50 years of operation.

After several re-settings,[7] pre-trial was set on April 10, 1997.[8] For failure to appear on the said date, petitioner was declared as in default.[9] However, on petitioner's motion[10] to lift the order of default, the same was granted by the trial court.[11]

At the pre-trial on May 6, 1997, petitioner did not want to admit the proposed stipulation that the deceased was a passenger of the Victory Liner Bus which fell on the ravine and that she was issued Passenger Ticket No. 977785. Respondents, for their part, did not accept petitioner's proposal to pay P50,000.00.[12]

After respondent Rosalito Gammad completed his direct testimony, cross-examination was scheduled for November 17, 1997[13] but moved to December 8, 1997,[14] because the parties and the counsel failed to appear. On December 8, 1997, counsel of petitioner was absent despite due notice and was deemed to have waived right to cross-examine respondent Rosalito.[15]

Petitioner's motion to reset the presentation of its evidence to March 25, 1998[16] was granted. However, on March 24, 1998, the counsel of petitioner sent the court a telegram[17] requesting postponement but the telegram was received by the trial court on March 25, 1998, after it had issued an order considering the case submitted for decision for failure of petitioner and counsel to appear.[18]

On November 6, 1998, the trial court rendered its decision in favor of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered and in the interest of justice, judgment is hereby rendered in favor of the plaintiffs and against the defendant Victory Liner, Incorporated, ordering the latter to pay the following:

1.

Actual Damages -----

P 122,000.00

2.

Death Indemnity -----

50,000.00

3.

Exemplary and Moral Damages-----

400,000.00

4.

Compensatory Damages -----

1,500,000.00

5.

Attorney's Fees -----

10% of the total amount granted

6.

Cost of the Suit.

SO ORDERED.[19]

On appeal by petitioner, the Court of Appeals affirmed the decision of the trial court with modification as follows:

[T]he Decision dated 06 November 1998 is hereby MODIFIED to reflect that the following are hereby adjudged in favor of plaintiffs-appellees:

- Actual Damages in the amount of P88,270.00;
- Compensatory Damages in the amount of P1,135,536.10;
- Moral and Exemplary Damages in the amount of P400,000.00; and
- Attorney's fees equivalent to 10% of the sum of the actual, compensatory, moral, and exemplary damages herein adjudged.

The court a quo's judgment of the cost of the suit against defendant-appellant is hereby AFFIRMED.

SO ORDERED.[20]

Represented by a new counsel, petitioner on May 21, 2003 filed a motion for reconsideration praying that the case be remanded to the trial court for cross-examination of respondents' witness and for the presentation of its

evidence; or in the alternative, dismiss the respondents' complaint.[21] Invoking *APEX Mining, Inc. v. Court of Appeals*,[22] petitioner argues, inter alia, that the decision of the trial court should be set aside because the negligence of its former counsel, Atty. Antonio B. Paguirigan, in failing to appear at the scheduled hearings and move for reconsideration of the orders declaring petitioner to have waived the right to cross-examine respondents' witness and right to present evidence, deprived petitioner of its day in court.

On August 21, 2003, the Court of Appeals denied petitioner's motion for reconsideration.[23]

Hence, this petition for review principally based on the fact that the mistake or gross negligence of its counsel deprived petitioner of due process of law. Petitioner also argues that the trial court's award of damages were without basis and should be deleted.

The issues for resolution are: (1) whether petitioner's counsel was guilty of gross negligence; (2) whether petitioner should be held liable for breach of contract of carriage; and (3) whether the award of damages was proper.

It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. However, the application of the general rule to a given case should be looked into and adopted according to the surrounding circumstances obtaining. Thus, exceptions to the foregoing have been recognized by the court in cases where reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require, and accord relief to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.[24]

The exceptions, however, are not present in this case. The record shows that Atty. Paguirigan filed an Answer and Pre-trial Brief for petitioner. Although initially declared as in default, Atty. Paguirigan successfully moved for the setting aside of the order of default. In fact, petitioner was represented by Atty. Paguirigan at the pre-trial who proposed settlement for P50,000.00. Although Atty. Paguirigan failed to file motions for reconsideration of the orders declaring petitioner to have waived the right to cross-examine respondents' witness and to present evidence, he nevertheless, filed a timely appeal with the Court of Appeals assailing the decision of the trial court. Hence, petitioner's claim that it was denied due process lacks basis.

Petitioner too is not entirely blameless. Prior to the issuance of the order declaring it as in default for not appearing at the pre-trial, three notices (dated October 23, 1996,[25] January 30, 1997,[26] and March 26, 1997,[27]) requiring attendance at the pre-trial were sent and duly received by petitioner. However, it was only on April 27, 1997, after the issuance of the April 10, 1997 order of default for failure to appear at the pre-trial when petitioner, through its finance and administrative manager, executed a special power of attorney[28] authorizing Atty. Paguirigan or any member of his law firm to represent petitioner at the pre-trial. Petitioner is guilty, at the least, of contributory negligence and fault cannot be imputed solely on previous counsel.

The case of *APEX Mining, Inc.*, invoked by petitioner is not on all fours with the case at bar. In *APEX*, the negligent counsel not only allowed the adverse decision against his client to become final and executory, but deliberately misrepresented in the progress report that the case was still pending with the Court of Appeals when the same was dismissed 16 months ago.[29] These circumstances are absent in this case because Atty. Paguirigan timely filed an appeal from the decision of the trial court with the Court of Appeals.

In *Gold Line Transit, Inc. v. Ramos*,[30] the Court was similarly confronted with the issue of whether or not the

client should bear the adverse consequences of its counsel's negligence. In that case, Gold Line Transit, Inc. (Gold Line) and its lawyer failed to appear at the pre-trial despite notice and was declared as in default. After the plaintiff's presentation of evidence ex parte, the trial court rendered decision ordering Gold Line to pay damages to the heirs of its deceased passenger. The decision became final and executory because counsel of Gold Line did not file any appeal. Finding that Goldline was not denied due process of law and is thus bound by the negligence of its lawyer, the Court held as follows –

This leads us to the question of whether the negligence of counsel was so gross and reckless that petitioner was deprived of its right to due process of law. We do not believe so. It cannot be denied that the requirements of due process were observed in the instant case. Petitioner was never deprived of its day in court, as in fact it was afforded every opportunity to be heard. Thus, it is of record that notices were sent to petitioner and that its counsel was able to file a motion to dismiss the complaint, an answer to the complaint, and even a pre-trial brief. What was irretrievably lost by petitioner was its opportunity to participate in the trial of the case and to adduce evidence in its behalf because of negligence.

In the application of the principle of due process, what is sought to be safeguarded against is not the lack of previous notice but the denial of the opportunity to be heard. The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. Verily, as petitioner retained the services of counsel of its choice, it should, as far as this suit is concerned, bear the consequences of its choice of a faulty option. Its plea that it was deprived of due process echoes on hollow ground and certainly cannot elicit approval nor sympathy.

To cater to petitioner's arguments and reinstate its petition for relief from judgment would put a premium on the negligence of its former counsel and encourage the non-termination of this case by reason thereof. This is one case where petitioner has to bear the adverse consequences of its counsel's act, for a client is bound by the action of his counsel in the conduct of a case and he cannot thereafter be heard to complain that the result might have been different had his counsel proceeded differently. The rationale for the rule is easily discernible. If the negligence of counsel be admitted as a reason for opening cases, there would never be an end to a suit so long as a new counsel could be hired every time it is shown that the prior counsel had not been sufficiently diligent, experienced or learned.[31]

Similarly, in *Macalalag v. Ombudsman*,[32] a Philippine Postal Corporation employee charged with dishonesty was not able to file an answer and position paper. He was found guilty solely on the basis of complainant's evidence and was dismissed with forfeiture of all benefits and disqualification from government service. Challenging the decision of the Ombudsman, the employee contended that the gross negligence of his counsel deprived him of due process of law. In debunking his contention, the Court said –

Neither can he claim that he is not bound by his lawyer's actions; it is only in case of gross or palpable negligence of counsel when the courts can step in and accord relief to a client who would have suffered thereby. If every perceived mistake, failure of diligence, lack of experience or insufficient legal knowledge of the lawyer would be admitted as a reason for the reopening of a case, there would be no end to controversy. Fundamental to our judicial system is the principle that every litigation must come to an end. It would be a clear mockery if it were otherwise. Access to the courts is guaranteed, but there must be a limit to it.

Viewed vis-à-vis the foregoing jurisprudence, to sustain petitioner's argument that it was denied due process of law due to negligence of its counsel would set a dangerous precedent. It would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel. The Court will not countenance such a farce which contradicts long-settled doctrines of trial and procedure.[33]

Anent the second issue, petitioner was correctly found liable for breach of contract of carriage. A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence

of very cautious persons, with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted, the court need not even make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence.[34]

In the instant case, there is no evidence to rebut the statutory presumption that the proximate cause of Marie Grace's death was the negligence of petitioner. Hence, the courts below correctly ruled that petitioner was guilty of breach of contract of carriage.

Nevertheless, the award of damages should be modified.

Article 1764[35] in relation to Article 2206[36] of the Civil Code, holds the common carrier in breach of its contract of carriage that results in the death of a passenger liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity, and (3) moral damages.

In the present case, respondent heirs of the deceased are entitled to indemnity for the death of Marie Grace which under current jurisprudence is fixed at P50,000.00.[37]

The award of compensatory damages for the loss of the deceased's earning capacity should be deleted for lack of basis. As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[38]

In *People v. Oco*,[39] the evidence presented by the prosecution to recover damages for loss of earning capacity was the bare testimony of the deceased's wife that her husband was earning P8,000.00 monthly as a legal researcher of a private corporation. Finding that the deceased was neither self-employed nor employed as a daily-wage worker earning less than the minimum wage under the labor laws existing at the time of his death, the Court held that testimonial evidence alone is insufficient to justify an award for loss of earning capacity.

Likewise, in *People v. Caraig*,[40] damages for loss of earning capacity was not awarded because the circumstances of the 3 deceased did not fall within the recognized exceptions, and except for the testimony of their wives, no documentary proof about their income was presented by the prosecution. Thus –

The testimonial evidence shows that Placido Agustin, Roberto Raagas, and Melencio Castro Jr. were not self-employed or employed as daily-wage workers earning less than the minimum wage under the labor laws existing at the time of their death. Placido Agustin was a Social Security System employee who received a monthly salary of P5,000. Roberto Raagas was the President of Sinclair Security and Allied Services, a family owned corporation, with a monthly compensation of P30,000. Melencio Castro Jr. was a taxi driver of New Rocalex with an average daily earning of P500 or a monthly earning of P7,500. Clearly, these cases do not fall under the exceptions where indemnity for loss of earning capacity can be given despite lack of documentary evidence. Therefore, for lack of documentary proof, no indemnity for loss of earning capacity can be given in these cases. (Emphasis supplied)

Here, the trial court and the Court of Appeals computed the award of compensatory damages for loss of earning capacity only on the basis of the testimony of respondent Rosalito that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue, Tuguegarao District Office with a salary of P83,088.00 per annum when she died.[41] No other evidence was presented. The award is clearly erroneous because the

deceased's earnings does not fall within the exceptions.

However, the fact of loss having been established, temperate damages in the amount of P500,000.00 should be awarded to respondents. Under Article 2224 of the Civil Code, temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

In *Pleno v. Court of Appeals*,^[42] the Court sustained the trial court's award of P200,000.00 as temperate damages in lieu of actual damages for loss of earning capacity because the income of the victim was not sufficiently proven, thus –

The trial court based the amounts of damages awarded to the petitioner on the following circumstances:

...

“As to the loss or impairment of earning capacity, there is no doubt that Pleno is an ent[re]preneur and the founder of his own corporation, the Mayon Ceramics Corporation. It appears also that he is an industrious and resourceful person with several projects in line, and were it not for the incident, might have pushed them through. On the day of the incident, Pleno was driving homeward with geologist Longley after an ocular inspection of the site of the Mayon Ceramics Corporation. His actual income however has not been sufficiently established so that this Court cannot award actual damages, but, an award of temperate or moderate damages may still be made on loss or impairment of earning capacity. That Pleno sustained a permanent deformity due to a shortened left leg and that he also suffers from double vision in his left eye is also established. Because of this, he suffers from some inferiority complex and is no longer active in business as well as in social life. In similar cases as in *Borromeo v. Manila Electric Railroad Co.*, 44 Phil 165; *Coriage, et al. v. LTB Co., et al.*, L-11037, Dec. 29, 1960, and in *Araneta, et al. v. Arreglado, et al.*, L-11394, Sept. 9, 1958, the proper award of damages were given.”

...

We rule that the lower court's awards of damages are more consonant with the factual circumstances of the instant case. The trial court's findings of facts are clear and well-developed. Each item of damages is adequately supported by evidence on record.

Article 2224 of the Civil Code was likewise applied in the recent cases of *People v. Singh*^[43] and *People v. Almedilla*,^[44] to justify the award of temperate damages in lieu of damages for loss of earning capacity which was not substantiated by the required documentary proof.

Anent the award of moral damages, the same cannot be lumped with exemplary damages because they are based on different jural foundations.^[45] These damages are different in nature and require separate determination.^[46] In culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of contractual obligations and, as in this case, when the act of breach of contract itself constitutes the tort that results in physical injuries. By special rule in Article 1764 in relation to Article 2206 of the Civil Code, moral damages may also be awarded in case the death of a passenger results from a breach of carriage.^[47] On the other hand, exemplary damages, which are awarded by way of example or correction for the public good may be recovered in contractual obligations if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.^[48]

Respondents in the instant case should be awarded moral damages to compensate for the grief caused by the death of the deceased resulting from the petitioner's breach of contract of carriage. Furthermore, the petitioner failed to prove that it exercised the extraordinary diligence required for common carriers, it is presumed to have acted recklessly.^[49] Thus, the award of exemplary damages is proper. Under the circumstances, we find it reasonable

to award respondents the amount of P100,000.00 as moral damages and P100,000.00 as exemplary damages. These amounts are not excessive.[50]

The actual damages awarded by the trial court reduced by the Court of Appeals should be further reduced. In *People v. Duban*,^[51] it was held that only substantiated and proven expenses or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized. A list of expenses (Exhibit “J”),^[52] and the contract/receipt for the construction of the tomb (Exhibit “F”)^[53] in this case, cannot be considered competent proof and cannot replace the official receipts necessary to justify the award. Hence, actual damages should be further reduced to P78,160.00,^[54] which was the amount supported by official receipts.

Pursuant to Article 2208^[55] of the Civil Code, attorney’s fees may also be recovered in the case at bar where exemplary damages are awarded. The Court finds the award of attorney’s fees equivalent to 10% of the total amount adjudged against petitioner reasonable.

Finally, in *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[56] it was held that when an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for payment of interest in the concept of actual and compensatory damages, subject to the following rules, to wit –

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (Emphasis supplied).

In the instant case, petitioner should be held liable for payment of interest as damages for breach of contract of carriage. Considering that the amounts payable by petitioner has been determined with certainty only in the instant petition, the interest due shall be computed upon the finality of this decision at the rate of 12% per annum until satisfaction, per paragraph 3 of the aforecited rule.^[57]

WHEREFORE, in view of all the foregoing, the petition is **PARTIALLY GRANTED**. The April 11, 2003 decision of the Court of Appeals in CA-G.R. CV No. 63290, which modified the decision of the Regional Trial Court of Tuguegarao, Cagayan in Civil Case No. 5023, is **AFFIRMED with MODIFICATION**. As modified, petitioner Victory Liner, Inc., is ordered to pay respondents the following: (1) P50,000.00 as indemnity for the death of Marie Grace Pagulayan-Gammad; (2) P100,000.00 as moral damages; (3) P100,000.00 as exemplary

damages; (4) P78,160.00 as actual damages; (5) P500,000.00 as temperate damages; (6) 10% of the total amount as attorneys fees; and the costs of suit.

Furthermore, the total amount adjudged against petitioner shall earn interest at the rate of 12% per annum computed from the finality of this decision until fully paid.

SO ORDERED.

Quisumbing, Carpio, and Azcuna, JJ., concur.

Davide, Jr., C.J., on official leave.

[1] Rollo, p. 57. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Eugenio S. Labitoria and Regalado E. Maambong.

[2] Rollo, p. 135. Penned by Judge Rolando L. Salacup.

[3] Mother of the other respondents (TSN, 1 July 1997, p. 8).

[4] TSN, 1 July 1997, pp. 4-6.

[5] Records, p. 1.

[6] Id., p. 10.

[7] Initially set on November 7, 1996 (Records, p. 16) but moved to December 18, 1996 on motion of petitioner's counsel (Records, p. 20), and thereafter motu proprio reset by the court to February 12, 1997 (Records, p. 24). Finally, upon agreement of both counsels, pre-trial was scheduled to April 10, 1997.

[8] Order dated February 12, 1997, Records, p. 27.

[9] Records, p. 29.

[10] Id., p. 31.

[11] Order dated May 6, 1997, Records, p. 33.

[12] Pre-trial Order dated May 6, 1997, Records, p. 34.

[13] Originally set on August 13, 1997 (Records, p. 36), but was rescheduled by the trial court to November 17, 1997 (Records, p. 38).

[14] Records, p. 39.

[15] Id., p. 41.

[16] Id., p. 44.

[17] Id., p. 45.

[18] Id., p. 46.

[19] Rollo, pp. 140-141.

[20] Id., pp. 79-80.

[21] CA Rollo, p. 93.

- [22] 377 Phil. 482 (1999).
- [23] Resolution dated August 21, 2003, Rollo, p. 83.
- [24] APEX Mining, Inc., *supra*, pp. 493-494.
- [25] Records, p. 19.
- [26] *Id.*, p. 25.
- [27] *Id.*, p. 28.
- [28] CA Rollo, p. 95.
- [29] 377 Phil. 482, 494-495 (1999).
- [30] 415 Phil. 492 (2001).
- [31] *Id.*, pp. 504-505.
- [32] G.R. No. 147995, 4 March 2004.
- [33] *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812, 830 (2002).
- [34] *Baliwag Transit, Inc. v. Court of Appeals*, 326 Phil. 762, 768 (1996).
- [35] ART. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.
- [36] ART. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
- (1) 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; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
- (2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;
- (3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.
- [37] *Tiu v. Arriesgado*, G.R. No. 138060, 1 September 2004.
- [38] *People v. Oco*, G.R. Nos. 137370-71, 29 September 2003, 412 SCRA 190, 222.
- [39] *Supra*.
- [40] G.R. Nos. 116224-27, 28 March 2003, 400 SCRA 67, 84-85.
- [41] TSN, 1 July 1997, p. 8.
- [42] G.R. No. L-56505, 9 May 1988, 161 SCRA 208, 224-225.

[43] 412 Phil. 842, 859 (2001). In this case, the Court awarded P200,000.00 temperate damages in place of the P5,760,000.00 awarded by the trial court as damages for loss of earning capacity of the deceased because the prosecution did not present the best evidence to prove the deceased's income.

[44] G.R. No. 150590, 21 August 2003, 409 SCRA 428, 433. Here, the Court did not compute damages for loss of earning capacity on the basis of the widow's testimony that his deceased husband was earning P22,000.00 a month and P10,000.00 from his sideline. Instead, the widow was awarded P25,000.00 as temperate damages.

[45] *People v. Trapane*, 436 Phil. 671, 682 (2002).

[46] *People v. Astudillo*, G.R. No. 141518, 29 April 2003, 401 SCRA 723, 739.

[47] *Expertravel & Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 448-449 (1999).

[48] *Yobido v. Court of Appeals*, 346 Phil. 1, 13 (1997).

[49] *Id.*

[50] *Fortune Express, Inc. v. Court of Appeals*, 364 Phil. 480, 496 (1999).

[51] G.R. No. 141217, 26 September 2003, 412 SCRA 131, 139.

[52] *Records*, p. 53.

[53] *Id.*, p. 49.

[54] Exhibit "C", Exhibit "D", Exhibit "E", *Records*, pp. 47-48; Exhibit "G" and Exhibit "H", *Records*, pp. 50-51.

[55] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

...

[56] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-96.

[57] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004. In this case, the Court set aside the decision of the Court of Appeals and in lieu thereof decreed the award of, among others, P500,000.00 monthly, representing the unrealized monthly income of petitioner or P6 Million a year from December 1, 1992 until respondent vacates the leased premises. The interest imposed was 12% per annum computed from the finality of the decision of the Court.

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