

PHILTRANCO SERVICE ENTERPRISES, INC., PETITIONER, VS. FELIX PARAS AND INLAND TRAILWAYS, INC., AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 161909. April 25, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In an action for breach of contract of carriage commenced by a passenger against his common carrier, the plaintiff can recover damages from a third-party defendant brought into the suit by the common carrier upon a claim based on tort or quasi-delict. The liability of the third-party defendant is independent from the liability of the common carrier to the passenger.

Philtranco Service Enterprises, Inc. (Philtranco) appeals the affirmance with modifications by the Court of Appeals (CA) of the decision of the Regional Trial Court (RTC) awarding moral, actual and temperate damages, as well as attorney's fees and costs of suit, to respondent Felix Paras (Paras), and temperate damages to respondent Inland Trailways, Inc. (Inland), respectively the plaintiff and the defendant/third-party plaintiff in this action for breach of contract of carriage, upon a finding that the negligence of the petitioner and its driver had caused the serious physical injuries Paras sustained and the material damage Inland's bus suffered in a vehicular accident.

Antecedents

The antecedent facts, as summarized by the CA, are as follows:

Plaintiff-appellant [respondent] Felix Paras (Paras for brevity), who hails from Cainta, Rizal is engaged in the buy and sell of fish products. Sometime on 08 February 1987, on his way home to Manila from Bicol Region, he hoarded a bus with Body No. 101 and Plate No. EVE 508, owned and operated- by Inland Trailways, Inc. (Inland for brevity) and driven by its driver Calvin Coner (Coner for brevity).

At approximately 3:50 o'clock in the morning of 09 February 1987, while the said bus was travelling along Maharlika Highway, Tiaong, Quezon, it was bumped at the rear by another bus with Plate No. 1-VB 259, owned and operated by Philtranco Service Enterprises, Inc. (Philtranco for brevity). As a result of the strong and violent impact, the Inland bus was pushed forward and smashed into a cargo truck parked along the outer right portion of the highway and the shoulder thereof. Consequently, the said accident bought considerable damage to the vehicles involved and caused physical injuries to the passengers and crew of the two buses, including the death of Coner who was the driver of the Inland Bus at the time of the incident.

Paras was not spared from the pernicious effects of the accident. After an emergency treatment at the San Pablo Medical Center, San Pablo City, Laguna, Paras was taken to the National Orthopedic Hospital. At the latter hospital, he was found and diagnosed by Dr. Antonio Tanchuling, Jr. to be affected with the following injuries: a) contusion/hematoma; b) dislocation of hip upon fracture of the fibula on the right leg; c) fractured small bone on the right leg; and d) close fracture on the tibial plateau of the left leg. (Exh. "A", p. 157. record)

On 04 March 1987 and 15 April 1987. Paras underwent two (2) operations affecting the fractured portions of his body. (Exhs. "A-2" and "A-3", pp. 159 and 160 respectively, record)

Unable to obtain sufficient financial assistance from Inland for the costs of his operations, hospitalization, doctors' fees and other miscellaneous expenses, on 31 July 1989. Paras filed a complaint for damages based on breach of contract of carriage against Inland.

In its answer, defendant Inland denied responsibility, by alleging, among others, that its driver Coner had observed an utmost and extraordinary care and diligence to ensure the safety of its passengers. In support of its disclaimer of responsibility. Inland invoked the Police Investigation Report which established the fact that the Philtranco bus driver of [sic] Apolinar Miralles was the one which violently bumped the rear portion of the inland bus. and therefore, the direct and proximate cause of Paras' injuries.

On 02 March 1990. upon leave of court. Inland Hied a third-party complaint against Philtranco and Apolinar Miralles (Third Party defendants). In this third-party complaint. Inland, sought for exoneration of its liabilities to Paras, asserting that the latter's cause of action should be directed against Philtranco considering that the accident was caused by Miralles' lack of care, negligence and reckless imprudence, (pp. 50 to 56, records).

After trial, the RTC (Branch 71) in Antipolo, Rizal rendered its judgment on July 18, 1997,[1] viz:

WHEREFORE, third-party defendant Philtranco and Apolinar Miralles are hereby ordered to pay plaintiff jointly and severally, the following amounts:

- P54,000.00 as actual damages;
- P50,000.00 as moral damages;
- P20,000.00 as attorney's fees and costs.

SO ORDERED.

All the parties appealed to the CA on different grounds.

On his part, Paras ascribed the following errors to the RTC, to wit:

- I. THE TRIAL COURT ERRED IN HOLDING THAT ONLY THIRD-PARTY DEFENDANT-APPELLANT PHILTRANCO IS LIABLE FOR THE DAMAGES SUFFERED BY APPELLANT PARAS.
- II. THE TRIAL COURT ERRED IN NOT HOLDING APPELLANT INLAND TRAILWAYS INC. TO BE JOINTLY AND SEVERALLY LIABLE FOR THE DAMAGES SUFFERED BY PARAS.
- III. THE TRIAL COURT ERRED IN NOT AWARDING UNEARNED INCOME AS ADDITIONAL ACTUAL DAMAGES SUFFERED BY APPELLANT PARAS AS HIS PHYSICAL DISABILITY IS PERMANENT IN NATURE.
- IV. THE TRIAL COURT ERRED IN NOT AWARDING EXEMPLARY DAMAGES IN FAVOR OF APPELLANT PARAS.

On the other hand. Inland assigned the following errors to the RTC, namely;

THE TRIAL COURT ERRED WHEN IT FAILED TO AWARD DAMAGES UNTO THE THIRD PARTY PLAINTIFF NOTWITHSTANDING CLEAR FINDING THAT:

'It is clear from the evidence that the plaintiff sustained injuries because of the reckless, negligence, and lack of precaution of third party defendant Apolinar Miralles, an employee of Philtranco. '

AND, COMPLETELY DISREGARDED "THE UNCONTROVERTED ORAL AND DOCUMENTARY

EVIDENCES ESTABLISHING THE EXTENT AND DEGREE OF DAMAGES SUSTAINED BY THE THIRD PARTY PLAINTIFF.

Lastly, Philtranco stated that the RTC erred thuswise:

I

THE COURT A QUO MISERABLY ERRED IN AWARDING ACTUAL DAMAGES GREATER THAN WHAT WAS ALLEGED IN THE COMPLAINT ITSELF, AND EVEN MUCH MORE GREATER THAN WHAT WERE PROVED DURING THE TRIAL, HENCE, PERPETUATING UNJUST ENRICHMENT.

II

THE COURT A QUO SERIOUSLY ERRED IN AWARDING MORAL DAMAGES TO A CAUSE OF ACTION OF CULPA-CONTRACTUAL EVEN WITHOUT ANY EVIDENCE OF GROSS BAD FAITH; HENCE, CONTRARY TO THE ESTABLISHED DOCTRINE IN THE CASES OF PHIL. RABBIT BUS LINES VS. ESGUERRA; SOBERANO VS. BENGUET AUTO LINE AND FLORES VS. MIRANDA.

III

THE COURT A QUO MISERABLY ERRED IN HOLDING THAT MIRALLES WAS THE ONE AT FAULT MERELY ON THE STRENGTH OF THE TESTIMONY OF THE POLICE INVESTIGATOR WHICH IS IN TURN BASED ON THE STATEMENTS OF ALLEGED WITNESSES WHO WERE NEVER PRESENTED ON THE WITNESS STAND.

THE COURT A QUO COMMITTED A GRIEVOUS ERROR IN DISREGARDING THE TESTIMONY OF APPELLANTS' WITNESSES WHO TESTIFIED AS TO THE DEFENSE OF EXERCISE OF DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF EMPLOYEES PURSUANT TO ART. 2180, LAST PARAGRAPH, NEW CIVIL CODE.

On September 25, 2002, the CA promulgated its decision,[2] disposing:

WHEREFORE, in consideration of the foregoing premises, the assailed decision dated 18 July 19(9)7 is perforce affirmed with the following modifications:

1. Third party defendants-appellants Philtranco and Apolinar Miralles are ordered to pay plaintiff-appellant Felix Paras jointly and severally the following amounts:

- a) P1,397.95 as actual damages;
- b) P50,000.00 as temperate damages;
- c) P50,000.00 as moral damages; and
- d) P20,000.00 as attorney's fees and costs of suit.

2. On the third party plaintiff-appellant Inland's claims, the third party defendant-appellants Philtranco and Apolinar Miralles are hereby ordered to pay the former (Inland) jointly and severally the amount of P250,000.00 as and by way of temperate damages.

SO ORDERED.

The CA agreed with the RTC's finding that no trace of negligence at the time of the accident was attributable to Inland's driver, rendering Inland not guilty of breach of contract of carriage; that faulty brakes had caused Philtranco's bus to forcefully bump Inland's bus from behind, making it hit the rear portion of a parked cargo truck; that the impact had resulted in considerable material damage to the three vehicles; and that Paras and others had sustained various physical injuries.

Accordingly, the CA:- (a) sustained the award of moral damages of P50,000.00 in favor of Paras pursuant to Article 2219 of the Civil Code based on quasi-delict committed by Philtranco and its driver; (b) reduced the actual damages to be paid by Philtranco to Paras from P54,000.00 to P1,397.95 because only the latter amount had been duly supported by receipts; (c) granted temperate damages of P50,000.00 (in lieu of actual damages in view of the absence of competent proof of actual damages for his hospitalization and therapy) to be paid by Philtranco to Paras; and (d) awarded temperate damages of P250,000.00 under the same premise to be paid by Philtranco to Inland for the material damage caused to Inland's bus.

Philtranco moved for reconsideration,[3] but the CA denied its motion for reconsideration on January 23, 2004.[4]

Issues

Hence, this appeal, in which the petitioner submits that the CA committed grave abuse of discretion amounting to lack of jurisdiction in awarding moral damages to Paras despite the fact that the complaint had been anchored on breach of contract of carriage; and that the CA committed a reversible error in substituting its own judgment by motu proprio awarding temperate damages of P250,000.00 to Inland and P50,000.00 to Paras despite the clear fact that temperate damages were not raised on appeal by Paras and Inland.

Ruling

The appeal lacks merit.

The Court does not disturb the unanimous findings by the CA and the RTC on the negligence of Philtranco and its driver being the direct cause of the physical injuries of Paras and the material damage of Inland.

Nonetheless, we feel bound to pass upon the disparate results the CA and the RTC reached on the liabilities of Philtranco and its driver.

1.

Paras can recover moral damages
in this suit based on quasi-delict

Philtranco contends that Paras could not recover moral damages because his suit was based on breach of contract of carriage, pursuant to which moral damages could be recovered only if he had died, or if the common carrier had been guilty of fraud or bad faith. It argues that Paras had suffered only physical injuries; that he had not adduced evidence of fraud or bad faith on the part of the common carrier; and that, consequently, Paras could not recover moral damages directly from it (Philtranco), considering that it was only being subrogated for Inland.

The Court cannot uphold the petitioner's contention.

As a general rule, indeed, moral damages are not recoverable in an action predicated on a breach of contract. This is because such action is not included in Article 2219 of the Civil Code[5] as one of the actions in which moral damages may be recovered. By way of exception, moral damages are recoverable in an action predicated on a breach of contract: (a) where the mishap results in the death of a passenger, as provided in Article 1764,[6] in relation to Article 2206, (3),[7] of the Civil Code; and (b) where the common carrier has been guilty of fraud or bad faith,[8] as provided in Article 2220[9] of the Civil Code.

Although this action does not fall under either of the exceptions, the award of moral damages to Paras was nonetheless proper and valid. There is no question that Inland filed its third-party complaint against Philtranco and its driver in order to establish in this action that they, instead of Inland, should be directly liable to Paras for the physical injuries he had sustained because of their negligence. To be precise. Philtranco and its driver were brought into the action on the theory of liability that the proximate cause of the collision between Inland's bus and

Philtranco's bus had been "the negligent, reckless and imprudent manner defendant Apolinar Miralles drove and operated his driven unit, the Philtranco-Bus with Plate No. 259, owned and operated by third-party defendant Philtranco Service Enterprises, Inc." [10] The apparent objective of Inland was not to merely subrogate the third-party defendants for itself, as Philtranco appears to suggest, [11] but, rather, to obtain a different relief whereby the third-party defendants would be held directly, fully and solely liable to Paras and inland for whatever damages each had suffered from the negligence committed by Philtranco and its driver. In other words, Philtranco and its driver were charged here as joint tortfeasors who would be jointly and severally be liable to Paras and Inland.

Impleading Philtranco and its driver through the third-party complaint filed on March 2, 1990 was correct. The device of the third-party action, also known as impleader, was in accord with Section 12, Rule 6 of the Revised Rules of Court, the rule then applicable, viz:

Section 12. Third-party complaint. — A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. [12]

Explaining the application of Section 12, Rule 6, supra, the Court said in *Balbastro v. Court of Appeals*, [13] to wit:

Section 12 of Rule 6 of the Revised Rules of Court authorizes a defendant to bring into a lawsuit any person "not a party to the action . . . for contribution, indemnity, subrogation or any other relief in respect of his opponent's claim." From its explicit language it does not compel the defendant to bring the third-parties into the litigation, rather it simply permits the inclusion of anyone who meets the standard set forth in the rule. The secondary or derivative liability of the third-party is central — whether the basis is indemnity, subrogation, contribution, express or implied warranty or some other theory. The impleader of new parties under this rule is proper only when a right to relief exists under the applicable substantive law. This rule is merely a procedural mechanism, and cannot be utilized unless there is some substantive basis under applicable law.

Apart from the requirement that the third-party complainant should assert a derivative or secondary claim for relief from the third-party defendant there are other limitations on said party's ability to implead. The rule requires that the third-party defendant is "not a party to the action" for otherwise the proper procedure for asserting a claim against one who is already a party to the suit is by means of counterclaim or cross-claim under sections 6 and 7 of Rule 6. In addition to the aforementioned requirement, the claim against the third-party defendant must be based upon plaintiff's claim against the original defendant (third-party claimant). The crucial characteristic of a claim under section 12 of Rule 6, is that the original "defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff."

Accordingly, the requisites for a third-party action are, firstly, that the party to be impleaded must not yet be a party to the action; secondly, that the claim against the third-party defendant must belong to the original defendant; thirdly, the claim of the original defendant against the third-party defendant must be based upon the plaintiff's claim against the original defendant; and, fourthly, the defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. [14]

As the foregoing indicates, the claim that the third-party complaint asserts against the third-party defendant must be predicated on substantive law. Here, the substantive law on which the right of Inland to seek such other relief through its third-party complaint rested were Article 2176 and Article 2180 of the Civil Code, which read:

Article 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. (1902a)

Article 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.

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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.

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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. (1903a)

Paras' cause of action against Inland (breach of contract of carriage) did not need to be the same as the cause of action of Inland against Philtranco and its driver (tort or quasi-delict) in the impleader. It is settled that a defendant in a contract action may join as third-party defendants those who may be liable to him in tort for the plaintiffs claim against him, or even directly to the plaintiff[15] Indeed, Prof. Wright, et al., commenting on the provision of the Federal Rules of Procedure of the United States from which Section 12, supra, was derived, observed so, to wit:[16]

The third-party claim need not be based on the same theory as the main claim. For example, there are cases in which the third-party claim is based on an express indemnity contract and the original complaint is framed in terms of negligence. Similarly, there need not be any legal relationship between the third-party defendant and any of the other parties to the action. Impleader also is proper even though the third party's liability is contingent, and technically does not come into existence until the original defendant's liability has been established. In addition, the words 'may be liable' in Rule 14(a) make it clear that impleader is proper even though the third-party defendant's liability is not automatically established once the third-party plaintiff's liability to the original plaintiff has been determined.

Nor was it a pre-requisite for attachment of the liability to Philtranco and its driver that Inland be first declared and found liable to Paras for the breach of its contract of carriage with him.[17] As the Court has cogently discoursed in *Samala v. Judge Vidor*:[18]

Appellants argue that since plaintiffs filed a complaint for damages against the defendants on a breach of contract of carriage, they cannot recover from the third-party defendants on a cause of action based on quasi-delict. The third party defendants, they allege, are never parties liable with respect to plaintiffs claim although they are with respect to the defendants for indemnification, subrogation, contribution or other reliefs. Consequently, they are not directly liable to the plaintiffs. Their liability commences only when the defendants are adjudged liable and not when they are absolved from liability as in the case at bar.

Quite apparent from these arguments is the misconception entertained by appellants with respect to the nature and office of a third party complaint.

Section 16. Rule 6 of the Revised Rules of Court defines a third party complaint as a "claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnification, subrogation, or any other relief, in respect of his opponent's claim." In the case of *Viluan vs. Court of Appeals, et al*, 16 SCRA 742 [1966], this Court had occasion to elucidate on the subjects covered by this Rule, thus:

... As explained in the *Atlantic Coast Line R. Co. vs. U.S. Fidelity & Guaranty Co.*, 52 F. Supp. 177(1943:)

'From the sources of Rule 14 and the decisions herein cited, it is clear that this rule, like the admiralty rule, 'covers two distinct subjects, the addition of parties defendant to the main cause of action, and the bringing in of a third party for a defendant's remedy over', xxx

'If the third party complaint alleges facts showing a third party's direct liability to plaintiff on the claim set out in plaintiffs petition, then third party 'shall' make his defenses as provided in Rule 12 and his counterclaims against plaintiff as provided in Rule 13. In the case of alleged direct liability, no amendment (to the complaint) is necessary or required. The subject-matter of the claim is contained in plaintiffs complaint, the ground of third party's liability on that claim is alleged in third party complaint, and third party's defense to set up in his answer to plaintiffs complaint. At that point and without amendment, the plaintiff and third party are at issue as to their rights respecting the claim.

The provision in the rule that, 'The third-party defendant may assert any defense which the third-party plaintiff may assert to the plaintiffs claim,' applies to the other subject, namely, the alleged liability of third party defendant. The next sentence in the rule, 'The third-party defendant is bound by the adjudication of the third party plaintiffs liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff applies to both subjects. If third party is brought in as liable only to defendant and judgment is rendered adjudicating plaintiffs right to recover against defendant and defendant's rights to recover against third party, he is bound by both adjudications. That part of the sentence refers to the second subject. If third party is brought in as liable to plaintiff, then third party is bound by the adjudication as between him and plaintiff. That refers to the first subject. If third party is brought in as liable to plaintiff and also over to defendant, then third party is bound by both adjudications.

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Under this Rule, a person not a party to an action may be impleaded by the defendant either (a) on an allegation of liability to the latter; (b) on the ground of direct liability to the plaintiff-; or, (c) both (a) and (b). The situation in (a) is covered by the phrase "for contribution, indemnity or subrogation;" while (b) and (c) are subsumed under the catch all "or any other relief, in respect of his opponent's claim."

The case at bar is one in which the third party defendants are brought into the action as directly liable to the plaintiffs upon the allegation that "the primary and immediate cause as shown by the police investigation of said vehicular collision between (sic) the above-mentioned three vehicles was the recklessness and negligence and lack of imprudence (sic) of the third-party defendant Virgilio (should be Leonardo) Esguerra y Ledesma then driver of the passenger bus." The effects are that "plaintiff and third party are at issue as to their rights respecting the claim" and "the third party is bound by the adjudication as between him and plaintiff." It is not indispensable in the premises that the defendant be first adjudged liable to plaintiff before the third-party defendant may be held liable to the plaintiff, as precisely, the theory of defendant is that it is the third party defendant, and not he, who is directly liable to plaintiff. The situation contemplated by appellants would properly pertain to situation (a) above wherein the third party defendant is being sued for contribution, indemnity or subrogation, or simply stated, for a defendant's "remedy over".[19]

It is worth adding that allowing the recovery of damages by Paras based on quasi-delict, despite his complaint being upon contractual breach, served the judicial policy of avoiding multiplicity of suits and circuity of actions by disposing of the entire subject matter in a single litigation.[20]

2.

Award of temperate damages was in order

Philtranco assails the award of temperate damages by the CA considering that, firstly, Paras and Inland had not raised the matter in the trial court and in their respective appeals; secondly, the CA could not substitute the temperate damages-granted to Paras if Paras could not properly establish his actual damages despite evidence of his actual expenses being easily available to him; and, thirdly, the CA gravely abused its discretion in granting

motu proprio the temperate damages of P250,000.00 to Inland although Inland had not claimed temperate damages in its pleading or during trial and even on appeal.

The Court cannot side with Philtranco.

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. The reason is that the court "cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages/" but "there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts." [21]

The receipts formally submitted and offered by Paras were limited to the costs of medicines purchased on various times in the period from February 1987 to July 1989 (Exhibits E to E-35, inclusive) totaling only P1,397.95. [22] The receipts by no means included hospital and medical expenses, or the costs of at least two surgeries as well as rehabilitative therapy. Consequently, the CA fixed actual damages only at that small sum of P1,397.95. On its part, Inland offered no definite proof on the repairs done on its vehicle, or the extent of the material damage except the testimony of its witness, Emerlinda Maravilla, to the effect that the bus had been damaged beyond economic repair. [23] The CA rejected Inland's showing of unrealized income worth P3,945,858.50 for 30 months (based on alleged average, weekly income of P239,143.02 multiplied by its guaranteed revenue amounting to 55% thereof, then spread over a period of 30 months, the equivalent to the remaining 40% of the vehicle's un-depreciated or net book value), finding such showing arbitrary, uncertain and speculative. [24] As a result, the CA allowed no compensation to Inland for unrealized income.

Nonetheless, the CA was convinced that Paras should not suffer from the lack of definite proof of his actual expenses for the surgeries and rehabilitative therapy; and that Inland should not be deprived of recourse to recover its loss of the economic value of its damaged vehicle. As the records indicated. Paras was first rushed for emergency treatment to the San Pablo Medical Center in San Pablo City, Laguna, and was later brought to the National Orthopedic Hospital in Quezon City where he was diagnosed to have suffered a dislocated hip, fracture of the fibula on the right leg, fracture of the small bone of the right leg, and closed fracture on the tibial plateau of the left leg. He underwent surgeries on March 4, 1987 and April 15, 1987 to repair the fractures. [25] Thus, the CA awarded to him temperate damages of P50,000.00 in the absence of definite proof of his actual expenses towards that end. As to Inland, Maravilla's testimony of the bus having been damaged beyond economic repair showed a definitely substantial pecuniary loss, for which the CA fixed temperate damages of P250,000.00. We cannot disturb the CA's determination, for we are in no position today to judge its reasonableness on account of the lapse of a long time from when the accident occurred. [26]

In awarding temperate damages in lieu of actual damages, the CA did not err, because Paras and Inland were definitely shown to have sustained substantial pecuniary losses. It would really be a travesty of justice were the CA now to be held bereft of the discretion to calculate moderate or temperate damages, and thereby leave Paras and Inland without redress from the wrongful act of Philtranco and its driver. [27] We are satisfied that the CA exerted effort and practiced great care to ensure that the causal link between the physical injuries of Paras and the material loss of Inland, on the one hand, and the negligence of Philtranco and its driver, on the other hand, existed in fact. It also rejected arbitrary or speculative proof of loss. Clearly, the costs of Paras' surgeries and consequential rehabilitation, as well as the fact that repairing Inland's vehicle would no longer be economical justly warranted the CA to calculate temperate damages of P50,000.00 and P250,000.00 respectively for Paras and Inland.

There is no question .that Article 2224 of the Civil Code expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages, to wit:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

The rationale for Article 2224 has been stated in *Premiere Development Bank v. Court of Appeals*[28] in the following manner:

Even if not recoverable as compensatory damages. Panacor may still be awarded damages in the concept of temperate or moderate damages. When the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proved with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:

In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

3.

Paras' loss of earning capacity
must be compensated

In the body of its decision, the CA concluded that considering that Paras had a minimum monthly income of P8,000.00 as a trader he was entitled to recover compensation for unearned income during the 3-month period of his hospital confinement and the 6-month period of his recovery and rehabilitation; and aggregated his unearned income for those periods to P72,000.00.[29] Yet, the CA omitted the unearned income from the dispositive portion.

The omission should be rectified, for there was credible proof of Paras' loss of income during his disability: According to Article 2205, (1), of the Civil Code, damages may be recovered for loss or impairment of earning capacity in cases of temporary or permanent personal injury. Indeed, indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*).[30] Even so, the formula that has gained acceptance over time has limited recovery to net earning capacity; hence, the entire amount of P72,000.00 is not allowable. The premise is obviously that net earning capacity is the person's capacity to acquire money, less the necessary expense for his own living.[31] To simplify the determination, therefore, the net earning capacity of Paras during the 9-month period of his confinement, surgeries and consequential therapy is pegged at only half of his unearned monthly gross income of P8,000.00 as a trader, or a total of P36,000.00 for the 9-month period, the other half being treated as the necessary expense for his own living in that period.

It is relevant to clarify that awarding the temperate damages (for the substantial pecuniary losses corresponding to Paras's surgeries and rehabilitation and for the irreparability of Inland's damaged bus) and the actual damages to compensate lost earnings and costs of medicines give rise to no incompatibility. These damages cover distinct pecuniary losses suffered by Paras and Inland.[32] and do not infringe the statutory prohibition against recovering damages twice for the same act or omission.[33]

4.

Increase in award of attorney's fees

Although it is a sound policy not to set a premium on the right to litigate,[34] we consider the grant to Paras and Inland of reasonable attorney's fees warranted. Their entitlement to attorney's fees was by virtue of their having been compelled to litigate or to incur expenses to protect their interests,[35] as well as by virtue of the Court now further deeming attorney's fees to be just and equitable.[36]

In view of the lapse of a long time in the prosecution of the claim,[37] the Court considers it reasonable and proper to grant attorney's fees to each of Paras and Inland equivalent to 10% of the total amounts hereby awarded to them, in lieu of only P20,000.00 for that purpose granted to Paras.

5.

Legal interest on the amounts awarded

Pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*,[38] legal interest at the rate of 6% per annum accrues on the amounts adjudged reckoned from July 18, 1997, the date when the RTC rendered its judgment; and legal interest at the rate of 12% per annum shall be imposed from the finality of the judgment until its full satisfaction, the interim period being regarded as the equivalent of a forbearance of credit.

WHEREFORE, the Court AFFIRMS WITH MODIFICATION the decision of the Court of Appeals promulgated on September 25, 2002. by ordering PHILTRANCO SERVICE ENTERPRISES, INC. and APOLINAR MIRALLES to pay, jointly and severally, as follows:

1. To Felix Paras:

(a) P1,397.95, as reimbursement for the costs of medicines purchased between February 1987 and July 1989;

(b) P50,000.00 as temperate damages;

(c) P50,000.00 as moral damages;

(d) P36,000.00 for lost earnings;

(e) 10% of the total of items (a) to (d) hereof as attorney's fees; and

(f) Interest of 6% per annum from July 18, 1997 on the total of items (a) to (d) hereof until finality of this decision, and 12% per annum thereafter until full payment.

2. To Inland Trail ways, Inc.:

(a) P250,000.00 as temperate damages;

(b) 10% of item (a) hereof; and

(c) Interest of 6% per annum on item (a) hereof from July 18, 1997 until finality of this decision, and 12% per annum thereafter until full payment.

3. The petitioner shall pay the costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo de Castro, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 66-70.

[2] CA rollo, pp. 115-132; penned by Associate Justice Bienvenido I. Reyes (now a Member of the Court), with Associate Justice Hilarion L. Aquino (retired) and Associate Justice Mario L. Guariña 111 (retired) concurring.

[3] CA rollo, pp. 133-143.

[4] Id., pp. 129-131.

[5] Article 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[6] Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with '1 hie 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.

[7] Article 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 (he 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.

[8] Japan Airlines v. Simangan, G.R. No. 17014 1, April 22, 2008, 552 SCRA 34!, 361.

[9] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[10] Rollo, p. 57.

[11] Id, p. 13.

[12] The rule, as revised in 1997, presently provides:

Section 11. Third (fourth, etc.) party complaint. — A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. (12a)

[13] No. 33255, November 29, 1972, 48 SCRA 23 1 (bold emphasis supplied)

[14] Id., pp. 236-237.

[15] Viluan v. Court of Appeals. Nos. 1,-21477-81, April 29, 1966. 16 SCRA 742; Samala v. Judge Victor. G.R. No. L,-53969, February 21, 1989, 170 SCRA 453, 460.

[16] Wright, Miller & Kane, Federal Practice and Procedure, Vol. 6, §1446, 1990 Edition. pp. 372-373.

[17] Viluan v. Court of Appeals, supra, note 15.

[18] Samala v. Judge Victor, supra, note 15.

[19] Id., at pp. 458-160 (bold underscoring supplied for emphasis).

[20] Id., at p. 460.

[21] Viron Transportation Co., Inc. v. Delos Samos, G.R. No. 138296, November 22, 2000, 345 SCRA 509,519.

[22] Records, pp. 176-1 85.

[23] Rollo, p.35.

[24] Id. p. 36.

[25] TSN, October 18, 1991, pp. 11-12.

[26] The Civil Code states:

Article 2225. Temperate damages must be reasonable under the circumstances.

[27] Government Service Insurance System v. Labung-Deang. G.R. No. 135644, September 17, 2001, 365 SCRA 341, 350.

[28] G.R. No. 159352, April 14, 2004, 427 SCRA 686, 699.

[29] Rollo, pp. 34-35.

[30] Titan-Ikeda Construction and Development Corporation v. Primetown Property Group, Inc., G.R. No. 158768. February 12, 2008, 544 SCRA 466, 491.

[31] Villa Rey Transit. Inc. v. Court of Appeals, 31 SCRA 511, 515-517.

[32] See. e.g., Ramos v. Court of Appeals. G.R. No. 124354, December 29, 1999, 321 SCRA 584, 624-625.

[33] The Civil Code provides:

Article. 21 77. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant, (n)

[34] Durban Apartments Corporation v. Pioneer Insurance and Surety Corporation, G.R. No. 179419, January 12, 2011, 639 SCRA 441, 454; see also Bank of the Philippine Islands v. Casa Montessori International, G.R. Nos. 149454 & 149507. May 28, 2004, 430 SCRA 261, 296.

[35] Article 2208, par. 2, Civil Code.

[36] Article 2208, par. 11, Civil Code.

[37] New World International Development (Phils.), Inc. v. NYK-FilJapan Shipping Corp. G.R. No. 171468/174241, August 24, 2011.

[38] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97.

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