ANTONIO V. NUEVA ESPAÑA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 163351. June 21, 2005

Ponente: CORONA, J.

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CORONA, J.:

At about 11:15 a.m. on May 15, 1998, petitioner Antonio E. Nueva España was driving a passenger bus owned by Vallacar Transit, Inc. He was then traversing the national highway of Calag-Calag, Ayungon, Negros Oriental and was southbound going to Dumaguete City. While negotiating a curve, the passenger bus collided with a northbound Honda motorcycle. As a result, Reynard So, the driver of the motorcycle, and Nilo Castro, the person riding in tandem with him, were killed. An information for reckless imprudence resulting in double homicide[1] was filed against petitioner who was also accused of failing to extend aid or assistance to the victims.

During the trial of the case, the prosecution presented Julito Dayuday and Florencio Banico as eyewitnesses to the collision. The father of So and the mother of Castro were also called to the witness stand to substantiate their respective claims for damages.

Julito Dayuday, a resident of Calag-Calag, Ayungon, Negros Oriental, testified that he was waiting for a ride to Dumaguete City when the collision between the bus and the Honda motorcycle occurred. He saw the bus coming from the north going to Dumaguete City and, in the opposite direction, a pedicab being followed by a Suzuki motorcycle and a Honda motorcycle on which So and Castro were riding. Upon approaching the curve on the highway, the bus swerved from its lane and struck the Honda motorcycle. The motorcycle snagged onto the left front fender of the bus and was dragged about 24 meters to the right of the southbound lane. So had been thrown to the ground by the time the bus finally stopped. Dayuday testified that he saw the accused get off the bus with the conductor and the passengers but, instead of assisting the victims, he casually walked away from the scene of the accident.

Florencio Banico, on the other hand, was a passenger of the bus driven by petitioner. He corroborated the testimony of Dayuday that the bus hit the motorcycle while it was negotiating a curve on the highway of Calag-Calag. He also stated in court that the accused left the scene of the accident while the victims lay dying on the road. He heard Castro shouting for help while So was unconscious. He testified that nobody helped the victims.

The father of So testified that his son was 30 years old at the time of his death and he was engaged in the buying and selling of copra. He was likewise a sugar cane planter and maintained a sari-sari store. So's father claimed that his son was earning P30,000 a month from his copra business and sari-sari store, and P50,000 a month from selling sugar cane. He added that his family spent P87,200[2] for the wake and funeral. He also demanded payment of attorney's fees of P30,000.

The mother of Castro, on the other hand, testified that her son was 26 years old when he died. He worked as welder in Manila and earned P8,000 a month. She allegedly spent P30,000 for her son's wake and burial.

For the defense, SPO2 Dolger Germundo, SPO3 Hilbert Arinaza, Roche Taburasa and the petitioner himself were called to the witness stand.

SPO2 Germundo, a policeman, testified that he found the southbound bus in its proper lane when he arrived at the site after the collision. He did not see any tire or skid marks which meant that the point of impact was at the center of the road, as stated by the prosecution witnesses. In his sketch[3] and photograph[4] of the accident, the passenger bus and the Honda motorcycle were at the outer part of the southbound lane, which was the lane the bus was traversing at the time of the accident. Due to the positions of the colliding vehicles, he concluded that it was the motorcycle that rammed into the bus.

SPO3 Arinaza of the Philippine National Police testified that he was on his way to Dumaguete City on board the bus driven by petitioner. At the time of the accident, he was seated behind petitioner-driver and felt the Honda motorcycle smash into the bus.

Taburasa, for his part, claimed he was the driver of the Suzuki motorcycle So tried to overtake when they were both nearing the curve on the highway of Calag-Calag. He claimed the collision occurred because the Honda motorcycle overshot its lane in its attempt to overtake him. He corroborated the declaration of SPO3 Arinaza that So's motorcycle hit the left front fender of the bus.

When petitioner (the accused) was called to the witness stand, he denied the accusations against him. He testified that the Honda motorcycle swerved out of its lane and veered towards the bus, resulting in the collision. After the incident, he allegedly went down the bus to aid the victims and even helped carry them into the vehicle that brought them to a nearby hospital. He thereafter went to a police station to report the incident.

The trial court gave no credence to the defense witnesses and convicted petitioner of the crime charged. The dispositive part of the decision read:

> WHEREFORE, premises considered, this court finds accused, ANTONIO VILLANUEVA NUEVA ESPAÑA, guilty beyond reasonable doubt for the crime of RECKLESS IMPRUDENCE RESULTING TO DOUBLE HOMICIDE, and aggravated by his failure to help the victim, as provided for Article 365 of the Revised Penal Code, and appreciating in his favor the benefits of the Indeterminate Sentence Law, is hereby imposed the indeterminate penalty of SIX (6) MONTHS of arresto mayor as minimum to SIX (6) YEARS AND ONE (1) DAY of prision correcional as maximum, and to pay the following damages:
>
> TO THE HEIRS OF THE VICTIM REYNARD SO
>
> 1) P2,997,000.00 – indemnity for loss of earning capacity of victim
> 2) 14,200.00 – for expenses of the wake
> 3) 20,000.00 – for funeral parlor
> 4) 12,000.00 – for the tomb
> 5) 53,000.00 – for cost of burial site
> 6) 30,000.00 – for attorney's fees
> 7) 200,000.00 – for moral damages
> 8) 100,000.00 – for exemplary damages
>
> P3,429,200.00 – TOTAL AMOUNT
>
> which total amount shall bear interest at the rate of TWELVE (12%) percent per annum from the date of this decision until the same is paid.
>
> TO THE HEIRS OF VICTIM NILO CASTRO
>
> 1) P1,728,000.00 – indemnity for loss of earning capacity

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2) 20,000.00 – for funeral expenses
3) 200,000.00 – for moral damages
4) 50,000.00 – for exemplary damages

P1,998,000.00 – TOTAL AMOUNT

which total amount shall bear interest at the rate of TWELVE (12%) percent per annum counted from the date of this decision until the same is fully paid.

Cost against accused.

So ordered.[5]

Via a petition for review, petitioner appealed the judgment of the court a quo to the Court of Appeals. On November 2, 2003, the appellate court modified the assailed judgment:

Consequently, the penalty imposed by the trial court is erroneous. The appellant should suffer the indeterminate penalty of SIX (6) YEARS of prision correcional, as minimum, to EIGHT (8) years of prision mayor, as maximum.

As to the civil liability, particularly the indemnity for the loss of the earning capacity of the victims, the formula last enunciated by the Supreme Court is:

"Net earning capacity (x) = life expectancy x gross-living
expenses annual (50% of

gross annual
income)"

Thusly, since the victim Reynard So was earning P80,000 a month at the time of his death when he was thirty (30) years old, his lost earning capacity should be computed as follows:

x = 2 (80-30) x [P960,000.00 P480,000.00)
3

x = 33.4 x P480,000.00

x = x P16,032,000.00

With respect to the victim Nilo Castro, he was earning P8,000.00 a month when he died at the age of twenty-six (26). His lost earnings were:

x = 2 (80 - 26) [P96,000.00 P48,000.00]
3

x = 36 x P48,000.00

x = P1,728,000.00

which the trial court correctly computed.

The other items of damages awarded are correct.[6]

The appellate court likewise provided for the subsidiary liability of petitioner's employer under Article 103[7] of the Revised Penal Code. The dispositive portion of the decision read:

WHEREFORE, the Decision appealed from is AFFIRMED, subject to MODIFICATION as to the penalty imposed; the indemnity for loss of earning capacity of the victim Reynard So; the reckoning date of the start of

> the 12% interest imposed; and the subsidiary civil liability of the accused appellant's employer, all as herein-above indicated. Costs against appellant.
>
> SO ORDERED.[8]

In this appeal before us, petitioner insists that he should not be made liable for the mishap as it was actually the Honda motorcycle that rammed into the bus he was driving. He seeks the reversal of his conviction for reckless imprudence resulting in double homicide. The issues raised by him can be summarized as follows:

> - the ruling of the Court of Appeals is untenable and contrary to law because the evidence of the prosecution is incompatible with the physical evidence on record;
>
> - the award of damages in the (total) amount of more than P18 Million is untenable and contrary to jurisprudence and law.[9]

On the first issue, the Court does not ordinarily pass upon the findings of fact of the trial court, specially if they have been affirmed on appeal by the appellate court.[10] The trial court was able to observe the witnesses and their demeanor on the stand and was in a position to scrutinize and discern whether they were telling the truth.[11] Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed. In the case at bar, we see no reason to deviate from the rule. The Court is in full agreement with the trial court and with the Court of Appeals regarding petitioner's liability for the crime charged against him.

On the second issue, however, we deem it necessary to modify the award of damages given by the lower courts.

When death occurs due to a crime, the following damages may be recovered: (1) a civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation, and (6) interest, in proper cases.

CIVIL INDEMNITY ex delicto

Both the trial court and the Court of Appeals failed to award civil indemnity ex delicto to the heirs of the victims. The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[12] Hence, based on recent jurisprudence[13], the award of civil indemnity ex delicto of P50,000 each for the heirs of both So and Castro is in order.

ACTUAL DAMAGES: INDEMNITY FOR LOSS OF EARNINGCAPACITY AND OTHER COMPENSATORY DAMAGES

With respect to indemnification for loss of earning capacity, the Court, in the case of People vs. Mallari,[14] enunciated:

> The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence if there is testimony that the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice is taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[15]

In this case, neither of the two exceptions applied. The earnings of So and Castro were both above the minimum wage set by labor laws in their respective workplaces at the time of their death.[16] This being the case, the general rule of requiring documentary evidence of their earning capacities finds application. Unfortunately for their heirs, no such proof was presented at all. It was therefore erroneous for both the trial court and the Court of

Appeals to award compensatory damages for loss of earning capacity on the basis alone of the oral testimonies of So's father and Castro's mother.

The lack of documentary evidence notwithstanding, since loss was actually established in this case, temperate damages in the amount of P25,000 each may be awarded to the heirs of So and Castro, respectively. 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 was suffered but its amount cannot be proved with certainty.[17]

With respect to other compensatory damages,[18] the Court in People v. Agudez[19] declared that competent evidence must likewise be presented to support the claim for such damages. In the case at bar, the father of So claimed that he spent P87,200[20] for the wake and burial of his son but all he was able to support with receipts were the payment to the funeral parlor of P20,000 and the cost of the burial site of P53,000.[21]

Regarding the claim for reimbursement of the actual expense allegedly incurred by the mother of Castro, the Court opts to award her temperate damages, in lieu of actual or compensatory damages, because she failed to submit any evidence in support thereof. Again, temperate damages should instead be given since it was to be expected that she spent for the burial and funeral services although the amount thereof was not determined with certitude.[22]

MORAL DAMAGES

The award for moral damages by the court a quo, as affirmed by the Court of Appeals, should be adjusted for being excessive. While courts have a wide latitude in ascertaining the proper award for moral damages, the award should not be to such an extent that it inflicts injustice on the accused. The award of P200,000 as moral damages each for the heirs of So and Castro, respectively, should accordingly be reduced to P50,000.[23]

EXEMPLARY DAMAGES

Under Article 2230 of the Civil Code, exemplary damages may also be imposed when the crime was committed with one or more aggravating circumstances. Here, petitioner failed to render aid or assistance to his victims after the collision.[24] Based on the prevailing jurisprudence, the award for exemplary damages for homicide is P25,000.[25]

ATTORNEY'S FEES

We affirm the award of P30, 000 for attorney's fees made by the trial court and the appellate court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation may be recovered when exemplary damages have been awarded, as in this case.

SUMMARY

To summarize, the heirs of the deceased Reynard So are entitled to the following:

P 50,000 — civil indemnity ex delicto
73,000 — actual damages
25,000 — temperate damages[26]
50,000 — moral damages
25,000 — exemplary damages
30,000 — attorney's fees

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P 253,000 — TOTAL

The heirs of Nilo Castro are also entitled to the following:

P 50,000 — civil indemnity ex delicto
50,000 — temperate damages[27]
50,000 — moral damages
25,000 — exemplary damages
30,000 — attorney's fees
P 205,000 — TOTAL

SUBSIDIARY LIABILITY

We adopt the pronouncement of the Court of Appeals regarding the subsidiary liability of petitioner's employer, Vallacar Transit Inc., under Article 103 of the Revised Penal Code. An employer may be subsidiarily liable for the employee's civil liability in the criminal action if it can be shown that: (1) the employer is engaged in any kind of industry; (2) the employee committed the offense in the discharge of his duties and (3) the accused is insolvent.[28] However, subject to prevailing jurisprudence,[29] the subsidiary liability may be enforced only upon a motion for subsidiary writ of execution against Vallacar Transit, Inc. and upon proof that petitioner is insolvent.

IMPRISONMENT

Lastly, we are also constrained to amend the penalty imposed by the Court of Appeals. The imposable penalty, under Article 365 (2) of the Revised Penal Code for homicide resulting from reckless imprudence in the use of the motor vehicle is prision correcional in its medium and maximum period, which ranges from 2 years, 4 months and 1 day to 6 years.

Under Article 64 of the same law, the penalty shall be divided into three equal portions, each of which shall form one period. The offense having been attended by one aggravating circumstance premised on the failure of petitioner to aid his victims, the penalty shall be increased but it cannot exceed the penalty provided by law in its maximum period.[30] Applying the provisions of the Indeterminate Sentence Law, the petitioner is thus entitled to a minimum term to be taken from the penalty next lower in degree, which is arresto mayor in any of its periods, to prision correcional maximum. Accordingly, petitioner should suffer the penalty of 2 years, 4 months and 1 day of arresto mayor, as minimum, to 6 years of prision correcional, as maximum.

WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATIONS as to the award of damages and the penalty imposed, as already discussed. The total amount of damages shall bear interest at the rate of 12% per annum from the finality of this decision.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

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[1] Similarly construed to be a violation of the Motor Vehicle Law resulting in death under Article 365 (2) of the Revised Penal Code.

[2] P14,200 for the wake; P20,000 for funeral expenses; P53,000 as cost of burial site.

[3] Exhibit “A,” Rollo, p. 194.

[4] Exhibit “K,” Rollo, p. 192.

[5] Decided by Honorable Ismael O. Baldado, Presiding Judge, 7th Judicial Region, Branch 45, Bais City; Rollo, pp. 103-104.

[6] Penned by Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Josefina Guevarra-Salonga and Arturo D. Brion, 11th Division; Rollo, pp. 81-82.

[7] Art. 103. Subsidiary civil liability of other persons. — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices or employees in the discharge of their duties.

[8] Rollo, p. 83.

[9] Rollo, p. 31.

[10] People v. Cañete, 433 Phil. 781 (2002); People v. Lining, 433 Phil. 797 (2002).

[11] People v. Salvador, 433 Phil. 692 (2002).

[12] People v. Opuran, G.R. No. 147674, 17 March 2004, 425 SCRA 654.

[13] Id.

[14] G.R. No. 145993, 17 June 2003, 404 SCRA 170; see also People vs. Ibañez, G.R. No. 148627, 28 April 2004.

[15] Id.

[16] Under Wage Order No. NCR-06 which covered Nilo Castro (and which took effect on 6 February 1998, the minimum wage at the time of the accident was P198.00 per day. Likewise, in Wage Order No. ROVII-6 which covered Reynard So (and which was approved on 10 March 1998), the minimum wage in Negros Oriental for the agriculture sector was P130.00.

[17] Victory Liner, Inc. v. Gammad, G.R. No. 159636, 25 November 2004.

[18] Id.

[19] G.R. No. 138386-87, 20 May 2004, 428 SCRA 692.

[20] Supra, at 4.

[21] Exhibits “E” and “I”.

[22] Supra.

[23] People v. Samson, 427 Phil. 248 (2002).

[24] Article 365 of the Revised Penal Code, supra.

[25] Talay v. Court of Appeals, 446 Phil. 256 (2003); People vs. Catubig, 416 Phil. 103 (2001).

[26] In lieu of award for loss of earning capacity.

[27] P25,000 as temperate damages, in lieu of the award for loss of earning capacity of Nilo Castro, and another P25,000 as temperate damages in lieu of actual damages which was not proved by documentary evidence.

[28] Carpio v. Doroja, G.R. No. 84516, 5 December 1989, 180 SCRA 1, as cited in “The Revised Penal Code” annotated by Luis B. Reyes.

[29] Basilio v. Court of Appeals, 385 Phil. 21 (2000).

[30] Article 64, Revised Penal Code.

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