

**SAFEGUARD SECURITY AGENCY, INC., AND ADMER PAJARILLO,
PETITIONERS, VS. LAURO TANGCO, VAL TANGCO, VERN LARRY
TANGCO, VAN LAURO TANGCO, VON LARRIE TANGCO, VIEN LARI
TANGCO AND VIV...**

G.R. NO. 165732. December 14, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by Safeguard Security Agency, Inc. (Safeguard) and Admer Pajarillo (Pajarillo) assailing the Decision[1] dated July 16, 2004 and the Resolution[2] dated October 20, 2004 issued by the Court of Appeals (CA) in CA-G.R. CV No. 77462.

On November 3, 1997, at about 2:50 p.m., Evangeline Tangco (Evangeline) went to Ecology Bank, Katipunan Branch, Quezon City, to renew her time deposit per advise of the bank's cashier as she would sign a specimen card. Evangeline, a duly licensed firearm holder with corresponding permit to carry the same outside her residence, approached security guard Pajarillo, who was stationed outside the bank, and pulled out her firearm from her bag to deposit the same for safekeeping. Suddenly, Pajarillo shot Evangeline with his service shotgun hitting her in the abdomen instantly causing her death.

Lauro Tangco, Evangeline's husband, together with his six minor children (respondents) filed with the Regional Trial Court (RTC) of Quezon City, a criminal case of Homicide against Pajarillo, docketed as Criminal Case No. 0-97-73806 and assigned to Branch 78. Respondents reserved their right to file a separate civil action in the said criminal case. The RTC of Quezon City subsequently convicted Pajarillo of Homicide in its Decision dated January 19, 2000.[3] On appeal to the CA, the RTC decision was affirmed with modification as to the penalty in a Decision[4] dated July 31, 2000. Entry of Judgment was made on August 25, 2001.

Meanwhile, on January 14, 1998, respondents filed with RTC, Branch 273, Marikina City, a complaint[5] for damages against Pajarillo for negligently shooting Evangeline and against Safeguard for failing to observe the diligence of a good father of a family to prevent the damage committed by its security guard. Respondents prayed for actual, moral and exemplary damages and attorney's fees.

In their Answer,[6] petitioners denied the material allegations in the complaint and alleged that Safeguard exercised the diligence of a good father of a family in the selection and supervision of Pajarillo; that Evangeline's death was not due to Pajarillo's negligence as the latter acted only in self-defense. Petitioners set up a compulsory counterclaim for moral damages and attorney's fees.

Trial thereafter ensued. On January 10, 2003, the RTC rendered its Decision,[7] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, the heirs of Evangeline Tangco, and against defendants Admer Pajarillo and Safeguard Security Agency, Inc. ordering said defendants to pay the

plaintiffs, jointly and severally, the following:

- ONE HUNDRED FIFTY SEVEN THOUSAND FOUR HUNDRED THIRTY PESOS (P157,430.00), as actual damages
- FIFTY THOUSAND PESOS (P50,000.00) as death indemnity;
- ONE MILLION PESOS (P1,000,000.00), as moral damages;
- THREE HUNDRED THOUSAND PESOS (P300,000.00), as exemplary damages;
- THIRTY THOUSAND PESOS (P30,000.00), as attorney's fees; and
- costs of suit.

For lack of merit, defendants' counterclaim is hereby DISMISSED.

SO ORDERED.[8]

The RTC found respondents to be entitled to damages. It rejected Pajarillo's claim that he merely acted in self-defense. It gave no credence to Pajarillo's bare claim that Evangeline was seen roaming around the area prior to the shooting incident since Pajarillo had not made such report to the head office and the police authorities. The RTC further ruled that being the guard on duty, the situation demanded that he should have exercised proper prudence and necessary care by asking Evangeline for him to ascertain the matter instead of shooting her instantly; that Pajarillo had already been convicted of Homicide in Criminal Case No. 0-97-73806; and that he also failed to proffer proof negating liability in the instant case.

The RTC also found Safeguard as employer of Pajarillo to be jointly and severally liable with Pajarillo. It ruled that while it may be conceded that Safeguard had perhaps exercised care in the selection of its employees, particularly of Pajarillo, there was no sufficient evidence to show that Safeguard exercised the diligence of a good father of a family in the supervision of its employee; that Safeguard's evidence simply showed that it required its guards to attend trainings and seminars which is not the supervision contemplated under the law; that supervision includes not only the issuance of regulations and instructions designed for the protection of persons and property, for the guidance of their servants and employees, but also the duty to see to it that such regulations and instructions are faithfully complied with.

Petitioners appealed the RTC decision to the CA. On July 16, 2004, the CA issued its assailed Decision, the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby AFFIRMED, with the modification that Safeguard Security Agency, Inc.'s civil liability in this case is only subsidiary under Art. 103 of the Revised Penal Code. No pronouncement as to costs.[9]

In finding that Safeguard is only subsidiarily liable, the CA held that the applicable provisions are not Article 2180 in relation to Article 2176 of the Civil Code, on quasi-delicts, but the provisions on civil liability arising from felonies under the Revised Penal Code; that since Pajarillo had been found guilty of Homicide in a final and executory judgment and is said to be serving sentence in Muntinlupa, he must be adjudged civilly liable under the provisions of Article 100 of the Revised Penal Code since the civil liability recoverable in the criminal action is one solely dependent upon conviction, because said liability arises from the offense charged and no other; that this is also the civil liability that is deemed extinguished with the extinction of the penal liability with a pronouncement that the fact from which the civil action might proceed does not exist; that unlike in civil liability arising from quasi-delict, the defense of diligence of a good father of a family in the employment and supervision of employees is inapplicable and irrelevant in civil liabilities based on crimes or ex-delicto; that Article 103 of the

Revised Penal Code provides that the liability of an employer for the civil liability of their employees is only subsidiary, not joint or solidary.

Petitioners filed their Motion for Reconsideration which the CA denied in a Resolution dated October 20, 2004.

Hence, the instant Petition for Review on Certiorari with the following assignment of errors, to wit:

The Honorable Court of Appeals gravely erred in finding petitioner Pajarillo liable to respondents for the payment of damages and other money claims.

The Honorable Court of Appeals gravely erred when it applied Article 103 of the Revised Penal Code in holding petitioner Safeguard solidarily [sic] liable with petitioner Pajarillo for the payment of damages and other money claims.

The Honorable Court of Appeals gravely erred in failing to find that petitioner Safeguard Security Agency, Inc. exercised due diligence in the selection and supervision of its employees, hence, should be excused from any liability.[10]

The issues for resolution are whether (1) Pajarillo is guilty of negligence in shooting Evangeline; and (2) Safeguard should be held solidarily liable for the damages awarded to respondents.

Safeguard insists that the claim for damages by respondents is based on culpa aquiliana under Article 2176[11] of the Civil Code, in which case, its liability is jointly and severally with Pajarillo. However, since it has established that it had exercised due diligence in the selection and supervision of Pajarillo, it should be exonerated from civil liability.

We will first resolve whether the CA correctly held that respondents, in filing a separate civil action against petitioners are limited to the recovery of damages arising from a crime or delict, in which case the liability of Safeguard as employer under Articles 102 and 103 of the Revised Penal Code[12] is subsidiary and the defense of due diligence in the selection and supervision of employee is not available to it.

The CA erred in ruling that the liability of Safeguard is only subsidiary.

The law at the time the complaint for damages was filed is Rule 111 of the 1985 Rules on Criminal Procedure, as amended, to wit:

SECTION 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

Respondents reserved the right to file a separate civil action and in fact filed the same on January 14, 1998.

The CA found that the source of damages in the instant case must be the crime of homicide, for which he had already been found guilty of and serving sentence thereof, thus must be governed by the Revised Penal Code.

We do not agree.

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, i.e., (1) civil liability ex delicto, under Article 100 of the Revised Penal Code; and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as a felony, e.g., culpa contractual

or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and culpa aquiliana under Article 2176 of the Civil Code; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code. Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes.[13]

It is important to determine the nature of respondents' cause of action. The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action.[14] The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.[15]

The pertinent portions of the complaint read:

7. That Defendant Admer A. Pajarillo was the guard assigned and posted in the Ecology Bank – Katipunan Branch, Quezon City, who was employed and under employment of Safeguard Security Agency, Inc. hence there is employer-employee relationship between co-defendants.

The Safeguard Security Agency, Inc. failed to observe the diligence of a good father of a family to prevent damage to herein plaintiffs.

8. That defendant Admer Pajarillo upon seeing Evangeline Tangco, who brought her firearm out of her bag, suddenly without exercising necessary caution/care, and in idiotic manner, with the use of his shotgun, fired and burst bullets upon Evangeline M. Tangco, killing her instantly. x x x

x x x x

16. That defendants, being employer and the employee are jointly and severally liable for the death of Evangeline M. Tangco.[16]

Thus, a reading of respondents' complaint shows that the latter are invoking their right to recover damages against Safeguard for their vicarious responsibility for the injury caused by Pajarillo's act of shooting and killing Evangeline under Article 2176, Civil Code which provides:

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.

The scope of Article 2176 is not limited to acts or omissions resulting from negligence. In *Dulay v. Court of Appeals*,^[17] we held:

x x x Well-entrenched is the doctrine that Article 2176 covers not only acts committed with negligence, but also acts which are voluntary and intentional. As far back as the definitive case of *Elcano v. Hill* (77 SCRA 98 [1977]), this Court already held that:

"x x x Article 2176, where it refers to "fault or negligence," covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has

not been committed by the accused. Briefly stated, We here hold, in reiteration of Garcia, that culpa aquiliana includes voluntary and negligent acts which may be punishable by law." (Emphasis supplied)

The civil action filed by respondents was not derived from the criminal liability of Pajarillo in the criminal case but one based on culpa aquiliana or quasi-delict which is separate and distinct from the civil liability arising from crime.[18] The source of the obligation sought to be enforced in the civil case is a quasi-delict not an act or omission punishable by law.

In *Bermudez v. Melencio-Herrera*,[19] where the issue involved was whether the civil action filed by plaintiff-appellants is founded on crime or on quasi-delict, we held:

x x x The trial court treated the case as an action based on a crime in view of the reservation made by the offended party in the criminal case (Criminal Case No. 92944), also pending before the court, to file a separate civil action. Said the trial court:

It would appear that plaintiffs instituted this action on the assumption that defendant Pontino's negligence in the accident of May 10, 1969 constituted a quasi-delict. The Court cannot accept the validity of that assumption. In Criminal Case No. 92944 of this Court, plaintiffs had already appeared as complainants. While that case was pending, the offended parties reserved the right to institute a separate civil action. If, in a criminal case, the right to file a separate civil action for damages is reserved, such civil action is to be based on crime and not on tort. That was the ruling in *Joaquin vs. Aniceto*, L-18719, Oct. 31, 1964.

We do not agree. The doctrine in the case cited by the trial court is inapplicable to the instant case x x x.

x x x x

In cases of negligence, the injured party or his heirs has the choice between an action to enforce the civil liability arising from crime under Article 100 of the Revised Penal Code and an action for quasi-delict under Article 2176-2194 of the Civil Code. If a party chooses the latter, he may hold the employer solidarily liable for the negligent act of his employee, subject to the employer's defense of exercise of the diligence of a good father of the family.

In the case at bar, the action filed by appellant was an action for damages based on quasi-delict. The fact that appellants reserved their right in the criminal case to file an independent civil action did not preclude them from choosing to file a civil action for quasi-delict.[20] (Emphasis supplied)

Although the judgment in the criminal case finding Pajarillo guilty of Homicide is already final and executory, such judgment has no relevance or importance to this case.[21] It would have been entirely different if respondents' cause of action was for damages arising from a delict, in which case the CA is correct in finding Safeguard to be only subsidiary liable pursuant to Article 103 of the Revised Penal Code.[22]

As clearly shown by the allegations in the complaint, respondents' cause of action is based on quasi-delict. Under Article 2180 of the Civil Code, when the injury is caused by the negligence of the employee, there instantly arises a presumption of law that there was negligence on the part of the master or the employer either in the selection of the servant or employee, or in the supervision over him after selection or both. The liability of the employer under Article 2180 is direct and immediate. Therefore, it is incumbent upon petitioners to prove that they exercised the diligence of a good father of a family in the selection and supervision of their employee.

We must first resolve the issue of whether Pajarillo was negligent in shooting Evangeline.

The issue of negligence is factual in nature. Whether a person is negligent or not is a question of fact, which, as a general rule, we cannot pass upon in a petition for review on certiorari, as our jurisdiction is limited to reviewing errors of law.[23] Generally, factual findings of the trial court, affirmed by the CA, are final and conclusive and

may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. [24]A thorough review of the records of the case fails to show any cogent reason for us to deviate from the factual finding of the trial court and affirmed by the CA that petitioner Pajarillo was guilty of negligence in shooting Evangeline.

Respondents' evidence established that Evangeline's purpose in going to the bank was to renew her time deposit.[25]On the other hand, Pajarillo claims that Evangeline drew a gun from her bag and aimed the same at him, thus, acting instinctively, he shot her in self-defense.

Pajarillo testified that when Evangeline aimed the gun at him at a distance of about one meter or one arm's length[26] he stepped backward, loaded the chamber of his gun and shot her.[27] It is however unimaginable that petitioner Pajarillo could still make such movements if indeed the gun was already pointed at him. Any movement could have prompted Evangeline to pull the trigger to shoot him.

Petitioner Pajarillo would like to justify his action in shooting Evangeline on his mere apprehension that Evangeline will stage a bank robbery. However, such claim is befuddled by his own testimony. Pajarillo testified that prior to the incident, he saw Evangeline roaming under the fly over which was about 10 meters away from the bank[28] and saw her talking to a man thereat;[29] that she left the man under the fly-over, crossed the street and approached the bank. However, except for the bare testimony of Pajarillo, the records do not show that indeed Evangeline was seen roaming near the vicinity of the bank and acting suspiciously prior to the shooting incident. In fact, there is no evidence that Pajarillo called the attention of his head guard or the bank's branch manager regarding his concerns or that he reported the same to the police authorities whose outpost is just about 15 meters from the bank.

Moreover, if Evangeline was already roaming the vicinity of the bank, she could have already apprised herself that Pajarillo, who was posted outside the bank, was armed with a shotgun; that there were two guards inside the bank[30] manning the entrance door. Thus, it is quite incredible that if she really had a companion, she would leave him under the fly-over which is 10 meters far from the bank and stage a bank robbery all by herself without a back-up. In fact, she would have known, after surveying the area, that aiming her gun at Pajarillo would not ensure entrance to the bank as there were guards manning the entrance door.

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance.[31]

That Evangeline just wanted to deposit her gun before entering the bank and was actually in the act of pulling her gun from her bag when petitioner Pajarillo recklessly shot her, finds support from the contentions raised in petitioners' petition for review where they argued that when Evangeline approached the bank, she was seen pulling a gun from inside her bag and petitioner Pajarillo who was suddenly beset by fear and perceived the act as

a dangerous threat, shot and killed the deceased out of pure instinct;[32] that the act of drawing a gun is a threatening act, regardless of whether or not the gun was intended to be used against petitioner Pajarillo;[33] that the fear that was created in the mind of petitioner Pajarillo as he saw Evangeline Tangco drawing a gun from her purse was suddenly very real and the former merely reacted out of pure self-preservation.[34]

Considering that unlawful aggression on the part of Evangeline is absent, Pajarillo's claim of self-defense cannot be accepted specially when such claim was uncorroborated by any separate competent evidence other than his testimony which was even doubtful. Pajarillo's apprehension that Evangeline will shoot him to stage a bank robbery has no basis at all. It is therefore clear that the alleged threat of bank robbery was just a figment of Pajarillo's imagination which caused such unfounded unlawful aggression on his part.

Petitioners argue that Evangeline was guilty of contributory negligence. Although she was a licensed firearm holder, she had no business bringing the gun in such establishment where people would react instinctively upon seeing the gun; that had Evangeline been prudent, she could have warned Pajarillo before drawing the gun and did not conduct herself with suspicion by roaming outside the vicinity of the bank; that she should not have held the gun with the nozzle pointed at Pajarillo who mistook the act as hold up or robbery.

We are not persuaded.

As we have earlier held, Pajarillo failed to substantiate his claim that Evangeline was seen roaming outside the vicinity of the bank and acting suspiciously prior to the shooting incident. Evangeline's death was merely due to Pajarillo's negligence in shooting her on his imagined threat that Evangeline will rob the bank.

Safeguard contends that it cannot be jointly held liable since it had adequately shown that it had exercised the diligence required in the selection and supervision of its employees. It claims that it had required the guards to undergo the necessary training and to submit the requisite qualifications and credentials which even the RTC found to have been complied with; that the RTC erroneously found that it did not exercise the diligence required in the supervision of its employee. Safeguard further claims that it conducts monitoring of the activities of its personnel, wherein supervisors are assigned to routinely check the activities of the security guards which include among others, whether or not they are in their proper post and with proper equipment, as well as regular evaluations of the employees' performances; that the fact that Pajarillo loaded his firearm contrary to Safeguard's operating procedure is not sufficient basis to say that Safeguard had failed its duty of proper supervision; that it was likewise error to say that Safeguard was negligent in seeing to it that the procedures and policies were not properly implemented by reason of one unfortunate event.

We are not convinced.

Article 2180 of the Civil Code provides:

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

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.

x x x x

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.

As the employer of Pajarillo, Safeguard is primarily and solidarily liable for the quasi-delict committed by the former. Safeguard is presumed to be negligent in the selection and supervision of his employee by operation of law. This presumption may be overcome only by satisfactorily showing that the employer exercised the care and the diligence of a good father of a family in the selection and the supervision of its employee.

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records.[35] On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.[36] To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.

We agree with the RTC's finding that Safeguard had exercised the diligence in the selection of Pajarillo since the record shows that Pajarillo underwent a psychological and neuro-psychiatric evaluation conducted by the St. Martin de Porres Center where no psychoses or ideations were noted, submitted a certification on the Pre-licensing training course for security guards, as well as police and NBI clearances.

The RTC did not err in ruling that Safeguard fell short of the diligence required in the supervision of its employee, particularly Pajarillo. In this case, while Safeguard presented Capt. James Camero, its Director for Operations, who testified on the issuance of company rules and regulations, such as the Guidelines of Guards Who Will Be Assigned To Banks,[37] Weapons Training,[38] Safeguard Training Center Marksmanship Training Lesson Plan,[39] Disciplinary/Corrective Sanctions,[40] it had also been established during Camero's cross-examination that Pajarillo was not aware of such rules and regulations.[41] Notwithstanding Camero's clarification on his re-direct examination that these company rules and regulations are lesson plans as a basis of guidelines of the instructors during classroom instructions and not necessary to give students copy of the same,[42] the records do not show that Pajarillo had attended such classroom instructions.

The records also failed to show that there was adequate training and continuous evaluation of the security guard's performance. Pajarillo had only attended an in-service training on March 1, 1997 conducted by Toyota Sta. Rosa, his first assignment as security guard of Safeguard, which was in collaboration with Safeguard. It was established that the concept of such training was purely on security of equipments to be guarded and protection of the life of the employees.[43]

It had not been established that after Pajarillo's training in Toyota, Safeguard had ever conducted further training of Pajarillo when he was later assigned to guard a bank which has a different nature of business with that of Toyota. In fact, Pajarillo testified that being on duty in a bank is different from being on duty in a factory since a bank is a very sensitive area.[44]

Moreover, considering his reactions to Evangeline's act of just depositing her firearm for safekeeping, i.e., of immediately shooting her, confirms that there was no training or seminar given on how to handle bank clients and on human psychology.

Furthermore, while Safeguard would like to show that there were inspectors who go around the bank two times a day to see the daily performance of the security guards assigned therein, there was no record ever presented of such daily inspections. In fact, if there was really such inspection made, the alleged suspicious act of Evangeline

could have been taken noticed and reported.

Turning now to the award of damages, we find that the award of actual damages in the amount P157,430.00 which were the expenses incurred by respondents in connection with the burial of Evangeline were supported by receipts. The award of P50,000.00 as civil indemnity for the death of Evangeline is likewise in order.

As to the award of moral damages, Article 2206 of the Civil Code provides that the spouse, legitimate children and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering he/she has undergone, by reason of the defendant's culpable action. Its award is aimed at restoration, as much as possible, of the spiritual status quo ante; thus it must be proportionate to the suffering inflicted.[45] The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender.[46]

In this case, respondents testified as to their moral suffering caused by Evangeline's death was so sudden causing respondent Lauro to lose a wife and a mother to six children who were all minors at the time of her death. In *People v. Teehankee, Jr.*, [47] we awarded one million pesos as moral damages to the heirs of a seventeen-year-old girl who was murdered. In *Metro Manila Transit Corporation v. Court of Appeals*, [48] we likewise awarded the amount of one million pesos as moral damages to the parents of a third year high school student and who was also their youngest child who died in a vehicular accident since the girl's death left a void in their lives. Hence, we hold that the respondents are also entitled to the amount of one million pesos as Evangeline's death left a void in the lives of her husband and minor children as they were deprived of her love and care by her untimely demise.

We likewise uphold the award of exemplary damages in the amount of P300,000.00. Under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[49] It is awarded as a deterrent to socially deleterious actions. In quasi-delict, exemplary damages may be granted if the defendant acted with gross negligence.[50]

Pursuant to Article 2208 of the Civil Code, attorney's fees may be recovered when, as in the instant case, exemplary damages are awarded. Hence, we affirm the award of attorney's fees in the amount of P30,000.00.

WHEREFORE, the petition for review is DENIED. The Decision dated July 16, 2004 of the Court of Appeals is AFFIRMED with MODIFICATION that the civil liability of petitioner Safeguard Security Agency, Inc. is SOLIDARY and PRIMARY under Article 2180 of the Civil Code.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ. concur

* Retired as of December 7, 2006.

[1] CA rollo, pp. 127-135; Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta.

[2] Id. at 158.

[3] Penned by Judge Percival Mandap Lopez.

[4] Docketed as G.R. CR No. 23947; Penned by Justice Bernardo P. Abesamis and concurred in by Justices

Godardo A. Jacinto (retired) and Eliezer R. delos Santos.

[5] Records, pp. 1-5; Docketed as Case No. 98-417-MK.

[6] Id. at 21-30.

[7] Id. at 320-336.

[8] Id. at 336.

[9] CA rollo, p.134.

[10] Rollo, p. 16.

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

[12] Revised Penal Code, Art. 102. Subsidiary civil liability of innkeepers, tavern-keepers and proprietors of establishments. - In default of the persons criminally liable, innkeepers, tavern-keepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulations shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposits of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

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.

[13] Cancio, Jr. v. Isip, 440 Phil. 29, 34-36 (2002).

[14] Dulay v. Court of Appeals, 313 Phil. 8, 20 (1995), citing Republic v. Estenzo, G.R. No. L-35512, February 29, 1988, 158 SCRA 282, 285.

[15] Id. citing De Tavera v. Philippine Tuberculosis Society, Inc., 197 Phil. 919, 926 (1982).

[16] Records, pp. 3-4.

[17] Supra note 14, at 20-21.

[18] Bordas v. Canadalla, G.R. No. L-30036, April 15, 1988, 160 SCRA 37, 39.

[19] G.R. No. L-32055, February 26, 1988, 158 SCRA 168.

[20] Id. at 170-171.

[21] McKee v. Intermediate Appellate Court, G.R. No. 68102, July 16, 1992, 211 SCRA 517, 536.

[22] Id.

- [23] Yambao v. Zuñiga, 463 Phil. 650, 657 (2003).
- [24] Child Learning Center Inc. v. Tagorio, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 241-242.
- [25] TSN, October 1, 1998, p. 33; TSN, November 12, 1998, p. 6.
- [26] TSN, April 4, 2002, p. 36.
- [27] Id. at 79.
- [28] Id. at 42.
- [29] Id. at 40-41.
- [30] Id. at 99.
- [31] Castañares v. Court of Appeals, G.R. Nos. L-41269-70, August 6, 1979, 92 SCRA 568, 580.
- [32] Rollo, p.17.
- [33] Id. at 18.
- [34] Id. at 19.
- [35] Metro Manila Transit Corporation v. Court of Appeals, 359 Phil. 18, 32 (1998).
- [36] Metro Manila Transit Corporation v. Court of Appeals, G.R. No. 104408, June 21, 1993, 223 SCRA 521, 540-541.
- [37] Records, pp. 263-267, Exhibit "10".
- [38] Id. at 268-270, Exhibit "11".
- [39] Id. at 271-274, Exhibit "12".
- [40] Id. at 275-279, Exhibit "13".
- [41] TSN, April 11, 2000, p. 26.
- [42] Id. at 30-31.
- [43] TSN, May 19, 1999, pp. 15-16.
- [44] TSN, April 4, 2002, p. 83.
- [45] Pleyto v. Lomboy, G.R. No. 148737, June 16, 2004, 432 SCRA 329, 342.
- [46] Secosa v. Heirs of Erwin Suarez Francisco, G.R. No. 160039, June 29, 2004, 433 SCRA 273, 282.
- [47] 319 Phil. 128, 216 (1995).
- [48] Supra note 35, at 44.
- [49] Civil Code, Art. 2229.
- [50] Civil Code, Art. 2231.

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