

ROSALINA MARTINEZ, PLAINTIFF AND APPELLANT, VS. AURELIA GONZALES, ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 17570. October 30, 1962*

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-17570/>**PAREDES, J.:**

Plaintiff-appellant Rosalina Martinez filed a case for damages against defendants-appellees, Aurelia Gonzales and Luis Fornal, owner and driver, respectively of Banner Taxi Cab Plate No. 3303-58, due to physical injuries sustained by her, while a passenger of said taxi cab, asking P2,000.00 for moral damages, P2,000.00 for exemplary damages, P200.00 for actual damages and P500.00 for attorney's fees. After trial in the CFI of Manila, where defendants failed to appear, and after receiving plaintiff's evidence ex-parte, the lower court rendered judgment, the pertinent portions of which recite:

"It appears that at about 12:00 o'clock noon of July 15, 1958, the plaintiff, Rosalina Martinez, who is a filing clerk in the NAWASA with a monthly salary of P150.00, boarded the "Banner taxicab, plate No. 3303-58, driven by defendant Luis Fornal, at the corner of Teodoro Alonso and Azcarraga Streets, Manila, and instructed the driver to take her to her residence at Misericordia Street, Sta. Cruz. When said vehicle arrived at the intersection of O'Donnel and Mayhaligue streets, it bumped a "Golden" taxicab, causing the plaintiff to fall from her seat and to loss consciousness. She regained consciousness at the North General Hospital, where she was taken by a passing Police Mobile Patrol Car. At said Hospital, she was treated by Dr. Ricardo Gochico for the following injuries: Contusion chin, left, infrascapular, left, buttocks, lateral left, lumber, posterior, left, (Exhibit "A"). After treatment, she was allowed to go home but she returned to the hospital dispensary for further treatment for a period of five (5) days. For her medical expenses, plaintiff incurred the sum of P150.00. Although she claims in her complaint that as a result of the injuries sustained by her because of the accident, she was prevented from performing her daily work at the office where she was employed, it appears, however, after questioning by the Court, that she was able to receive her salary covering the period of her absence from office.

* * * * *

Wherefore, judgment is hereby rendered, ordering the defendants, Aurelia Gonzales and Luis Fornal y Soniel, to pay jointly and severally to the plaintiff, Rosalina Martinez, the sum of P150.00 as compensatory damages, plus the further amount of P200.00 as attorney's fees, and the costs."

Plaintiff moved for a reconsideration of the above judgment insofar as it did not award the moral and exemplary damages amounting to P4,000.00, prayed for in the complaint. The motion was denied, so the plaintiff appealed to the Court of Appeals, which certified the same to this Court, since the facts were not at all controverted.

As this case now stands, the only issue we are called upon to determine is whether the court a quo erred in not awarding the moral and exemplary damages and in reducing the attorney's fees.

It is the contention of the plaintiff-appellant that having suffered physical injuries, she is entitled to moral and exemplary damages, pursuant to Articles 2219 and 2229 of the New Civil Code, quoted hereunder:

"Art. 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;

* * * * *

Art. 2229.—Exemplary or corrective damages are imposed by way of example or correction for the public good in addition to the moral temperate, liquidated or compensatory damages."

The action of plaintiff is based on breach of contract of transportation, which, as may be seen, is not one of those enumerated under Article 2219, authorizing the award of moral damages. The query would be, is the cause of action included under the expression "analogous cases"? This Court has had the occasion to pass upon the above question in recent cases, in which we made the following pronouncements:

"* a branch of contract cannot be considered included in the descriptive term "analogous cases" used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code-expressly excludes the cases where there is a "pre-existing contractual relation between the parties." (S. A. Verzosa vs. A. Baytan, et al., 107 Phil., 1010).

"Petitioner next contends that the Court of Appeals erred in awarding moral damages to respondent Bautista.

The contention is meritorious. This Court has repeatedly held (*Cachero vs. Manila Yellow Taxicab, Inc.*, 101 Phil., 523; 54 Off. Gaz. [26] 6599; *Necesito vs. Paras, et al.*, 104 Phil., 75; 56 Off. Gaz. [23] 4023; *Fores vs. Miranda*, 105 Phil., 256; 57 Off. Gaz. [44] 7938; *Tamayo vs. Aquino, et al.*, 105 Phil., 949 56 Off. Gaz. [36] 5617) that moral damages are not recoverable in damages actions, predicated on a breach of the contract of transportation, as in the instant case, in view of the provisions of Articles 2219 and 2220 of the New Civil Code. The exceptions according to the *Fores* case, *supra* (which we here re-affirm), are (1) where the mishap results in the death of a passenger, and (2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result." (*Rex Taxicab Co., Inc. vs. Jose Bautista, et al.*, 109 Phil., 712).

"We gleaned, therefore, from the above mentioned decisions, (1) that the case of a passenger of a carrier who suffered physical injuries "because of the carrier's negligence (*culpa contractual*), cannot be considered in the descriptive expression 'analogous cases', used in Art. 2219; and (2) that in cases of breach of contract (including one of transportation) proof of bad faith or fraud (*dolus*) i.e., wanton or deliberate injurious conduct is essential to justify an award of moral damages. There being no evidence of fraud, malice or bad faith, contemplated by law, on the part of the respondents, because the cause of the accident was merely the bursting of a tire while the bus was over speeding, the cause of petitioner Nita Lira should fail, as far as moral damages is concerned. Moral damages was, therefore, correctly eliminated by the Court of Appeals". (*Mercado, et al.*

vs. Lira et al., Lira vs. Mercado et al., 113 Phil., 112).

Appellant's complaint does not allege fraud, malice or bad faith on the part of the defendants-appellees. Neither was there any allegation of wanton or gross negligence. In fact, plaintiff-appellant designated the incident as accident and predicated her cause of action on the failure of the defendants to perform her obligation, as a carrier, to bring plaintiff-appellant safely to her destination. This being the case, no moral damages are awardable.

Plaintiff-appellant not being entitled to moral damages, she is not also entitled to exemplary damages. For one to recover exemplary damages, he must first show that he is entitled to moral, temperate, liquidated or compensatory damages (Yutuk vs. Manila Electric Co., 112 Phil., 271, and cases cited therein).

Plaintiff-appellant also impugns the award for only P200.00 as attorney's fees. All circumstances considered, however, we find the amount to be reasonable.

Conformably with the foregoing, we find the decision appealed from in conformity with the law on the matter. The same should be, as it is hereby affirmed in all respects, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.