

VIVIAN B. TORREON AND FELOMINA F. ABELLANA, PETITIONERS, V. GENEROSO APARRA, JR., FELIX CABALLES, AND CARMELO SIMOLDE, RESPONDENTS.*G.R. No. 188493. December 13, 2017*

Ponente: LEONEN, J.

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Lack of documentary evidence is not fatal to a claim for the deceased's lost earning capacity. Testimony from a competent witness familiar with his salary is a sufficient basis to determine the deceased's income before his death.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Court, praying that the April 3, 2008 Decision[2] and the May 28, 2009 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 71090 be partially modified. Petitioner Vivian B. Torreon (Vivian) prays that: (1) an award of actual or compensatory damages for loss of earning capacity worth P2,079,675.00 be granted; (2) the award of moral damages be increased to P1,000,000.00; (3) the award of exemplary damages be increased to P1,000,000.00; and (4) the awarded attorney's fees and litigation expenses be increased to P100,000.00 and P50,000.00, respectively.[4]

On November 1, 1989, Vivian's husband, Rodolfo Torreon (Rodolfo), and daughters, Monalisa Torreon (Monalisa) and Johanna Ava Torreon (Johanna), arrived with Felomina Abellana (Abellana) at the municipal wharf of Jetafe, Bohol. They came from Cebu City aboard M/B Island Traders, a motor boat owned and operated by Carmelo Simolde (Simolde).[5]

After they disembarked from the motor boat, they looked for a vehicle that would transport them from the wharf to the poblacion of Jetafe. A cargo truck entered the wharf and their fellow passengers boarded it. Abellana, Rodolfo, and his daughters chose not to board the already-overcrowded truck. Instead, they waited for a different vehicle to bring them to the poblacion. However, they were informed that only the cargo truck, which was also owned and operated by Simolde, would enter the wharf.[6]

Approximately 10 minutes later, the same cargo truck returned to the wharf. Again, fellow passengers from M/B Island Traders started embarking it. This time, Rodolfo, Monalisa, Johanna, and Abellana also boarded it. Abellana was seated in front, while Rodolfo and his daughters were with the rest of the passengers at the back of the truck. Because there were no proper seats at the back of the truck, the 30 or more passengers were either standing or sitting on their bags.[7]

While passengers were getting on the truck, Simolde called Felix Caballes (Caballes), the official truck driver. Caballes approached Simolde but left the engine running. While Simolde and Caballes were talking, Generoso Aparra, Jr. (Aparra), Simolde's chief diesel mechanic, started driving the truck. Upon seeing the truck move, Caballes rushed to the truck and sat beside Aparra. However, instead of taking control of the vehicle, Caballes allowed Aparra to drive.[8]

Shortly thereafter, Aparra maneuvered the truck to the right side of the road to avoid hitting a parked bicycle. But as he turned, Aparra had to swerve to the left to avoid hitting Marcelo Subiano, who was allegedly standing on the side of the road. Because the road was only four (4) meters and 24 inches wide, rough, and full of potholes, Aparra lost control of the truck and they fell off the wharf.[9]

Consequently, Rodolfo and Monalisa died while Johanna and Abellana were injured.[10]

On April 3, 1990, Vivian and Abellana filed a criminal complaint for Reckless Imprudence resulting to Double Homicide, Multiple Serious Physical Injuries and Damage to Property against Aparra and Caballes,[11] docketed as Criminal Case No. 6555 before the Regional Trial Court, Tagbilaran City, Bohol.[12]

On January 4, 1991, Vivian and Abellana filed a separate complaint for damages against Simolde, Caballes, and Aparra[13] docketed as Civil Case No. 3593 before Branch 3, Regional Trial Court, Butuan City.[14]

Simolde, Caballes, and Aparra filed a Motion to Dismiss and to Suspend Proceedings (Motion to Dismiss) in Civil Case No. 3593. They argued that when Abellana instituted Criminal Case No. 6555 before the Regional Trial Court of Bohol, she failed to make a reservation to file an independent civil action for damages. Thus, Abellana was barred from instituting the civil action.[15]

On January 22, 1992, the Regional Trial Court of Butuan City denied the Motion to Dismiss. However, upon reconsideration, the Regional Trial Court dismissed the case, ruling that the civil action was impliedly instituted with Criminal Case No. 6555.[16]

Abellana and Vivian filed a Petition for Certiorari before the Court of Appeals, assailing the dismissal of the case. On June 18, 1993, the Court of Appeals reinstated Civil Case No. 3593 but only with respect to Vivian.[17]

During the trial for the civil case, SPO2 Federico T. Tornado (SPO2 Tornado) testified that he was the "acting traffic investigator of the PNP" assigned to the case.[18] According to SPO2 Tornado, he had previously seen the pick-up truck transport passengers from the wharf to the poblacion.[19] The road, which was four (4) meters wide, could only accommodate one (1) vehicle. Other than the truck, there were no other vehicles that came in and out of the wharf.[20] He further testified that on the day of the accident, he asked to see Aparra's license but Aparra only presented a student driver's permit.[21]

Abellana testified that Rodolfo was the General Manager of her businesses in Butuan City. As manager, Rodolfo was in charge of three (3) drugstores, an apartment, and rice fields. He was earning a basic salary of P10,000.00 and received a 20% commission on the profit of the businesses, thus, earning more or less P15,000.00. Abellana claimed that she could not present her accounting books to the court because she had already disposed of them.[22]

On November 17, 2000, the Regional Trial Court ruled that Caballes and Aparra committed acts constituting a quasi-delict.[23] Since these acts were the proximate cause of the deaths of Rodolfo and Monalisa and the injuries sustained by Abellana and Johanna, Simolde, Caballes, and Aparra were held liable for damages. The dispositive portion of the trial court Decision stated:

Wherefore, on the basis therefore of the foregoing evidence, both [testimonial and documentary .] [t]his Court does hereby render judgment in favor of the plaintiffs and against defendants and hereby ordering the defendants as follows:

- To pay jointly and severally to plaintiffs the amount of P300,000.00 as actual damages;
- To pay jointly and severally to plaintiffs the sum of P50,000.00 as moral damages; and to pay in solidum to plaintiffs by way of litigation expenses in the sum of P10,000.00;

- To pay in solidum into plaintiffs [Vivian] Torreon and Felomina Abellana the sum of P25,000.00 and P10,000.00 by way of Attorney's fees; and
- To pay in solidum into plaintiffs the sum of P10,000.00 as exemplary damages.

SO ORDERED.[24]

Simolde, Caballes, and Aparra filed a Notice of Appeal on November 27, 2000.[25]

On April 3, 2008, the Court of Appeals promulgated a Decision[26] holding Simolde solidarity liable with Caballes and Aparra. According to the Court of Appeals, Caballes and Aparra were clearly negligent in transporting the passengers. Given that the road was narrow and full of pot holes, it was apparent that an experienced driver was needed to safely navigate the vehicle out of the wharf. In allowing Aparra to drive the truck despite having only a student driver's permit, Caballes risked the lives of the passengers on board the truck. The Court of Appeals also held Simolde solidarity liable with his employees for failing to exercise due diligence in supervising them.[27] However, the Court of Appeals deleted the award of actual damages for Rodolfo's loss of earning capacity. According to the Court of Appeals, documentary evidence should be presented to substantiate a claim for loss of earning capacity. The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, in view of the foregoing, the decision of the Court a quo in Civil Case No. 3593 is SET ASIDE and another one is RENDERED ordering appellants Carmelo T. Simolde, Felix Caballes and Generoso Aparra, Jr., to pay, solidarity, appellee Vivian Torreon the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity for the death of Rod[o]lfo Torreon; another Fifty Thousand (P50,000.00) Pesos as civil indemnity for the death of Monalisa Torreon; Twenty-five Thousand (P25,000.00) Pesos as temperate or moderate damages for pecuniary loss sustained due to the death of Rod[o]lfo Torreon and another Twenty-five Thousand (P25,000.00) Pesos as temperate or moderate damages for pecuniary loss sustained due to the death of Monalisa Torreon; Fifty Thousand (P50,000.00) Pesos as moral damages; Ten Thousand (P10,000.00) Pesos as exemplary damages; Ten Thousand . . . (P10,000.00) Pesos as attorney's fees and Twenty[-]Five Thousand (P25,000.00) Pesos as litigation expenses, with legal interest at the rate of SIX PERCENT(6%) per annum starting from the date of the promulgation of the court a quo's Decision or from 17 November 2000. A TWELVE PERCENT (12%) interest, in lieu of SIX PERCENT (6%), shall be imposed on such amount upon finality of this decision until actual payment thereof.

SO ORDERED.[28]

Vivian and Abellana filed a Motion for Partial Reconsideration,[29] asking the Court of Appeals to modify its April 3, 2008 Decision by increasing the award of the damages to the following amounts:

(a)

Php2,079,675.00, as compensatory damages for loss or impairment of earning capacity (lucro cesant); instead of Php25,000.00.

(b)

Php300,000.00 as actual damages for funeral and burial expenses; or in the alternative, a reasonable or just amount as temperate damages.

(c)

Php1,000,000.00 as moral damages; instead of Php50,000.00.

(d)

Php1,000,000.00 as exemplary damages; instead of Php10,000.00.

(e)

Php100,000.00 and Php50,000.00 as attorney's fees and litigation expenses; instead of Php10,000.00 and Php25,000.00, respectively[.][30]

In its May 28, 2009 Resolution,[31] the Court of Appeals denied the motion.

Hence, this Petition was filed before this Court.

Petitioner Vivian argues that the Court of Appeals gravely erred in deleting the compensatory damages awarded for Rodolfo's loss of earning capacity.[32] She posits that Abellana's testimony is enough to prove Rodolfo's income. As Rodolfo's employer, Abellana had direct and personal knowledge of the compensation that he was receiving prior to his death; thus, she is qualified to testify on his income.[33] Petitioner Vivian cites *Philippine Airlines, Inc. v. Court of Appeals*[34] to point out that the Court of Appeals gravely erred in concluding that Abellana's testimony, without any documentary evidence, did not suffice to claim damages for lack of earning capacity.[35] Based on Abellana's testimony, Rodolfo had an estimated gross monthly income of P15,000.00 or an annual gross income of P195,000.00.[36] Using the formula[37] laid down in *Negros Navigation Co., Inc. v. Court of Appeals*,[38] Rodolfo's lost earnings would amount to P2,079,675.00.[39]

Petitioner Vivian cites four (4) reasons why the damages awarded to her should be increased. First, she points to the gravity of the loss she suffered. The difficulties she has gone through, following the death of her husband and her young daughter, are immeasurable and deserve a higher compensation. Second, the degree of the negligence committed by respondents, as affirmed by the Court of Appeals, is gross and inexcusable, thereby warranting harsher penalties.[40] Third, Simolde has an undisputable substantial financial capacity to pay more. Allegedly, Simolde has a "virtual monopoly of the business at Jetafe wharf." [41] He has the capacity to pay the increased amounts petitioner Vivian is praying for. Lastly, the length of the litigation, which spanned almost two (2) decades at the time this petition was filed to this Court, has whittled down the real value of the monetary award.[42]

On the other hand, respondents argue that the Court of Appeals committed no reversible error in the assailed Decision. They claim that there is no sufficient proof to sustain the award of damages.[43] Respondents also contend that the inclusion of Abellana as a petitioner is baseless. The Court of Appeals in CA-G.R. SP No. 28859 already ruled that the present case is reinstated only with respect to Vivian.[44]

In its February 17, 2010 Resolution, this Court required petitioners to file a Reply to respondents' Comment.[45]

On April 28, 2010, petitioners filed their Reply and claimed that Abellana's inclusion as a petitioner is "a non-issue." [46] Abellana was only joined as a petitioner because she was already a co-petitioner in the lower courts. However, as seen "in the prayer of the Petition for Review, Felomina Abellana is not mentioned as being entitled [to] payment for damages from respondents." [47]

The issues for this Court's resolution are as follows:

First, whether or not actual damages for loss of earning capacity should be awarded to petitioner Vivian B. Torreon; and

Second, whether or not the value of the other awarded damages should be increased.

Before proceeding with the discussion regarding civil damages, this Court will briefly discuss Abellana's standing in this case. Notably, the Court of Appeals already ruled on this matter. However, since respondents raised it in their Comment,[48] it is best to address this concern.

I

On April 3, 1990, petitioners instituted a criminal case against respondents. However, petitioner Abellana did not reserve her right to file a separate civil action for damages arising from the crime.[49] Rule 111, Section 1(a) of the Rules of Court provides:

Section 1. Institution of criminal and civil actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

The Court of Appeals in CA-G.R. SP No. 28859 correctly reinstated the present case only with regard to Vivian. When Abellana did not reserve her right to institute a separate civil action, her cause of action for damages was deemed impliedly instituted with the criminal case. Rule 111, Section 3 of the Rules of Court prohibits offended parties from recovering damages twice for the act being prosecuted in the criminal action.[50] Thus, Abellana is now barred from instituting this case.

This Court now moves to the discussion regarding damages.

II

Article 2176 of the Civil Code provides that those who commit acts constituting a quasi-delict are liable to pay damages:

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.

Vergara v. Court of Appeals[51] enumerated the elements necessary to establish a quasi-delict case:

These requisites are: (1) damages to the plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose acts he must respond, was guilty; and (3) the connection of cause and effect between such negligence and the damages.[52]

This Court affirms the finding of the Court of Appeals that Caballes and Aparra were grossly negligent in transporting the passengers. The Court of Appeals ruled:

Records bore that after appellant Aparra took over the control of the wheel of the cargo truck and drove the same, appellant Caballes merely rushed to get on the truck and only sat beside appellant Aparra. Appellant Caballes, despite the fact that appellant Aparra possessed only a student driver's permit, allowed him to continue driving the truck. Moreover, We cannot glean from the records that appellant Caballes cautioned appellant Aparra while the latter was driving the truck. It must be pointed out that the cargo truck had more than thirty (30) passengers on board at its back, who were either just standing or sitting on their bags, with nothing to hold on for support, while the truck was moving. Furthermore, the road was only four (4) meters wide, rough and with many pot holes. Obviously, these circumstances warrant that the driver be somebody of competence and experience in maneuvering a vehicle under such a precarious condition. Therefore, the acts of appellant Aparra in taking the wheel and of appellant Caballes in allowing the former to take the wheel are plain manifestations of negligence.[53]

Caballes was grossly negligent in allowing Aparra to drive the truck despite being an inexperienced driver. Aparra's inexperience caused the accident that led to the deaths of Rodolfo and Monalisa. It is undisputed that the deaths of Vivian's husband and daughter caused damage to her. Clearly, the requisites for a quasi-delict are present in this case.

In addition to Caballes and Aparra, the law also holds their employer, Simolde, liable. Article 2180 of the Civil Code provides that an employer is vicariously liable with his employees for any damage they cause while performing their duties.

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.

....

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.

....

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. (Emphasis supplied)

Delsan Transport Lines, Inc. v. C & A Construction, Inc.[54] explained that when an employee's negligence causes injury to another, a presumption against the employer arises. To avoid liability, the employer must prove he exercised due diligence in selecting as well as supervising his employees.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris familias* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees. To avoid liability or a quasi-delict committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.

There is no question that petitioner, who is the owner/operator of M/V Delsan Express, is also the employer of Capt. Jusep who at the time of the incident acted within the scope of his duty. The defense raised by petitioner was that it exercised due diligence in the selection of Capt. Jusep because the latter is a licensed and competent Master Mariner. It should be stressed, however, that the required diligence of a good father of a family pertains not only to the selection, but also to the supervision of employees. It is not enough that the employees chosen be competent and qualified, inasmuch as the employer is still required to exercise due diligence in supervising its employees.

In *Fabre, Jr. v. Court of Appeals*, it was held that due diligence in supervision requires the formulation of rules and regulations for the guidance of employees and the issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules. Corollarily, in *Ramos v. Court of Appeals*, the Court stressed that once negligence on the part of the employees is shown, the burden of proving that he observed the diligence in the selection and supervision of its employees shifts to the employer.[55] (Emphasis supplied, citations omitted)

In an effort to decry liability, Simolde insists that the passengers boarded the truck without his knowledge and despite his objections. He testified as follows:

Q:

You mentioned that this truck was being used by different passengers to load their cargoes to different destinations, and of course when the passengers would load their cargoes, they would join in the truck?

A:

It depends on the condition at their own risk.

Q:

Regardless whether at their own risk, you would admit that there was also passengers boarding the truck at the same time that the cargoes are being loaded and transported to their respective destinations?

A:

No, only cargoes, that is strictly given and instructed to the driver.

Q:

Now, Mr. Simolde, you said it was at their own risk when the passengers boarded the cargo truck when this truck transported the cargoes to their destinations, do you mean to say that no passengers were on board that particular vehicle?

A:

You know, you cannot, although you try to impose this, but you know in the provinces like that, especially there are only few jeepney for transportation, even cargo trucks are being boarded by the passengers in spite of the fact that the driver says no passengers, no passengers, you know, those things are pakikisama, but my strict implementation is that the truck is only good for services for the cargoes and the cargo that is being loaded there is already included on the freight-on-board the vessel, so that truck is used for servicing cargo.

Q:

Based on your observations, you mentioned that this cargo truck picture of which has been identified as Exh. "6", was used to transport cargo, now, in one occasion, how many passengers would ride without your notice,

can you make an estimate?

A:

I cannot tell you any facts about that, because for me, I have not received any information that the truck has been boarded with passengers, because by the nature of the looks of the truck, how could the passenger board the vehicle, and where can they sit down on the side, there is no bench.

Q:

Let us clarify this, Mr. Simolde, you earlier admitted that there were occasions, because of the absence of cargo trucks and passenger vehicles in the area, the passengers would board the cargo truck even without your knowledge or your consent?

A:

Yes, sir.

Q:

In other words, there were occasions, of course you acquired knowledge of this, when the truck was transporting cargoes, passengers would join in the truck?

A:

No, only cargoes. I don't know if when the truck is already out of sight, it depends on the driver.[56]

Instead of helping his defense, Simolde's testimony proves his failure to supervise his employees. Simolde should have been more diligent in ensuring that his employees acted within the parameters of their jobs. He should have taken steps to ensure that his instructions were followed. His failure to control the behavior of his employees makes him liable for the consequences of their actions. Thus, Simolde is solidarity liable with Caballes and Aparra for the payment of the damages granted by law.

The Civil Code holds Simolde liable for the damages that his actions have caused.[57] Article 2206 specifically applies when a death occurs as a result of a crime or a quasi-delict:

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 the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3)

The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. (Emphasis supplied)

The same rules on damages are applicable whether or not the death occurred as a result of a crime or a quasi-delict. To summarize, the heirs are entitled to recover:

1. As indemnity for the death of the victim of the offense — P12,000.00, without the need of any evidence or proof of damages, and even though there may have been mitigating circumstances attending the commission of the offense [now P50,000.00].
2. As indemnity for loss of earning capacity of the deceased — an amount to be fixed by the court according to the circumstances of the deceased related to his actual income at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a matter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused. If the deceased was obliged to give support, under Art. 291, Civil Code, the recipient who is not an heir, may demand support from the accused for not more than five years, the exact duration to be fixed by the court.
3. As moral damages for mental anguish, — an amount to be fixed by the court. This may be recovered even by the illegitimate descendants and ascendants of the deceased.
4. As exemplary damages, when the crime is attended by one or more aggravating circumstances, — an amount to be fixed in the discretion of the court, the same to be considered separate from fines.
5. As attorney's fees and expenses of litigation, — the actual amount thereof, (but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded)
6. Interests in the proper cases.
7. It must be emphasized that the indemnities for loss of earning capacity of the deceased and for moral damages are recoverable separately from and in addition to the fixed sum of P12,000.00 corresponding to the indemnity for the sole fact of death, and that these damages may, however, be respectively increased or lessened according to the mitigating or aggravating circumstances, except items 1 and 4 above, for obvious reasons.[58] (Emphasis supplied)

Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[59] Initially fixed by the Civil Code at P3,000.00, the amount of the indemnity is currently fixed at P50,000.00.[60]

Thus, respondents are liable to pay Rodolfo's heirs P50,000.00. They are liable to pay another P50,000.00 to answer for the death of Monalisa.

In *Pestaño v. Spouses Sumayang*,[61] this Court applied Article 2206 of the Civil Code and awarded compensation for the deceased's lost earning capacity in addition to the award of civil indemnity. The indemnity for the deceased's lost earning capacity is meant to compensate the heirs for the income they would have received

had the deceased continued to live.[62]

Pleyto v. Lomboy[63] provided the formula to compute a deceased's earning capacity:

It is well-settled in jurisprudence that the factors that should be taken into account in determining the compensable amount of lost earnings are: (1) the number of years for which the victim would otherwise have lived; and (2) the rate of loss sustained by the heirs of the deceased. Jurisprudence provides that the first factor, i.e., life expectancy, is computed by applying the formula $(\frac{2}{3} \times [80 - \text{age at death}])$ adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. As to the second factor, it is computed by multiplying the life expectancy by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: $\text{Net Earning Capacity} = [\frac{2}{3} \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$. [64] (Emphasis supplied, citations omitted)

The reason behind the formula for loss of earning capacity was discussed in *Villa Rey Transit, Inc. v. Court of Appeals*: [65]

[The award of damages for loss of earning capacity is] concerned with the determination of the losses or damages sustained by the Private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, We must reckon with the "necessary expenses of his own living", which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, "less the necessary expense for his own living." Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning, are to be considered that is, the total of the earnings less expenses necessary in creation of such earnings or income and less living and other incidental expenses. [66] (Citations omitted)

The formula provided in these cases is presumptive, i.e., it should be applied in the absence of proof in terms of statistics and actuarial presented by the plaintiff.

The Court of Appeals deleted the award of actual damages granted to petitioner for Rodolfo's lost earnings. According to the Court of Appeals, documentary evidence should be presented to substantiate a claim for the deceased's lost income. [67]

This Court disagrees.

In civil cases, Vivian is only required to establish her claim by a preponderance of evidence. Allowing testimonial evidence to prove loss of earning capacity is consistent with the nature of civil actions. [68] Rule 133, Section 1 of the Rules of Court provides:

Section 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

In determining if this quantum of proof is met, this Court is not required to exclusively consider documentary evidence:

Nothing in the Rules of Court requires that only documentary evidence is allowed in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence. In addition, the Civil Code does not prohibit a claim for loss of earning capacity on the basis that it is not proven by documentary evidence.

Testimonial evidence, if not questioned for credibility, bears the same weight as documentary evidence. Testimonies given by the deceased's spouse, parent, or child should be given weight because these individuals are presumed to know the income of their spouse, child, or parent.

If the amount of income testified to seemed incredible or unrealistic, the defense could always raise their objections and discredit the witness or, better yet, present evidence that would outweigh the evidence of the prosecution.[69]

This Court has previously accepted a competent witness' testimony to determine the deceased's income. In *Pleyto v. Lomboy*,[70] this Court used the testimony of the deceased's widow as basis to estimate his earning capacity:

Petitioners' claim that no substantial proof was presented to prove Ricardo Lomboy's gross income lacks merit. Failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity. Hence, the testimony of respondent Maria Lomboy, Ricardo's widow, that her husband was earning a monthly income of P8,000 is sufficient to establish a basis for an estimate of damages for loss of earning capacity.[71] (Citation omitted)

In a torts case, this Court also accepted testimony from co-workers of the deceased to establish his income before his death.

The witnesses Mate and Reyes, who were respectively the manager and auditor of Allied Overseas Trading Company and Padilla Shipping Company, were competent to testify on matters within their personal knowledge because of their positions, such as the income and salary of the deceased, Nicanor A. Padilla (Sec. 30, Rule 130, Rules of Court). As observed by the Court of Appeals, since they were cross-examined by petitioner's counsel, any objections to their competence and the admissibility of their testimonies, were deemed waived. The payrolls of the companies and the decedent's income tax returns could, it is true, have constituted the best evidence of his salaries, but there is no rule disqualifying competent officers of the corporation from testifying on the compensation of the deceased as an officer of the same corporation, and in any event, no timely objection was made to their testimonies.[72]

If co-workers were deemed competent to testify on the compensation that the deceased was receiving, all the more should an employer be allowed to testify on the amount she was paying her deceased employee.

Abellana testified that at the time of his death, deceased Rodolfo was earning P15,000.00 per month:

Q:

Prior to the death of Rodolfo Torreon, do you know where he was working?

A:

He was working under me.

Q:

You said he was working under you?

A:

Yes, later, he was the general manager in my business in Butuan City.

Q:

What were these business [es]?

A:

Three drug stores.

Q:

Can you identify the drug stores at that time?

A:

Yes[,] sir.

Q:

What are the names?

A:

All Farmacia Buena. Farmacia Bue[n]a located in G. Flores Ave., Farmacia Buena located in A.D. Curato St., and the other one in Langihan.

Q:

What happened to these drugstores?

A:

At that time, I immediately sold my store in Curato St., a few months after the death of Rod[o]lfo Torreon.

Q:

Aside from the drug stores, what other business you have at that time in 1989?

A:

I have an apartment.

Q:

And Rod[o]lfo Torreon was?

A:

He was the one supervising.

Q:

Aside from this apartment, what else?

A:

I have my rice fields in Los Angeles.

....

Q:

Did you keep the payroll of Rodolfo Torreon?

A:

At this time, almost five years, I think I have thrown that away already, the records.

Q:

From your estimate, how much income was he receiving?

A:

His basic salary is P10,000.00 a month and he is receiving 20% commission on the net profit.

Q:

How about for the other businesses, did he also receive share?

A:

Sometimes.

Q:

How much do you think was Rodolfo Torreon earning at that time?

A:

More or less P15,000.00 and I think he was receiving commission from the salesmen.[73]

The simplified formula to compute loss of earning capacity was given in the ponencia of People v. Wahiman:[74]

$$[2/3 \times 80 - \text{age}] \times [\text{gross annual income} - \text{necessary expenses equivalent to 50\% of the gross annual income}][75]$$

The concurring opinion in Wahiman was instructive on how to properly apply this formula:

This is a step-by-step guide to compute an award for loss of earning capacity.

- (1) Subtract the age of the deceased from 80.
- (2) Multiply the answer in (1) by 2, and divide it by 3 (these operations, are interchangeable).
- (3) Multiply 50% to the annual gross income of the deceased.
- (4) Multiply the answer in (2) by the answer in (3). This is the loss of earning capacity to be awarded.

When the evidence on record only shows monthly gross income, annual gross income is derived from multiplying the monthly gross income by 12. When the daily wage is the only information provided during trial, such amount may be multiplied by 260, or the number of usual workdays in a year, to arrive at annual gross income.[76]

At the time of his death, Rodolfo was 48 years old and was earning P15,000.00 monthly.[77] To determine his annual gross income, this Court multiplied his gross monthly income by 12 to get the result of P180,000.00.

Computing for life expectancy, or steps 1 and 2, results:

Life Expectancy = $2/3 \times (80 - 48)$

Life Expectancy = $2/3 \times (32)$

Life Expectancy = 21.33 years

Applying his life expectancy and annual gross income to the general formula, or step 3:

Loss of Earning Capacity = Life Expectancy x 1/2 annual gross income

Loss of Earning Capacity = 21.33 x (P180,000.00/2)

Loss of Earning Capacity = 21.33 x P90,000.00

Loss of Earning Capacity = P1,919,700.00

Respondents are liable to pay P1,919,700.00 to compensate for the income Rodolfo's heirs would have received had he lived.

On the other hand, Vivian failed to prove the actual damages she suffered for the death of her daughter, Monalisa. Vivian merely testified as to the funeral and burial expenses she incurred without producing any receipt or other evidence to support her claim.[78] Consequently, she cannot be entitled to an award of actual damages on account of Monalisa's loss.

III

With regard to the award of moral damages, this Court affirms the Court of Appeals' ruling to grant it. Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity.[79]

In her petition, Vivian maintains that the amount of moral damages granted her should be increased. This Court is not convinced. Although the Civil Code[80] grants compensation for the mental anguish suffered by the heirs for the loss of their loved one, this award is not meant to enrich the petitioner at the expense of the respondents.[81]

The Court of Appeals correctly granted P50,000.00 as moral damages to the heirs of Rodolfo. An award of P50,000.00 is also awarded to the heirs of Monalisa.

In addition, this Court affirms the award for exemplary damages. Exemplary damages are imposed by way of example or to correct a wrongful conduct.[82] It is imposed as a punishment for highly reprehensible conduct, meant to deter serious wrongdoing.[83] Specifically, in cases of quasi-delicts, it is granted if the respondent acted with gross negligence.[84]

Kierulf v. Court of Appeals[85] summarized the requirements for exemplary damages to be awarded:

Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender. However, it cannot be recovered as a matter of right. It is based entirely on the discretion of the court. Jurisprudence sets certain requirements before exemplary damages may be awarded, to wit:

- (1) They may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant;
- (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and
- (3) the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[86] (Citations omitted)

The Court of Appeals correctly imposed exemplary damages against respondents. Each respondent clearly acted with gross negligence. Aparra drove without a license and jeopardized the life of the cargo truck passengers. Caballes not only allowed Aparra to drive on a perilous road but he also permitted passengers to board the cargo truck despite knowing that the vehicle was not designed to transport people. Simolde was also grossly negligent for tolerating his employees' negligent behaviors. Had Simolde been more diligent in supervising his employees, his driver would not have allowed passengers to board the truck and his mechanic would not have attempted to

drive a vehicle he was not equipped to handle.

Thus, to ensure that such behavior will not be repeated, respondents are directed to pay P10,000.00 as exemplary damage to the heirs of Rodolfo and Monalisa.

With respect to the award of litigation expenses and attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed.

Considering the protracted litigation of this dispute, an award of P100,000.00 as attorney fees and P50,000.00 for litigation expenses are awarded to Vivian.

Finally, there is a need to modify the interest imposed by the Court of Appeals.

In its Decision, the Court of Appeals imposed 6% interest on the award of damages and a 12% interest on the judgment award:

In addition, We impose the legal interest at the rate of SIX PERCENT (6%) per annum of the total amount of damages awarded by this Court in the amount of Two Hundred Forty Five Thousand (P245,000.00) Pesos, starting from the date of the promulgation of the court a quo's Decision or from 17 November 2000 and the rate of TWELVE PERCENT (12%) interest per annum, in lieu of SIX PERCENT (6%), upon finality of the decision of this Court. This is in line with the ruling of the Supreme Court in *Eastern Shipping Lines, Inc. versus Court of Appeals*.[87]

The Court of Appeals used as a guide *Eastern Shipping v. Court of Appeals*,[88] which provided:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When a[n] obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[89] (Emphasis supplied, citations omitted)

Interest by way of damages, also known as moratory interest, is allowed in actions for breach of contract or tort.[90] Since the obligation in this case stems from a quasi-delict and not from a loan or forbearance of money, the interest awarded falls under the second paragraph illustrated in *Eastern Shipping*. This is in line with Article 2211 of the Civil Code which states that this Court may impose "interest as a part of the damages" in quasi-delict

cases.[91] Awarding this interest is discretionary upon the courts.[92]

This is different from interest on interest imposed under Article 2212[93] of the Civil Code. Interest on interest is mandatory and is imposed as penalty for the delay in the payment of a sum of money.[94]

Guided by *Eastern Shipping*, the Court of Appeals imposed a 6% interest on the award of damages starting from November 17, 2000, the date of the promulgation of the Regional Trial Court Decision. However, this award is not proper.

Generally, the Civil Code does not allow interest upon unliquidated claims or damages to be recovered unless they can be established with reasonable certainty.[95] The rationale for this is because it would be unfair to require the liable person to pay interest on a sum that is yet to be determined. However, the courts, in the interest of justice, may impose interest on unliquidated claims or damages upon judgment.

In this case, there is no need to impose a moratory interest. Actual damages to compensate for the deceased's lost earnings are already granted. Payment for Rodolfo's lost earning capacity should be enough to cover the actual damages suffered by his heirs.

On the other hand, pursuant to *Eastern Shipping*, the Court of Appeals correctly imposed an interest on the judgment award. However, the 12% interest should be modified. Following *Bangko Sentral ng Pilipinas-Monetary Board Circular No. 796* dated May 16, 2013, the rate of legal interest is now 6%. *Nacar v. Gallery Frames*[96] is instructive:

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.I, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.[97] (Citations omitted)

Consequently, the guidelines laid down in *Eastern Shipping* have been amended as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[98] (Emphasis supplied)

Since the judgment of this Court has not yet become final and executory, the interest rate applicable to the judgment award is 6% and not 12% as imposed by the Court of Appeals.

The interest on the judgment award discussed in *Eastern Shipping* is reckoned from finality of the judgment until full payment. It is designed to penalize non-payment of the judgment award. Thus, if the liable party immediately pays, no interest will be imposed.

WHEREFORE, the April 3, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 71090 is MODIFIED. Respondents Carmelo T. Simolde, Felix Caballes, and Generoso Aparra, Jr., are ORDERED to pay solidarity petitioner Vivian B. Torreon the amounts of:

- P50,000.00 as civil indemnity for the death of Rodolfo Torreon;
- P50,000.00 as civil indemnity for the death of Monalisa Torreon;
- P1,919,700.00 as actual damages for Rodolfo Torreon's lost earning capacity;
- P100,000.00 as moral damages composed of P50,000.00 for Rodolfo Torreon's heirs and P50,000.00 for Monalisa Torreon's heirs;
- P10,000.00 as exemplary damages;
- P100,000.00 as attorney fees; and
- P50,000.00 as litigation expenses.

An interest at the legal rate of six percent (6%) per annum shall also be imposed on the total judgment award computed from the finality of this decision until its actual payment.

SO ORDERED.

Velasco, Jr., (Chairperson), Martires, and Gesmundo, JJ., concur.
Bersamin, J., on official leave.

March 1, 2018

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on December 13, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on March 1, 2018 at 9:18 a.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

[1] Rollo, pp. 1040.

[2] Id. at 42-64. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Edgardo T. Lloren of the Twenty-Second Division of the Court of Appeals, Cagayan de Oro City.

[3] Id. at 80-82. The Resolution was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Edgardo T. Lloren of the Former Twenty-Second Division of the Court of Appeals, Cagayan de Oro City.

[4] Id. at 36-37.

[5] Id. at 43.

[6] Id. at 14-15.

[7] Id. at 43-44.

[8] Id. at 44.

[9] Id.

[10] Id.

[11] Id. at 90-91.

[12] Id. at 16.

[13] Id. at 65.

[14] Id. at 16.

[15] Id.

[16] Id. at 17.

[17] Id. at 45.

[18] Id. at 70.

[19] Id. at 69.

[20] Id. at 72.

[21] Id. at 70.

[22] Id. at 73-75.

[23] Id. at 77.

[24] Id. at 77-78.

[25] Id. at 84 and 101.

[26] Id. at 42-64.

[27] Id. at 54.

[28] Id. at 63-64.

[29] Id. at 204-218.

[30] Id. at 216.

[31] Id. at 80-82.

[32] Id. at 21-29.

[33] Id. at 24-26.

[34] 263 Phil. 806 (1990) [Per J. Grino-Aquino, First Division].

[35] Rollo, pp. 22-25.

[36] Id. at 25.

[37] Net Earning Capacity = life expectancy x [gross annual income - reasonable and necessary living expenses (50%)]

[38] 346 Phil. 551 (1997) [Per J. Mendoza, Second Division].

[39] Rollo, pp. 25-26.

[40] Id. at 33.

[41] Id. at 34.

[42] Id.

[43] Id. at 231-233.

[44] Id. at 233-236.

[45] Id. at 240.

[46] Id. at 248.

[47] Id.

[48] Id. at 233-237.

[49] Id. at 16.

[50] RULES OF COURT, Rule 111, sec. 3 provides:

Section 3. When civil action may proceed independently. — In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

[51] 238 Phil. 565 (1987) [Per J. Padilla, Second Division].

[52] Id. at 568.

[53] Rollo, pp. 50-51.

[54] 459 Phil. 156 (2003) [Per J. Ynares-Santiago, First Division].

[55] Id. at 163-164.

[56] Rollo, pp. 54-55.

[57] Art. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

[58] *Castro v. Bustos*, 136 Phil. 553, 561-562 (1969) [Per J. Barredo, En Banc].

[59] *People v. Buban*, 551 Phil. 120, 135 (2007) [Per J. Quisumbing, En Banc].

[60] *PhilTranco Service Enterprises, Inc. v. Court of Appeals*, 340 Phil. 98, 109-110 (1997) [Per J. Davide, Third Division].

[61] 400 Phil. 740 (2000) [Per J. Panganiban, Third Division].

[62] Id. at 750-751.

[63] 476 Phil. 373 (2004) [Per J. Quisumbing, Second Division].

[64] Id. at 389-390.

[65] 142 Phil. 494 (1970) [Per J. Concepcion, Second Division].

[66] Id. at 500.

[67] Rollo, pp. 60-61.

[68] J. Leonen's Concurring Opinion in *People v. Wahiman y Rayos*, G.R. No. 200942 (2015), [Per J. Del Castillo, En Banc].

[69] Concurring Opinion of J. Leonen in *People v. Wahiman*, 760 Phil. 368, 384-385 (2015) [Per J. Del Castillo, En Banc]

[70] 476 Phil. 373 (2004) [Per J. Quisumbing, Second Division].

[71] *Id.* at 389.

[72] *Philippine Airlines, Inc. v. Court of Appeals*, 263 Phil. 806, 819 (1990) [Per J. Grinio-Aquino, First Division].

[73] *Rollo*, pp. 24-25.

[74] *People v. Wahiman*, 760 Phil. 368 (2015) [Per J. Del Castillo, En Banc]

[75] *Id.* at 377.

[76] *Id.* at 389.

[77] *Rollo*, p. 25.

[78] *Id.* at 61.

[79] See *Mercado v. Lira*, 113 Phil. 112 (1961) [Per J. Paredes, First Division].

[80] CIVIL CODE, art. 2217 provides:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[81] See *Kierulf v. Court of Appeals*, 336 Phil. 414 (1997) [Per J. Panganiban, Third Division].

[82] CIVIL CODE, art. 2229 provides:

Article 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.

[83] See *People v. Catubig y Horio*, 416 Phil. 102 (2001) [Per J. Vitug, En Banc].

[84] CIVIL CODE, art. 2231 provides:

Article 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

[85] 336 Phil. 414 (1997) [Per J. Panganiban, Third Division].

[86] *Id.* at 428-429.

[87] *Rollo*, pp. 62-63.

[88] 304 Phil. 236 (1994) [Per J. Vitug, En Banc].

[89] *Id.* at 252-254.

[90] *Id.* at 250.

[91] CIVIL CODE, art. 2211 provides:

Article 2211. In crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.

[92] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994) [Per J. Vitug, En Banc].

[93] Civil CODE, art. 2212 provides:

Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[94] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994) [Per J. Vitug, En Banc].

[95] CIVIL CODE, art. 2213 provides:

Article 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

[96] 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

[97] *Id.* at 280.

[98] *Id.* at 282-283.

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