

LETICIA TAN, MYRNA MEDINA, MARILOU SPOONER, ROSALINDA TAN, and MARY JANE TAN, MARY LYN TAN, CELEDONIO TAN, JR., MARY JOY TAN, AND MARK ALLAN TAN, REPRESENTED HEREIN BY THEIR MOT...

G.R. No. 190521. January 12, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve the motion for reconsideration[1] - filed by Leticia Tan, Myrna Medina, Marilou Spooner, Rosalinda Tan, Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan, and Mark Allan Tan (petitioners), all heirs of the late Celedonio Tan - asking us to reverse and set aside our Resolution of February 17, 2010.[2] We denied in this Resolution their petition for review on certiorari for failing to show any reversible error in the assailed Court of Appeals (CA) decision of June 22, 2009[3] sufficient to warrant the exercise of our discretionary appellate jurisdiction.

The CA decision, in turn, affirmed with modification the decision of the Regional Trial Court (RTC) of Muntinlupa City in Civil Case No. 96-186, finding the respondents - OMC Carriers, Inc. (OMC) and Bonifacio Arambala - guilty of gross negligence and awarding damages to the petitioners.

THE FACTS

On September 27, 1996, the petitioners filed a complaint for damages with the RTC against OMC and Bonifacio Arambala.[4] The complaint states that on November 24, 1995, at around 6:15 a.m., Arambala was driving a truck[5] with a trailer[6] owned by OMC, along Meralco Road, Sucat, Muntinlupa City. When Arambala noticed that the truck had suddenly lost its brakes, he told his companion to jump out. Soon thereafter, he also jumped out and abandoned the truck. Driverless, the truck rammed into the house and tailoring shop owned by petitioner Leticia Tan and her husband Celedonio Tan, instantly killing Celedonio who was standing at the doorway of the house at the time.[7]

The petitioners alleged that the collision occurred due to OMC's gross negligence in not properly maintaining the truck, and to Arambala's recklessness when he abandoned the moving truck. Thus, they claimed that the respondents should be held jointly and severally liable for the actual damages that they suffered, which include the damage to their properties, the funeral expenses they incurred for Celedonio Tan's burial, as well as the loss of his earning capacity. The petitioners also asked for moral and exemplary damages, and attorney's fees.[8]

The respondents denied any liability for the collision, essentially claiming that the damage to the petitioners was caused by a fortuitous event, since the truck skidded due to the slippery condition of the road caused by spilled motor oil.[9]

THE RTC DECISION

After trial, the RTC found OMC and Arambala jointly and severally liable to the petitioners for damages.[10] Relying on the doctrine of *res ipsa loquitur*, the RTC held that it was unusual for a truck to suddenly lose its brakes; the fact that the truck rammed into the petitioners' house raised the presumption of negligence on the part of the respondents. These, the respondents failed to refute.[11]

The RTC did not agree with the respondents' claim of a fortuitous event, pointing out that even with oil on the road, Arambala did not slow down or take any precautionary measure to prevent the truck from skidding off the road. The alleged oil on the road did not also explain why the truck lost its brakes. Had OMC done a more rigid inspection of the truck before its use, the defective brake could have been discovered. The RTC, thus, held OMC jointly and severally liable with Arambala for the damage caused to the petitioners, based on the principle of vicarious liability embodied in Article 2180[12] of the Civil Code.[13]

The dispositive portion of the decision stated:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering:

- The defendants to pay the plaintiffs jointly and severally the amount of P50,000.00 for the death of Celedonio Tan;
- The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 for the loss of earning capacity of Celedonio Tan, plus interest thereon from the date of death of Celedonio Tan;
- The defendants to pay the plaintiff Leticia Tan jointly and severally the amount of P355,895.00 as actual damages;
- The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 as moral damages;
- The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 as exemplary damages; and
- The defendants to pay the plaintiffs jointly and solidarily the amount of P500,000.00 as attorney's fees.

Costs against the defendants.

SO ORDERED.[14]

THE COURT OF APPEALS DECISION

On appeal, the CA affirmed the RTC's findings on the issues of the respondents' negligence and liability for damages. However, the CA modified the damages awarded to the petitioners by reducing the actual damages award from P355,895.00 to P72,295.00. The CA observed that only the latter amount was duly supported by official receipts.[15]

The CA also deleted the RTC's award for loss of earning capacity. The CA explained that the petitioners failed to substantiate Celedonio Tan's claimed earning capacity with reasonable certainty; no documentary evidence was ever presented on this point. Instead, the RTC merely relied on Leticia Tan's testimony regarding Celedonio Tan's income. The CA characterized this testimony as self-serving.[16]

The CA further reduced the exemplary damages from P500,000.00 to P200,000.00, and deleted the award of attorney's fees because the RTC merely included the award in the dispositive portion of the decision without discussing its legal basis.[17]

THE PETITION

In the petition for review on certiorari before us,[18] the petitioners assert that the CA erred when it modified the RTC's awarded damages. The petitioners submit the reasons outlined below.

First, the CA erred when it reduced the RTC's award of actual damages from P355,895.00 to P72,295.00. The petitioners claim that they sought compensation for the damage done to petitioner Leticia Tan's house, tailoring shop, sewing machines, as well as other household appliances. Since the damages primarily refer to the value of their destroyed property, and not the cost of repairing or replacing them, the value cannot be evidenced by receipts. Accordingly, the RTC correctly relied on petitioner Leticia Tan's testimony and the documentary evidence presented, consisting of pictures of the damaged property, to prove their right to recover actual damages for the destroyed property.

Second, the petitioners are entitled to actual damages for the loss of Celedonio Tan's earning capacity. While they admit that they did not submit any documentary evidence to substantiate this claim, the petitioners point out that Celedonio Tan was undisputably a self-employed tailor who owned a small tailor shop; in his line of work, no documentary evidence is available.

Third, the petitioners maintain that they are entitled to exemplary damages in the amount of P500,000.00 because the RTC and the CA consistently found that the collision was caused by the respondents' gross negligence. Moreover, the respondents acted with bad faith when they fabricated the "oil slick on the road" story to avoid paying damages to the petitioners. As observed by the CA, the Traffic Accident Investigation Report did not mention any motor oil on the road at the time of the accident. SPO4 Armando Alambro, the Investigation Officer, likewise testified that there was no oil on the road at the time of the accident. For the public good and to serve as an example, the respondents should be made to pay P500,000.00 as exemplary damages.

Lastly, the petitioners are entitled to attorney's fees based on Article 2208 of the Civil Code which provides, among others, that attorney's fees can be recovered when exemplary damages are awarded, and when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

We initially denied the petition in our Resolution of February 17, 2010, for the petitioners' failure to show any reversible error in the CA decision sufficient to warrant the exercise of our discretionary appellate jurisdiction. In our Resolution of August 11, 2010, we reinstated the petition on the basis of the petitioners' motion for reconsideration.

OUR RULING

Finding merit in the petitioners' arguments, we partly grant the petition.

Procedural Issue

As both the RTC and the CA found that the respondents' gross negligence led to the death of Celedonio Tan, as well as to the destruction of the petitioners' home and tailoring shop, we see no reason to disturb this factual finding. We, thus, concentrate on the sole issue of what damages the petitioners are entitled to.

We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages, an essentially factual question, because Section 1, Rule 45 of the Rules of Court, expressly states that -

Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The

petition shall raise only questions of law which must be distinctly set forth.

In light, however of the RTC's and the CA's conflicting findings on the kind and amount of damages suffered which must be compensated, we are compelled to consider the case as one of the recognized exceptions.[19] We look into the parties' presented evidence to resolve this appeal.

Temperate damages in lieu
of actual damages

We begin by discussing the petitioners' claim for actual damages arising from the damage inflicted on petitioner Leticia Tan's house and tailoring shop, taking into account the sewing machines and various household appliances affected. Our basic law tells us that to recover damages there must be pleading and proof of actual damages suffered.[20] As we explained in *Viron Transportation Co., Inc. v. Delos Santos*: [21]

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.[22]

The petitioners do not deny that they did not submit any receipt to support their claim for actual damages to prove the monetary value of the damage caused to the house and tailoring shop when the truck rammed into them. Thus, no actual damages for the destruction to petitioner Leticia Tan's house and tailoring shop can be awarded.

Nonetheless, absent competent proof on the actual damages suffered, a party still has the option of claiming temperate damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss.[23] As defined in Article 2224 of the Civil Code:

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

In *Canada v. All Commodities Marketing Corporation*, [24] we disallowed the award of actual damages arising from breach of contract, where the respondent merely alleged that it was entitled to actual damages and failed to adduce proof to support its plea. In its place, we awarded temperate damages, in recognition of the pecuniary loss suffered.

The photographs the petitioners presented as evidence show the extent of the damage done to the house, the tailoring shop and the petitioners' appliances and equipment.[25] Irrefutably, this damage was directly attributable to Arambala's gross negligence in handling OMC's truck. Unfortunately, these photographs are not enough to establish the amount of the loss with certainty. From the attendant circumstances and given the property destroyed, [26] we find the amount of P200,000.00 as a fair and sufficient award by way of temperate damages.

Temperate damages in lieu of
loss of earning capacity

Similarly, the CA was correct in disallowing the award of actual damages for loss of earning capacity. Damages for loss of earning capacity are awarded pursuant to Article 2206 of the Civil Code, which states that:

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[.]

As a rule, documentary evidence should be presented to substantiate the claim for loss of earning capacity.[27] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[28]

According to the petitioners, prior to his death, Celedonio was a self-employed tailor who earned approximately P156,000.00 a year, or P13,000.00 a month. At the time of his death in 1995, the prevailing daily minimum wage was P145.00,[29] or P3,770.00 per month, provided the wage earner had only one rest day per week. Even if we take judicial notice of the fact that a small tailoring shop normally does not issue receipts to its customers, and would probably not have any documentary evidence of the income it earns, Celedonio's alleged monthly income of P13,000.00 greatly exceeded the prevailing monthly minimum wage; thus, the exception set forth above does not apply.

In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.

In *Pleno v. Court of Appeals*,[30] we sustained the award of temperate damages in the amount of P200,000.00 instead of actual damages for loss of earning capacity because the plaintiff's income was not sufficiently proven.

We did the same in *People v. Singh*,[31] and *People v. Almedilla*,[32] granting temperate damages in place of actual damages for the failure of the prosecution to present sufficient evidence of the deceased's income.

Similarly, in *Victory Liner, Inc. v. Gammad*,[33] we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs P500,000.00 as temperate damages.

In the present case, the income-earning capacity of the deceased was never disputed. Petitioners Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan and Mark Allan Tan were all minors at the time the petition was filed on February 4, 2010,[34] and they all relied mainly on the income earned by their father from his tailoring activities for their sustenance and support. Under these facts and taking into account the unrebutted annual earnings of the deceased, we hold that the petitioners are entitled to temperate damages in the amount of P300,000.00 [or roughly, the gross income for two (2) years] to compensate for damages for loss of the earning capacity of the deceased.

Reduction of exemplary damages proper

Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[35] In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[36]

Celedonio Tan's death and the destruction of the petitioners' home and tailoring shop were unquestionably caused by the respondents' gross negligence. The law allows the grant of exemplary damages in cases such as this to serve as a warning to the public and as a deterrent against the repetition of this kind of deleterious actions.[37] The

grant, however, should be tempered, as it is not intended to enrich one party or to impoverish another. From this perspective, we find the CA's reduction of the exemplary damages awarded to the petitioners from P500,000.00 to P200,000.00 to be proper.

Attorney's fees in order

In view of the award of exemplary damages, we find it also proper to award the petitioners attorney's fees, in consonance with Article 2208(1) of the Civil Code.[38] We find the award of attorney's fees, equivalent to 10% of the total amount adjudged the petitioners, to be just and reasonable under the circumstances.

Interests due

Finally, we impose legal interest on the amounts awarded, in keeping with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[39] which held that:

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 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 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 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.

Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from May 14, 2003, when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

WHEREFORE, premises considered, we **PARTIALLY GRANT** the petition. The June 22, 2009 decision of the Court of Appeals in CA-G.R. CV. No. 84733, which modified the decision of the Regional Trial Court of Muntinlupa City, Branch 256, in Civil Case No. 96-186, is **AFFIRMED** with **MODIFICATION**. As modified, respondents OMC Carriers, Inc. and Bonifacio Arambala are ordered to jointly and severally pay the petitioners the following:

- (1) P50,000.00 as indemnity for the death of Celedonio Tan;
- (2) P72,295.00 as actual damages for funeral expenses;
- (3) P200,000.00 as temperate damages for the damage done to petitioner Leticia's house, tailoring shop, household appliances and shop equipment;
- (4) P300,000.00 as damages for the loss of Celedonio Tan's earning capacity;
- (5) P500,000.00 as moral damages;
- (6) P200,000.00 as exemplary damages; and
- (7) 10% of the total amount as attorney's fees; and costs of suit.

In addition, the total amount adjudged shall earn interest at the rate of 6% per annum from May 14, 2003, and at the rate of 12% per annum, from the finality of this Resolution on the balance and interest due, until fully paid.

SO ORDERED.

Carpio Morales, J., (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 251-261.

[2] Id. at 242.

[3] Id. at 43-55; Penned by Associate Justice Pampio Abarintos, with Associate Justices Amelita Tolentino and Antonio Villamor concurring.

[4] Id. at 70-78.

[5] With plate number PRS-885.

[6] With plate number CZA 233.

[7] Rollo, p. 58.

[8] Id. at 70-78.

[9] Id. at 86-87.

[10] Decision dated May 14, 2003.

[11] Rollo, pp. 59-60.

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

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[13] Rollo, p. 60.

[14] Id. at 60-61.

[15] Id. at 52.

[16] Id. at 53-54.

[17] Id. at 54-55.

[18] Id. at 26-39.

[19] The recognized exceptions to this rule are: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) when the inference made is manifestly mistaken; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) when the findings of fact of the Court of Appeals are contrary to those of the trial court; (8); when said findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 [1998]).

[20] *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[21] G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519, citing *Marina Properties Corporation v. Court of Appeals*, G.R. No. 125447, August 14, 1998, 294 SCRA 273.

[22] Id. at 519.

[23] *Premiere Development Bank v. Court of Appeals*, G.R. No. 159352, April 14, 2004, 427 SCRA 686, 699.

[24] *Supra* note 20.

[25] *Rollo*, pp. 203-231.

[26] Consisting of the petitioners' home, the tailoring shop, sewing machines and appliances.

[27] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010.

[28] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598.

[29] Based on Wage Order No. NCR-03, series of 1993, and the Rules Implementing Wage Order No. NCR-03.

[30] G.R. No. L-56505, May 9, 1988, 161 SCRA 208, 224-225.

[31] 412 Phil. 842, 859 (2001).

[32] G.R. No. 150590, August 21, 2003, 409 SCRA 428, 433.

[33] G.R. No. 159636, November 25, 2004, 444 SCRA 355.

[34] As alleged in their petition for review on certiorari, an allegation which the respondents did not dispute in their Comment dated October 5, 2010.

[35] CIVIL CODE, Article 2229.

[36] CIVIL CODE, Article 2231.

[37] *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 75, citing

Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-Purpose Cooperative, Inc., G.R. No. 136914, January 25, 2002, 374 SCRA 653.

[38] CIVIL CODE, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: (1) When exemplary damages are awarded.

[39] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

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