

**LAGUNA TAYABAS BUS CO., PETITIONER, VS. RUFINA DIASANTA,
ASSISTED BY HER HUSBAND SEVERO TAJADA, RESPONDENTS.***G.R. No. 19882. June 30, 1964*

Ponente: CONCEPCION, J.

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Appeal by certiorari from a decision of the Court of Appeals.

The record shows that on July 28, 1958, respondent Rufina Diasanta boarded at Atimonan, Quezon, Bus No. 29 of petitioner Laguna-Tayabas Transportation Co., which was bound for Manila: that the bus driver, Henry Betito, drove and operated it so recklessly that, upon nearing the town of Pagbilao, the bus went off the asphalted holes and ruts on that portion of the road and of the excessive speed of the bus, the same jumped up and down so violently that respondent was jerked from her seat to the floor with such force that she suffered a fracture in her vertebrae; that she was accordingly taken to a clinic in San Pablo City, and then transferred to the National Orthopedic Hospital at Mandaluyong, Rizal, where she was placed in a cast, thereby immobilizing her for several months; that her demands for the corresponding indemnity not having been heeded, she instituted in the Court of First Instance of Manila the present action for damages against the petitioner; that, in due course, said Court rendered a decision, sentencing the petitioner to pay to respondent: (1) P1,281.05 as reimbursement for actual expenses; (2) P3,000 as consequential damages; (3) P3,000.00 for moral and exemplary damages; (4) P2,000 for attorney's fee; and (5) the costs; and that, on appeal, this decision was affirmed by the Court of Appeals, except as to "the award of P3,000 for moral and exemplary damages", which was "reduced to P1,000 only for exemplary damages".

Petitioner maintains that these awards for actual and consequential damages, exemplary damages and attorney's fees contravene Articles 2199, 2201, 2208 and 2232 of the Civil Code of the Philippines and our decision in *Bautista vs. Lovina*, G. R. No. L-6569 and *Pascual vs. Court of Appeals*, G. R. No. Li-G576 (April 18, 1956), as well as that of the Court of Appeals in *Alegre vs. Batangas Transportation Co.*, CA-G.R. No. 24823-R (December 29, 1961).

We find no merit in this pretense. Upon consideration of the evidence on record, the Court of Appeals affirmed the finding of the trial court to the effect that respondent had suffered actual damages and consequential damages in the sums of P1,281.05 and P3,000 respectively. These are findings of fact which we can not review on appeal by certiorari, there being substantial evidence in support of the conclusion reached by said courts.

As regards the exemplary damages, Article 2232 of the Civil Code of the Philippines provides that, in contracts and quasi-contracts the court may award exemplary damages if the defendant acted in a "wanton, fraudulent, reckless, oppressive or malevolent manner." In the case at bar, petitioner's driver and, hence its agent has been found guilty of recklessness. No such finding had been made in the *Bautista* case. Moreover, under Article 2208 of the same Code, attorney's fees other than judicial costs may be awarded "when exemplary damages are awarded."

Upon the other hand, the Alegre case relied upon by petitioner is not in point, not only because the bus driver in that case—unlike the one involved in the one at bar— had not acted recklessly, but, also, because the injured party in the Alegre case may have contributed, although in a small measure, to the occurrence of the accident that resulted in the injury upon which the action was based, and no such factor, is present in the present case. It may not be amiss to note, also, that courts have discretion to grant or not to grant exemplary damages and that the circumstances obtaining in this case do not warrant interference with the exercise of such discretion by the lower courts.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

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

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