

**ESTATE OF THE DECEASED MR. AND MRS. FLORENCIO P. BUAN,
REPRESENTED BY BIENVENIDO P. BUAN AND A. NATIVIDAD PARAS,
CO-ADMINISTRATORS, DOING BUSINESS UNDER THE NAME AND
STYLE, PHIL...**

G.R. No. 21569. February 28, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review on certiorari of the decision of the Court of Appeals (CA—G.R. 23401—R) under date 18 June 1963 affirming the award of damages and attorney's fees by the Court of First Instance of Rizal, in its Civil Case No. 3712, in favor of herein respondent, Priscilio Camaganacan, and against herein petitioner, Estate of the late Attorney and Mrs. Florencio P. Buan, et al.

As narrated by the appellate court, the facts are as follows:

"In the night of December 14, 1954, Priscillo Camaganacan, a pay passenger bound for Grace Park, Caloocan, Rizal, took at San Fernando, Pampanga, Philippine Rabbit Bus No. 79 belonging to the Estate of Mr. & Mrs. Florencio P. Buan, of which defendants are the administrators. In Malolos, Bulacan, the bus tried to overtake a La Mallorca bus. The two buses ran a race. As it overtook the La Mallorca bus in Guiguinto, Bulacan, and while driven at a fast clip, the Philippine Rabbit bus ran smack into a Delbros trailer travelling in the opposite direction.

"In consequence, Priscillo Camaganacan suffered a fracture of the right wrist, a crushing injury on the second finger of the left hand, and a lacerated wound on the right leg. Brought to the Malolos Provincial Hospital, he was on the next day—December 15, 1954—transferred to the National Orthopedic Hospital in Mandaluyong. Discharged on January 22, 1955, he received further treatment until April 15, 1955. His hospital expenses were paid by the defendants.

"On July 22, 1955, Priscillo Camaganacan started suit for damages. The judgment below ordered defendants to pay plaintiff P2,630.00 as actual damages, plus P2,000.00 as attorneys' fees, or a total of P4,680.00, and the costs. Defendants appealed."

Not satisfied by the affirmatory judgment of the Court of Appeals, the herein petitioners elevated the case to the Supreme Court on the 'lone assignment of error that "The Court of Appeals erred in sentencing the herein petitioners to pay the herein respondent the sum of P2,000.00 for attorney's fees".

The trial court did not state in its decision why it was awarding attorney's fees against the defendants therein; the

matter of such fees was touched but once and appears already in the dispositive portion of the decision. The Court of Appeals, passing also upon this point, and nowhere else in its decision, merely stated:

"On the matter of attorneys' fees, the lower court in the exercise of ample discretion under Article 2208 (11), Civil Code, fixed the amount at P2,000.00. No justification exists why this amount should be disturbed. In fact, we find in appellants' counterclaim that they placed their counsel's fees also at that amount."

The text of the decision should state the reason why attorneys' fees are being awarded, otherwise, the award is disavowed (*Fed. of United Namarco Distributors, Inc., et al. vs. National Marketing Corp.* 114 Phil. 802; & *National Marketing Corp. vs. Tan, etc., et al.*, L-17768, 31 March 1962; *Jimenez vs. Bucoy*, 103 Phil. 40; *Castillo vs. Samonte*, 106 Phil. 1023).

The very opening paragraph of Article 2208 reveals that the award of attorneys' fees remains exceptional in our law, and it is up to the court to make an express finding of the facts that bring the case within the exception and justify the grant of counsel fees:

"Art. 2208. In the absence of stipulation, attorneys' fees and expenses of litigation, other than judicial costs can not be recovered, except: * * * " (Italics supplied)

the general rule being still that it is not sound public policy to make a penalty on the right to litigate (*Tan Ti vs. Alveor*, 26 Phil. 568) ; nor should counsel fees be awarded every time a party wins a lawsuit (*Jimenez vs. Bucoy*, supra.).

It is true that, in No. 11 of Article 2208, recovery of counsel fees is allowed "where the court deems it just and equitable that attorneys' fees and expenses of litigation should be recovered", but even in such cases the conclusion must be borne out by findings of facts and law. What is just and equitable in a given case is not a mere matter of feeling but of demonstration. This is specially true since the last part of Article 2208 expressly adds that the able". In the present case, for the award of P2,680.00 in "attorneys' fees and expenses of litigation must be reason-actual damages the appealed decision awards no less than P2,000.00 in counsel fees, which is hardly reasonable. Hence, the exercise of judicial discretion in the award of attorneys' fees under Article 2208 (11) of the Civil Code demands a factual, legal, or equitable justification upon the basis of which the court exercises, its discretion. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.

For the foregoing reasons, the decision under review is hereby modified by deleting therefrom the award of attorney's fees. No pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion; Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

Decision modified.

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