

**THE ILOCOS NORTE ELECTRIC COMPANY, PETITIONER, VS.
HONORABLE COURT OF APPEALS, (FIRST DIVISION) LILIAN JUAN
LUIS, JANE JUAN YABES, VIRGINIA JUAN CID, GLORIA JUAN CARAG,
AND PURI...**

G.R. No. 53401. November 06, 1989

Ponente: PARAS, J.

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PARAS, J.:

Sought to be reversed in this petition is the Decision[*] of the respondent Court of Appeals' First Division, setting aside the Judgment of the then Court of First Instance (CFI) of Ilocos Norte, with the following dispositive portion:

WHEREFORE, the appealed judgment is hereby set aside and another rendered in its stead whereby defendant is hereby sentenced to pay plaintiffs actual damages of P30,229.45; compensatory damages of P50,000.00; exemplary damages of P10,000.00; attorney's fees of P3,000.00; plus the costs of suit in both instances, (p. 27, Rollo).

Basically, this case involves a clash of evidence whereby both parties strive for the recognition of their respective versions of the scenario from which the disputed claims originate. The respondent Court of Appeals (CA) summarized the evidence of the parties as follows:

From the evidence of plaintiffs it appears that in the evening of June 28 until the early morning of June 29, 1967 a strong typhoon by the code name "Gening" buffeted the province of Ilocos Norte, bringing heavy rains and consequent flooding in its wake. Between 5:30 and 6:00 A.M. on June 29, 1967, after the typhoon had abated and when the floodwaters were beginning to recede, the deceased Isabel Lao Juan, fondly called Nana Belen, ventured out of the house of her son-in-law, Antonio Yabes, on No. 19 Guerrero Street, Laoag City, and proceeded northward towards the direction of the Five Sisters Emporium, of which she was the owner and proprietress, to look after the merchandise therein that might have been damaged. Wading in waist-deep flood on Guerrero, the deceased was followed by Aida Bulong, a Salesgirl at the Five Sisters Grocery, also owned by the deceased, and by Linda Alonzo Estavillo, a ticket seller at the YJ Cinema, which was partly owned by the deceased. Aida and Linda walked side by side at a distance of between 5 and 6 meters behind the deceased. Suddenly, the deceased screamed "Ay" and quickly sank into the water. The two girls attempted to help, but fear dissuaded them from doing so because on the spot where the deceased sank they saw an electric wire dangling from a post and moving in snake-like fashion in the water. Upon their shouts for help, Ernesto dela Cruz came out of the house of Antonio Yabes. Ernesto tried to go to the deceased, but at four meters away from her he turned back shouting that the water was grounded. Aida and Linda prodded Ernesto to seek help from Antonio Yabes at the YJ Cinema building which was four or five blocks away.

When Antonio Yabes was informed by Ernesto that his mother-in-law had been electrocuted, he acted immediately. With his wife Jane, together with Ernesto and one Joe Ros, Yabes passed by the City Hall of Laoag to request the police to ask the people of defendant Ilocos Norte Electric Company or 1NELCO to cut off the electric current. Then the party waded to the house on Guerrero Street. The floodwater was receding

and the lights inside the house were out indicating that the electric current had been cut off in Guerrero. Yabes instructed his boys to fish for the body of the deceased. The body was recovered about two meters from an electric post.

In another place, at about 4:00 AM. on that fateful date, June 29, 1967, Engineer Antonio Juan, Power Plant Engineer of the National Power Corporation at the Laoag Diesel-Electric Plant, noticed certain fluctuations in their electric meter which indicated such abnormalities as grounded or short-circuited lines. Between 6:00 and 6:30 A.M., he set out of the Laoag NPC Compound on an inspection. On the way, he saw grounded and disconnected lines. Electric lines were hanging from the posts to the ground. Since he could not see any INELCO lineman, he decided to go to the INELCO Office at the Life Theatre on Rizal Street by way of Guerrero. As he turned right at the intersection of Guerrero and Rizal, he saw an electric wire about 30 meters long strung across the street "and the other end was seeming to play with the current of the water." (p. 64, TSN, Oct. 24, 1972) Finding the Office of the INELCO still closed, and seeing no lineman therein, he returned to the NPC Compound.

At about 8:10 A.M., Engr. Juan went out of the compound again on another inspection trip. Having learned of the death of Isabel Lao Juan, he passed by the house of the deceased at the corner of Guerrero and M.H. del Pilar streets to which the body had been taken. Using the resuscitator which was a standard equipment in his jeep and employing the skill he acquired from an in-service training on resuscitation, he tried to revive the deceased. His efforts proved futile. Rigor mortis was setting in. On the left palm of the deceased, Engr. Juan noticed a hollow wound. Proceeding to the INELCO Office, he met two linemen on the way. He told them about the grounded lines of the INELCO. In the afternoon of the same day, he went on a third inspection trip preparatory to the restoration of power. The dangling wire he saw on Guerrero early in the morning of June 29, 1967 was no longer there.

Many people came to the house at the corner of Guerrero and M.H. del Pilar after learning that the deceased had been electrocuted. Among the sympathizers was Dr. Jovencio Castro, Municipal Health Officer of Sarrat, Ilocos Norte. Upon the request of the relatives of the deceased, Dr. Castro examined the body at about 8:00 A.M. on June 29, 1967. The skin was grayish or, in medical parlance, cyanotic, which indicated death by electrocution. On the left palm, the doctor found an "electrically charged wound" (Exh. C-1; p. 101, TSN, Nov. 28, 1972) or a first degree burn. About the base of the thumb on the left hand was a burned wound. (Exh. C-2, pp. 102-103, Ibid.) The certificate of death prepared by Dr. Castro stated the cause of death as "circulatory shock electrocution" (Exh. I; p. 103, Ibid.).

In defense and exculpation, defendant presented the testimonies of its officers and employees, namely, Conrado Asis, electric engineer; Loreto Abijero, collector-inspector; Fabico Abijero, lineman; and Julio Agcaoili, president-manager of INELCO. Through the testimonies of these witnesses, defendant sought to prove that on and even before June 29, 1967 the electric service system of the INELCO in the whole franchise area, including Area No. 9 which covered the residence of Antonio Yabes at No. 18 Guerrero Street, did not suffer from any defect that might constitute a hazard to life and property. The service lines, devices and other INELCO equipment in Area No. 9 had been newly-installed prior to the date in question. As a public service operator and in line with its business of supplying electric current to the public, defendant had installed safety devices to prevent and avoid injuries to persons and damage to property in case of natural calamities such as floods, typhoons, fire and others. Defendant had 12 linesmen charged with the duty of making a round-the-clock check-up of the areas respectively assigned to them.

Defendant asserts that although a strong typhoon struck the province of Ilocos Norte on June 29, 1967, putting to streets of Laoag City under water, only a few known places in Laoag were reported to have suffered damaged electric lines, namely, at the southern approach of the Marcos Bridge which was washed away and where the INELCO lines and posts collapsed; in the eastern part near the residence of the late Governor Simeon Mandac; in the far north near the defendant's power plant at the corner of Segundo and Castro Streets, Laoag City; and at the far northwest side, near the premises of the Ilocos Norte National High School. Fabico

Abijero testified that in the early morning before 6 o'clock on June 29, 1967 he passed by the intersection of Rizal and Guerrero Streets to switch off the street lights in Area No. 9. He did not see any cut or broken wires in or near the vicinity. What he saw were many people fishing out the body of Isabel Lao Juan.

A witness in the person of Dr. Antonio Briones was presented by the defense to show that the deceased could not have died of electrocution. Substantially, the testimony of the doctor is as follows: Without an autopsy on the cadaver of the victim, no doctor, not even a medico-legal expert, can speculate as to the real cause of death. Cyanosis could not have been found in the body of the deceased three hours after her death, because cyanosis, which means lack of oxygen circulating in the blood and rendering the color of the skin purplish, appears only in a live person. The presence of the elongated burn in the left palm of the deceased (Exhibit C-1 and C-2) is not sufficient to establish her death by electrocution; since burns caused by electricity are more or less round in shape and with points of entry and exit. Had the deceased held the lethal wire for a long time, the laceration in her palm would have been bigger and the injury more massive. (CA Decision, pp. 18-21, Rollo)

An action for damages in the aggregate amount of P250,000 was instituted by the heirs of the deceased with the aforesaid CFI on June 24, 1968. In its Answer (Vide, Record on Appeal, p. 55, Rollo), petitioner advanced the theory, as a special defense, that the deceased could have died simply either by drowning or the electrocution due to negligence attribute only to herself and not to petitioner. In its regard, it was pointed out that the deceased, without petitioner's knowledge, caused the installation of a burglar deterrent must have been left on, hence, causing the deceased's electrocution when she tried to open her gate that early morning of June 29, 1967. After due trial, the CFI found the facts in favor of petitioner and dismissed the complaint but awarded to the latter P25,000 in moral damages and attorney's fee of P45,000. An appeal was filed with the CA which issued the controverted decision.

In this petition for review the petitioner assigns the following errors committed by the respondent CA:

- The respondent Court of Appeals committed grave abuse of discretion and error in considering the purely hearsay alleged declarations of Ernesto de la Cruz as part of the *res gestae*.
- The respondent Court of Appeals committed grave abuse of discretion and error in holding that the strong typhoon "Gening" which struck Laoag City and Ilocos Norte on June 29, 1967 and the flood and deluge it brought in its wake were not fortuitous events and did not exonerate petitioner-company from liability for the death of Isabel Lao Juan.
- The respondent Court of Appeals gravely abused its discretion and erred in not applying the legal principle of "assumption of risk" in the present case to bar private respondents from collecting damages from petitioner company.
- That the respondent Court of Appeals gravely erred and abused its discretion in completely reversing the findings of fact of the trial court.
- The findings of fact of the respondent Court of Appeals are reversible under the recognized exceptions.
- The trial court did not err in awarding moral damages and attorney's fees to defendant corporation, now petitioner company.

- Assuming *arguendo* that petitioner company may be held liable for the death of the late Isabel Lao Juan, the damages granted by respondent Court of Appeals are improper and exorbitant. (Petitioner's Memorandum, p. 133, Rollo)

Basically, three main issues are apparent: (1) whether or not the deceased died of electrocution; (2) whether or not petitioner may be held liable for the deceased's death; and (3) whether or not the respondent CA's substitution of the trial court's factual findings for its own was proper.

In considering the first issue, it is Our view that the same be resolved in the affirmative. By a preponderance of evidence, private respondents were able to show that the deceased died of electrocution, a conclusion which can be primarily derived from the photographed burnt wounds (Exhibits "C", "C-1", "C-2") on the left palm of the former. Such wounds undoubtedly point to the fact that the deceased had clutched a live wire of the petitioner. This was corroborated by the testimony of Dr. Jovencio Castro who actually examined the body of the deceased a few hours after the death and described the said burnt wounds as a "first degree burn" (p. 144, TSN, December 11, 1972) and that they were "electrically charged" (p. 102, TSN, November 28, 1972). Furthermore, witnesses Linda Alonzo Estavillo and Aida Bulong added that after the deceased screamed "Ay" and sank into the water, they tried to render some help but were overcome with fear by the sight of an electric wire dangling from an electric post, moving in the water in a snake-like fashion (*supra*). The foregoing therefore justifies the respondent CA in concluding that "(t)he nature of the wounds as described by the witnesses who saw them can lead to no other conclusion than that they were "burns," and there was nothing else in the street where the victim was wading thru which could cause a burn except the dangling live wire of defendant company" (CA Decision, p. 22, Rollo).

But in order to escape liability, petitioner ventures into the theory that the deceased was electrocuted, if such was really the case, when she tried to open her steel gate, which was electrically charged by an electric wire she herself caused to install to serve as a burglar deterrent. Petitioner suggests that the switch to said burglar alarm was left on. But this is mere speculation, not backed up with evidence. As required by the Rules, "each party must prove his own affirmative allegations." (Rule 131, Sec. 1). Nevertheless, the CA significantly noted that "during the trial, this theory was abandoned" by the petitioner (CA Decision, p. 23, Rollo).

Furthermore the CA properly applied the principle of *res gestae*. The CA said:

Linda Alonzo Estavillo, a ticket seller, and Aida Bulong, a salesgirl, were with the deceased during that fateful morning of June 29, 1967. This Court has not been offered any sufficient reason to discredit the testimonies of these two young ladies. They were one in the affirmation that the deceased, while wading in the waist-deep flood on Guerrero Street five or six meters ahead of them, suddenly screamed "Ay" and quickly sank into the water. When they approached the deceased to help, they were stopped by the sight of an electric wire dangling from a post and moving in snake-like fashion in the water. Ernesto dela Cruz also tried to approach the deceased, but he turned back shouting that the water was grounded. These bits of evidence carry much weight. For the subject of the testimonies was a startling occurrence, and the declarations may be considered part of the *res gestae*. (CA Decision, p. 21, Rollo)

For the admission of the *res gestae* in evidence, the following requisites must be present: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; (3) that the statements made must concern the occurrence in question and its immediately attending circumstances (*People vs. Ner*, 28 SCRA 1151; *People vs. Balbas*, 122 SCRA 959). We do not find any abuse of discretion on the CA's part in view of the satisfaction of said requisites in the case at bar.

The statements made relative to the startling occurrence are admitted in evidence precisely as an exception to the hearsay rule on the grounds of trustworthiness and necessity. "Trustworthiness" because the statements are made instinctively (*Wesley vs. State*, 53 Ala. 182), and "necessity" because such natural and spontaneous utterances are

more convincing than the testimony of the same person on the stand (*Mobile vs. Ascraft*, 48 Ala. 31). Therefore, the fact that the declarant, Ernesto de la Cruz, was not presented to testify does not make the testimony of Linda Alonzo Estavillo and Aida Bulong hearsay since the said declaration is part of the *res gestae*. Similarly, We considered part of the *res gestae* a conversation between two accused immediately after commission of the crime as overheard by a prosecution witness (*People vs. Reyes*, 82 Phil. 563).

While it may be true that, as petitioner argues (*vide*, petitioner's Memorandum, p. 135, Rollo), Ernesto de la Cruz was not an actual witness to the instant when the deceased sank into the waist-deep water, he acted upon the call of help of Aida Bulong and Linda Alonzo Estavillo with the knowledge of, and immediately after, the sinking of the deceased. In fact the startling event had not yet ceased when Ernesto de la Cruz entered the scene considering that the victim remained submerged. Under such a circumstance, it is undeniable that a state of mind characterized by nervous excitement had been triggered in Ernesto de la Cruz's being as anybody under the same contingency could have experienced. As such, We cannot honestly exclude his shouts that the water was grounded from the *res gestae* just because he did not actually see the sinking of the deceased nor hear her scream "Ay."

Neither can We dismiss the said declaration as a mere opinion of Ernesto de la Cruz. While We concede to the submission that the statement must be one of facts rather than opinion, We cannot agree to the proposition that the one made by him was a mere opinion. On the contrary, his shout was a translation of an actuality as perceived by him through his sense of touch.

Finally, We do not agree that the taking of Ernesto de la Cruz' testimony was suppressed by the private respondents, thus, is presumed to be adverse to them pursuant to Section 5(e), Rule 131. For the application of said Rule as against a party to a case, it is necessary that the evidence alleged to be suppressed is available only to said party (*People vs. Tulale*, No. 7233, 18 May 1955, 97 Phil. 953). The presumption does not operate if the evidence in question is equally available to both parties (*Staples-Howe Printing Co. vs. Bldg. and Loan Assn.*, 36 Phil. 421). It is clear from the records that petitioner could have called Ernesto de la Cruz to the witness stand. This, precisely, was Linda Alonzo Estavillo's suggestion to petitioner's counsel when she testified on cross examination:

"Q. And that Erning de la Cruz, how far did he reach from the gate of the house?

A. Well, you can ask that matter from him sir because he is here. (TSN, p. 30, 26 Sept. 1972)

The foregoing shows that petitioner had the opportunity to verify the declarations of Ernesto de la Cruz which, if truly adverse to private respondent, would have helped its case. However, due to reasons known only to petitioner, the opportunity was not taken.

Coming now to the second issue, We tip the scales in the private respondents' favor. The respondent CA acted correctly in disposing the argument that petitioner be exonerated from liability since typhoons and floods are fortuitous events. While it is true that typhoons and floods are considered Acts of God for which no person may be held responsible, it was not said eventuality which directly caused the victim's death. It was through the intervention of petitioner's negligence that death took place. We subscribe to the conclusions of the respondent CA when it found:

"On the issue whether or not the defendant incurred liability for the electrocution and consequent death of the late Isabel Lao Juan, defendant called to the witness-stand its electrical engineer, chief lineman, and lineman to show exercise of extraordinary diligence and to negate the charge of negligence. The witnesses testified in a general way about their duties and the measures which defendant usually adopts to prevent hazards to life and

limb. From these testimonies, the lower court found "that the electric lines and other equipment of defendant corporation were properly maintained by a well-trained team of lineman, technicians and engineers working around the clock to insure that these equipments were in excellent condition at all times." (p. 40, Record on Appeal) The finding of the lower court, however, was based on what the defendant's employees were supposed to do, not on what they actually did or failed to do on the date in question, and not on the occasion of the emergency situation brought about by the typhoon.

The lower court made a mistake in assuming that defendant's employees worked around the clock during the occurrence of the typhoon on the night of June 28 and until the early morning of June 29, 1967, Engr. Antonio Juan of the National Power Corporation affirmed that when he first set out on an inspection trip between 6:00 and 6:30 A.M. on June 29, 1967, he saw grounded and disconnected electric lines of the defendant but he saw no INELCO lineman. The INELCO Office at the Life theatre on Rizal Street was still closed, (pp. 63-64, TSN, Oct. 24, 1972) Even the witnesses of defendant contradict the finding of the lower court. Conrado Asis, defendant's electrical engineer, testified that he conducted a general inspection of the franchise area of the INELCO only on June 30, 1967, the day following the typhoon. The reason he gave for the delay was that all their vehicles were submerged, (p. 337, TSN, July 20, 1973) According to Asis, he arrived at his office at 8:00 A.M. on June 30 and after briefing his men on what to do they started out. (p. 338, Ibid.) One or two days after the typhoon, the INELCO people heard "rumors that someone was electrocuted" so he sent one of his men to the place but his man reported back that there was no damaged wire. (p. 385, Id.) Loreto Abijero, chief lineman of defendant, corroborated Engr. Juan. He testified that at about 8:00 A.M. on June 29, 1967 Engr. Juan came to the INELCO plant and asked the INELCO people to inspect their lines. He went with Engr. Juan and their inspection lasted from 8:00 A.M. to 12:00 noon. (pp. 460,465, TSN, Jan. 28, 1975) Fabico Abijero, lineman of defendant, testified that at about 6:00 on June 29, 1967 the typhoon ceased. At that time, he was at the main building of the Divine Word College of Laoag where he had taken his family for refuge, (pp. 510-511, Ibid.)

In times of calamities such as the one which occurred in Laoag City on the night of June 28 until the early hours of June 29, 1967, extraordinary diligence requires a supplier of electricity to be in constant vigil to prevent or avoid any probable incident that might imperil life or limb. The evidence does not show that defendant did that. On the contrary, evidence discloses that there were no men (linemen or otherwise) policing the area, nor even manning its office. (CA Decision, pp. 24-25, Rollo)

Indeed, under the circumstances of the case, petitioner was negligent in seeing to it that no harm is done to the general public "... considering that electricity is an agency, subtle and deadly, the measure of care required of electric companies must be commensurate with or proportionate to the danger. The duty of exercising this high degree of diligence and care extends to every place where persons have a right to be" (Astudillo vs. Manila Electric, 55 Phil. 427). The negligence of petitioner having been shown, it may not now absolve itself from liability by arguing that the victim's death was solely due to a fortuitous event. "When an act of God combines or concurs with the negligence of the defendant to produce an injury, the defendant is liable if the injury would not have resulted but for his own negligent conduct or omission" (38 Am. Jur., p. 649).

Likewise, the maxim "volenti non fit injurid" relied upon by petitioner finds no application in the case at bar. It is imperative to note the surrounding circumstances which impelled the deceased to leave the comforts of a roof and brave the subsiding typhoon. As testified by Linda Alonzo Estavillo (see TSN, p. 5, 26 Sept. 1972) and Aida Bulong (see TSN, p. 43, 26 Sept. 1972), the deceased, accompanied by the former two, were on their way to the latter's grocery store "to see to it that the goods were not flooded." As such, shall We punish her for exercising her right to protect her property from the floods by imputing upon her the unfavorable presumption that she assumed the risk of personal injury? Definitely not. For it has been held that a person is excused from the force of the rule, that when he voluntarily assents to a known danger he must abide by the consequences, if an emergency is found to exist or if the life or property of another is in peril (65A C.S.C. Negligence 174(5), p. 301), or when he seeks to rescue his endangered property (Harper and James, "The Law of Torts." Little, Brown and Co., 1956, v. 2, p.

1167). Clearly, an emergency was at hand as the deceased's property, a source of her livelihood, was faced with an impending loss. Furthermore, the deceased, at the time the fatal incident occurred, was at a place where she had a right to be without regard to petitioner's consent as she was on her way to protect her merchandise. Hence, private respondents, as heirs, may not be barred from recovering damages as a result of the death caused by petitioner's negligence (*ibid.*, pp. 1165, 1166).

But petitioner assails the CA for having abused its discretion in completely reversing the trial court's findings of fact, pointing to the testimonies of three of its employees — its electrical engineer, collector-inspector, lineman, and president-manager — to the effect that it had exercised the degree of diligence required of it in keeping its electric lines free from defects that may imperil life and limb. Likewise, the said employees of petitioner categorically disowned the fatal wires as they appear in two photographs taken on the afternoon of June 29, 1967 (Exhs. "D" and "E"), suggesting that said wires were just hooked to the electric post (petitioner's Memorandum, p. 170, Rollo). However, as the CA properly held, "(t)he finding of the lower court . . . was based on what the defendant's employees were supposed to do, not on what they actually did or failed to do on the date in question, and not on the occasion of the emergency situation brought about by the typhoon" (CA Decision, p. 25, Rollo). And as found by the CA, which We have already reiterated above, petitioner was in fact negligent. In a like manner, petitioner's denial of ownership of the several wires cannot stand the logical conclusion reached by the CA when it held that "(t)he nature of the wounds as described by the witnesses who saw them can lead to no other conclusion than that they were 'burns,' and there was nothing else in the street where the victim was wading thru which could cause a burn except the dangling live wire of defendant company" (*supra*).

"When a storm occurs that is liable to prostrate the wires, due care requires prompt efforts to discover and repair broken lines" (Cooley on Torts, 4th ed., v. 3, p. 474). The fact is that when Engineer Antonio Juan of the National Power Corporation set out in the early morning of June 29, 1967 on an inspection tour, he saw grounded and disconnected lines hanging from posts to the ground but did not see any INELCO lineman either in the streets or at the INELCO office (*vide*, CA Decision, *supra*). The foregoing shows that petitioner's duty to exercise extraordinary diligence under the circumstance was not observed, confirming the negligence of petitioner. To aggravate matters, the CA found:

. . . even before June 28 the people in Laoag were already alerted about the impending typhoon, through radio announcements. Even the fire department of the city announced the coming of the big flood, (pp.-532-534, TSN, March 13, 1975) At the INELCO irregularities in the flow of electric current were noted because "amperes of the switch volts were moving." And yet, despite these danger signals, INELCO had to wait for Engr. Juan to request that defendant's switch be cut off— but the harm was done. Asked why the delay, Loreto Abijero answered that he "was not the machine tender of the electric plant to switch off the current." (pp. 467-468, *Ibid.*) How very characteristic of gross inefficiency! (CA Decision, p. 26, Rollo)

From the preceding, We find that the CA did not abuse its discretion in reversing the trial court's findings but tediously considered the factual circumstances at hand pursuant to its power to review questions of fact raised from the decision of the Regional Trial Court, formerly the Court of First Instance (see Sec. 9, B.P. 129).

In considering the liability of petitioner, the respondent CA awarded the following in private respondent's favor: P30,229.45 in actual damages (i.e., P12,000 for the victim's death and P18,229.45 for funeral expenses); P50,000 in compensatory damages, computed in accordance with the formula set in the Villa-Rey Transit case (31 SCRA 511) with the base of P15,000 as average annual income of the deceased; P10,000 in exemplary damages; P3,000 attorney's fees; and costs of suit. Except for the award of P12,000 as compensation for the victim's death, We affirm the respondent CA's award for damages and attorney's fees. Pursuant to recent jurisprudence (*People vs. Mananquil*, 132SCRA 196; *People vs. Traya*, 147 SCRA 381), We increase the said award of P12,000 to P30,000,

thus, increasing the total actual damages to P48,229.45.

The exclusion of moral damages and attorney's fees awarded by the lower court was properly made by the respondent CA, the charge of malice and bad faith on the part of respondents in instituting this case being a mere product of wishful thinking and speculation. Award of damages and attorney's fees is unwarranted where the action was filed in good faith; there should be no penalty on the right to litigate (*Espirituvs. CA*, 137 SCRA 50). If damage results from a person's exercising his legal rights, it is *damnum absque injuria* (*AuyongHian vs. CTA*, 59 SCRA 110).

WHEREFORE, the questioned decision of the respondent, except for the slight modification that actual damages be increased to P48,229.45 is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by then Acting Presiding Justice Lourdes P. San Diego and concurred in by Justices Samuel F. Reyes and Lino M. Patajo.

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