

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), PETITIONER, VS. COURT OF APPEALS AND YABUT FREIGHT EXPRESS INC., MANUEL DAVID AND DAVID OLAIVAR, RESPONDENTS.

G.R. No. 55194. February 26, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In Civil Case No. C-2247 of the Court of First Instance of Caloocan City, Branch XXXII, entitled "Yabut Freight Express, Inc., et als. vs. Radio Communications of the Philippines, Inc. (RCPI)", the freight company claimed that due to "utter, patent, and wanton carelessness, gross negligence and un-pardonable fault" of the personnel of RCPI, the latter transmitted erroneously a telegram which should have read "No truck available" but instead read "Truck available". As a consequence, the freight company suffered damages, and prayed for an award of P100,00.00 as actual damages, P30,000.00 as moral damages, exemplary or corrective damages in the discretion of the Court, and P15,000.00 as attorney's fees.

The trial Court, upheld by the Court of Appeals, awarded damages as follows:

"WHEREFORE, defendant Radio, Communications of the Philippines, Inc. is ordered to pay plaintiff Yabut Freight Express, Inc. the sum of P10,000.00 as compensatory, plus P500.00 as actual, and P5,000.00 as corrective damages plus P2,000.00 as attorney's fees and litigation expenses with the costs of this suit."

Petitioner, Radio Communications of the Philippines, Inc. (RCPI), elevated the case to us for review on October 3, 1980 on the following grounds:

"First: The respondent court erred in finding that the suit was predicated on quasi-delict.

"Second: The respondent court erred in virtually ruling that the petitioner's acts were the proximate cause of the alleged damage.

"Third: The respondent court erred in awarding compensatory in addition to actual damages.

"Fourth: The respondent court erred in condemning the petitioner to pay corrective damages and attorney's fees plus costs and litigation expenses.

"Fifth: The respondent court erred in not finding that private respondent had committed negligence which was the proximate cause of the alleged damage or at least, amounted to contributory negligence warranting reduction of the award."

We gave due course to the Petition on January 28, 1981, only in so far as the aspect of damages is concerned, having found that respondent Court correctly concluded that the error in the transmission of the telegram was due to the gross negligence of RCPI employees and not to atmospheric disturbances as it claimed, and that there was no contributory negligence on the part of the freight company.

In respect of compensatory and actual damages, it is not entirely erroneous to grant both items of damages. They

were so awarded in *MD Transit vs. Court of Appeals, et al.*, 22 SCRA 559 (1968). True, compensatory and actual damages are dealt with in the Civil Code under the same Chapter 2 thereof and that the two terms are used therein as equivalent to one another. However, as provided for in Article 2200 of the Civil Code, which is part of the aforementioned Chapter 2, indemnification for damages shall comprehend not only the value of the loss suffered, or actual damages ("damnum emergens"), but also that of the profits which the obligee failed to obtain, or compensatory damages ("lucrum cessans").^[1] In other words, there are two components to actual or compensatory damages.

In this particular case, the value of the actual loss suffered by Yabut has been proven to be P132.12 (not P500.00 as held by respondent Court).^[2] This is compensable. Compensatory damages were also awarded for injury to Yabut's "business reputation or business standing", "loss of goodwill and loss of customers or shippers who shifted their patronage to competitors". The grant thereof is proper under the provisions of Article 2205 of the Civil Code, which provides that damages may be recovered "for injury to the plaintiff's business standing or commercial credit." And even if not recoverable as compensatory damages, they may still be awarded in the concept of temperate or moderate damages.

"There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act."^[3]

Exemplary damages were likewise properly imposed. In contracts and quasi-contracts, exemplary damages may be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.^[4] There was gross negligence on the part of RCPI personnel in transmitting the wrong telegram, for which RCPI must be held liable. Gross carelessness or negligence constitutes wanton misconduct.^[5]

"x x x punitive damages may be recovered for wilful or wantonly negligent acts in respect of messages, even though those acts are neither authorized nor ratified (*Arkansas & L.R. Co. v. Stroude*, 91 SW 18; *West v. Western U. Tel. Co.*, 17 P 807; *Peterson v. Western U. Tel. Co.*, 77 NW 985; *Brown v. Western U. Tel. Co.*, 67 SE 146). Thus, punitive damages have been recovered for mistakes in the transmission of telegrams (*Pittman v. Western Union Tel. Co.*, 66 So 977; *Painter v. Western Union Tel. Co.*, 84 SE 293)"^[6] (emphasis supplied).

The award of attorney's fees and expenses of litigation is likewise deemed just and equitable.^[7]

But while the assessment of damages, except liquidated ones, is generally left to the discretion of the Court according to the circumstances of each case,^[8] we find that the damages and attorney's fees awarded are excessive and should be reduced.

WHEREFORE, the judgment of respondent Court is hereby modified and the damages awarded hereby reduced to P3,000.00 as actual and compensatory damages; P2,000.00 as exemplary or corrective damages; and P1,000.00 as attorney's fees and litigation expenses.

Costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] *MD Transit vs. Court of Appeals, et al.*, supra.

[2] Rollo, p. 34; Brief of Defendant-Appellant, p. 21.

[3] Araneta vs. Bank of America, 40 SCRA 144, 145 (1971).

[4] Art. 2232, Civil Code.

[5] Welch vs. Durand, 36 Conn. 182, 184, 4 Am. Rep. 55.

[6] 74 Am. Jur. 2d, Telecommunications, § 105, p. 421.

[7] Art. 2208, Civil Code.

[8] Art. 2216, Civil Code; Grand Union Supermarket, Inc. vs. Espino, Jr., 94 SCRA 953, 965 (1979).

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