

MAXIMO PLENO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, PHILIPPINE PAPER PRODUCTS, INC., AND FLORANTE DE LUNA, RESPONDENT.

G.R. No. 56505. May 09, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. No. 64497 which modified the decision of the Court of First Instance of Rizal in a vehicular accident case and reduced by one-half the award for temperate damages, moral damages, and attorney's fees from a total of P430,000.00 to P215,000.00. The awards for actual damages in the amount of P48,244.08 and exemplary damages in the amount of P50,000.00 were affirmed.

The facts of the case are summarized as follows:

"On April 11, 1972, plaintiff commenced an action for damages in the Court of First Instance of Rizal (Pasig) against defendants Philippine Paper Products, Inc., and Florante de Luna.

"The material allegations of the complaint are to the following effect: That the Philippine Paper Products, Inc., is the owner of a delivery truck (Ford Stake) with Plate No. 30-51 Y/Y T-Rizal '71, having in its regular employ in conducting business several motor vehicle drivers, one of them being Florante de Luna who, on December 21, 1971, at about 12:45 P.M., was in charge of and driving said delivery truck (Ford Stake) on the right lane of the South Super Highway in Taguig, Rizal, in a careless, reckless and imprudent manner, by driving the vehicle at a speed greater than what is reasonable and proper at the time without taking necessary precaution to avoid accident to persons and damage to property, that as a consequence of the said driver's reckless and imprudent driving, said vehicle of defendant Philippine Paper Products, Inc., hit, bumped and sideswiped plaintiff's Volkswagen Delivery Van, with Plate No. 52-50 Y/Y, S-Manila '71, driven by said plaintiff causing the Volkswagen Delivery Van to swerve to the right that it rammed into the rear part of a truck with Plate No. 8157W, T-Manila '71 parked at the shoulder of the road: that as a result of the vehicular accident, plaintiff suffered various serious injuries, was hospitalized, and because he suffered injuries affecting his brain, he acted beyond normalcy at times, that as a consequence he suffered actual and compensatory damages of approximately P100,000.00: moral damages of P500,000.00 for suffering from bodily pain, mental anguish serious anxiety: for Florante de Luna's wanton and brazen disregard of traffic laws and regulations aggravated by his running away from the scene of the accident, without rendering aid to the victim, plaintiff should be adjudged as exemplary or corrective damages of P300,000.00 as an example to all, owners, operators and drivers of motor vehicles and in the interest of public safety and welfare, as well as the sum of P100,000.00 for the payment of attorney's fees. Plaintiff prays that defendants be jointly and severally ordered to pay him P100,000.00, for actual and compensatory damages: for moral damages P500,000.00: P300,000.00 as exemplary damages: for attorney's fees P100,000.00, interest at the rate of 6% on the actual and moral damages and loss of earnings computed from the filing of the complaint until the P100,000.00 and the P500,000.00 are fully paid and the costs of suit.

"On May 19, 1972, defendant Philippine Paper Products, Inc., filed its answer with counterclaim. While it admits the allegation of paragraph 1 of the complaint pertaining to it, the said defendant denies the substantial allegations of the complaint and alleges as defenses that it exercises and continues to exercise the requisite diligence in the employment and supervision of its employees and laborers as well as in keeping in constant repair and in good condition all its vehicles; and that plaintiff is the one grossly negligent, careless and imprudent in driving and operating his vehicle who has neither the license nor the permit to drive the said vehicle. It prays that plaintiff's complaint be dismissed with cost against him; and on the counterclaim, that plaintiff be ordered to pay to the herein defendant actual damages and other expenses of litigation as shall be proved in the course of the proceedings as well as exemplary damages sufficient for the purposes sought to be attained thereby apart from reasonable attorney's fees.

"On May 24, 1972, plaintiff filed his Answer to Counterclaim denying the allegations of the counterclaim of defendant.

"On May 25, 1972, defendant Florante de Luna filed his answer with counterclaim. While he admits the allegations of paragraphs 1, 2 and 3 of the complaint, he denies the substantial allegations of the same and, as affirmative and/or special defenses, avers that plaintiff without proper license to drive a Volkswagen Kombi delivery van drove said vehicle along a portion of the east service road of the South Super Highway in Taguig, Rizal in a reckless and imprudent manner by operating and driving said Kombi delivery van at a speed very much more than reasonable without taking the precautions to prevent injury to persons and damage to property and without considering the traffic condition at the place and time that as a consequence the delivery van tilted to its left side of the road following its travel direction that somewhere in the front part of the vehicle being driven by him made a slight contact with the rear left side of the vehicle driven by plaintiff and despite the same, plaintiff did not bother to put to a stop his vehicle instead and continued to drive that his vehicle smashed against another vehicle driven by a certain Ruben Rivera and that in view of the circumstance plaintiff is not entitled from defendant even if only attorney's fees. As counterclaim, he avers that as a result of the filing of the unwarranted complaint he suffered mental anguish, serious anxiety besides forcing himself to retain the services of counsel. He prays for the dismissal of the complaint in addition for payment for moral damages and attorney's fees and costs of suit.

"On June 1, 1972, plaintiff filed his answer to defendant Florante de Luna's counterclaim by denying the substantial allegations of said counterclaim with the averment that the complaint was initiated and filed for a just cause.

"After due trial, on August 30, 1977, the Court a quo rendered its decision sentencing jointly and severally defendants to pay plaintiff (1) P48,244.08 actual damages; (2) temperate or moderate damage of P200,000.00; (3) moral damages of P200,000.00; (4) exemplary damages of P50,000.00; (5) attorney's fees of P30,000.00; and (6) costs of suit.

"The facts, as related by the trial court and as borne out by the records, are as follows:

"As brought out in the trial, the incident which is the basis of this complaint involves a three vehicle collision which happened about past noon of December 21, 1971 at the South Super Highway in the portion of Taguig, Rizal. At about 12:45 in the afternoon of said date, a snub-nosed volkswagen kombi with plate no. 52-50, S-Manila '71, was cruising towards Manila along the asphalt pavement of the service road of the South Super Highway. The kombi had two passengers, Maximo Pleno who was at the wheel, and, a New Zealander, James Arthur Longley, who was sitting beside Mr. Pleno on the front seat. The volkswagen was suddenly and without warning hit on its left rear corner by a red colored cargo truck. Due to the impact, the volkswagen moved faster veering to the right and smashing unto the right rear portion of a truck with plate no. 81-87, T-Manila '71, parked along the shoulder of the road in front of the National Manpower Building. The parked truck was also moved forward when it was hit on its back by the Volkswagen and the driver of the parked truck, Ruben Rivera who was at that time standing in front of his parked truck urinating was bumped by his own truck. Witness to all these was Diego Orca, a gardener, who at such time, was watering his plants in front of the

National Manpower Building.

“‘Having been hit from behind by the red colored cargo truck and having smashed into the rear portion of the parked truck, the right front portion of the volkswagen on the driver's side was reduced to a pulp. At impact, the front door on the right side burst open and Longley, who was seated on that side, was thrown out of the vehicle and landed on a ditch. Pleno, the driver of the volkswagen was crushed in the driver's seat since the kombi's front portion offered no protection, being the snub-nosed type, with the motor at the back. His legs were trapped in the wreckage. The red cargo truck stopped for a while and then sped away. Ruben Rivera, the driver of the parked truck, was brought by a passing jeepney to the hospital. Longley who was thrown out of the volkswagen but was not seriously hurt, with the help of a few persons nearby, extricated Pleno from the volkswagen after pushing the truck away and there after took him to the Makati Medical Center. Pleno suffered extensive injuries on his head and legs and affected his eyesight and stayed in the hospital for almost five (5) months.

“The hit and run incident was reported to the Taguig Police Department several hours later or about 3:15 in the afternoon of the same day by Manuel Pleno, son of plaintiff Maximo Pleno. An investigator was sent by the Taguig Police Department at the scene of the incident where an initial report was submitted containing a description of the suspect vehicle as a delivery truck colored red all over with yellow, canvass at the top. A team to investigate this hit and run incident was formed thereafter by Patrolman Maximo de Guzman of the Taguig Police Department.

“Days later or on January 8, 1972, a certain Atty. Tagumpay Eusebio, who is connected with the Philippine Paper Products Inc., went to Pat. de Guzman's precinct at Taguig, Rizal inquiring why one of the Taguig's Police Traffic Officers at the service road of the South Super Highway stopped and investigated Florante de Luna, driver of the said company. Pat. de Guzman told Atty. Eusebio that De Luna was stopped and investigated because the delivery truck he was driving matched the description of the delivery truck in a hit and run incident which occurred at about 12:45 p.m. of December 21, 1971. Atty. Eusebio promised to bring De Luna to the police precinct. After receiving such information, Pat. de Guzman and his team proceeded to the compound of the Philippine Paper Products, Inc., at Sun Valley Subdivision, South Super Highway, Paranaque, Rizal on the same day, January 8, 1972. Pat. de Guzman and his team made further visits at said compound and during these visits, they discovered that the suspect vehicle exhibited plate No. 3-51 Taguig, Rizal, T- '71 and was painted red all over. The team also discovered a 'dented' or 'depressed' portion of the right front portion of the vehicle. The distance from the ground to the 'dented' or 'depressed' portion of the truck was three feet and 3 inches, the same distance from the ground to the depressed portion of the volkswagen on its left rear portion. The paint was scratched off and there were blue colored stains. The volkswagen was blue colored. On one of the visits by Pat. de Guzman he brought with him Dr. Diego Orca, the gardener who, at the time of the incident on December 21, 1971, was tending to his plants in front of the National Manpower Corporation and who witnessed the 3 vehicle collision. Orca positively identified the vehicle of the defendant corporation as the one involved in the incident. Also brought along by the team in one of their visits was a photographer, Bernardo Beduya who took photographs of the suspect vehicle (Exhibits 'D-1' to 'D-2'). Pat. de Guzman was also able to look into the logbook of the Philippine Paper Products, Inc., which showed that the suspect vehicle with Florante de Luna driving it, left the compound of the company on December 21, 1971 at 12:00 p.m. or barely 25 minutes before the incident. A photograph of the log book which a finger pointing at the above entry was taken by photographer Beduya (Exh. 'F-a').

“On January 12, 1972, while Patrolman de Guzman and his team were in the compound of the Philippine Paper Products, Inc., they met Atty. Eusebio with two companions who later turned out to be Florante de Luna and an insurance adjuster, Atty. Eusebio invited Pat. de Guzman in his office and asked him about the progress of the investigation to which De Guzman informed him that 99% of the evidence in their hands pointed to the delivery

truck of the defendant company as the vehicle involved in the accident. Atty. Eusebio then took Pat. de Guzman aside and revealed to him that it was only sometime that their driver, Florante de Luna, admitted to him the involvement of the company truck in the incident and that was the reason why a representative or adjuster of the insurance company was with them so that they can settle the case. Thereafter, Pat. de Guzman, together with Atty. Eusebio, Florante de Luna and the adjuster, went to De Guzman's precinct where De Luna executed a written statement (Exhibits 'G' and 'G-1'). De Luna's statement, although admitting that the delivery truck of the company was involved in the incident, however, claimed that the fault lay in Mr. Pleno because while a truck was moving on its way to the main road, Pleno who was driving the volkswagen applied his brakes and his left rear portion veered towards the right and came in contact with the delivery truck being driven by De Luna. Thereafter, the volkswagen accelerated and went out of control veering further towards the right and hitting the truck which was then moving towards the direction of the highway. In other words, De Luna claimed that the braked truck was no longer parked at the time of the collision but that it was already moving, and the fault in the collision was on the part of Mr. Maximo Pleno. Before the written statement of Pleno was subscribed before the mayor of Taguig, Rizal, an incident transpired as testified by Pat. De Guzman:

""WITNESS (Pat. de Guzman)

""A. Before you went to the Municipal Building of Taguig, Rizal, for the subscription of the statement of Mr. de Luna, while I was along inside your investigation room, Atty. Eusebio with a certain adjuster of the insurance company approached me and offered me something.

""ATTY. OBEN:

""Q. What is that something?

""A.

He told me in vernacular, to wit:

""Tsip, iyon pala naman ay hindi pa nalalaman ng pamilya ng victim ang pagkakadeskobre ninyo nito tungkol sa involvement ni De Luna sa kasong ito. Kung maari ay pag-usapan na lang natin ito. And I answered: 'Ano ang ibig mong sabihin ng pagusapan?

""Q. What did Atty. Eusebio tell you?

"A.

He told me that if you will not divulge this incident to the family of the victim, we will just give you the amount, all the expenses that may be incurred by the Philippine Paper Products, Inc., in this case.

'Q. "If Atty. Eusebio is in the courtroom, can you point to him up in the courtroom?

“A.

He is in the middle. (witness pointing to Atty. Eusebio who is seated in the courtroom).’ (TSN., Nov. 21, 1972, pp. 5-9).

"As regards the injuries suffered by Maximo Pleno, it may be seen from the exhibits shown particularly the photographs of the volkswagen that it is the driver's side which was severely damaged considering that the vehicle is the snub-nosed type with its motor at the back. Due to the impact, Pleno's head was dashed and he lost consciousness with his legs trapped in the wreckage. It took several persons to extricate him therefrom. And they have to push the parked truck away before they could do so. Pleno was brought to the Makati Medical Center in the afternoon of December 21, 1971 and he left the hospital almost five (5) months later or on May 9, 1972. The orthopedic surgeon who treated Pleno at the emergency room of the Makati Medical Hospital testified that Pleno sustained multiple fractures of both thigh bones and the left shin bone or tibia. He sustained multiple lacerations in his forehead and left thigh. There was evidence of head injury, according to the surgeon. Pleno was incoherent in pain and disabled, Pleno had to undergo about five surgical operations of his thigh, one of which involving the insertion of these many operations, he still finds it difficult to stand up even with the aid of crutches or a cane. He walks with a limp and his left is shorter than the right.

"As regards his eyesight, Pleno complained that his left eye suffers from double vision so that whenever he looks to the left, he sees two objects of the same thing. The injuries above mentioned affected his social and business life for he could no longer attend social gatherings nor could he concentrate on his business ventures.’ (at pp. 30-39, Printed Amended Joint Record on Appeal)." (pp. 39-47)

Upon appeal, the Court of Appeals affirmed the factual findings of the lower court to wit:

"We find the findings of the lower court after hearing the parties to be more in consonance to the truth and what actually occurred. We fully agree that the Kombi delivery panel was hit by the cargo truck driven by the driver at the left rear corner when the cargo truck of the driver was overtaking it. Naturally, when one overtakes another vehicle the overtaking vehicle must run faster than the vehicle to be overtaken. The impact caused the Kombi delivery panel upon being hit to swerve to the right at the same time due to the force and suddenness of impact Pleno lost control of his vehicle, as it happened in this case it accelerated towards the parked cargo truck with chairs.

"A table re-enactment of the incident convinces us that the claim of the driver that he saw a cargo truck moving out from the curve into the road a moment before the collision is false. It is a fact that the driver appellant was about to overtake the Kombi delivery panel moments before the accident. Therefore, he must have been only about 2 to 5 meters to the left behind the kombi delivery panel. At this position and distance, it is impossible for the driver to see the cargo truck with chairs he claimed to be moving out of the curve as his vision or view to the right is covered by the Kombi delivery panel which he was about to overtake.

"We likewise refuse to believe the driver's claim that the Kombi delivery panel swerved to the left towards his

driver's) lane to avoid the cargo truck with chairs then moving out of the shoulder of the road. Ruben Rivera, driver of the cargo truck with chairs, testified that his truck was parked and was not about to move out of the shoulder. Rivera testified that he was standing in front of his truck. Witness Diego Orca corroborated Ruben Rivera.

"Efforts of appellants to discredit Rivera notwithstanding, we are convinced that the driver hitting the left rear corner of the Kombi delivery panel in the manner to overtake it was the proximate cause of the accident.

"It is also unbelievable that the driver did not feel or notice any contact between his cargo truck and the Kombi delivery panel. After all, it has been established and admitted after police investigation that the protruding front right edge of the loading platform of the cargo truck, established by the telltale marks and measurement, hit the left rear corner of the Kombi delivery panel.

"Considering the accelerated speed of the cargo truck of the driver in attempting to overtake the Kombi delivery panel, in all probability upon contact there would have emitted an impact sound similar to a sound of a hard object hit by another hard object. This kind of sound one cannot miss to feel or notice. We are not, therefore, persuaded by the pretense of the driver.

"We are in full accord with the Court a quo when it said:

“Having been hit from behind by the red colored cargo truck and having smashed unto the rear portion of the parked truck, the right front portion of the volkswagen on the driver's side was reduced to a pulp. At impact, the front door on the right side burst open and Longley, who was seated on that side, was thrown out of the vehicle and landed on a ditch. Pleno, the driver of the volkswagen was crushed in the driver's seat since the kombi's front portion offered no protection being the snub-nosed type, with the motor at the back. His legs were trapped in the wreckage. The red cargo truck stopped for a while and then sped away. Ruben Rivera, the driver of the parked truck, was brought by a passing jeepney to the hospital. Longley who was thrown out of the volkswagen but was not seriously hurt, with the help of a few persons nearby, extricated Pleno from the volkswagen after pushing the truck away and thereafter took him to the Makati Medical Center. Pleno suffered extensive injuries on his head and legs and affected his eyesight and stayed in the hospital for almost five (5) months. (at pp. 31-32, Printed Record on Appeal)."

"The immediately preceding discussion disposes of the second, third, fourth, and fifth errors assigned by appellant driver.

"From the reconstruction of the incident, we find the driver the one negligent and not the plaintiff-appellee as assailed by the appellants. Neither do we find any contributory negligence attributable to plaintiff-appellee. The proximate cause as hereintofores discussed above was the recklessness of the driver De Luna in miscalculating his distance to and from the kombi delivery panel on overtaking. So much so that the front right edge of his loading platform hit the left rear corner of the kombi delivery panel causing the kombi delivery panel to swerve to the right forcing it to run smack into the parked cargo truck with chairs. Having been found negligent, which negligence resulted to serious injuries, the lower court did not err in sentencing defendant driver De Luna to pay actual, moral, temperate and exemplary damages, likewise to pay attorney's fees.

"To justify these awards, we consider the established fact that it is beyond dispute, despite driver's protestation that he did not hit the kombi delivery panel at the left rear corner; that he did not attempt to evade responsibility; even knowingly realizing that he caused the accident, he merely stopped a while (which we doubt if he did); and, upon seeing the extensiveness of the resulting damage and the seriousness of the injury, left the scene of the accident and kept quiet all about it until discovered thru police investigation - thus making it a hit and run case, pure and simple.

"Appellant driver De Luna's seventh, eighth and ninth errors will be treated together with the errors assigned by

appellant corporation.

"Appellant Corporation asserts that it exercised due diligence in the selection and supervision of its employees. Therefore, it claimed it was error for the trial court not to so hold and further claimed that it erred in holding the Corporation liable to plaintiff-appellee.

"Contending that at the time of the accident its employee driver De Luna, a duly licensed professional driver, had been driving for five years before his employment with the Corporation in 1970; that he was given examination in driving and found fit; that he was assigned to drive small vehicles before being assigned to drive cargo trucks for two months and after being tested for his driving ability, appellant Corporation professes that it had exercised the due diligence of a good father of a family in the selection and supervision of its employee driver De Luna. One of the overriding circumstances considered by the court a quo, in disregarding the defense of exercise of due diligence interposed by appellant Corporation is the record of defendant driver De Luna that he was once accused of serious physical injuries thru reckless imprudence. Appellant Corporation argued that in that case driver De Luna was acquitted. True. But the records did not show that his acquittal was in a trial on the merits. The case may have been dismissed and he was acquitted for failure of the prosecution to prosecute thru desistance of the aggrieved party. His innocence was not therefore proven. It is not enough that defendant Corporation hold high and waves driver's acquittal of that charge but Corporation should have presented evidence that in the trial on the merits his employed defendant driver was declared innocent. A diligent and thorough inquiry of the background of driver De Luna was not undertaken. Otherwise, defendant-appellant Corporation should not have hired De Luna - had it exercised the due diligence it is required by law in hiring the driver, the accident would not have occurred in the manner it happened and would have been avoided.

"The lower court, as we are, was not satisfied with the testimonies of Manuel Zurbano and Benjamin Francisco, both employees of appellant Corporation. Their testimonies, aside from dealing merely on generalities and mere observations on defendant driver De Luna's driving were not thorough. It was not enough. They should have declared on the different company procedures in hiring its employees, particularly its drivers. There are steps, manual of procedures to be followed strictly by employers before hiring its employees. In the case at bar, evidence has it that there was unexcusable laxity in the supervision of its driver by the Corporation. Proof of this is that the accident happened on December 21, 1971 and not until January 8, 1972 when the defendant-appellant Corporation, thru Atty. Tagumpay Eusebio, came to know that one of its vehicles was involved in an accident. Indeed, if there was close supervision exercised by the defendant-appellant Corporation on its employees and proper care of its equipments, it would have known of the involvement of its driver De Luna in the accident in question. As it was lax in its supervision, it did not know until confronted that its cargo truck met an accident and caused the damage and injury in question. It is very difficult for us to believe the claim of the appellant that it did not report the accident because no one in its company knew about the accident. That even De Luna himself did not realize that the track he was driving came in contact with the plaintiff's kombi delivery panel. We have discarded driver De Luna's pretense that he did not realize that his truck came in contact with the Kombi delivery panel of plaintiff. His pretense is contrary to human and factual experience. A careful driver can even detect a small pebble hitting his vehicle. Even a slight nudge becomes discernible. How much more with the contact and impact which have been established beyond doubt and ultimately admitted by driver De Luna that his truck, after all, hit the kombi at its rear left corner which sent the Kombi delivery panel careening to the right smack against the parked cargo truck with chairs. Not only did the defendant-appellant corporation not report the accident to the authorities, but we are convinced by the conclusion arrived at by the trial court that defendant-appellant Corporation thru its representative and counsel, Atty. Eusebio, attempted to cover up the involvement of its driver and truck in the accident from the victim's family (Testimony of Pat. de Guzman)." (pp. 49-54, Rollo)

The court, however, modified the award on damages such that temperate damages were reduced from P200,000.00 to P100,000.00; moral damages were reduced from P200,000.00 to P100,000.00; an attorney's fees were reduced from P30,000.00 to P15,000.00. It further ruled that the employer's liability is subsidiary.

All the parties assailed the decision by filing two separate petitions before us. Philippine Paper Products, Inc., sought the reversal of the factual findings of the appellate court as regards their liability. The case was docketed as G.R. No. 56511. On the other hand, Maximo Pleno filed G.R. No. 56505 questioning the reduction of the damages awarded to him and the court's ruling that the liability of Philippine Paper Products, Inc., as employer is only subsidiary.

On May 20, 1981, we issued a resolution in both petitions. G.R. No. 56511 was denied, "the questions raised being factual and for insufficient showing that findings of facts by respondent court are unsupported by substantial evidence." G.R. No. 56505, was given due course and it is the petition which we now resolve. In this same resolution, we declared "that with respect to the affirmed judgment of the Court of Appeals ordering respondents to pay jointly and severally the petitioner P48,244.08, actual damages, P100,000.00 temperate or moderate damages, P100,000.00 moral damages, P50,000.00 exemplary damages, and P15,000.00 attorney's fees, and the costs of suit, (with reduction of a total of P215,000.00) wherein the petition for review in G.R. No. 56511 has been herein DENIED, execution may issue immediately by the court a quo upon receipt of this resolution." (p. 79, Rollo)

The resolution became final and executory on September 7, 1981 and an entry of judgment was made.

The issues raised in this petition are two-fold. They are: (1) whether or not the employer's liability in quasi-delict is subsidiary, and (2) whether or not the appellate court was correct in reducing the amount of damages awarded to the petitioner.

We sustain the view of the petitioner that the liability of an employer in quasi-delict is primary and solidary and not subsidiary. This, we have ruled in a long line of cases. (See *Bachrach Motor Co. v. Gamboa*, L-110296, May 21, 1957; *Malipol v. Tan*, 55 SCRA 202; *Barredo v. Garcia and Almario*, 73 Phil. 607; *Vinluan v. Court of Appeals, et al.*, 16 SCRA 742; *Anuran, et al. v. Buno, et al.*, 17 SCRA 224; *Poblete v. Fabros*, 93 SCRA 20; *Lanuzo v. Ping*, 100 SCRA 205; *Prudenciado v. Alliance Transport System, Inc.*, 148 SCRA 440)

The Court of Appeals affirmed the awards of damages based on its findings, as follows:

"Both appellants assailed the awards of damages. Appellant Corporation claims that damages were not alleged in the complaint nor competent evidence adduced to prove the damages awarded. This is a sweeping statement. We find on record sufficient evidence supporting the adjudication of damages in favor of the plaintiff-appellee. Maximo Pleno is a mechanical engineer, a topnotcher, and at the time of the accident was a director, vice-president and general manager of Mayon Ceramics Corporation. He was confined from the date of the accident up to May, 1972. He could not work immediately. He sustained serious wounds on his forehead and legs. In short, he became an invalid. According to Dr. Ramon Borromeo, plaintiff-appellee Maximo Pleno sustained multiple fractures involving both thigh bones and the left shin bone or tibia and there is evidence of head injury. Dr. Borromeo conducted a series of operations. In order to be more detailed, We quote from the brief of the appellee the condition of the plaintiff-appellee Mr. Pleno, borne by the records and remained unrefuted as follows:

"Dr. Ramon Borromeo, the orthopedic surgeon who treated Mr. Pleno and saw him at the emergency room of the Makati Medical Center on the day of the accident, testified that Mr. Pleno sustained multiple fractures involving both thigh bones and the left shin bone or tibia; multiple laceration involving wound in his forehead and left thigh; and, evidence of head injury (t.s.n. Borromeo, February 22, 1974, p. 10 and 11). Mr. Pleno was incoherent when he first saw him (ibid p. 11). He was in pain (ibid); limited in leg motion because of the

fractures and disabled (ibid pp. 11-12). On that same day, Mr. Pleno's wound in the thighs were cleaned followed by skeletal traction to both legs by which a wire is inserted to the bone to obtain more or less satisfactory alignment, a temporary procedure, Dr. Borromeo explained, to relieve swelling and spasm of the muscles (ibid, pp. 13 and 14). Two weeks thereafter, Dr. Borromeo conducted another operation, this time what he described to be an open surgery on the left thigh bone, the purpose of which was to obtain an accurate alignment of the fractures (ibid, p. 15). Dr. Borromeo performed still another operation three weeks thereafter, this time on the right thigh bone (ibid, p. 16). This was not to be the last of the operations Mr. Pleno underwent. A year later, Mr. Pleno developed foreign-body reaction, which according to Dr. Borromeo, necessitated another surgery, this time the extraction of the metallic appliance (Exh. I) on both thighs (ibid, p. 16). Then, again, several months later he developed rejection of the metallic appliance with secondary infection of the bones which required another operation (ibid, p. 17). The metallic appliance, the surgeon explained, is inserted throughout the whole canal of the thigh bone to obtain adequate alignment and in the case of Mr. Pleno, the appliance was inserted on both thigh bones (ibid, p. 18) Mr. Pleno had to use crutches because the fracture was not just an ordinary fracture, it was what the doctor called 'coominute fractures', meaning the bone was broken up into several fragments, multiple fragments which naturally would prolong the healing period (ibid, p. 19). After identifying the various x-ray films presented (Exhibits M, M-1, M-2 and M-4), Dr. Borromeo testified that definitely there is shortening of one leg of Mr. Pleno, the left leg, despite the surgery (ibid, pp. 23 and 24).

"Mr. Pleno had complained of defective eyesight (t.s.n., Pleno, July 13, 1973, pp. 28 and 29). On the witness stand, an eye specialist, Dr. Reynaldo Bordador testified that Mr. Pleno was suffering from horizontal deplopia or double vision of the left eye which can be caused by injury resulting from a blunt instrument hitting the forehead or any part of the head (t.s.n. Bordador, April 4, 1974, pp. 7 and 8). The effect is that Mr. Pleno when he looks to the left, he would be seeing two objects (ibid, p. 8). Prolonged reading will result in headache (ibid). Dr. Bordador described Mr. Pleno's eye condition as one which resulted from paralysis of one of the ocular muscle (ibid, p. 9). While surgery could be performed, the outcome is not guaranteed - there will also be double vision no matter how good the surgery is, the doctor concluded (ibid, p. 9). (at pp. 14-17)" '.

"There is clear and convincing evidence establishing actual and compensatory damages.

"The gravity of the injuries Mr. Pleno received and the resulting pain and mental suffering is very much evident from the medical diagnosis and prognosis stated above." (pp. 54-57, Rollo)

Nevertheless, as stated earlier, the appellate court reduced the amount of temperate and moral damages as well as the amount of attorney's fees on the ground that the awards were "too high". The award of temperate damages was reduced by the appellate court on the ground that the amount of P200,000.00 is rather "too high" especially considering the fact that the driver De Luna is a mere driver and defendant-appellant Corporation is only subsidiarily liable thereof. The award was reduced to P100,000.00.

The petitioner now assails the reduction of the damages as without justification. It specifically mentions the findings of the trial court which were affirmed by the appellate court regarding the gravity of the injuries suffered by the petitioner, the effect of the injuries upon him as a person, and his business as well as his standing in society. And yet, it reduced the amount of damages.

As stated earlier, the employer's liability in quasi-delict is primary and solidary. The award of temperate, moral, and exemplary damages as well as attorney's fees lies upon the discretion of the court based on the facts and circumstances of each case. (See *Magbanua v. Intermediate Appellate Court*, 137 SCRA 328; *Siquenza v. Court of Appeals*, 137 SCRA 570; *San Andres v. Court of Appeals*, 116 SCRA 81; *Sarkies Tours Phil., Inc. v. Intermediate Appellate Court*, 124 SCRA 588; *Prudenciado v. Alliance Transport System, Inc.*, supra.).

The court's discretion is of course, subject to the condition that the award for damages is not excessive under the attendant facts and circumstances of the case.

Temperate damages are included within the context of compensatory damages (*Radio Communications of the Philippines, Inc. (RCPI) v. Court of Appeals, supra.*). In arriving at a reasonable level of temperate damages to be awarded, trial courts are guided by our ruling that:

"x x x 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 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." (*Araneta v. Bank of America*, 40 SCRA 144, 145)

In the case of moral damages, the yardstick should be that the "amount awarded should not be palpably and scandalously excessive" so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court (*Gellada v. Warner Barnes & Co., Inc.*, 57 O.G. (4) 7347, 7358; *Sadie v. Bachrach Motor Co., Inc.*, 57 O. G. (4) 636; *Adone v. Bachrach Motor Co., Inc.*, 656 cited in *Prudenciado v. Alliance Transport System, Inc.*, *supra.*). Moreover, the actual losses sustained by the aggrieved parties and the gravity of the injuries must be considered in arriving at reasonable levels (*Siquenza v. Court of Appeals, supra*, cited in *Prudenciado v. Alliance Transport System, Inc.*, *supra.*).

The trial court based the amounts of damages awarded to the petitioner on the following circumstances:

"Coming now to the damages suffered by plaintiff Maximo Pleno, it is not controverted that Pleno was hospitalized for about five months beginning December 21, 1971, the day of the incident, up to May 9, 1972. While in the hospital, he underwent several major operations on his legs and in spite of said operations, a deformity still resulted and that his left leg is shorter than the right. The medical expenses, hospital bills and doctors' fees were properly exhibited and not rebutted by defendants. This being the case, actual expenses of P48,244.08 may be awarded.

"As to the loss or impairment of earning capacity, there is no doubt that Pleno is an entrepreneur and the founder of his own corporation, the Mayon Ceramics Corporation. It appears also that he is an industrious and resourceful person with several projects in line, and were it not for the incident, might have pushed them through. On the day of the incident, Pleno was driving homeward with geologist Longley after an ocular inspection of the site of the Mayon Ceramics Corporation. His actual income however has not been sufficiently established so that this Court cannot award actual damages, but, an award of temperate or moderate damages may still be made on loss or impairment of earning capacity. That Pleno sustained a permanent deformity due to a shortened left leg and that he also suffers from double vision in his left eye is also established. Because of this, he suffers from some inferiority complex and is no longer active in business as well as in social life. In similar cases as in *Borromeo v. Manila Electric Railroad Co.*, 44 Phil. 165; *Coriage, et al. v. LTB Co., et al.*, L-11037, Dec. 29, 1960, and in *Araneta, et al. v. Arreglado, et al.*, L-11394, Sept. 9, 1958, the proper award of damages were given.

"There is also no doubt that due to the incident, Pleno underwent physical suffering, mental anguish, fright, severe anxiety and that he also underwent several major operations. As previously stated, Pleno is the founder of Mayon Ceramics Corporation, manufacturer of the now famous Crown Lynn ceramic wares. He is a mechanical engineer and the topnotcher of the professional examination for mechanical engineering in 1938. From the record, most if not all of his children excelled in academic studies here and abroad. The suffering, both mental and physical, which he experienced, the anxiety and fright that he underwent are sufficiently proved, if not patent. He is therefore entitled to moral damages. Pleno is also entitled to exemplary damages since it appears that gross negligence was committed in the hiring of driver de Luna. In spite of his past record,

he was still hired by the corporation. As regards de Luna, the very fact that he left the scene of the incident without assisting the victims and without reporting to the authorities entitles an award of exemplary damages, so as to serve as an example that in cases of accidents of this kind, the drivers involved should not leave their victims behind but should stop to assist the victims or if this is not possible, to report the matter immediately to the authorities. That the corporation did not also report the matter to the authorities and that their lawyer would attempt to bribe the police officers in order that the incident would be kept a secret shows that the corporation ratified the act of their employees and such act also shows bad faith. Hence, said corporation is liable to pay exemplary damages.

"The award of attorney's fees is also proper in this case considering the circumstances and that it took more than five years of trial to finish this case. Also, plaintiff's counsel prepared lengthy and exhaustive memorandum." (pp. 48-50, Amended Joint Record on Appeal)

We rule that the lower court's awards of damages are more consonant with the factual circumstances of the instant case. The trial court's findings of facts are clear and well-developed. Each item or damages is adequately supported by evidence on record. On the other hand, there are no substantial reasons and no references to any misimpressions of facts in the appellate decision. The Court of Appeals has shown no sufficient reasons for altering factual findings which appear correct. We, therefore, affirm the lower court's awards of damages and hold that the appellate court's reduction of the amounts of temperate and moral damages is not justified. However, we modify the award of attorney's fees to P20,000.00 which we deem to be just and equitable under the circumstances of the case.

WHEREFORE, the instant petition is GRANTED. The questioned decision is REVERSED and SET ASIDE. The decision of the Court of First Instance of Rizal (Pasig) in Civil Case No. 16024 is AFFIRMED in all respects, except for the award of attorney's fees which is reduced to P20,000.00.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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