

FLORENTINA A. GUILATCO, PETITIONER, VS. CITY OF DAGUPAN, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 61516. March 21, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In a civil action[1] for recovery of damages filed by the petitioner Florentina A. Guilatco, the following judgment was rendered against the respondent City of Dagupan:

x x x

(1) Ordering defendant City of Dagupan to pay plaintiff, actual damages in the amount of P15,924 (namely P8,054.00 as hospital, medical and other expenses [Exhs. H to H-60], P7,420.00 as lost income for one (1) year [Exh. F] and P450.00 as bonus), P150,000.00 as moral damages, P50,000.00 as exemplary damages, and P3,000.00 as attorney's fees and litigation expenses, plus costs and to appropriate through its Sangguniang Panglunsod (City Council) said amounts for said purpose;

(2) Dismissing plaintiff's com-plaint as against defendant City Engr. Alfredo G. Tangco; and

(3) Dismissing the counterclaims of defendant City of Dagupan and defendant City Engr. Alfredo G. Tangco, for lack of merit.[2]

The facts as found by the trial court are as follows:[3]

'It would appear from the evidences that on July 25, 1978, herein plaintiff, a Court Interpreter of Branch III, CFI -- Dagupan City, while she was about to board a motorized tricycle at a sidewalk located at Perez Blvd. (a National Road, under the control and supervision of the City of Dagupan) accidentally fell into a manhole located on said sidewalk, thereby causing her right leg to be fractured. As a result thereof, she had to be hospitalized, operated on, confined, at first at the Pangasinan Provincial Hospital, from July 25 to August 3, 1978 (or for a period of 16 days). She also incurred hospitalization, medication and other expenses, to the tune of P8,053.65 (Exh. H to H-60) or a total of P10,000.00 in all, as other receipts were either lost or misplaced; during the period of her confinement in said two hospitals, plaintiff suffered severe or excruciating pain not only on her right leg which was fractured but also on all parts of her body; the pain has persisted even after her discharge from the Medical City General Hospital on October 9, 1978 to the present. Despite her discharge from the Hospital plaintiff is presently still wearing crutches and the Court has actually observed that she has difficulty in locomotion. From the time of the mishap on July 25, 1978 up to the present, plaintiff has not yet reported for duty as court interpreter, as she has difficulty of locomotion in going up the stairs of her office, located near the city hall in Dagupan City. She earns at least P720.00 a month consisting of her monthly salary and other means of income, but since July 25, 1978 up to the present she has been deprived of said income as she has already consumed her accrued leaves in the government service. She has lost several pounds as a result of the accident and she is no longer her former jovial self; she has been unable to perform her religious, social, and other activities which she used to do prior to the incident.

Dr. Norberto Felix and Dr. Dominado Manzano of the Provincial Hospital, as well as Dr. Antonio Sison of the

Medical City General Hospital in Mandaluyong Rizal (Exh. 1; see also Exhs. F, G, G-1 to G-19) have confirmed beyond shadow of any doubt the extent of the fracture and injuries sustained by the plaintiff as a result of the mishap. On the other hand, Patrolman Claveria, De Asis and Cerezo corroborated the testimony of the plaintiff regarding the mishap and they have confirmed the existence of the manhole (Exhs. A, B, C and sub-exhibits) on the sidewalk along Perez Blvd., at the time of the incident on July 25, 1978 which was partially covered by a concrete flower pot by leaving gaping hole about 2 ft. long by 1 1/2 feet wide or 42 cms. wide by 75 cms. long by 150 cms. deep (see Exhs. D. and D-1).

Defendant Alfredo Tangco, City Engineer of Dagupan City and admittedly ex-officio Highway Engineer, City Engineer of the Public Works and Building Official for Dagupan City, admitted the existence of said manhole along the sidewalk in Perez Blvd., admittedly a National Road in front of the Luzon Colleges. He also admitted that said manhole (there are at least 11 in all in Perez Blvd.) is owned by the National Government and the sidewalk on which they are found along Perez Blvd. are also owned by the National Government. But as City Engineer of Dagupan City, he supervises the maintenance of said manholes or drainage system and sees to it that they are properly covered, and the job is specifically done by his subordinates, Mr. Santiago de Vera (Maintenance Foreman) and Engr. Ernesto Solermo, also a maintenance Engineer. In his answer defendant Tangco expressly admitted in par. 7-1 thereof, that in his capacity as ex-officio Highway Engineer for Dagupan City he exercises supervision and control over National roads, including the Perez Blvd. where the incident happened.

On appeal by the respondent City of Dagupan, the appellate court[4] reversed the lower court findings on the ground that no evidence was presented by the plaintiff-appellee to prove that the City of Dagupan had "control or supervision" over Perez Boulevard.[5]

The city contends that Perez Boulevard, where the fatal drainage hole is located, is a national road that is not under the control or supervision of the City of Dagupan. Hence, no liability should attach to the city. It submits that it is actually the Ministry of Public Highways that has control or supervision through the Highway Engineer which, by mere coincidence, is held concurrently by the same person who is also the City Engineer of Dagupan.

After examination of the findings and conclusions of the trial court and those of the appellate court, as well as the arguments presented by the parties, we agree with those of the trial court and of the petitioner. Hence, we grant the petition.

In this review on certiorari, we have simplified the errors assigned by the petitioner to a single issue: whether or not control or supervision over a national road by the City of Dagupan exists, in effect binding the city to answer for damages in accordance with article 2189 of the Civil Code.

The liability of public corporations for damages arising from injuries suffered by pedestrians from the defective condition of roads is expressed in the Civil Code as follows:

Article 2189. Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.

It is not even necessary for the defective road or street to belong to the province, city, or municipality for liability to attach. The article only requires that either control or supervision is exercised over the defective road or street.[6]

In the case at bar, this control or supervision is provided for in the charter of Dagupan and is exercised through the City Engineer who has the following duties:

Sec. 22. The City Engineer -- His powers, duties and compensation -- There shall be a city engineer, who shall

be in charge of the department of Engineering and Public Works. He shall receive a salary of not exceeding three thousand pesos per annum. He shall have the following duties:

x x x

(j) He shall have the care and custody of the public system of water-works and sewers, and all sources of water supply, and shall control, maintain and regulate the use of the same, in accordance with the ordinance relating thereto; shall inspect and regulate the use of all private systems for supplying water to the city and its inhabitants, and all private sewers, and their connection with the public sewer system.

x x x

The same charter of Dagupan also provides that the laying out, construction and improvement of streets, avenues and alleys and sidewalks, and regulation of the use thereof, may be legislated by the Municipal Board.[7] Thus the charter clearly indicates that the city indeed has supervision and control over the sidewalk where the open drainage hole is located.

The express provision in the charter holding the city not liable for damages or injuries sustained by persons or property due to the failure of any city officer to enforce the provisions of the charter, can not be used to exempt the city, as in the case at bar.[8]

The charter only lays down general rules regulating the liability of the city. On the other hand article 2189 applies in particular to the liability arising from "defective streets, public buildings and other public works." [9]

The City Engineer, Mr. Alfredo G. Tangco, admits that he exercises control or supervision over the said road. But the city can not be excused from liability by the argument that the duty of the City Engineer to supervise or control the said provincial road belongs more to his functions as an ex-officio Highway Engineer of the Ministry of Public Highway than as a city officer. This is because while he is entitled to an honorarium from the Ministry of Public Highways, his salary from the city government substantially exceeds the honorarium.

We do not agree.

Alfredo G. Tangco "(i)n his official capacity as City Engineer of Dagupan, as Ex-Officio Highway Engineer, as Ex-Officio City Engineer of the Bureau of Public Works, and, last but not the least, as Building Official for Dagupan City, receives the following monthly compensation: P1,810.66 from Dagupan City; P200.00 from the Ministry of Public Highways; P100.00 from the Bureau of Public Works and P500.00 by virtue of P.D. 1096, respectively." [10] This function of supervision over streets, public buildings, and other public works pertaining to the City Engineer is coursed through a Maintenance Foreman and a Maintenance Engineer.[11] Although these last two officials are employees of the National Government, they are detailed with the City of Dagupan and hence receive instruction and supervision from the city through the City Engineer.

There is, therefore, no doubt that the City Engineer exercises control or supervision over the public works in question. Hence, the liability of the city to the petitioner under article 2189 of the Civil Code is clear.

Be all that as it may, the actual damages awarded to the petitioner in the amount of P10,000.00 should be reduced to the proven expenses of P8,053.65 only. The trial court should not have rounded off the amount. In determining actual damages, the court can not rely on "speculation, conjecture or guess work" as to the amount. Without the actual proof of loss, the award of actual damages becomes erroneous.[12]

On the other hand, moral damages may be awarded even without proof of pecuniary loss, inasmuch as the determination of the amount is discretionary on the court.[13] Though incapable of pecuniary estimation, moral damages are in the nature of an award to compensate the claimant for actual injury suffered but which for some

reason can not be proven. However, in awarding moral damages, the following should be taken into consideration:

- (1) First, the proximate cause of the injury must be the claimer's acts.[14]
- (2) Second, there must be compensatory or actual damages as satisfactory proof of the factual basis for damages.[15]
- (3) Third, the award of moral damages must be predicated on any of the cases enumerated in the Civil Code.[16]

In the case at bar, the physical suffering and mental anguish suffered by the petitioner were proven. Witnesses from the petitioner's place of work testified to the degeneration in her disposition -- from being jovial to depressed. She refrained from attending social and civic activities.[17]

Nevertheless the award of moral damages at P150,000.00 is excessive. Her handicap was not permanent and disabled her only during her treatment which lasted for one year. Though evidence of moral loss and anguish existed to warrant the award of damages,[18] the moderating hand of the law is called for. The Court has time and again called attention to the reprehensible propensity of trial judge to award damages without basis,[19] resulting exorbitant amounts.[20]

Although the assessment of the amount is better left to the discretion of the trial court,[21] under preceding jurisprudence, the amount of moral damages should be reduced to P20,000.00.

As for the award of exemplary damages, the trial court correctly pointed out the basis:

To serve as an example for the public good, it is high time that the Court, through this case, should serve warning to the city or cities concerned to do more conscious of their duty and responsibility to their constituents, especially when they are engaged in construction work or when there are manholes on their sidewalks or streets which are uncovered, to immediately cover the same, in order to minimize or prevent accidents to the poor pedestrians.[22]

Too often in the zeal to put up "public impact" projects such as beautification drives, the end is more important than the manner in which the work is carried out. Because of this obsession for showing off, such trivial details as misplaced flower pots betray the careless execution of the projects, causing public inconvenience and inviting accidents.

Pending appeal by the respondent City of Dagupan from the trial court to the appellate court, the petitioner was able to secure an order for garnishment of the funds of the City deposited with the Philippine National Bank, from the then presiding judge, Hon. Willelmo Fortun. This order for garnishment was revoked subsequently by the succeeding presiding judge, Hon. Romeo D. Magat, and became the basis for the petitioner's motion for reconsideration which was also denied.[23]

We rule that the execution of the judgment of the trial court pending appeal was premature. We do not find any good reason to justify the issuance of an order of execution even before the expiration of the time to appeal.[24]

WHEREFORE, the petition is GRANTED. The assailed decision and resolution of the respondent Court of Appeals are hereby REVERSED and SET ASIDE and the decision of the trial court, dated March 12, 1979 and amended on March 13, 1979, is hereby REINSTATED with the indicated modifications as regards the amounts awarded:

- (1) Ordering the defendant City of Dagupan to pay the plaintiff actual damages in the amount of P15,924 (namely P8,054.00 as hospital, medical and other expenses; P7,420.00 as lost income for one (1) year and P450.00 as bonus); P20,000.00 as moral damages and P10,000.00 as exemplary damages.

The attorney's fees of P3,000.00 remain the same.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Florentina A. Guilatco v. City of Dagupan and Alfredo G. Tangco, RTC (Lingayen, Pangasinan), Civil Case No. 15463, March 12, 1979.

[2] Rollo, 25 (Record on Appeal, 57).

[3] Id. (Record on Appeal, 47-49).

[4] Florentina A. Guilatco v. City of Dagupan, CA-G.R. No. 65470-R, May 31, 1982; De la Fuente, B.S. J., ponente; German, Milagros A. and Cuevas, Serafin R., JJ., concurring.

[5] Rollo, 29.

[6] City of Manila v. Teotico, No. L-23052, January 29, 1968, 22 SCRA 267.

[7] R.A. 170, sec. 15(y).

[8] R.A. 170, sec. 5.

[9] Jimenez v. City of Manila, No. 71049, May 29, 1987, 150 SCRA 510.

[10] Rollo, 25 (Record on Appeal, 25).

[11] Rollo, 25 (Record on Appeal, 61.)

[12] Medelo v. Gorospe, G.R. 41970, March 25, 1988.

[13] Civil Code, Article 2216.

[14] Ledesma v. Court of Appeals, No. 54598, April 15, 1988.

[15] San Miguel Brewery, Inc. v. Magno, No. L-21879, September 29, 1967, 21 SCRA 300.

[16] Bagumbayan Corp. v. Intermediate Appellate Court, No. 66274, September 30, 1984, 132 SCRA 444.

[17] Record on Appeal, 55.

[18] Guita v. Court of Appeals, No. 60409, November 11, 1985, 139 SCRA 576.

[19] Felisilda v. Villanueva, No. 60372, October 29, 1985, 139 SCRA 431.

[20] R & B Surety and Insurance Co., Inc. v. Intermediate Appellate Court, No. 64515, June 22, 1984, 129 SCRA 736.

[21] Pleno v. Court of Appeals, G.R. 56505, May 9, 1988.

[22] Rollo, 25. Record on Appeal, pp. 55-56, See also De Leon and Gonzales-De leon v. Hon. Court of Appeals, G.R. No. L-31931, August 31, 1988.

[23] Rollo, 29.

[24] Rules of Court, Rule 39, sec. 2.

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