

FELINA RODRIGUEZ-LUNA, JOSE R. LUNA AND ROBERTO R. LUNA, JR., PETITIONERS, VS. THE HON. INTERMEDIATE APPELLATE COURT, JOSE E. DELA ROSA AND LUIS DELA ROSA, RESPONDENTS.

G.R. No. 62988. February 28, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision of the defunct Court of Appeals. The petitioners are the heirs of Roberto R. Luna who was killed in a vehicular collision. The collision took place on January 18, 1970, at the go-kart practice area in Greenhills, San Juan, Metro Manila. Those involved were the go-kart driven by the deceased, a business executive, and a Toyota car driven by Luis dela Rosa, a minor of 13 years who had no driver's license.

In a suit for damages brought by the heirs of Roberto R. Luna against Luis dela Rosa and his father Jose dela Rosa, the Court of First Instance of Manila in Civil Case No. 81078, rendered the following judgment:

"WHEREFORE, judgment is hereby rendered sentencing the defendants Luis dela Rosa and Jose dela Rosa to pay, jointly and severally, to the plaintiffs the sum of P1,650,000.00 as unearned net earnings of Roberto Luna, P12,000.00 as compensatory damages, and P50,000.00 for the loss of his companionship, with legal interest from the date of this decision; plus attorney's fees in the sum of P50,000.00, and the costs of suit." (Record on Appeal, p. 35.)

The defendants appealed to the defunct Court of Appeals which in a decision dated May 22, 1979, affirmed in toto that of the trial court. (Rollo, p. 48.) However, upon a motion for reconsideration filed by the defendants-appellants, the Court of Appeals, in a resolution dated June 19, 1981, modified its judgment thus:

"WHEREFORE, the decision rendered in this case is hereby modified insofar as the judgment ordering the defendants to pay, jointly and severally, the sum of P1,650,000.00 to plaintiffs with legal interest from July 5, 1973, is concerned. In lieu thereof, defendants are hereby ordered to pay plaintiffs, jointly and severally, the sum of Four Hundred Fifty Thousand Pesos (P450,000.00) as unearned net earnings of Roberto R. Luna, with legal interest thereon from the date of the filing of the complaint until the whole amount shall have been totally paid.

"The rest of the other dispositions in the judgment a quo stand." (Rollo, pp. 33-34.)

Both parties filed separate petitions for review of the appellate court's decision.

In G.R. No. 57362, the petition for review of Jose and Luis dela Rosa was denied for lack of merit on October 5, 1981. Subsequently, they informed that the decision sought to be reviewed was not yet final because the Lunas had a pending motion for reconsideration. For prematurity, this Court set aside all previous resolutions. On February 16, 1983, acting upon the motion and manifestation of the petitioners, they were required to file an amended petition within thirty days from notice. On June 20, 1983, this Court resolved: "For failure of the petitioners to file an amended petition as re-quired, this case is hereby DISMISSED and the dismissal is final."

The instant case - G.R. No. 62988 - is the separate appeal of the Lunas. Their petition contains the following prayer:

"1. That the petition be given due course;

"2. That after notice and hearing, judgment be rendered, setting aside or modifying the RESOLUTION of respondent Court of Appeals dated June 19, 1981, attached as Annex "A" to the petition, only insofar as it reduced the unearned net earnings to P450,000.00, so as to affirm the trial court's finding as to the un-earned net earnings of the deceased in the amount of P1,650,000.00;

"3. Ordering that the award of attorney's fees shall also be with interest, at the legal rate." (Rollo, p. 27.)

On June 27, 1983, the petition was given due course. (Rollo, pp. 122-123.)

In the light of the foregoing, the resolution stated:

"It thus appears that the questions in esse are with respect to the award for unearned net earnings - should the award be P450,000.00 only or should it be P1,650,000.00 as originally adjudged; and whether the award for attorney's fees shall also be with interest at the legal rate.

"The Court takes notice that the wrongful death occurred as early as January 18, 1970, and that until now the process of litigation is not yet over. In the meantime the value of the Philippine peso has been seriously eroded so that the heirs of the deceased may ultimately have a greatly depreciated judgment. In the interest of justice, the private respondents are hereby ordered to PAY to the petitioners within thirty (30) days from notice the following amounts adjudged against them: P450,000.00 for unearned net earnings of the deceased; P12,000.00 as compensatory damages; P50,000.00 for the loss of his companionship with legal interest from July 3, 1973; and P50,000.00 as attorney's fees.

"Still to be resolved shall be the following: whether the award for unearned net earnings shall be increased to P1,650,000.00; and whether the award for attorney's fees shall also be with interest at the legal rate. The costs will be adjudged as a matter of course." (Rollo, p. 123.)

The private respondents failed to pay the amounts and when required to explain they said that they had no cash money. Accordingly, this Court directed the trial court to issue a writ of execution but the attempt of the special sheriff to enter the private respondent's premises so that he could make an inventory of personal properties was thwarted by guards and this Court had to direct the Chief of the Philippine Constabulary to assist in enforcing the writ of execution. The execution yielded only a nominal amount. In the meantime, Luis dela Rosa is now of age, married with two children, and living in Madrid, Spain with an uncle but only casually employed. It is said: "His compensation is hardly enough to support his family. He has no assets of his own as yet." (Rollo, p. 208.)

1. On the amount of the award.

The award of P1,650,000.00 was based on two factors, namely: (a) that the deceased Roberto R. Luna could have lived for 30 more years; and (b) that his annual net income was P55,000.00, computed at P75,000.00 annual gross income less P20,000.00 annual personal expenses.

This is what the trial court said on Luna's life expectancy:

"According to the American Experience Table of Mortality, at age 33 the life expectancy of Roberto Luna was 33.4 years, and under the Commissioner Standard Ordinary, used by our domestic insurance companies since 1968 for policies above P5,000.00 his life expectancy was 38.51 years. Dr. Vicente Campa, medical director of San Miguel Corporation, testified that he was the regular physician of Roberto Luna since his marriage to Felina Rodriguez in 1957. He said that except for a slight anemia which he had ten years earlier, Roberto Luna was of good health. Allowing for this condition, he could reasonably expect to have a life expectancy of 30

years." (Record on Appeal, p. 33.)

The Court of Appeals in sustaining the trial court's conclusion said:

"We have not been persuaded to disturb the conclusion that the deceased had a life expectancy of thirty years. At the time of Luna's death, he was only thirty-three years old and in the best of health. With his almost perfect physical condition and his sound mind, the expectation that he could have lived for another thirty years is reasonable, considering that with his educational attainment, his social and financial standing, he had the means of staying fit and preserving his health and well-being. That he could have lived at least until the age of sixty-three years is an assessment which is more on the conservative side in view of the testimony of Dr. Vicente Campa that the general life expectancy nowadays has gone up to seventy years." (Rollo, p. 45.)

The Court of Appeals likewise sustained the trial court in respect of Luna's annual income and expense. This is what the trial court said:

"Roberto Luna was 33 years old when he died, and was survived by his wife Felina Rodriguez-Luna, and two children, Roberto Jr., 13 years, and Jose, 12 years. His wife was 35 years old at the time. He declared a gross income of P16,900.00 for 1967 (Exhibit I), P29,700.00 for 1962 (Exhibit H) and P45,117.69 for 1969 (Exhibit G). He had investments in various corporations amounting to P136,116.00 (Exhibits K, M, M-1, N, N-1 to N-3, O, O-1, P, Q and R) and was the president and general manager of Rodlun, Inc.; general manager of Esso Greenhills Service Center; Assistant manager of Jose Rodriguez Lanuza Sons; director of Steadfast Investment Corporation; chairman and treasurer of Greenhills Industrial Corporation; vice-president of Oasis, Inc.; director of Nation Savings Association; director of Arlun Taxi; and treasurer of National Association of Retired Civil Employees.

"x x x. His income tax returns show an increase in his income in the short period of three years. It is reasonable to expect that it would still go higher for the next fifteen years and reach a minimum of P75,000.00 a year. The potential increase in the earning capacity of a deceased person is recognized by the Supreme Court. x x x the court believes that the expected gross earnings of Roberto Luna should be fixed in the sum of P75,000.00 a year for the period of his life expectancy of 30 years, but deducting his personal expenses which, because of his business and social standing the court in the amount of P20,000.00 a year, in accordance with the rulings of the Supreme Court." (Record on Appeal, pp. 32-34.)

Acting on a motion for reconsideration filed by the dela Rosas, the Court of Appeals took into account the fact "that the deceased Roberto R. Luna had been engaged in car racing as a sport, having participated in tournaments both here and abroad;" it said that Luna's habit and manner of life should be "one of the factors affecting the value of mortality table in actions for damages;" and, consequently, concluded that Luna could not have lived beyond 43 years. The result was that the 30-year life expectancy of Luna was reduced to 10 years only.

Further on the motion for reconsideration, the Court of Appeals ruled in respect of Luna's annual personal expenses:

"x x x. Considering the escalating price of automobile gas which is a key expenditure in Roberto R. Luna's social standing, We should increase that amount to P30,000.00 as the would be personal expenses of the deceased per annum." (Rollo, p. 33.)

The Court of Appeals then determined the amount of the award thus: P75,000.00 annual gross income less P30,000.00 annual personal expenses leaves P45,000.00 multiplied by 10 years of life expectancy and the product is P450,000.00.

The petitioners contend that the Court of Appeals erred when by its resolution of June 19, 1981, it reduced Luna's life expectancy from 30 to 10 years and increased his annual personal expenses from P20,000.00 to P30,000.00. We sustain the petitioners.

The Court of Appeals, in reducing Luna's life expectancy from 30 to 10 years said that his habit and manner of life should be taken into account, i.e. that he had been engaged in car racing as a sport both here and abroad - a dangerous and risky activity tending to shorten his life expectancy. That Luna had engaged in car racing is not based on any evidence on record. That Luna was engaged in go-kart racing is the correct statement but then go-kart racing cannot be categorized as a dangerous sport for go-karts are extremely low slung, low powered vehicles, only slightly larger than foot-pedalled four wheeled conveyances. It was error on the part of the Court of Appeals to have disturbed the determination of the trial court which it had previously affirmed.

Similarly, it was error for the Court of Appeals to reduce the net annual income of the deceased by increasing his annual personal expenses but without at the same time increasing his annual gross income. It stands to reason that if his annual personal expenses should increase because of the "escalating price of gas which is a key expenditure in Roberto R. Luna's social standing" [a statement which lacks complete basis], it would not be unreasonable to suppose that his income would also increase considering the manifold sources thereof.

In short, the Court of Appeals erred in modifying its original decision.

2. Attorney's fees - with or without interest at the legal rate.

The trial court awarded attorney's fees to the petitioners in the sum of P50,000.00. This award was affirmed by the Court of Appeals in its decision of May 22, 1979. The resolution of June 19, 1981, reaffirmed the award. The two decisions as well as the resolution do not provide for interest at the legal rate to be tacked to the award.

The petitioners now pray that the award of attorney's fees be with interest at the legal rate from the date of the filing of the complaint. There is merit in this prayer. The attorney's fees were awarded in the concept of damages in a quasi-delict case and under the circumstances interest as part thereof may be adjudicated at the discretion of the court. (See Art. 2211, Civil Code.) As with the other damages awarded, the interest should accrue only from the date of the trial court's decision.

The private respondents invoke *Elcano vs. Hill*, L-24803, May 26, 1977; 77 SCRA 98, where it was held that Article 2180 of the Civil Code applied to Atty. Marvin Hill notwithstanding the emancipation by marriage of Reginald Hill, his son but since Reginald had attained age, as a matter of equity, the liability of Atty. Hill had become merely subsidiary to that of his son. It is now said that Luis dela Rosa, is now married and of legal age and that as a matter of equity the liability of his father should be subsidiary only.

We are unwilling to apply equity instead of strict law in this case because to do so will not serve the ends of justice. Luis dela Rosa is abroad and beyond the reach of Philippine courts. Moreover, he does not have any property either in the Philippines or elsewhere. In fact his earnings are insufficient to support his family.

WHEREFORE, the resolution of the Court of Appeals dated June 19, 1981, is hereby set aside; its decision dated May 22, 1979, is reinstated with the sole modification that the award for attorney's fees shall earn interest at the legal rate from July 5, 1973, the date of the trial court's decision. Costs against the private respondents.

SO ORDERED.

Aquino, Concepcion, Jr., Gutierrez, Jr., and De la Fuente, JJ., concur.

Makasiar, J., (Chairman), reserve his vote.

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