

GLORIA DARROCA DE CALISTON, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND GERONIMO DALMACIO, RESPONDENTS.

G.R. No. 63135. June 24, 1983

Ponente: PLANA, J.

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PLANA, J.:

While driving a passenger bus in Bacolod City, private respondent Geronimo Dalmacio ran over Juana Sonza Vda. de Darroca (a USVA pensioner) who died instantly, survived by her only child, Gloria Darroca de Caliston, the herein petitioner.

Prosecuted for homicide thru reckless imprudence, Dalmacio was convicted by the Court of First Instance of Negros Occidental, sentenced to imprisonment and ordered to pay the herein petitioner P15,000.00 for the death of the victim, P5,000.00 as moral damages, P5,000.00 for burial expenses and P10,000.00 for loss of pension which the deceased had failed to receive.

On appeal, the former Court of Appeals modified the CFI decision by absolving Dalmacio from the payment of the P10,000.00 for loss of pension and credited him for the amount of P5,000.00 previously paid to the herein petitioner under a vehicular insurance policy obtained by the bus owner.

The above modifications are now assailed in this petition for review on which the private respondent has filed his comment.

The deletion of the P10,000.00 awarded for loss of pension is unjustified. Under Article 2206 of the Civil Code—

"The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter . . ."

The pension of the decedent being a sure income that was cut short by her death for which Dalmacio was responsible, the surviving heir of the former is entitled to the award of P10,000.00 which is just equivalent to the pension the decedent would have received for one year if she did not die.

On the other hand, the P5,000.00 paid to the herein petitioner by the insurer of the passenger bus which figured in the accident may be deemed to have come from the bus owner who procured the insurance. Since the civil liability (ex-delicto) of the latter for the death caused by his driver is subsidiary and, at bottom, arises from the same culpa, the insurance proceeds should be credited in favor of the errant driver.

WHEREFORE, the petition is hereby granted partially in that the P10,000.00 award for loss of pension deleted in the appealed Court of Appeals decision is hereby reinstated. Costs against private respondent.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

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