

BAGUMBAYAN CORPORATION, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, LELISA SEÑA AND ARTURO SEÑA, RESPONDENTS.*G.R. No. 66274. September 30, 1984*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-66274/>**AQUINO, J.:**

This case is about the customer's claim for moral and exemplary damages due to the alleged negligence of a waiter. The spouses Lelisa Sena and Arturo Seña and their four children went to the Tropical Palace Hotel, Parañaque, Metro Manila in the evening of December 20, 1976 to see the Reycard Duet Show. They occupied a table and ordered drinks before the show started. The hall was crowded and, as anyone who attended such show can attest, excitement and confusion prevailed (8, 40-41 tsn, January 19, 1978).

Lelisa's version was that when a waiter named Baez was going to serve them, the tray containing the drinks was overturned and fell on her. She was drenched. Later, she felt some chill. The drinks and the splinters from the broken glasses allegedly destroyed her dress which, with her handbag and shoes, cost one thousand pesos (32-33 tsn November 29, 1977).

She was shocked. She sensed that some persons were laughing at or pitying her. Lawyer Francisco Gatchalian, who was at the same table, commented that it was one of those unavoidable things (24 tsn November 29, 1977).

A waitress took Lelisa to the ladies' room. She had to remove her dress and underwear which were wet. She was not given any towel to cover herself. She remained standing as there was no chair (27-28 tsn). Two of her daughters followed her to the ladies' room (31 tsn). She returned to the hall after about thirty minutes later when the show had started (28, 51-52 tsn). The lower court erred in concluding that she missed the show.

Lelisa testified that she was claiming moral damages of P100,000 for herself and her husband due to embarrassment and the fact that the management did not even offer any apology on that night (34-37 tsn). She was claiming exemplary damages in the same amount to teach the management a lesson. The husband, Arturo Seña, testified that the incident infuriated him. There was no apology from the management.

Rudy Tanchanco, the food and beverage manager, was one of three persons in charge of the show. He testified that the admission was on a "first come, first served" basis. All the waiters were extras performing under twelve supervisors. In open court, Tanchanco apologized to the plaintiffs in behalf of the management for the inconvenience caused to them, meaning that the management was sorry for what happened to Mrs. Seña (38-39 tsn February 27, 1978).

The Señas sued the corporation, as employer of the waiter, for actual damages of P200,000 plus attorney's fees of P10,000 and such moral and exemplary damages as might be fixed by the court. The action involves a quasi-delict. It was based on articles 2176 and 2180 of the Civil Code.

The corporation in its answer alleged that it came to know of the incident only when it was served with summons.

Had the incident been brought to its attention on that same night, it would have apologized immediately to the plaintiffs, made appropriate amends and taken steps to discipline the waiter and his supervisor.

In fact, in its answer it apologized to the plaintiffs. It labelled the incident as a fortuitous event. It alleged that it observed diligentissimi patrisfamilias to prevent the damage. It reiterated that it was sorry for what had happened. It manifested its desire to make the proper amends in any reasonable manner or form.

After hearing, the trial court awarded the Señas P1,540 as actual damages consisting of the value of Mrs. Seña's outfit and P540, the cost of the six tickets used by the Seña family Which was considered a loss because of their alleged failure to enjoy the show. It also awarded the Señas P50,000 as moral damages, P10,000 as exemplary damages and P5,000 as attorney's fees.

The corporation appealed. The Intermediate Appellate Court affirmed the judgment with the modification that the moral and exemplary damages were reduced to P15,000 and P5,000, respectively. Hence, this appeal.

The trial court sensibly noted that court action could have been avoided had the matter been taken up directly with the corporation before the action was filed. No extrajudicial demand preceded the action.

While the award for actual damages has some basis, the grant of moral and exemplary damages is devoid of legal justification because it was not predicated upon any of the cases enumerated in the Civil Code (Ventanilla vs. Centeno, 110 Phil. 811, 816).

The Civil Code provides:

"ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

"ART. 2219. Moral damages may be recovered in the following and analogous cases:

"(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in article 309;

(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

"The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

"The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named."

"ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

The instant case is not specifically mentioned in article 2219 which refers to quasi-delicts causing physical injuries. The Appellate Court erred in considering it as analogous to the cases mentioned therein without indicating what specific case the instant case resembles or is analogous to. For example, an unfounded complaint with a baseless imputation of forgery is analogous to defamation mentioned in article 2219(7). It justified an award of P2,000 as moral damages (*Justiva vs. Gustilo*, 117 Phil. 71).

Generally, there can be no recovery of moral damages if the case is not mentioned in articles 2219 and 2220 (*Malonzo vs. Galang*, 109 Phil. 16; *Ventanilla vs. Centeno*, 110 Phil. 811).

What we call moral damages are treated in American jurisprudence as compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong (25 C.J.S. 815).

"Mental suffering means distress or serious pain as distinguished from annoyance, regret or vexation. Mental anguish is intense mental suffering." (*Johnson vs. Western Union Telegraph Co.*, 81 S. C. 235, 238, 62 SE 244, Note 35, 17 C.J. 829.)

"Generally, damages for mental anguish are limited to cases in which there has been a personal physical injury or where the defendant wilfully, wantonly, recklessly, or intentionally caused the mental anguish" (22 Am Jur 2nd 275). "Nor will damages generally be awarded for mental anguish which is not accompanied by a physical injury, at least where maliciousness, wantonness, or intentional conduct is not involved" (22 Am Jur 2nd 276).

"Damages for mental anguish and suffering have been held recoverable where the act complained of was done with such gross carelessness or recklessness as to show an utter indifference to the consequences" (25 C.J.S. 820).

"Under Ohio law, damages for emotional distress consisting of embarrassment and mental suffering and dire threats, are not recoverable unless intentionally caused" (*Parmelee vs. E. A. Ackerman*, 252 Fed. 2nd 721).

In *Chicago, R. I. & P. Ry. Co. vs. Caple*, 179 S. W. 2nd 151, it was held that where the act is wanton or willful, there may be a recovery for humiliation and mental suffering without any physical injury. It was further held that in negligence cases, where there is no willful or wanton wrong, there can be no recovery for mental suffering unless there is also physical injury.

We hold that the "embarrassment" to which Mrs. Seña was exposed by the incident is not the mental anguish contemplated in article 2217 for which moral damages can be recovered.

Parenthetically, the case of *People vs. Plaza*, CA 52 OG 6609, 6612, a case decided by Justice Sanchez, may be cited. In that case, Genoveva de Soriano was a passenger in a riverboat which was bumped by another boat manned by Berchman Plaza and caused the first boat to capsize and sink but did not drown Genoveva. She did not know how to swim. Her life was endangered. She suffered fright and mental anguish during those moments when her fate was uncertain. Her claim for P500 as moral damages was not allowed.

In this case, it would not be just and proper to include moral damages in the corporation's vicarious liability as employer. The award of P5,000 as exemplary or corrective damages cannot also be sustained because there was no gross negligence in this case.

WHEREFORE, the decision of the Appellate Court is modified. The petitioner is ordered to pay Lelisa Seña the sum of P5,000 to cover her actual damages, litigation expenses and attorney's fees. The award of moral and

exemplary damages is eliminated. No costs.

SO ORDERED.

Makasiar (Chairman), Escolin, and Cuevas, JJ., concur.

Abad Santos, J., see concurring opinion.

Concepcion, Jr., J., did not take part.

Guerrero, J., on leave.

CONCURRING OPINION

ABAD SANTOS, J.:

The Seña's claim for excessive damages could have been amicably settled by the trial judge. The record does not show whether or not a pre-trial was conducted. But it must be presumed that official duty was performed, that a pre-trial was held. Why then was not a case like this aborted? Not only did the case go to trial but the court awarded unwarranted damages and the Intermediate Appellate Court which should have known better compounded the error. Judges and justices of inferior courts are enjoined to review the law on damages so that decisions like those rendered by the trial and appellate courts shall not be repeated. With this observation, I concur in the learned ponencia of Mr. Justice Ramon C. Aquino.

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