

ST. FRANCIS HIGH SCHOOL, AS REPRESENTED BY SPS. FERNANDO NANTES AND ROSARIO LACANDULA, BEN-JAMIN ILUMIN, TIRSO DE CHAVEZ, LUISITO VINAS, CONNIE ARQUIO AND PATRIA CADIZ, PETITION...

G.R. No. 82465. February 25, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision[*] of the Court of Appeals, the dispositive portion of which reads:

"WHEREFORE, the decision under appeal is hereby affirmed, with the following modifications: (1) Exemplary damages in the amount of P20,000.00 are hereby awarded to plaintiffs, in addition to the actual damages of P30, 000.00, moral damages of P20,000.00 and attorney's fees in the amount of P15,000.00 awarded to plaintiffs in the decision under appeal; (2) St. Francis High School, represented by the spouses Fernando Nantes and Rosario Lacandula, and Benjamin Illumin, are hereby held jointly and severally liable with defendants Connie Arquo, Tirso de Chaves, Luisito Vinas and Patria Cadiz for the payment to plaintiffs of the abovementioned actual damages, moral damages, exemplary damages and attorney's fees, and for costs; and (3) Defendants Yoly Jaro and Nida Aragonas are hereby absolved from liability, and the case against them, together with their respective counterclaims, is hereby ordered dismissed.

"SO ORDERED." (p. 60, Rollo)

The complaint alleged that Ferdinand Castillo, then a freshman student of Section I-C at the St. Francis High School, wanted to join a school picnic undertaken by Class I-B and Class I-C at Talaan Beach, Sariaya, Quezon. Ferdinand's parents, respondents spouses Dr. Romulo Castillo and Lilia Cadiz Castillo, because of short notice, did not allow their son to join but merely allowed him to bring food to the teachers for the picnic, with the directive that he should go back home after doing so. However, because of persuasion of the teachers, Ferdinand went on with them to the beach.

During the picnic and while the students, including Ferdinand, were in the water, one of the female teachers was apparently drowning. Some of the students, including Ferdinand, came to her rescue, but in the process, it was Ferdinand himself who drowned. His body was recovered but efforts to resuscitate him ashore failed. He was brought to a certain Dr. Luna in Sariaya, Quezon and later to the Mt. Carmel General Hospital where he was pronounced dead on arrival.

Thereupon, respondent spouses filed a complaint docketed as Civil Case No. 8834, in the Regional Trial Court, Branch LVIII of Lucena City, against the St. Francis High School, represented by the spouses Fernando Nantes and Rosario Lacandula, Benjamin Illumin (its principal), and the teachers: Tirso de Chavez, Luisito Vinas, Connie Arquo, Nida Aragonas, Yoly Jaro and Patria Cadiz, for Damages which respondents allegedly incurred from the death of their 13-year old son, Ferdinand Castillo. Contending that the death of their son was due to the failure of the petitioners to exercise the proper diligence of a good father of the family in preventing their son's drowning,

respondents prayed of actual, moral and exemplary damages, attorney's fees and expenses for litigation.

The trial court found in favor of the respondents and against petitioners-teachers Arquio, de Chavez, Vinas, Aragones, Jaro and Cadiz, ordering all of them jointly and severally to pay respondents the sum of P30,000.00 as actual damages, P20,000.00 as moral damages, P15,000.00 as attorney's fees, and to pay the costs. The court a quo reasoned:

"Taking into consideration the evidence presented, this Court believes that the defendant teachers namely: Connie Arquio, Luisito Vinas, Tirso de Chavez, Yoly Jaro, Nida Aragones and Patria Cadiz had failed to exercise the diligence required of them by law under the circumstances to guard against the harm they had foreseen." (pp. 29-30, Rollo)

"xxx xxx xxx.

"While it is alleged that when defendants Yoly Jaro and Nida Aragones arrived at the picnic site, the drowning incident had already occurred, such fact does not and cannot excuse them from their liability. In fact, it could be said that by coming late, they were remiss in their duty to safeguard the students." (p. 30, Rollo)

"The students, young as they were then (12 to 13 years old), were easily attracted to the sea without aforethought of the dangers it offers. Yet, the precautions and reminders allegedly performed by the defendants-teachers definitely fell short of the standard required by law under the circumstances. While the defendants-teachers admitted that some parts of the sea where the picnic was held are deep, the supposed lifeguards of the children did not even actually go to the water to test the depth of the particular area where the children would swim. And indeed the fears of the plaintiff's that the picnic area was dangerous was confirmed by the fact that three persons during the picnic got drowned at the same time. Had the defendant teachers made an actual and physical observation of the water before they allowed the students to swim, they could have found out that the area where the children were- swimming was indeed dangerous. And not only that, the male teachers who according to the female teachers were there to supervise the children to ensure their safety were not even at the area where the children were swimming. They were somewhere and as testified to by plaintiffs' witness they were having a drinking spree. (pp. 55-56, Rollo)

On the other hand, the trial court dismissed the case against the St. Francis High School, Benjamin Illumin and Aurora Cadorna. Said the court a quo:

"As shown and adverted to above, this Court cannot find sufficient evidence showing that the picnic was a school sanctioned one. Similarly, no evidence has been shown to hold defendants Benjamin Illumin and Aurora Cadorna responsible for the death of Ferdinand Castillo together with the other defendant teachers. It has been sufficiently shown that Benjamin Illumin had himself not consented to the picnic and in fact he did not join it. On the other hand, defendant Aurora Cadorna had then her own class to supervise and in fact she was not amongst those allegedly invited by defendant Connie Arquio to supervise class I-C to which Ferdinand Castillo belongs." (p. 30, Rollo)

Both petitioners and respondents appealed to the Court of Appeals. Respondents-spouses assigned the following errors committed by the trial court:

"1. The lower court erred in not declaring the defendant St. Francis High School and its administrator/principal Benjamin Illumin as equally liable not only for its approved co-curricular activities but also for those which they unreasonably failed to exercise control and supervision like the holding of picnic in the dangerous water of Talaan Beach, Sariaya, Quezon.

"2. The lower court erred in not declaring the St. Francis High School and principal Benjamin Illumin as jointly and solidarily liable with their co-defendants-teachers Rosario Lacandula, et. als., for the tragic death of Ferdinand Castillo in a picnic at Talaan Beach, Sariaya, Quezon, last March 20, 1982.

"3. The lower court erred in not declaring higher amount for actual and moral damages for the untimely and tragic death of Ferdinand Castillo in favor of plaintiffs-appellants against all the defendants." (pp. 56-57. Rollo)

The Court of Appeals ruled:

"We find plaintiffs-appellants' submission well-taken.

"Even were We to find that the picnic in question was not a school-sponsored activity, nonetheless it cannot be gainsaid that the same was held under the supervision of the teachers employed by the said school, particularly the teacher in charge of Class I-C to whom the victim belonged, and those whom she invited to help her in supervising the class during the picnic. Considering that the court a quo found negligence on the part of the six defendants-teachers who, as such, were charged with the supervision of the children during the picnic, the St. Francis High School and the school principal, Benjamin Illumin, are liable under Article 2176 taken together with the 1st, 4th and 5th paragraphs of Article 2180 of the Civil Code. They cannot escape liability on the mere excuse that the picnic was not an 'extra-curricular activity of the St. Francis High School.' We find from the evidence that, as claimed by plaintiffs-appellants, the school principal had knowledge of the picnic even from its planning stage and had even been invited to attend the affair; and yet he did not express any prohibition against undertaking the picnic, nor did he prescribe any precautionary measures to be adopted during the picnic. At the least, We must find that the school and the responsible school officials, particularly the principal, Benjamin Illumin, had acquiesced to the holding of the picnic.

"Under Article 2180, supra, the defendant school and defendant school principal must be found jointly and severally liable with the defendants-teachers for the damages incurred by the plaintiffs as a result of the death of their son. It is the rule that in cases where the above-cited provisions find application, the negligence of the employee in causing the injury or damage gives rise to a presumption of negligence on the part of the owner and/or manager of the establishment (in the present case, St. Francis High School and Its principal); and while this presumption is not conclusive, it may be overthrown only by clear and convincing proof that the owner and/or manager exercised the care and diligence of a good father of a family in the selection and/or supervision of the employee or employees causing the injury or damage (in this case, the defendants-teachers). The record does not disclose such evidence as would serve to overcome the aforesaid presumption and absolve the St. Francis High School and its principal from liability under the above-cited provisions.

"As to the third assigned error interposed by plaintiffs-appellants, while We cannot but commiserate with the plaintiffs for the tragedy that befell them in the untimely death of their son Ferdinand Castillo and understand their suffering as parents, especially the victim's mother who, according to appellants, suffered a nervous breakdown as a result of the tragedy, We find that the amounts fixed by the court a quo as actual damages and moral damages (P30,000.00 and P20,000.00, respectively) are reasonable and are those which are sustained by the evidence and the law.

"However, We believe that exemplary or corrective damages in the amount of P20,000.00 may and should be, as it is hereby, imposed in the present case by way of example or correction for the public good, pursuant to Article 2229 of the Civil Code." (pp. 57-59, Rollo)

On the other hand, petitioners-teachers assigned the following errors committed by the trial court:

1. "... in finding the defendants Connie Arquio, Tirso de Chavez, Luisito Vinas, Nida Aragonese, Yoly Jaro and Patria Cadiz guilty of negligence and jointly and severally liable for damages such finding not being supported by facts and evidence."
2. "... in dismissing the counterclaim interposed by the defendants." (p. 59, Rollo)

On this score, respondent Court ruled:

"The main thrust of defendants-appellants' appeal is that plaintiffs, the parents of the victim Ferdinand Castillo, were not able to prove by their evidence that they did not give their son consent to join the picnic in question. However, We agree with the trial court in its finding that whether or not the victim's parents had given such permission to their son was immaterial to the determination of the existence of liability on the part of the defendants for the damage incurred by the plaintiffs-appellants as a result of the death of their son. What is material to such a determination is whether or not there was negligence on the part of defendants vis-a-vis the supervision of the victim's group during the picnic; and, as correctly found by the trial court, an affirmative reply to this question has been satisfactorily established by the evidence, as already pointed out.

"However, We sustain defendants-appellants insofar as two of the defendants-teachers, Yoly Jaro and Nida Aragon, are concerned. As to them, the trial court found:

'While it is alleged that when defendants Yoly Jaro and Nida Aragon arrived at the picnic site, the drowning incident had already occurred, such fact does not and cannot excuse them from their liability. In fact, it could be said that by coming late, they were remiss in their duty to safeguard the students.'

The evidence shows that these two defendants had satisfactorily explained why they were late in going to the picnic site, namely, that they had to attend to the entrance examination being conducted by the school which is part of their duty as teachers thereof. Since they were not at the picnic site during the occurrence in question, it cannot be said that they had any participation in the negligence attributable to the other defendants-teachers who failed to exercise diligence in the supervision of the children during the picnic and which failure resulted in the drowning of plaintiffs' son. Thus, We may not attribute any act or omission to the two teachers, Yoly Jaro and Nida Aragon, as to make them liable for the injury caused to the plaintiffs because of the death of their son resulting from his drowning at the picnic. Accordingly, they must be absolved from any liability.

"As to the second assigned error raised by defendants-appellants, We agree with the court a quo that the counterclaim must be dismissed for lack of merit." (pp. 59-60, Rollo)

Hence, this petition.

The issues presented by petitioners are:

"A) Whether or not there was negligence attributable to the defendants which will warrant the award of damages to the plaintiffs;

"B) Whether or not Art. 2180, in relation to Art. 2176 of the New Civil Code is applicable to the case at bar;

"C) Whether or not the award of exemplary and moral damages is proper under the circumstances surrounding the case at bar." (pp. 81-82, Rollo)

In the resolution of January 16, 1989, We gave due course to the petition and required the parties to submit their respective memoranda.

The petition is impressed with merit.

If at all petitioners are liable for negligence, this is because of their own negligence or the negligence of people under them. In the instant case however, as will be shown hereunder, petitioners are neither guilty of their own negligence or guilty of the negligence of those under them.

Hence, it cannot be said that they are guilty at all of any negligence. Consequently they cannot be held liable for damages of any kind.

At the outset, it should be noted that respondent-spouses, parents of the victim Ferdinand, allowed their son to join the excursion.

“Testimony of Dr. Castillo on cross exam. by Atty. Flores

Q.

Now, when your son asked you for money to buy food, did you not ask him where he will bring this?

A.

I asked him where he was going, he answered, I am going to the picnic, and when I asked him where, he did not answer, sir.

Q.

And after giving the money, you did not tell him anything more?

A.

No more, sir.

Q.

And after that you just learned that your son join the picnic?

A.

Yes, sir.

Q.

And you came to know of it after the news that your son was drowned in the picnic came to you, is that correct?

A.

Yes, sir.

Q.

From 8:00 o'clock in the morning up to 12:00 o'clock noon of March 20, 1982, you did not know that your son join the picnic?

A.

No, sir, I did not know.

Q.

Did you not look for your son during that time?

A.

I am too busy with my profession, that is why I was not able, sir.

Q.

You did not ask your wife?

A.

I did not, sir.

Q.

And neither did your wife tell you that your son join the picnic?

A.

Later on after 12:00, sir.

Q.

And during that time you were too busy that you did not inquire whether your son have joined that picnic?

A. Yes, sir."

(TSN, pp. 16-17, hearing of April 2, 1984 witness Romulo Castillo).

The fact that he gave money to his son to buy food for the picnic even without knowing where it will be held, is a sign of consent for his son to join the same. Furthermore:

"Testimony of Dr. Lazaro on cross examination:

Q.

How did you conduct this mental and physical examination?

A.

I have interviewed several persons and the patient herself. She even felt guilty about the death of her son because she cooked adobo for him so he could join the excursion where her son died of drowning.

Q

Why were you able to say she was feeling guilty because she was the one who personally cooked the adobo for her son?

A.

It was during the interview that I had gathered it from the patient herself. She was very sorry had she not allowed her son to join the excursion her son would have not drowned. I don't know if she actually permitted her son although she said she cooked adobo so he could join. (Underlining Supplied) (TSN, p. 19, hearing of April 30, 1984, Dr. Lazaro - witness).

Respondent Court of Appeals committed an error in applying Article 2180 of the Civil Code in rendering petitioner school liable for the death of respondent's son.

Article 2180, par. 4 states that:

"The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

Under this paragraph, it is clear that before an employer may be held liable for the negligence of his employee, the act or omission which caused damage or prejudice must have occurred while an employee was in the performance of his assigned tasks.

In the case at bar, the teachers/petitioners were not in the actual performance of their assigned tasks. The incident happened not within the school premises, not on a school day and most importantly while the teachers and students were holding a purely private affair, a picnic. It is clear from the beginning that the incident happened while some members of the I-C class of St. Francis High School were having a picnic at Talaan Beach. This picnic had no permit from the school head or its principal, Benjamin Illumin because this picnic is not a school sanctioned activity neither is it considered as an extra-curricular activity.

As earlier pointed out by the trial court, mere knowledge by petitioner/principal Illumin of the planning of the picnic by the students and their teachers does not in any way or in any manner show acquiescence or consent to the holding of the same. The application therefore of Article 2180 has no basis in law and neither is it supported by any jurisprudence. If we were to affirm the findings of respondent Court on this score, employers will forever be exposed to the risk and danger of being hailed to Court to answer for the misdeeds or omissions of the employees even if such act or omission he committed while they are not in the performance of their duties.

Finally, no negligence could be attributable to the petitioners-teachers to warrant the award of damages to the respondents-spouses.

Petitioners Connie Arquio, the class adviser of I-C, the section where Ferdinand belonged, did her best and exercised diligence of a good father of a family to prevent any untoward incident or damages to all the students who joined the picnic.

In fact, Connie invited co-petitioners Tirso de Chavez and Luisito Vinas who are both P.E. instructors and scout masters who have knowledge in First Aid application and swimming. Moreover, even respondents' witness, Segundo Vinas, testified that "the defendants (petitioners herein) had life savers especially brought by the defendants in case of emergency." (p. 85, Rollo) The records also show that both petitioners Chavez and Vinaz did all what is humanly possible to save the child.

"Testimony of Luisito Vinas on cross examination,

Q.

And when you saw the boy, Ferdinand Castillo, you approached the boy and claim also having applied first aid on him?

A.

Yes, sir.

Q.

And while you were applying the so called first aid, the children were covering you up or were surrounding

you?

A.

Yes, sir.

Q.

You were rattled at that time, is it not?

A.

No, sir.

Q.

You mean you were in calm and peaceful condition?

A.

Yes, sir.

Q.

Despite the fact that the boy was no longer responding to your application of first aid?

A.

Yes, sir.

Q.

You have never been disturbed, "nababahala" in the process of your application of the first aid on the body of Ferdinand Castillo?

A.

No, sir, because we were attending to the application of first aid that we were doing, sir.

Q.

After you have applied back to back pressure and which you claimed the boy did not respond, were you not

disturb anyway?

A.

I was disturbed during that time, sir.

Q.

For how many minutes have you applied the back to back pressure?

A.

From 9 to 11 times, sir.

Q.

You mean 9 to 11 times of having applied the pressure of your body on the body of Ferdinand Castillo?

A.

Yes, sir.

Q.

Will you please describe how you applied a single act of back to back pressure?

A.

This has been done by placing the boy lay first downwards, then the face was a little bit facing right and doing it by massaging the back of the child, sir." (TSN, pp. 32-35, hearing of July 30, 1984)

"Testimony of Tirso de Chavez on direct examination

ATTY. FLORES:

Q.

Who actually applied the first aid or artificial respiration to the child?

A.

Myself, sir.

Q.

How did you apply the first aid to the guy?

A

The first step that I took, with the help of Mr. Luisito Vinas, was I applied back to back pressure and took notice of the condition of the child. We placed the feet in a higher position than that of the head of the child, sir.

Q.

After you have placed the boy in that particular position, where the feet were on a higher level than that of the head, what did you do next?

A.

The first thing that we did, particularly myself, was that after putting the child in that position, I applied the back to back pressure and started to massage from the waistline up, but I noticed that the boy was not responding, sir.

Q.

For how long did you apply this back to back pressure on the boy?

A.

About 10 seconds, sir.

Q.

What about Mr. Vinas?

A.

Almost the same a little longer, for 15 seconds, sir.

Q.

After you noticed that the boy was not responding, what did you do?

A.

When we noticed that the boy was not responding, we changed the position of the boy by placing the child facing upwards laying on the sand then we applied the mouth to mouth resuscitation, sir." (pp. 92-93, Rollo)

With these facts in mind, no moral nor exemplary damages may be awarded in favor of respondents-spouses. The case at bar does not fall under any of the grounds to grant moral damages.

"Art. 2217. Moral Damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similarly 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."

Moreover, as already pointed out hereinabove, petitioners are not guilty of any fault or negligence, hence, no moral damages can be assessed against them.

While it is true that respondents-spouses did give their consent to their son to join the picnic, this does not mean that the petitioners were already relieved of their duty to observe the required diligence of a good father of a family in ensuring the safety of the children. But in the case at bar, petitioners were able to prove that they had exercised the required diligence. Hence, the claim for moral or exemplary damages becomes baseless.

PREMISES CONSIDERED, the questioned decision dated November 19, 1987, finding petitioners herein guilty of negligence and liable for the death of Ferdinand Castillo and awarding the respondents damages, is hereby SET ASIDE insofar as the petitioners herein are concerned, but the portion of the said decision dismissing their counterclaim, there being no merit, is hereby AFFIRMED.

SO ORDERED.

Sarmiento and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., concur in the dissenting opinion of J. Padilla.

[*] Penned by Associate Justice Lorna S. Lombos-De la Fuente and concurred in by Associate Justices Ricardo J. Francisco and Alfredo L. Benipayo.

DISSENTING OPINION

PADILLA, J.:

I regret that I can not concur with the majority. I believe that the reversal of respondent appellate court's decision gives rise to a situation which was neither contemplated nor intended by the applicable laws. I refer more particularly to the fact that the ponencia has left private respondents-spouses with no one to hold liable for the untimely demise of their son. On the other, hand, they have, to my mind, been wronged and they should at least be recompensed for their sufferings. For this and other reasons stated hereunder, I dissent.

The issues, as adopted by the ponencia from the record, are as follows:

"A) Whether or not there was negligence attributable to the defendants which will warrant the award of damages to the plaintiffs;

"B) Whether or not Art. 2180, in relation to Art. 2176 of the New Civil Code is applicable to the case at bar;

“C) Whether or not the award of exemplary and moral damages is proper under the circumstances surrounding the case at bar.”[1]

In my opinion, the record clearly shows negligence on the part of the petitioners-teachers, with the exception of Aragonés and Jaro. As to these two, respondent court absolved them from liability for their having satisfactorily demonstrated lack of participation in the negligence of their colleagues. I am in agreement with said conclusion. But I also agree with the respondent court in its finding that Tirso de Chavez, Luisito Viñas, Connie Arguio and Patria Cadiz failed to exercise DILIGENT SUPERVISION over the children during the ill-fated excursion.

I may concede, albeit with reservation, that the afore-mentioned petitioners may not have been negligent in finding ways and means to revive the young Castillo AFTER the drowning incident. Their application of first-aid measures may have failed to revive him but the petitioners had fully exhausted their efforts to save the deceased. This concession, however, is given with hesitation, for there is indication in the record that petitioners may have tarried too long in securing immediate medical attention for the deceased. I refer to the trial court's finding that "it still took the jeep which brought Ferdinand Castillo to the poblacion six (6) minutes before it finally moved to await the other teachers." [2]

All this aside, I am really disturbed about, and would like to emphasize the demonstrated lack of diligence on the part of the petitioners-teachers BEFORE the unfortunate incident took place. Despite awareness that the waters in the area were deep, petitioners-teachers did not take concrete steps to make sure their wards did not stray too far and too deeply. Even if they were not actually informed of the possible dangers which the area posed, petitioners-teachers should have first "tested the waters", so to speak, to ensure which parts thereof were safe for swimming purposes. However, this was not the case for as testified to by petitioner de Chavez, "they admitted that they did not even go to the water to check its depth although they were aware that some parts of it were deep." [3] At best it appears that, only oral safety instructions were imparted to the young excursionists.

But, what I find most disturbing is the fact that at the time the trouble arose. Viñas and de Chavez, the male teachers who were supposed to ensure the children's safety, being physical education instructors, were nowhere within the immediate vicinity but were, in fact, as admitted by the latter, "at his house getting some foods (sic) and drinks." The court a quo even went as far as to say that "they were somewhere and as testified to by plaintiffs' witness they were having a drinking spree!" [4]

It thus appears that the petitioners-teachers failed to exercise the proper diligence or what I may refer to as DILIGENCE BEFORE THE FACT. As earlier mentioned, the steps taken to revive the deceased may be considered adequate, despite my reservations, but the over-all lack of diligence on the part of petitioners-teachers suffices to put them within the standards set by this Court in determining the existence of negligence. As held in *Hedy Gan y Yu vs. Court of Appeals et al.*, the test in determining whether or not a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: Would a prudent man in the position of the person to whom negligence attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes the duty on the doer TO TAKE PRECAUTION against its mischivous results and the failure to do so, constitutes negligence.[5]

The next issue to be addressed pertains to the liability of the petitioner St. Francis High School as represented by petitioners-spouses Fernando Nantes and Rosario Lacandula. The majority would like to emphasize the fact that the unfortunate incident having occurred during a purely private affair, the teachers involved therein were not in the actual performance of their assigned tasks. Consequently, any act or omission caused by them cannot bind their employer, petitioner St. Francis High School.

I take exception to this proposition. Although the excursion may not have been attended by the appropriate school

authorities, the presence or stamp of authority of the school nevertheless pervaded by reason of the participation not of one but of several teachers, the petitioners. As found by the court a quo, the excursion was an activity "organized by the teachers themselves, for the students and to which the students, NATURALLY, acceded." [6]

Moreover, the record indicates that petitioner Benjamin Illumin, school principal, knew of the excursion and had, in fact, been invited to attend. As the majority see it, such knowledge does not in any manner show acquiescence or consent to the holding of the excursion, a view which I do not accept. It seems to me that having known of the forthcoming activity, petitioner Illumin, as school principal, should have taken appropriate measures to ensure the safety of his students. Having preferred to remain silent, and even indifferent, he now seeks excuse from such omission by invoking his alleged lack of consent to excursion. But it is precisely his silence and negligence in performing his role as principal head of the school that must be construed as an implied consent to such activity.

As administrative head (principal) of St. Francis High School petitioner Illumin acted as the agent of his principal (the school) or its representatives, the petitioners-spouses Nantes and Lacandula. Consequently, and as found by the respondent court, Article 2176 in conjunction with Article 2180; paragraphs (1) and (5) are applicable to the situation. In the application of these provisions, the negligence of the employee in causing injury or damage gives rise to a presumption of negligence on the part of the owner and/or manager of the establishment. While this presumption is not conclusive, it may be overcome only by clear and convincing evidence that the owner and/or manager exercised the care and diligence of a good father of a family in the selection and/or supervision of the employees causing the injury or damage. I agree with the respondent court that no proof was presented to absolve the owner and/or manager, herein petitioners-spouses Nantes and Lacandula, and Illumin. Thus, as correctly held by the respondent court they too must be accountable for the death of Ferdinand Castillo.

The majority view appears to be apprehensive that employers will be continuously held accountable for misdeeds of their employees committed even when the same are done not in the actual exercise of their duties. I fail to appreciate such apprehensions, which need not arise on the part of employers so long as the latter have no knowledge of or give consent to, such act or omission on the part of their employee.

Educational institutions have responsibilities which cannot be equated with those of the ordinary employer or business establishment. Such institutions, particularly the primary and secondary schools, hold the tremendous responsibility of exercising supervision over young children. Too often, such schools avoid liabilities, as in the instant case, by invoking the absence of approval on their part for activities that may be held outside school premises or held on a day not a school day. It is about time that such schools realize that theirs is not a mere money-making entity or one impersonally established for the sole task of teaching the rudimentary skills of "reading, writing and 'rithmetic." They must consider that their students are children of tender years who are in need of adequate care, continuing attention and guidance.

Anent the issue of damages, from the foregoing discussion the award thereof is clearly proper. I only wish to point out the basis for moral damages which is found in Article 2219 of the Civil Code, to wit:

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

1. x x x
2. Quasi-delicts causing physical injuries;

x x x "

It should be noted that the term "physical injuries" must not be construed in its penal sense alone but rather in its generic sense, in the spirit of this Court's rulings in *Carandang vs. Santiago* (51 O.G. 2878) and *Madeja vs. Caro, et al.* (G.R. No. 51183, 21 December 1983, 126 SCRA 293). Thus, the death of private respondents' son as a result

of petitioners' negligence gives rise to an action for quasi--delict which, as provided, entitles the claimant to an award of moral damages.

In the light of the foregoing, I vote to AFFIRM the decision of the respondent court and thus hold the petitioners jointly and severally liable for the death of Ferdinand Castillo.

[1] Rollo, pp. 81-82

[2] Decision in Civil Case No. 8834, Rollo. p. 29

[3] Ibid. p. 26

[4] Ibid., p. 31

[5] G.R. No. L-44264, 19 September 1988, 165 SCRA 378; emphasis supplied.

[6] Decision in Civil Case No. 8834, rollo, p. 24; emphasis supplied.

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