

# Civil Law – Torts and Damages

Case Digests



**UNIVERSITY OF SANTO TOMAS  
FACULTY OF CIVIL LAW**

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**TORTS AND DAMAGES****OUR LADY OF LOURDES HOSPITAL vs SPOUSES ROMEO AND REGINA CAPANZANA**  
**G.R. No. 189218, March 22, 2017, Sereno, CJ.**

*In an action for damages against a hospital, the negligence of its nurses can be imputed to the employer where there is no proof that the employer exercised actual supervision and monitoring of consistent compliance with hospital rules by its staff.*

**FACTS:**

Regina Capanzana was brought to petitioner hospital for an emergency C-section. She successfully gave birth to a baby boy. 13 hours after her operation, she asked for oxygen, and complained of a headache, a chilly sensation, restlessness, and shortness of breath. It took around 10 minutes for nurses to respond to the call and administer oxygen. She was eventually transferred to the Intensive Care Unit, where she was hooked to a mechanical ventilator. When her condition still showed no improvement, Regina was transferred to the Cardinal Santos Hospital. The doctors thereat found that she was suffering from rheumatic heart disease mitral stenosis with mild pulmonary hypertension. This development resulted in cardiopulmonary arrest and, subsequently, brain damage. Regina lost the use of her speech, eyesight, hearing and limbs. She was discharged in a vegetative state and eventually died.

Respondent spouses Capanzana filed a complaint for damages against petitioner hospital, along with co-defendants: the nurses on duty. They allege that the nurses were negligent for not having promptly given oxygen, and that the hospital was equally negligent for not making available and accessible the oxygen unit on that same hospital floor.

**ISSUE:**

W/N petitioner hospital is negligent.

**RULING:**

**YES.** Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. The omission of the nurses - their failure to promptly check on Regina and to refer her to the resident doctor and, thereafter, to immediately provide oxygen - was clearly the proximate cause that led to the brain damage suffered by the patient.

As to the nurses: the RTC and CA found that there was a delay in the administration of oxygen to the patient. When she was gasping for breath and turning cyanotic (bluish), it was the duty of the nurses to intervene immediately by informing the resident doctor. Such high degree of care and responsiveness was needed cannot be overemphasized because it takes only five minutes of oxygen deprivation for irreversible brain damage to set in. Regina herself had asked for oxygen but even if the patient had not asked for oxygen, the mere fact that her breathing was labored to an abnormal degree should have impelled the nurses to immediately call the doctor and to administer oxygen. They committed a breach of their duty to respond immediately to the needs of Regina. Regina suffered from brain damage and the proximate cause of the brain damage was the delay in responding to Regina's call for help and for oxygen.

As to the hospital: For the negligence of its nurses, petitioner is thus liable under Article 2180 (NCC). An employer like petitioner hospital may be held liable for the negligence of its employees based on its responsibility under a relationship of *patria potestas*. Once negligence of the employee is shown, the burden is on the employer to overcome the presumption of negligence on the latter's part by proving observance of the required diligence. The hospital failed to discharge its burden of proving due diligence in the supervision of its nurses and is therefore liable for their negligence. While the hospital offered proof of diligence in hiring, there is no proof of actual supervision of the employees' work or actual implementation and monitoring of consistent compliance with hospital rules. The hospital is directly liable for the negligence of its nurses.

**JOHN E.R. REYES and MERWIN JOSEPH REYES v. ORICO DOCTOLERO, ROMEO AVILA,  
GRANDEUR SECURITY AND SERVICES CORPORATION, and MAKATI CINEMA SQUARE  
G.R. No. 185597, August 2, 2017, THIRD DIVISION, JARDELEZA, J.**

*As a general rule, one is only responsible for his own act or omission under Article 2176. The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. One exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Article 2180. Here, although the employer is not the actual tortfeasor, the law makes him vicariously liable on the basis of the civil law principle of pater familias for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another.*

**FACTS:**

The case arose from an altercation between respondent Orico Doctolero, a security guard of respondent Grandeur Security and Services Corporation and petitioners John E.R. Reyes and Merwin Joseph Reyes in the parking area of respondent Makati Cinema Square. The respondents shot the petitioners but both parties alleged different version of the incident.

Petitioners filed with the Regional Trial Court a complaint for damages against respondents Doctolero and Avila and their employer Grandeur, charging the latter with negligence in the selection and supervision of its employees. They likewise impleaded MCS on the ground that it was negligent in getting Grandeur's services. In their complaint, petitioners prayed that respondents be ordered, jointly and severally, to pay them actual, moral, and exemplary damages, attorney's fees and litigation costs. Respondents Doctolero and Avila failed to file an answer despite service of summons upon them. Thus, they were declared in default.

For its part, Grandeur asserted that it exercised the required diligence in the selection and supervision of its employees. It likewise averred that the shooting incident was caused by the unlawful aggression of petitioners who took advantage of their "martial arts" skills. On the other hand, MCS contends that it cannot be held liable for damages simply because of its ownership of the premises where the shooting incident occurred. It argued that the injuries sustained by petitioners were caused by the acts of respondents Doctolero and Avila, for whom respondent Grandeur should be solely responsible.

On January 18, 1999, the RTC rendered judgment against respondents Doctolero and Avila, finding them responsible for the injuries sustained by petitioners. In reconsidering its Decision, the RTC held that it re-evaluated the facts and the attending circumstances of the present case and was



convinced that Grandeur has sufficiently overcome the presumption of negligence. It gave credence to the testimony of Grandeur's witness, Eduardo Ungui, the head of the Human Resources Department (HRD) of Grandeur, as regards the various procedures in its selection and hiring of security guards.

**ISSUE:**

Whether Grandeur and MCS may be held vicariously liable for the damages caused by respondents Doctolero and Avila to petitioners John and Mervin Reyes.

**RULING:**

NO. MCS is not liable to petitioners. As a general rule, one is only responsible for his own act or omission. This general rule is laid down in Article 2176 of the Civil Code, which provides:

*Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.*

The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. One exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Article 2180. Here, although the employer is not the actual tortfeasor, the law makes him vicariously liable on the basis of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another.

It must be stressed, however, that the above rule is applicable only if there is an employer-employee relationship. This employer-employee relationship cannot be presumed but must be sufficiently proven by the plaintiff. The plaintiff must also show that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees. In the absence of such relationship, vicarious liability under Article 2180 of the Civil Code cannot be applied. The Court found no employer-employee relationship between MCS and respondent guards. The guards were merely assigned by Grandeur to secure MCS' premises pursuant to their Contract of Guard Services. Thus, MCS cannot be held vicariously liable for damages caused by these guards' acts or omissions. Neither can it be said that a principal-agency relationship existed between MCS and Grandeur.

On the other hand, paragraph 5 of Article 2180 of the Civil Code may be applicable to Grandeur, it being undisputed that respondent guards were its employees. When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. The "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees.

To rebut the presumption of negligence, Grandeur must prove two things: first, that it had exercised due diligence in the selection of respondents Doctolero and Avila, and second, that after hiring Doctolero and Avila, Grandeur had exercised due diligence in supervising them.

Here, both the RTC and the CA found that Grandeur was able to sufficiently prove, through testimonial and documentary evidence, that it had exercised the diligence of a good father of a family in the selection and hiring of its security guards. As testified to by its HRD head Ungui, and corroborated by documentary evidence including clearances from various government agencies, certificates, and favorable test results in medical and psychiatric examinations.

The question of diligent supervision, however, depends on the circumstances of employment. Ordinarily, evidence demonstrating that the employer has exercised diligent supervision of its employee during the performance of the latter's assigned tasks would be enough to relieve him of the liability imposed by Article 2180 in relation to Article 2176 of the Civil Code.

Considering all the evidence borne by the records, we find that Grandeur has sufficiently exercised the diligence of a good father of a family in the selection and supervision of its employees. Hence, having successfully overcome the legal presumption of negligence, it is relieved of liability from the negligent acts of its employees, respondents Doctolero and Avila

**GLAN PEOPLE'S LUMBER AND HARDWARE, GEORGE LIM, FABIO S. AGAD, FELIX LIM and PAUL ZACARIAS y INFANTE, petitioners, vs. INTERMEDIATE APPELLATE COURT, CECILIA ALFEREZ VDA. DE CALIBO, Minors ROYCE STEPHEN, JOYCE JOAN, JANISE MARIE, JACQUELINE BRIGITTE JOCELINE CORAZON, JULIET GERALDINE, JENNIFER JILL, all surnamed CALIBO, represented by their mother, CECILIA A. VDA. DE CALIBO, respondents.**  
**G.R. No. 70493, FIRST DIVISION, May 18, 1989, NARVASA, J.**

*The doctrine of the last clear chance provides as valid and complete a defense to accident liability today as it did when invoked and applied in the 1918 case of Picart vs. Smith.*

## **FACTS**

Engineer Orlando T. Calibo, Agripino Roranes, and Maximo Patos were on the jeep owned by the Bacnotan Consolidated Industries, Inc., with Calibo at the wheel, as it approached from the South Lizada Bridge going towards the direction of Davao City at about 1:45 in the afternoon of July 4, 1979. At about that time, the cargo truck, loaded with cement bags, GI sheets, plywood, driven by defendant Paul Zacarias y Infants, coming from the opposite direction of Davao City and bound for Glan, South Cotabato, had just crossed said bridge. At about 59 yards after crossing the bridge, the cargo truck and the jeep collided as a consequence of which Engineer Calibo died while Roranes and Patos sustained physical injuries. Zacarias was unhurt. As a result of the impact, the left side of the truck was slightly damaged while the left side of the jeep, including its fender and hood, was extensively damaged. After the impact, the jeep fell and rested on its right side on the asphalted road a few meters to the rear of the truck, while the truck stopped on its wheels on the road. On November 27, 1979, the instant case for damages was filed by the surviving spouse and children of the late Engineer Calibo who are residents of Tagbilaran City against the driver and owners of the cargo truck.

For failure to file its answer to the third party complaint, third party defendant, which insured the cargo truck involved, was declared in default.

## **ISSUE**

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Whether Zacarias was negligent

### **RULING**

No. The evidence not only acquits Zacarias of any negligence in the matter; there are also quite a few significant indicators that it was rather Engineer Calibo's negligence that was the proximate cause of the accident. Zacarias had told Patrolman Dimaano at the scene of the collision and later confirmed in his written statement at the police headquarters<sup>23</sup> that the jeep had been "zigzagging," which is to say that it was travelling or being driven erratically at the time. The other investigator, Patrolman Jose Esparcia, also testified that eyewitnesses to the accident had remarked on the jeep's "zigzagging."<sup>24</sup> There is moreover more than a suggestion that Calibo had been drinking shortly before the accident. The decision of the Trial Court adverts to further testimony of Esparcia to the effect that three of Calibo's companions at the beach party he was driving home from when the collision occurred, who, having left ahead of him went to the scene when they heard about the accident, had said that there had been a drinking spree at the party and, referring to Calibo, had remarked: "Sabi na huag nang mag drive . . . pumipilit," (loosely translated, "He was advised not to drive, but he insisted.")

Even, however, ignoring these telltale *indicia* of negligence on the part of Calibo, and assuming some antecedent negligence on the part of Zacarias in failing to keep within his designated lane, incorrectly demarcated as it was, the physical facts, either expressly found by the Intermediate Appellate Court or which may be deemed conceded for lack of any dispute, would still absolve the latter of any actionable responsibility for the accident under the rule of the last clear chance.

Both drivers, as the Appellate Court found, had had a full view of each other's vehicle from a distance of one hundred fifty meters. Both vehicles were travelling at a speed of approximately thirty kilometers per hour.<sup>26</sup> The private respondents have admitted that the truck was already at a full stop when the jeep plowed into it. And they have not seen fit to deny or impugn petitioners' imputation that they also admitted the truck had been brought to a stop while the jeep was still thirty meters away.<sup>27</sup> From these facts the logical conclusion emerges that the driver of the jeep had what judicial doctrine has appropriately called the last clear chance to avoid the accident, while still at that distance of thirty meters from the truck, by stopping in his turn or swerving his jeep away from the truck, either of which he had sufficient time to do while running at a speed of only thirty kilometers per hour. In those circumstances, his duty was to seize that opportunity of avoidance, not merely rely on a supposed right to expect, as the Appellate Court would have it, the truck to swerve and leave him a clear path.

The doctrine of the last clear chance provides as valid and complete a defense to accident liability today as it did when invoked and applied in the 1918 case of *Picart vs. Smith*.

**THE SPOUSES BERNABE AFRICA and SOLEDAD C. AFRICA, and the HEIRS OF DOMINGA ONG, petitioners-appellants, vs. CALTEX (PHIL.), INC., MATEO BOQUIREN and THE COURT OF APPEALS, respondents-appellees.**

**G.R. No. L-12986, EN BANC, March 31, 1966, MAKALINTAL, J.**



*Gasoline is a highly combustible material, in the storage and sale of which extreme care must be taken. On the other hand, fire is not considered a fortuitous event, as it arises almost invariably from some act of man.*

## **FACTS**

On March 18, 1948 a fire broke out at the Caltex service station at the corner of Antipolo street and Rizal Avenue, Manila St. all started while a gasoline was being hosed from a tank truck into the underground storage, right at the opening of the receiving tank where the nozzle of the hose was inserted. The fire spread to and burned several neighboring house. The spouse Bernabe and heirs of Domingo Ong herein petitioner, sued respondents Caltex (phils), Inc. and Mateo Boquiren on negligence on the part of both of tyhem was attributed as the cause of the fire.

The trial court and the Court of Appeals found that petitioners failed to prove negligence and that respondents had exercised due care in the premises and with respect to the supervision of their employees.

In the police and fire report they started that during the transferring of gasoline to the tank truck an unknown Filipino Citizen lighted a cigarette and threw the burning match stick near the main valve of the of the paid underground tank. Due to gasoline fumes, fire suddenly blazed. The respondents contend that it is not their negligence why the fire broke. But there was no evidence presented to prove this theory and no other explanation can be had as to the reason for the fire. Apparently also, Caltex and the branch owner failed to install a concrete firewall to contain fire if in case one happens.

## **ISSUE**

Whether or not Caltex and Boquiren are liable to pay for damages.

## **RULING**

Yes.

It is true of course that decisions of the Court of Appeals do not lay down doctrines binding on the Supreme Court, but we do not consider this a reason for not applying the particular doctrine of *res ipsa loquitur* in the case at bar. Gasoline is a highly combustible material, in the storage and sale of which extreme care must be taken. On the other hand, fire is not considered a fortuitous event, as it arises almost invariably from some act of man.

The gasoline station, with all its appliances, equipment and employees, was under the control of appellees. A fire occurred therein and spread to and burned the neighboring houses. The persons who knew or could have known how the fire started were appellees and their employees, but they gave no explanation thereof whatsoever. It is a fair and reasonable inference that the incident happened because of want of care.



**SPS. FERNANDO VERGARA and HERMINIA VERGARA vs. ERLINDA TORRECAMPO SONKIN**  
**G.R. No. 193659, FIRST DIVISION, June 15, 2015, PERLAS-BERNABE, J.**

*When the complainant is guilty of contributory negligence, the award of damages shall be mitigated. Contributory. Attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.*

**FACTS:**

Petitioners-spouses Fernando Vergara and Herminia Vergara (Sps. Vergara) and Spouses Ronald Mark Sonkin and Erlinda Torrecampo Sonkin (Sps. Sonkin) are adjoining landowners. In view of the geographical configuration of the adjoining properties, the property owned by Sps. Sonkin (Sonkin Property) is slightly lower in elevation than that owned by Sps. Vergara (Vergara Property).

When Sps. Sonkin bought the Sonkin Property sometime, they raised the height of the partition wall and caused the construction of their house thereon. The house itself was attached to the partition wall such that a portion thereof became part of the wall of the master's bedroom and bathroom.

Sps. Vergara levelled the uneven portion of the Vergara Property by filling it with gravel, earth, and soil. As a result, the level of the Vergara Property became even higher than that of the Sonkin Property by a third of a meter. Eventually, Sps. Sonkin began to complain that water coming from the Vergara Property was leaking into their bedroom through the partition wall, causing cracks, as well as damage, to the paint and the wooden parquet floor. Sps. Sonkin repeatedly demanded that Sps. Vergara build a retaining wall on their property in order to contain the landfill that they had dumped thereon, but the same went unheeded. Hence, Sps. Sonkin filed the instant complaint for damages and injunction with prayer for preliminary mandatory injunction and issuance of a temporary restraining order against Sps. Vergara.

The RTC found Sps. Vergara civilly liable to Sps. Sonkin for damages. The CA reversed and set aside the assailed RTC Decision. Hence, this petition.

**ISSUES:**

1. Whether or not the CA erred in upholding the award of moral damages and attorney's fees
2. Whether or not it should have ordered the demolition of the portion of the Sps. Sonkin's house that adjoins the partition wall.

**RULING:**

1. **No.** Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.

It is undisputed that the Sonkin property is lower in elevation than the Vergara property, and thus, it is legally obliged to receive the waters that flow from the latter, pursuant to Article 637 of the Civil Code. The CA correctly held that while the proximate cause of the damage sustained by the house of Sps. Sonkin was the act of Sps. Vergara in dumping gravel and soil onto their property, thus, pushing the perimeter wall back and causing cracks thereon, as well as water seepage, the former is nevertheless guilty of contributory negligence for not only failing to observe the two (2)-meter setback rule under the National Building Code, but also for disregarding the legal easement constituted over their property. As such, Sps. Sonkin must necessarily and equally bear their own loss. In view of Sps. Sonkin's contributory negligence, the Court deems it appropriate to delete the award of moral damages in their favor.

Attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. In this case, the Court observes that neither Sps. Sonkin nor Sps. Vergara (thru their compulsory counterclaim) were shown to have acted in bad faith in pursuing their respective claims against each other. The existence of bad faith is negated by the fact that both parties have valid contentions against each other. Thus, absent cogent reason to hold otherwise, the Court deems it inappropriate to award attorney's fees in favor of either party.

2. **Yes.** In view of Sps. Sonkin's undisputed failure to observe the two (2)-meter setback rule under the National Building Code, and in light of the order of the courts a quo directing Sps. Vergara to provide an adequate drainage system within their property, the Court likewise deems it proper, equitable, and necessary to order Erlinda, who is solely impleaded as respondent before the Court, to comply with the aforesaid rule by the removal of the portion of her house directly abutting the partition wall. The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence.

**SPOUSES ED DANTE LATONIO AND MARY ANN LATONIO and the minor ED CHRISTIAN  
LATONIO v. MCGEORGE FOOD INDUSTRIES INC., CEBU GOLDEN FOODS INDUSTRIES, INC., and  
TYKE PHILIP LOMIBAO  
G.R. No. 206184, December 6, 2017, PERALTA, J.:**

*To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.*

**FACTS:**

Spouses Ed and Mary Ann accompanied their eight-month-old child Ed Christian to a birthday party at the McDonald's Restaurant, Ayala Center, Cebu City. During the party and as part of the birthday package, McDonald's presented two mascots. Intending to have her child's photo taken with the mascots, Mary Ann placed Ed Christian on a chair in front of the mascot "Birdie." Lomibao was the person inside the "Birdie" mascot suit. Lomibao positioned itself behind the child and extended its

"wings" to give a good pose for the camera. As photos were about to be taken, Mary Ann released her hold of Ed Christian. Seconds later, the child fell head first from the chair onto the floor.

Employees of McDonald's (Cebu Golden Food) assisted petitioners in giving first aid treatment to Ed Christian. McDonald's reimbursed Mary Ann for the expenses incurred for the x-ray examination. It further offered to pay the expenses for the CT scan. Subsequently, spouses instituted a complaint for damages amounting to 15 Million and attorney's fees against McGeorge, the licenser of McDonalds Cebu .

RTC held Cebu Golden Food is liable because the proximate cause of Ed Christian's fall is the negligence of their employee, Lomibao. On the other hand, the Court of Appeals reversed the trial court's decision and held that Ed Christian's mother, Mary Ann, is liable because the proximate cause of the child's fall was Mary Ann's act of leaving her eightmonth- old child, Ed Christian, in the "hands" of Lomibao who was at the time wearing the Birdie mascot costume.

**ISSUE:**

Whether or not the Court of Appeals erred in ruling that the proximate cause of Ed Christian's fall was the negligence of petitioner Mary Ann

**RULING:**

No. We agree with the appellate court that despite Mary Ann's insistence that she made sure that her baby was safe and secured before she released her grasp on Ed Christian.

It is irresponsible for a mother to entrust the safety, even momentarily, of her eight-month-old child to a mascot, not to mention a bird mascot in thick leather suit that had no arms to hold the child and whose diminished ability to see, hear, feel, and move freely was readily apparent. Moreover, by merely tapping the mascot and saying "papiicture ta", Mary Ann cannot be said to have "told, informed and instructed the mascot that she was letting the mascot hold the baby momentarily." Releasing her grasp of the baby without waiting for any indication that the mascot heard and understood her is just plain negligence on the part of Mary Ann.

To Our mind, what is more in accord with human experience and dictates of reason is that a diligent mother would naturally ensure first and foremost the safety of her child before releasing her hold on him. Mary Ann, in placing Ed Christian on a chair and expecting a bird mascot to ensure the child's safety, utterly failed to observe the degree of diligence expected of her as a mother of an eight-month- old baby.

In the absence of negligence on the part of respondents Cebu Golden Foods and Lomibao, as well as their management and staff, they cannot be made liable to pay for the damages prayed for by the petitioners.

To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.



Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy resulting from an act which does not amount to a legal injury or wrong.

**ROMULO ABROGAR and ERLINDA ABROGAR vs COSMOS BOTTLING COMPANY and INTERGAMES, INC.**

**G.R. No. 164749, March 15, 2017, Bersamin, J.**

*A higher degree of diligence was required given that practically all of the participants were children or minors and that the law imposes a duty of care towards children and minors even if ordinarily there was no such duty under the same circumstances had the persons involved been adults of sufficient discretion.*

**FACTS:**

To promote the sales of Pop Cola, Cosmos, jointly with Intergames, organized the Pop Cola Junior Marathon. Plaintiff's son, Rommel, joined and ran the course plotted by the defendants. Rommel was bumped by a jeepney that was then running along the route of the marathon and in spite of medical treatment given to him, he died later that same day due to severe head injuries.

Plaintiffs sued the respondents in the CFI to recover various damages for the untimely death of Rommel.

**ISSUES:**

- 1) W/N the defendants were negligent.
- 2) W/N the negligence of Intergames was the proximate cause of the death.
- 3) W/N the doctrine of assumption of risks applies.

**RULING:**

**1) Only Intergames was negligent. The sponsorship of Cosmos was limited to financing the race.** *Negligence* is the failure to observe that degree of care, precaution, and vigilance which the circumstances justly demand, whereby another person suffers injury. The safety and precautionary measures undertaken by Intergames were short of the diligence demanded by the circumstances of persons, time and place under consideration. Hence, Intergames as the organizer was guilty of negligence.

- In staging the event, Intergames had no employees of its own to man the race, and relied only on the "cooperating agencies" and volunteers who had worked with it in previous races. It held no briefings of any kind on the actual duties to be performed by each group of volunteers. It did not instruct the volunteers on how to minimize, if not avert, the risks of the race. Since the marathon would be run alongside moving vehicular traffic, at the very least,

Intergames ought to have seen to the constant and closer coordination among the personnel manning the route to prevent the foreseen risks from befalling the participants.

- Intergames further conceded that the marathon could have been staged on a blocked-off route where runners could run against the flow of vehicular traffic. Intergames had the option to hold the race in a route where such risks could be minimized, if not eliminated.

2) **YES.** To be considered the *proximate cause* of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage. The negligence of the jeepney driver, albeit an intervening cause, was not efficient enough to break the chain of connection between the negligence of Intergames and the injurious consequence suffered by Rommel.

3) **NO.** The *doctrine of assumption of risk* means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom. It is based on voluntary consent, express or implied, to accept danger of a known and appreciated risk; but one does not ordinarily assume risk of any negligence which he does not know and appreciate.

Rommel would not have joined the marathon if he had known of or appreciated the risk of harm or even death from vehicular accident while running in the organized running event. Without question, a marathon route safe and free from foreseeable risks was the reasonable expectation of every runner participating in an organized running event. Neither was the waiver of liability signed by Rommel, then a minor, an effective form of express or implied consent in the context of the doctrine of assumption of risk.

**R TRANSPORT CORPORATION, Petitioner, vs. LUISITO G. YU, Respondent.  
G.R. No. 174161, THIRD DIVISION, February 18, 2015, PERALTA, J.**

*Under Article 2180 of the New Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Once negligence on the part of the employee is established, a presumption instantly arises that the employer was remiss in the selection and/or supervision of the negligent employee. To avoid liability for the quasi-delict committed by its employee, it is incumbent upon the employer to rebut this presumption by presenting adequate and convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employees.*

*Unfortunately, however, the records of this case are bereft of any proof showing the exercise by petitioner of the required diligence.*

## **FACTS**

At around 8:45 in the morning of December 12, 1993, Loreta J. Yu, after having alighted from a passenger bus in front of Robinson's Galleria along the north-bound lane of Epifanio de los Santos Avenue (EDSA), was hit and run over by a bus driven by Antonio P. Gimena, who was then employed by petitioner R Transport Corporation. Loreta was immediately rushed to Medical City Hospital where she was pronounced dead on arrival.<sup>3</sup>

On February 3, 1994, the husband of the deceased, respondent Luisito G. Yu, filed a Complaint for damages before the Regional Trial Court (RTC) of Makati City against petitioner R Transport, Antonio Gimena, and Metro Manila Transport Corporation (MMTC) for the death of his wife. MMTC denied its liability reasoning that it is merely the registered owner of the bus involved in the incident, the actual owner, being petitioner R Transport.<sup>4</sup> It explained that under the Bus Installment Purchase Program of the government, MMTC merely purchased the subject bus, among several others, for resale to petitioner R Transport, which will in turn operate the same within Metro Manila. Since it was not actually operating the bus which killed respondent's wife, nor was it the employer of the driver thereof, MMTC alleged that the complaint against it should be dismissed.<sup>5</sup> For its part, petitioner R Transport alleged that respondent had no cause of action against it for it had exercised due diligence in the selection and supervision of its employees and drivers and that its buses are in good condition. Meanwhile, the driver Antonio Gimena was declared in default for his failure to file an answer to the complaint.

### **ISSUE**

Whether Gimena and the petitioner are liable

### **RULING**

Yes.

Both the trial and appellate courts found driver Gimena negligent in hitting and running over the victim and ruled that his negligence was the proximate cause of her death. Negligence has been defined as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury." Verily, foreseeability is the fundamental test of negligence. It is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

In this case, the records show that driver Gimena was clearly running at a reckless speed. As testified by the police officer on duty at the time of the incident<sup>16</sup> and indicated in the Autopsy Report,<sup>17</sup> not only were the deceased's clothes ripped off from her body, her brain even spewed out from her skull and spilled over the road. Indeed, this Court is not prepared to believe petitioner's contention that its bus was travelling at a "normal speed" in preparation for a full stop in view of the fatal injuries sustained by the deceased. Moreover, the location wherein the deceased was hit and run over further indicates Gimena's negligence. As borne by the records, the bus driven by Gimena bumped the deceased in a loading and unloading area of a commercial center. The fact that he was approaching such a busy part of EDSA should have already cautioned the driver of the bus. In fact, upon seeing that a bus has stopped beside his lane should have signalled him to step on his brakes to slow down for the possibility that said bus was unloading its passengers in the area. Unfortunately, he did not take the necessary precaution and instead, drove on and bumped the deceased despite being aware that he was traversing a commercial center where pedestrians were



crossing the street. Ultimately, Gimena should have observed due diligence of a reasonably prudent man by slackening his speed and proceeding cautiously while passing the area.

Under Article 2180 of the New Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Once negligence on the part of the employee is established, a presumption instantly arises that the employer was remiss in the selection and/or supervision of the negligent employee. To avoid liability for the quasi-delict committed by its employee, it is incumbent upon the employer to rebut this presumption by presenting adequate and convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employees.

Unfortunately, however, the records of this case are bereft of any proof showing the exercise by petitioner of the required diligence. As aptly observed by the CA, no evidence of whatever nature was ever presented depicting petitioner's due diligence in the selection and supervision of its driver, Gimena, despite several opportunities to do so. In fact, in its petition, apart from denying the negligence of its employee and imputing the same to the bus from which the victim alighted, petitioner merely reiterates its argument that since it is not the registered owner of the bus which bumped the victim, it cannot be held liable for the damage caused by the same. Nowhere was it even remotely alleged that petitioner had exercised the required diligence in the selection and supervision of its employee. Because of this failure, petitioner cannot now avoid liability for the quasi-delict committed by its negligent employee.

The contention is devoid of merit. While the Court therein ruled that the registered owner or operator of a passenger vehicle is jointly and severally liable with the driver of the said vehicle for damages incurred by passengers or third persons as a consequence of injuries or death sustained in the operation of the said vehicle, the Court did so to correct the erroneous findings of the Court of Appeals that the liability of the registered owner or operator of a passenger vehicle is merely subsidiary, as contemplated in Art. 103 of the Revised Penal Code. In no case did the Court exempt the actual owner of the passenger vehicle from liability. On the contrary, it adhered to the rule followed in the cases of *Erezo vs. Jepte*, *Tamayo vs. Aquino*, and *De Peralta vs. Mangusang*, among others, that the registered owner or operator has the right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused.

**MARIA BENITA A. DULAY, in her own behalf and in behalf of the minor children KRIZTEEN ELIZABETH, BEVERLY MARIE and NAPOLEON II, all surnamed DULAY, petitioners, vs. THE COURT OF APPEALS, Former Eighth Division, HON. TEODORO P. REGINO, in his capacity as Presiding Judge of the Regional Trial Court National Capital Region, Quezon City, Br. 84, SAFEGUARD INVESTIGATION AND SECURITY CO., INC., and SUPERGUARD SECURITY CORPORATION, respondents.**

**G.R. No. 108017, SECOND DIVISION, April 3, 1995, BIDIN, J.**

*Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter.*

*Contrary to the theory of private respondents, there is no justification for limiting the scope of Article 2176 of the Civil Code to acts or omissions resulting from negligence. Well-entrenched is the doctrine that article 2176 covers not only acts committed with negligence, but also acts which are voluntary and intentional.*

## **FACTS**

On December 7, 1988, an altercation between Benigno Torzuela and Atty. Napoleon Dulay occurred at the "Big Bang Sa Alabang," Alabang Village, Muntinlupa as a result of which Benigno Torzuela, the security guard on duty at the said carnival, shot and killed Atty. Napoleon Dulay.

Herein petitioner Maria Benita A. Dulay, widow of the deceased Napoleon Dulay, in her own behalf and in behalf of her minor children, filed on February 8, 1989 an action for damages against Benigno Torzuela and herein private respondents Safeguard Investigation and Security Co., Inc., ("SAFEGUARD") and/or Superguard Security Corp. ("SUPERGUARD"), alleged employers of defendant Torzuela.

Respondent SUPERGUARD alleged that a complaint for damages based on negligence under Article 2176 of the New Civil Code, such as the one filed by petitioners, cannot lie, since the civil liability under Article 2176 applies only to quasi-offenses under Article 365 of the Revised Penal Code. In addition, the private respondent argued that petitioners' filing of the complaint is premature considering that the conviction of Torzuela in a criminal case is a condition *sine qua non* for the employer's subsidiary liability.

## **ISSUE**

Whether Superguard is liable

## **RULING**

Yes. It is well-settled that the filing of an independent civil action before the prosecution in the criminal action presents evidence is even far better than a compliance with the requirement of express reservation (*Yakult Philippines v. Court of Appeals*, 190 SCRA 357 [1990]). This is precisely what the petitioners opted to do in this case. However, the private respondents opposed the civil action on the ground that the same is founded on a delict and not on a quasi-delict as the shooting was not attended by negligence. What is in dispute therefore is the nature of the petitioner's cause of action.

The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action (*Republic v. Estenzo*, 158 SCRA 282 [1988]). The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief. (*De Tavera v. Philippine Tuberculosis Society*, 112 SCRA 243 [1982]). An examination of the complaint in the present case would show that the plaintiffs, petitioners herein, are invoking their right to recover damages against the private respondents for their vicarious responsibility for the injury

caused by Benigno Torzuela's act of shooting and killing Napoleon Dulay, as stated in paragraphs 1 and 2 of the complaint.

Article 2176 of the New Civil Code provides:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter.

Contrary to the theory of private respondents, there is no justification for limiting the scope of Article 2176 of the Civil Code to acts or omissions resulting from negligence. Well-entrenched is the doctrine that article 2176 covers not only acts committed with negligence, but also acts which are voluntary and intentional.

Private respondents also contend that their liability is subsidiary under the Revised Penal Code; and that they are not liable for Torzuela's act which is beyond the scope of his duties as a security guard. It having been established that the instant action is not *ex-delicto*, petitioners may proceed directly against Torzuela and the private respondents. Under Article 2180 of the New Civil Code as aforequoted, when an injury is caused by the negligence of the employee, there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after selection or both (*Layugan v. Intermediate Appellate Court*, 167 SCRA 363 [1988]). The liability of the employer under Article 2180 is direct and immediate; it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee (*Kapalaran Bus Lines v. Coronado*, 176 SCRA 792 [1989]). Therefore, it is incumbent upon the private respondents to prove that they exercised the diligence of a good father of a family in the selection and supervision of their employee.

Since Article 2176 covers not only acts of negligence but also acts which are intentional and voluntary, it was therefore erroneous on the part of the trial court to dismiss petitioner's complaint simply because it failed to make allegations of attendant negligence attributable to private respondents.

**RAFAEL REYES TRUCKING CORPORATION, *Petitioner*, v. PEOPLE OF THE PHILIPPINES and ROSARIO P. DY (for herself and on behalf of the minors Maria Luisa, Francis Edward, Francis Mark and Francis Rafael, all surnamed Dy), *Respondents*.**  
**G.R. No. 129029, EN BANC, April 3, 2000, PARDO, J.**

*The policy against double recovery requires that only one action be maintained for the same act or omission whether the action is brought against the employee or against his employer. The injured party must choose which of the available causes of action for damages he will bring.*

## FACTS



The defendant Rafael Reyes Trucking Corporation is a domestic corporation engaged in the business of transporting beer products for the San Miguel Corporation (SMC for Short) from the latter's San Fernando, Pampanga plant to its various sales outlets in Luzon. Among its fleets of vehicles for hire is the white truck trailer described above driven by Romeo Dunca y Tumol, a duly licensed driver. Aside from the Corporation's memorandum to all its drivers and helpers to physically inspect their vehicles before each trip, the SMC's Traffic Investigator-Inspector certified the roadworthiness of this White Truck trailer prior to June 20, 1989. In addition to a professional driver's license, it also conducts a rigid examination of all driver applicants before they are hired.

In the early morning of June 20, 1989, the White Truck driven by Dunca left Tuguegarao, Cagayan bound to San Fernando, Pampanga loaded with 2,000 cases of empty beer "Grande" bottles. Seated at the front right seat beside him was Ferdinand Domingo, his truck helper ("pahinante" in Pilipino). At around 4:00 o'clock that same morning while the truck was descending at a slight downgrade along the national road at Tagaran, Cauayan, Isabela, it approached a damaged portion of the road covering the full width of the truck's right lane going south and about six meters in length. These made the surface of the road uneven because the potholes were about five to six inches deep. The left lane parallel to this damaged portion is smooth. As narrated by Ferdinand Domingo, before approaching the potholes, he and Dunca saw the Nissan with its headlights on coming from the opposite direction. They used to evade this damaged road by taking the left lane but at that particular moment, because of the incoming vehicle, they had to run over it. This caused the truck to bounce wildly. Dunca lost control of the wheels and the truck swerved to the left invading the lane of the Nissan. As a result, Dunca's vehicle rammed the incoming Nissan dragging it to the left shoulder of the road and climbed a ridge above said shoulder where it finally stopped.. The Nissan was severely damaged, and its two passengers, namely: Feliciano Balcita and Francisco Dy, Jr. died instantly from external and internal hemorrhage and multiple fractures.

### **ISSUES**

1. Whether petitioner as owner of the truck involved in the accident may be held subsidiarily liable for the damages awarded to the offended parties in the criminal action against the truck driver despite the filing of a separate civil action by the offended parties against the employer of the truck driver
2. Whether the Court may award damages to the offended parties in the criminal case despite the filing of a civil action against the employer of the truck driver; and in amounts exceeding that alleged in the information for reckless imprudence resulting in homicide and damage to property

### **RULING**

1. No. Rafael Reyes Trucking Corporation, as employer of the accused who has been adjudged guilty in the criminal case for reckless imprudence, can not be held subsidiarily liable because of the filing of the separate civil action based on *quasi delict* against it. In view of the reservation to file, and the subsequent filing of the civil action for recovery of civil liability, the same was not instituted with the criminal action. Such separate civil action was for recovery of damages under Article 2176 of the Civil Code, arising from the same act or omission of the accused. <sup>27</sup>

Pursuant to the provision of Rule 111, Section 1, paragraph 3 of the 1985 Rules of Criminal Procedure, when private respondents, as complainants in the criminal action, reserved the right to file the separate civil action, they waived other available civil actions predicated on the same act or omission of the accused-driver. Such civil action includes the recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, and 34 of the Civil Code of the Philippines arising from the same act or omission of the accused.<sup>28</sup>

The intention of private respondents to proceed primarily and directly against petitioner as employer of accused truck driver became clearer when they did not ask for the dismissal of the civil action against the latter based on *quasi delict*.

We rule that the trial court erred in awarding civil damages in the criminal case and in dismissing the civil action. Apparently satisfied with such award, private respondent did not appeal from the dismissal of the civil case. However, petitioner did appeal. Hence, this case should be remanded to the trial court so that it may render decision in the civil case awarding damages as may be warranted by the evidence.

2. No. With regard to the second issue, the award of damages in the criminal case was improper because the civil action for the recovery of civil liability was waived in the criminal action by the filing of a separate civil action against the employer. As enunciated in *Ramos vs. Gonong*,<sup>34</sup> "civil indemnity is not part of the penalty for the crime committed." The only issue brought before the trial court in the criminal action is whether accused Romeo Dunca y de Tumol is guilty of reckless imprudence resulting in homicide and damage to property. The action for recovery of civil liability is not included therein, but is covered by the separate civil action filed against the petitioner as employer of the accused truck-driver.

In this case, accused-driver jumped bail pending his appeal from his conviction. Thus, the judgment convicting the accused became final and executory, but only insofar as the penalty in the criminal action is concerned. The damages awarded in the criminal action was invalid because of its effective waiver. The pronouncement was void because the action for recovery of the civil liability arising from the crime has been waived in said criminal action.

As a final note, we reiterate that "the policy against double recovery requires that only one action be maintained for the same act or omission whether the action is brought against the employee or against his employer."<sup>36</sup> The injured party must choose which of the available causes of action for damages he will bring.

**CRESENCIO LIBI \* and AMELIA YAP LIBI, *Petitioners*, v. HON. INTERMEDIATE APPELLATE COURT, FELIPE GOTIONG and SHIRLEY GOTIONG, *Respondents*.  
G.R. No. 70890, EN BANC, September 18, 1992, REGALADO, J.**

*The subsidiary liability of parents for damages caused by their minor children imposed by Article 2180 of the New Civil Code covers obligations arising from both quasi-delicts and criminal offenses.*

*The subsidiary liability of parent's arising from the criminal acts of their minor children who acted with discernment is determined under the provisions of Article 2180, N.C.C. and under Article 101 of*

*the Revised Penal Code, because to hold that the former only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damages caused by his or her son, no liability would attach if the damage is caused with criminal intent.*

## **FACTS**

Synthesized from the findings of the lower courts, it appears that respondent spouses are the legitimate parents of Julie Ann Gotiong who, at the time of the deplorable incident which took place and from which she died on January 14, 1979, was an 18-year old first year commerce student of the University of San Carlos, Cebu City; while petitioners are the parents of Wendell Libi, then a minor between 18 and 19 years of age living with his aforesaid parents, and who also died in the same event on the same date.

For more than two (2) years before their deaths, Julie Ann Gotiong and Wendell Libi were sweethearts until December, 1978 when Julie Ann broke up her relationship with Wendell after she supposedly found him to be sadistic and irresponsible. During the first and second weeks of January, 1979, Wendell kept pestering Julie Ann with demands for reconciliation but the latter persisted in her refusal, prompting the former to resort to threats against her. In order to avoid him, Julie Ann stayed in the house of her best friend, Malou Alfonso, at the corner of Maria Cristina and Juana Osmeña Streets, Cebu City, from January 7 to 13, 1978.

On January 14, 1979, Julie Ann and Wendell died, each from a single gunshot wound inflicted with the same firearm, a Smith and Wesson revolver licensed in the name of petitioner Cresencio Libi, which was recovered from the scene of the crime inside the residence of private respondents at the corner of General Maxilom and D. Jakosalem streets of the same city.

Private respondents, bereaved over the death of their daughter, submitted that Wendell caused her death by shooting her with the aforesaid firearm and, thereafter, turning the gun on himself to commit suicide. On the other hand, *Petitioners*, puzzled and likewise distressed over the death of their son, rejected the imputation and contended that an unknown third party, whom Wendell may have displeased or antagonized by reason of his work as a narcotics informer of the Constabulary Anti-Narcotics Unit (CANU), must have caused Wendell's death and then shot Julie Ann to eliminate any witness and thereby avoid identification. [chanrobles.com:cranlaw:red](http://chanrobles.com:cranlaw:red)

As a result of the tragedy, the parents of Julie Ann filed Civil Case No. R-17774 in the then Court of First Instance of Cebu against the parents of Wendell to recover damages arising from the latter's vicarious liability under Article 2180 of the Civil Code.

## **ISSUE**

Whether the parents should be held liable

## **RULING**



Yes. Petitioners' defense that they had exercised the due diligence of a good father of a family, hence they should not be civilly liable for the crime committed by their minor son, is not borne out by the evidence on record either.

Petitioner Amelita Yap Libi, mother of Wendell, testified that her husband, Cresencio Libi, owns a gun which he kept in a safety deposit box inside a drawer in their bedroom. Each of these petitioners holds a key to the safety deposit box and Amelita's key is always in her bag, all of which facts were known to Wendell. They have never seen their son Wendell taking or using the gun. She admitted, however, that on that fateful night the gun was no longer in the safety deposit box. 16 We, accordingly, cannot but entertain serious doubts that petitioner spouses had really been exercising the diligence of a good father of a family by safely locking the fatal gun away. Wendell could not have gotten hold thereof unless one of the keys to the safety deposit box was negligently left lying around or he had free access to the bag of his mother where the other key was.

The diligence of a good father of a family required by law in a parent and child relationship consists, to a large extent, of the instruction and supervision of the child. Petitioners were gravely remiss in their duties as parents in not diligently supervising the activities of their son, despite his minority and immaturity, so much so that it was only at the time of Wendell's death that they allegedly discovered that he was a CANU agent and that Cresencio's gun was missing from the safety deposit box. Both parents were sadly wanting in their duty and responsibility in monitoring and knowing the activities of their children who, for all they know, may be engaged in dangerous work such as being drug informers, 17 or even drug users. Neither was a plausible explanation given for the photograph of Wendell, with a handwritten dedication to Julie Ann at the back thereof, 18 holding upright what clearly appears as a revolver and on how or why he was in possession of that firearm. The subsidiary liability of parents for damages caused by their minor children imposed by Article 2180 of the New Civil Code covers obligations arising from both quasi-delicts and criminal offenses. The subsidiary liability of parent's arising from the criminal acts of their minor children who acted with discernment is determined under the provisions of Article 2180, N.C.C. and under Article 101 of the Revised Penal Code, because to hold that the former only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damages caused by his or her son, no liability would attach if the damage is caused with criminal intent.

**COCA-COLA BOTTLERS PHILIPPINES, INC., vs. THE HONORABLE COURT OF APPEALS (Fifth Division) and MS. LYDIA GERONIMO, respondents.**  
**G.R. No. 110295, FIRST DIVISION, October 18, 1993, DAVIDE, JR., J**

*The vendee's remedies against a vendor with respect to the warranties against hidden defects of or encumbrances upon the thing sold are not limited to those prescribed in Article 1567 of the Civil Code. The vendor could likewise be liable for quasi-delict under Article 2176 of the Civil Code, and an action based thereon may be brought by the vendee. While it may be true that the pre-existing contract between the parties may, as a general rule, bar the applicability of the law on quasi-delict, the liability*

*may itself be deemed to arise from quasi-delict, i.e., the acts which breaks the contract may also be a quasi-delict.*

## **FACTS**

On 7 May 1990, Lydia L. Geronimo, the herein private respondent, filed a complaint for damages against petitioner with the Regional Trial Court (RTC) of Dagupan City.<sup>1</sup> The case was docketed as Civil Case No. D-9629. She alleges in her complaint that she was the proprietress of Kindergarten Wonderland Canteen docketed as located in Dagupan City, an enterprise engaged in the sale of soft drinks (including Coke and Sprite) and other goods to the students of Kindergarten Wonderland and to the public; on or about 12 August 1989, some parents of the students complained to her that the Coke and Sprite soft drinks sold by her contained fiber-like matter and other foreign substances or particles; he then went over her stock of softdrinks and discovered the presence of some fiber-like substances in the contents of some unopened Coke bottles and a plastic matter in the contents of an unopened Sprite bottle; she brought the said bottles to the Regional Health Office of the Department of Health at San Fernando, La Union, for examination; subsequently, she received a letter from the Department of Health informing her that the samples she submitted "are adulterated;" as a consequence of the discovery of the foreign substances in the beverages, her sales of soft drinks severely plummeted from the usual 10 cases per day to as low as 2 to 3 cases per day resulting in losses of from P200.00 to P300.00 per day, and not long after that she had to lose shop on 12 December 1989; she became jobless and destitute; she demanded from the petitioner the payment of damages but was rebuffed by it. She prayed for judgment ordering the petitioner to pay her P5,000.00 as actual damages, P72,000.00 as compensatory damages, P500,000.00 as moral damages, P10,000.00 as exemplary damages, the amount equal to 30% of the damages awarded as attorney's fees, and the costs.

## **ISSUE**

Whether the cause of action involved is quasi-delict

## **RULING**

Yes. The public respondent's conclusion that the cause of action in Civil Case No. D-9629 is found on *quasi-delict* and that, therefore, pursuant to Article 1146 of the Civil Code, it prescribes in four (4) years is supported by the allegations in the complaint, more particularly paragraph 12 thereof, which makes reference to the reckless and negligent manufacture of "adulterated food items intended to be sold for public consumption."

The vendee's remedies against a vendor with respect to the warranties against hidden defects of or encumbrances upon the thing sold are not limited to those prescribed in Article 1567 of the Civil Code.

The vendor could likewise be liable for *quasi-delict* under Article 2176 of the Civil Code, and an action based thereon may be brought by the vendee. While it may be true that the pre-existing contract between the parties may, as a general rule, bar the applicability of the law on *quasi-delict*,

the liability may itself be deemed to arise from *quasi-delict*, i.e., the acts which breaks the contract may also be a *quasi-delict*.

Under American law, the liabilities of a manufacturer or seller of injury-causing products may be based on negligence, breach of warranty, tort, or other grounds such as fraud, deceit, or misrepresentation. *Quasi-delict*, as defined in Article 2176 of the Civil Code, (which is known in Spanish legal treaties as *culpa aquiliana*, *culpa extra-contractual* or *cuasi-delitos*) is homologous but not identical to tort under the common law, which includes not only negligence, but also intentional criminal acts, such as assault and battery, false imprisonment and deceit.

**CITY OF MANILA**, petitioner, vs. **GENARO N. TEOTICO and COURT OF APPEALS**, respondents.  
**G.R. No. L-23052, EN BANC, January 29, 1968, CONCEPCION, C.J.**

### FACTS

On January 27, 1958, at about 8:00 p.m., Genaro N. Teotico was at the corner of the Old Luneta and P. Burgos Avenue, Manila, within a "loading and unloading" zone, waiting for a jeepney to take him down town. After waiting for about five minutes, he managed to hail a jeepney that came along to a stop. As he stepped down from the curb to board the jeepney, and took a few steps, he fell inside an uncovered and unlighted catch basin or manhole on P. Burgos Avenue. Due to the fall, his head hit the rim of the manhole breaking his eyeglasses and causing broken pieces thereof to pierce his left eyelid. As blood flowed therefrom, impairing his vision, several persons came to his assistance and pulled him out of the manhole. One of them brought Teotico to the Philippine General Hospital, where his injuries were treated, after which he was taken home. In addition to the lacerated wound in his left upper eyelid, Teotico suffered contusions on the left thigh, the left upper arm, the right leg and the upper lip apart from an abrasion on the right infra-patella region. These injuries and the allergic eruption caused by anti-tetanus injections administered to him in the hospital, required further medical treatment by a private practitioner who charged therefor P1,400.00.

As a consequence of the foregoing occurrence, Teotico filed, with the Court of First Instance of Manila, a complaint — which was, subsequently, amended — for damages against the City of Manila, its mayor, city engineer, city health officer, city treasurer and chief of police.

### ISSUE

Whether Art. 2189 should apply

### RULING

Yes.

Section 4 of Republic Act No. 409 (Charter of the City of Manila) provides:

The city shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provisions of this chapter, or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions.



Article 2189 of the Civil Code of the Philippines which provides:

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

Manila maintains that the former provision should prevail over the latter, because Republic Act 409, is a special law, intended exclusively for the City of Manila, whereas the Civil Code is a general law, applicable to the entire Philippines.

The Court of Appeals, however, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned, Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject-matter of the provisions above quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for: "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of" said Act "or any other law or ordinance, or from negligence" of the city "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions." Upon the other hand, Article 2189 of the Civil Code constitutes a particular prescription making "provinces, cities and municipalities . . . liable for damages for the death of, or injury suffered by any person by reason" — specifically — "of the *defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.*" In other words, said section 4 refers to liability arising from negligence, in general, regardless of the object thereof, whereas Article 2189 governs liability due to "defective streets," in particular. Since the present action is based upon the alleged defective condition of a road, said Article 2189 is decisive thereon.

**FLORENTINA A. GUILATCO**, petitioner, vs. **CITY OF DAGUPAN**, and the **HONORABLE COURT OF APPEALS**, respondents.

**G.R. No. 61516, SECOND DIVISION, March 21, 1989, SARMIENTO, J.**

*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.*

## **FACTS**

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 P 8,053.65 or a total of P 10,000.00 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 P 720.00 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 have confirmed beyond shadow of any doubt the extent of the fracture and injuries sustained by the plaintiff as a result of the mishap.

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.

### **ISSUE**

Whether 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.

### **RULING**

Yes. 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.

In the case at bar, this control or supervision is provided for in the charter of Dagupan and is exercised through the City Engineer.

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. Thus the charter clearly indicates that the city indeed has supervision and control over the sidewalk where the open drainage hole is located.

**GOTESCO INVESTMENT CORPORATION**, petitioner, vs. **GLORIA E. CHATTO and LINA DELZA CHATTO**, respondents.

**G.R. No. L-87584, THIRD DIVISION, June 16, 1992, DAVIDE, JR., J**

*The owner or proprietor of a place of public amusement impliedly warrants that the premises, appliances and amusement devices are safe for the purpose for which they are designed, the doctrine being subject to no other exception or qualification than that he does not contract against unknown defects not discoverable by ordinary or reasonable means.*

## **FACTS**

In the afternoon of June 4, 1982 plaintiff Gloria E. Chatto, and her 15-year old daughter, plaintiff Lina Delza E. Chatto went to see the movie "Mother Dear" at Superama I theater, owned by defendant Gotesco Investment Corporation. They bought balcony tickets but even then were unable to find seats considering the number of people patronizing the movie. Hardly ten (10) minutes after entering the theater, the ceiling of its balcony collapsed. The theater was plunged into darkness and pandemonium ensued. Shocked and hurt, plaintiffs managed to crawl under the fallen ceiling. As soon as they were able to get out to the street they walked the nearby FEU Hospital where they were confined and treated for one (1) day.

The next day, they transferred to the UST hospital. Plaintiff Gloria Chatto was treated in said hospital from June 5 to June 19 and plaintiff Lina Delza Chatto from June 5 to 11. Due to continuing pain in the neck, headache and dizziness, plaintiff went to Illinois, USA in July 1982 for further treatment. She was treated at the Cook County Hospital in Chicago, Illinois. She stayed in the U.S. for about three (3) months during which time she had to return to the Cook County Hospital five (5) or, six (6) times.

Defendant tried to avoid liability by alleging that the collapse of the ceiling of its theater was done due to *force majeure*. It maintained that its theater did not suffer from any structural or construction defect

## **ISSUE**

Whether Gotesco is liable

## **RULING**



Yes. Petitioner's claim that the collapse of the ceiling of the theater's balcony was due to *force majeure* is not even founded on facts because its own witness, Mr. Jesus Lim Ong, admitted that "he could not give any reason why the ceiling collapsed." Having interposed it as a defense, it had the burden to prove that the collapse was indeed caused by *force majeure*. It could not have collapsed without a cause. That Mr. Ong could not offer any explanation does not imply *force majeure*. As early as eighty-five (85) years ago, this Court had the occasion to define *force majeure*.

Petitioner could have easily discovered the cause of the collapse if indeed it were due to *force majeure*. To Our mind, the real reason why Mr. Ong could not explain the cause or reason is that either he did not actually conduct the investigation or that he is, as the respondent Court impliedly held, incompetent. He is not an engineer, but an architect who had not even passed the government's examination. Verily, post-incident investigation cannot be considered as material to the present proceedings. What is significant is the finding of the trial court, affirmed by the respondent Court, that the collapse was due to construction defects. There was no evidence offered to overturn this finding. The building was constructed barely four (4) years prior to the accident in question. It was not shown that any of the causes denominates as *force majeure* obtained immediately before or at the time of the collapse of the ceiling. Such defects could have been easily discovered if only petitioner exercised due diligence and care in keeping and maintaining the premises. But as disclosed by the testimony of Mr. Ong, there was no adequate inspection of the premises before the date of the accident. His answers to the leading questions on inspection disclosed neither the exact dates of said. inspection nor the nature and extent of the same. That the structural designs and plans of the building were duly approved by the City Engineer and the building permits and certificate of occupancy were issued do not at all prove that there were no defects in the construction, especially as regards the ceiling, considering that no testimony was offered to prove that it was ever inspected at all.

It is settled that:

The owner or proprietor of a place of public amusement impliedly warrants that the premises, appliances and amusement devices are safe for the purpose for which they are designed, the doctrine being subject to no other exception or qualification than that he does not contract against unknown defects not discoverable by ordinary or reasonable means.

This implied warranty has given rise to the rule that:

Where a patron of a theater or other place of public amusement is injured, and the thing that caused the injury is wholly and exclusively under the control and management of the defendant, and the accident is such as in the ordinary course of events would not have happened if proper care had been exercised, its occurrence raises a presumption or permits of an inference of negligence on the part of the defendant. <sup>15</sup>

That presumption or inference was not overcome by the petitioner.

**RUKS KONSULT AND CONSTRUCTION, Petitioner, vs. ADWORLD SIGN AND ADVERTISING CORPORATION\* and TRANSWORLD MEDIA ADS, INC., Respondents.**  
**G.R. No. 204866, FIRST DIVISION, January 21, 2015, Perlas-Bernabe, J.**

*Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.*

## **FACTS**

The instant case arose from a complaint for damages filed by Adworld against Transworld and Comark International Corporation (Comark) before the RTC.<sup>5</sup> In the complaint, Adworld alleged that it is the owner of a 75 ft. x 60 ft. billboard structure located at EDSA Tulay, Guadalupe, Barangka Mandaluyong, which was misaligned and its foundation impaired when, on August 11, 2003, the adjacent billboard structure owned by Transworld and used by Comark collapsed and crashed against it. Resultantly, on August 19, 2003, Adworld sent Transworld and Comark a letter demanding payment for the repairs of its billboard as well as loss of rental income. On August 29, 2003, Transworld sent its reply, admitting the damage caused by its billboard structure on Adworld's billboard, but nevertheless, refused and failed to pay the amounts demanded by Adworld. As Adworld's final demand letter also went unheeded, it was constrained to file the instant complaint, praying for damages in the aggregate amount of ₱474,204.00, comprised of ₱281,204.00 for materials, ₱72,000.00 for labor, and ₱121,000.00 for indemnity for loss of income.<sup>6</sup> In its Answer with Counterclaim, Transworld averred that the collapse of its billboard structure was due to extraordinarily strong winds that occurred instantly and unexpectedly, and maintained that the damage caused to Adworld's billboard structure was hardly noticeable. Transworld likewise filed a Third-Party Complaint against Ruks, the company which built the collapsed billboard structure in the former's favor.<sup>1</sup> It was alleged therein that the structure constructed by Ruks had a weak and poor foundation not suited for billboards, thus, prone to collapse, and as such, Ruks should ultimately be held liable for the damages caused to Adworld's billboard structure.

## **ISSUE**

Whether the CA correctly affirmed the ruling of the RTC declaring Ruks jointly and severally liable with Transworld for damages sustained by Adworld.

## **RULING**

Yes. Jurisprudence defines negligence as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.<sup>27</sup> It is the failure to observe for the protection of the interest of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.<sup>28</sup>

In this case, the CA correctly affirmed the RTC's finding that Transworld's initial construction of its billboard's lower structure without the proper foundation, and that of Ruks's finishing its upper structure and just merely assuming that Transworld would reinforce the weak foundation are the two (2) successive acts which were the direct and proximate cause of the damages sustained by Adworld. Worse, both Transworld and Ruks were fully aware that the foundation for the former's billboard was weak; yet, neither of them took any positive step to reinforce the same. They merely relied on each other's word that repairs would be done to such foundation, but none was done at all. Clearly, the foregoing circumstances show that both Transworld and Ruks are guilty of negligence in the construction of the former's billboard, and perforce, should be held liable for its collapse and the resulting damage to Adworld's billboard structure. As joint tortfeasors, therefore, they are solidarily liable to Adworld. Verily, "[j]oint tortfeasors are those who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or approve of it after it is done, if done for their benefit. They are also referred to as those who act together in committing wrong or whose acts, if independent of each other, unite in causing a single injury. Under Article 2194<sup>29</sup> of the Civil Code, joint tortfeasors are solidarily liable for the resulting damage. In other words, joint tortfeasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves.

Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.

**SEVEN BROTHERS SHIPPING CORPORATION vs. DMC-CONSTRUCTION RESOURCES, INC.**  
**G.R. No. 193914. November 26, 2014, C.J. Sereno**

*Petitioner questions the decision of the CA awarding respondent nominal damages after having ruled that the actual damages awarded by the RTC was unfounded. Petitioner argues that nominal damages are only awarded to vindicate a right that has been violated and not to indemnify a party for any loss suffered by the latter. The SC ruled that what should have been awarded was temperate and not nominal damages. Temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. Considering that it has been established that respondent suffered a loss, even if the amount thereof cannot be proven with certainty, the Court ruled that what should have been awarded was temperate damages.*

**FACTS:**

On February 23, 1996, the cargo ship M/V "Diamond Rabbit" (the Vessel) owned and operated by Petitioner Seven Brothers Shipping Corporation was anchored at the causeway of the port of Bislig.



The Master of the vessel, however, decided to go to PICOP Pier in Surigao del Sur to dock there. Due to the bad weather that day, the vessel, while sailing to PICOP Pier, experienced some difficulties in maneuvering and controlling its engine. Thus, in order to stop the vessel from drifting and swinging, its Master decided to drop the starboard anchor. However, the uncontrollable and unmaneuverable vessel drifted and dragged its anchor until it hit several structures at the pier. One of the structures it hit was the coal conveyor facility owned by respondent DMC.

Thereafter, DMC sent a formal demand letter to petitioner Seven Brothers claiming damages for the destruction of its vessel. Petitioner Seven Brothers, however, failed to pay DMC prompting the latter to file a complaint for damages against it before the RTC.

Finding negligence on the part of the vessel's captain, the RTC ruled in favor of DMC and awarded it actual damages in the amount of P3,523,179.92. On appeal, the CA affirmed the decision of the RTC but modified the nature of the damages awarded, from actual to nominal, on the premise that actual damages had not been proved. Hence, the instant petition wherein Petitioner Seven Brothers argues that under Articles 2221 and 2223 of the Civil Code, nominal damages are only awarded to vindicate or recognize a right that has been violated, and not to indemnify a party for any loss suffered by the latter. They are not awarded as a simple replacement for actual damages that were not duly proven during trial. Petitioner Seven Brother further contends that assuming that nominal damages were properly awarded by the CA, Petitioner Seven Brothers is of the belief that the amount thereof must be equal or at least commensurate to the injury sustained by the claimant. Considering that respondent DMC failed to substantiate its actual loss, it was therefore improper for the CA to award nominal damages of 3,523,175.92, which was based on DMC's "highly speculative claims."

### **ISSUE**

Whether the CA erred in awarding nominal damages to DMC.

### **RULING**

Yes. The Court ruled that temperate, and not nominal, damages should be awarded to DMC in the amount of P3,523,175.92.

In this case, two facts have been established by the appellate and trial courts: that DMC suffered a loss caused by petitioner Seven Brothers; and that DMC failed to sufficiently establish the amount due to him, as no actual receipt was presented.

Temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Jurisprudence has consistently held that “[t]o justify an award of actual damages x x x credence can be given only to claims which are duly supported by receipts.” The Court takes this to mean by credible evidence. Otherwise, the law mandates that other forms of damages must be awarded, to wit:

Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case. Under Article 2221 of the Civil Code, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. The Court has laid down the concept of nominal damages in the following wise:

Nominal damages are ‘recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.’

In contrast, under Article 2224, temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. This principle was thoroughly explained in *Araneta v. Bank of America*, which cited the Code Commission, to wit:

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:

In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

Given these findings, the Court is of the belief that temperate and not nominal damages should have been awarded, considering that it has been established that DMC suffered a loss, even if the amount thereof cannot be proven with certainty.

**ROBERT DA JOSE and FRANCISCO OCAMPO y ANGELES**, Petitioners, vs. **CELERINA R. ANGELES, EDWARD ANGELO R. ANGELES and CELINE ANGELI R. ANGELES**, Respondents.  
**G.R. No. 187899, FIRST DIVISION, October 23, 2013, VILLARAMA, JR., J**

*Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn money. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.*

*In this case, the cash vouchers though admitted in evidence, whether objected to or not, have no probative value for being hearsay.*

## **FACTS**

On December 1, 2001, at about 9:00 p.m., a vehicular collision took place along the stretch of the Dofia Remedios Trinidad Highway in Brgy. Taal, Pulilan, Bulacan involving a Mitsubishi Lancer model 1997 with Plate No. ULA-679 registered under the name of, and at that time driven by the late Eduardo Tuazon Angeles<sup>4</sup> (Eduardo), husband of respondent Celerina Rivera-Angeles<sup>5</sup> (Celerina) and father of respondents Edward Angelo R. Angeles<sup>6</sup> (Edward) and Celine Angeli R. Angeles<sup>7</sup> (Celine), and a Nissan Patrol Turbo Inter cooler model 2001 with Plate No. RDJ-444 registered under the name of petitioner Robert Da Jose<sup>8</sup> (Robert) and at that time driven by petitioner Francisco Ocampo y Angeles<sup>9</sup> (Francisco). Eduardo was rushed by unidentified persons to the F.M. Cruz Orthopedic and General Hospital in Pulilan, Bulacan. Despite treatment at said hospital, Eduardo died on the same day due to Hemorrhagic Shock as a result of Blunt Traumatic Injury.<sup>10</sup>

A criminal complaint for Reckless Imprudence Resulting in Homicide and Damage to Property was filed on December 3, 2001 against Francisco before the Municipal Trial Court (MTC) of Pulilan, Bulacan (Criminal Case No. 01-8154.<sup>11</sup> In a Decision<sup>12</sup> dated December 22, 2008, the MTC declared Francisco guilty beyond reasonable doubt of the crime charged.

During the pendency of the criminal case, respondents' counsel sent petitioners via registered mail a demand-letter<sup>13</sup> dated December 15, 2001 for the payment (within 5 days from receipt of the letter) of the amount of ₱5,000,000 representing damages and attorney's fees. Failing to reach any settlement, respondents subsequently filed a Complaint<sup>14</sup> for Damages based on tort against Robert and Francisco

## **ISSUE**

Whether the CA erred in awarding the sum of ₱2,316,000 for loss of earning capacity.

## **RULING**



Yes. Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn money. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

Based on the foregoing and in line with respondents' claim that Eduardo during his lifetime earned more or less an annual income of ₱1,000,000, the case falls under the purview of the general rule rather than the exceptions.

Now, while it is true that respondents submitted cash vouchers to prove Eduardo's income, it is lamentable as duly observed by the RTC that the officers and/or employees who prepared, checked or approved the same were not presented on the witness stand. The CA itself in its assailed Decision disregarded the cash vouchers from Classic Personnel, Inc. and the Jhamec Construction Corp. due to lack of proper identification and authentication. We find that the same infirmity besets the cash vouchers from Glennis Laundry Haus upon which the award for loss of earning capacity was based.

It bears stressing that the cash vouchers from Glennis Laundry Haus were not identified by Celerina contrary to the findings of the CA but by Celine in her testimony before the RTC on November 13, 2002 and Celine, under cross-examination, admitted by way of stipulation that she had no participation in the preparation thereof.

We thus agree with the RTC's ruling that said cash vouchers though admitted in evidence, whether objected to or not, have no probative value for being hearsay.

Except for the award for the loss of earning capacity, the Court concurs with the findings of the CA and sustains the other awards made in so far as they are in accordance with prevailing jurisprudence.

**ANTONIO GELUZ**, petitioner, vs. **THE HON. COURT OF APPEALS and OSCAR LAZO**, respondents.  
**G.R. No. L-16439, EN BANC, July 20, 1961, REYES, J.B.L., J.**

*According to Article 40 of the Civil Code, birth determines personality. In this case, the fetus does not yet possess a personality to speak of because it was aborted in uterus. The child should be born before the parents can seek any recovery for damages. Action for pecuniary damages on account of personal injury or death pertains primarily to the one injured.*

*There could be no action for such damages that can be instituted on behalf of the unborn child for the injuries it received because it lacked juridical personality. The damages which the parents of an unborn child can recover are limited to moral damages.*

## **FACTS**

Nita Villanueva came to know the defendant (Antonio Geluz) for the first time in 1948 — through her aunt Paula Yambot. In 1950 she became pregnant by her present husband before they were legally married. Desiring to conceal her pregnancy from her parent, and acting on the advice of her aunt, she had herself aborted by the defendant.

After her marriage with the plaintiff, she again became pregnant. As she was then employed in the Commission on Elections and her pregnancy proved to be inconvenient, she had herself aborted again by the defendant in October 1953. Less than two years later, she again became pregnant. On February 21, 1955, accompanied by her sister Purificacion and the latter's daughter Lucida, she again repaired to the defendant's clinic on Carriedo and P. Gomez streets in Manila, where the three met the defendant and his wife. Nita was again aborted, of a two-month old foetus, in consideration of the sum of fifty pesos, Philippine currency. The plaintiff was at this time in the province of Cagayan, campaigning for his election to the provincial board; he did not know of, nor gave his consent, to the abortion.

## **ISSUE**

Whether the husband can claim damages for the death of the unborn fetus.

## **RULING**

No. The fetus was not yet born and thus does not have civil personality. According to Article 40 of the Civil Code, birth determines personality. In this case, the fetus does not yet possess a personality to speak of because it was aborted in uterus. The child should be born before the parents can seek any recovery for damages. Action for pecuniary damages on account of personal injury or death pertains primarily to the one injured.

There could be no action for such damages that can be instituted on behalf of the unborn child for the injuries it received because it lacked juridical personality. The damages which the parents of an unborn child can recover are limited to moral damages, in this case, for the act of the appellant Geluz to perform the abortion. However, moral damages cannot also be recovered because the wife willingly sought the abortion, and the husband did not further investigate on the causes of the abortion. Furthermore, the husband did not seem to have taken interest in the administrative and criminal cases against the appellant, but was more concerned in obtaining from the doctor a large money payment.

**HECTOR C. VILLANUEVA, *Petitioner*, v. UNITED COCONUT PLANTERS BANK (UCPB),  
Dumaguete Branch, *Respondent*.  
G.R. No. 138291, THIRD DIVISION, March 7, 2000, PANGANIBAN, J.**

*A suit for malicious prosecution cannot prosper unless the plaintiff satisfactorily proves that the earlier criminal action lacked probable cause and was filed, by a sinister design, mainly to injure, vex,*

*annoy or humiliate. An acquittal, by itself, does not necessarily prove the absence of probable cause in the criminal information or complaint. Upon the other hand, the complainant cannot escape liability merely on the ground that it was the fiscal who prosecuted the proceedings in court.*

## **FACTS**

Sometime in December 1978, Hermenegildo Villanueva, father of [herein Petitioner] Hector C. Villanueva, applied for and was granted a loan by [Respondent] United Coconut Planters' Bank (UCPB), Dumaguete City Branch, which at that time was managed by one Bobby Cafe. The loan was for the alleged purpose of agricultural coconut production and for processing under the Coconut Production Loan Program. As security therefor, Hermenegildo Villanueva mortgaged to the bank a parcel of land registered in his name located at Mauban, Quezon.

In the course of a bank audit, certain fraud, anomalies and irregularities were discovered in the application, processing and granting of said loan prompting UCPB to conduct further investigation on the matter.

After due inquiry, the [respondent] bank found and concluded that [petitioner], together with his father, Hermenegildo Villanueva, Bobby Cafe (UCPB Dumaguete City Branch Manager) and a certain Reynaldo Ramos, confederated and conspired with each other in perpetrating the fraud, anomalies and irregularities to the detriment of the bank. UCPB, through its counsel, filed criminal complaints with the Office of the City Fiscal (now Prosecutor) of Dumaguete City.

After preliminary investigation, the City Fiscal found probable cause and resolved to file three (3) informations with the Court of First Instance (now Regional Trial Court) of Dumaguete City as follows:

1. Criminal Case No. 3699- Against Bobby Cafe, Hermenegildo Villanueva, Hector Villanueva and Reynaldo Ramos for violation of Sections 77, 87-A-2(b) and 87-A-1(d) of the General Banking Act, RA No. 337, as amended by PD No. 71 and [Central Bank] Circular No. 517, Series of 1976
2. Criminal Case No. 3700- Against Hermenegildo Villanueva, Hector Villanueva, Reynaldo Ramos and Bobby B. Cafe for violation of Sections 87-A-2(d) and 87-A-1(c), General Banking Act, RA No. 337, as amended by PD NO. 71
3. Criminal Case No. 3701- Against Bobby Cafe, Hermenegildo Villanueva, Hector Villanueva and Reynaldo Ramos for the crime of Estafa under Article 315(2)(a) of the Revised Penal Code

The three (3) criminal cases were consolidated and tried jointly.

On June 29, 1991, the Regional Trial Court of Dumaguete City, Branch 37, rendered a decision therein acquitting all the accused except for Bobby Café.

In view of his acquittal in the criminal cases, Hector Villanueva filed a complaint for damages on the ground of alleged malicious prosecution with the Regional Trial Court of Dumaguete City against [respondent bank], which was docketed as Civil Case No. 172-B and raffled to Branch [44] of the court.



The complaint alleged, among others, that [petitioner] is a respectable member of the community, a professional, a member of various civic organizations, a businessman, and a political leader; that the filing of the criminal cases against him by [respondent bank] was done with malice which resulted in the undue maligning, blackening . . . of his integrity, honesty and good reputation, as well as adversely affecting his political career and business dealings, for which [petitioner] prayed that [respondent bank] be held liable to him for the amount [of] P200,000.00 in actual damages, P6,000,000.00 in moral damages, P2,000,000.00 in exemplary damages, P1,000,000.00 in nominal damages, and P800,000.00 in attorney's fees, as well as P5,000.00 charge per court appearance.

After trial on the merits, the lower court rendered its Decision dated November 6, 1995, in favor of petitioner. On appeal, the CA reversed the trial court in the assailed Decision and Resolution.

### ISSUE

Whether the petitioner was prosecuted out of malice.

### RULING

No. The respondent bank filed the criminal Complaints for violations of the General Banking Act in its honest belief that these charges were meritorious. There is no credible evidence to show that it was impelled by a desire to unjustly vex, annoy and inflict injury on the petitioner. Before these cases were referred to the city fiscal, it had even conducted its own investigation with the assistance of the National Bureau of Investigation.

Malicious prosecution requires proof that the prosecution was prompted by a sinister design to vex and humiliate the plaintiff. The respondent bank had neither a "bone to pick" with the petitioner nor a "previous dealing with petitioner that could have prompted the respondent bank to turn the tables on him."

Resort to judicial processes, by itself, is not an evidence of ill will, as the mere act of filing a criminal complaint does not make the complainant liable for malicious prosecution.<sup>22</sup> There must be proof that the suit was prompted by legal malice — an inexcusable intent to injure, oppress, vex, annoy or humiliate. A contrary rule would discourage peaceful recourse to the courts and unjustly penalize the exercise of a citizen's right to litigate. Where the action is filed in good faith, no penalty should be imposed thereon.

**MANILA ELECTRIC COMPANY (MERALCO), *Petitioner*, v. ATTY. PABLITO M. CASTILLO, doing business under the trade name and style of PERMANENT LIGHT MANUFACTURING ENTERPRISES and GUIA S. CASTILLO, *Respondent*.**  
**G.R. No. 182976, FIRST DIVISION, January 14, 2013, VILLARAMA, JR., J.**

*Actual or compensatory damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. The award is dependent upon competent proof of the damage suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.*

### FACTS

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Respondents Pablito M. Castillo and Guia S. Castillo are spouses engaged in the business of manufacturing and selling fluorescent fixtures, office steel cabinets and related metal fabrications under the name and style of Permanent Light Manufacturing Enterprises (Permanent Light).

In the afternoon of April 19, 1994, Joselito Ignacio and Peter Legaspi, Fully Phased Inspectors of petitioner Meralco, sought permission to inspect Permanent Light's electric meter. Said inspection was carried out in the presence of Mike Malikay, an employee of respondents.

The results of the inspection show that the terminal seal of Permanent Light's meter was deformed, its meter seal was covered with fake lead, and the 100th dial pointer was misaligned. On the basis of these findings, Ignacio concluded that the meter was tampered with and electric supply to Permanent Light was immediately disconnected. The questioned meter was then taken to Meralco's laboratory for verification.

By petitioner Meralco's claim, it sustained losses in the amount of P126,319.92 over a 24-month period, on account of Permanent Light's tampered meter. The next day, in order to secure the reconnection of electricity to Permanent Light, respondents paid P50,000 as down payment on the differential bill to be rendered by Meralco.

Petitioner Meralco billed Permanent Light the amount of P61,709.11, representing the latter's unregistered electric consumption for the period of September 20, 1993 to March 22, 1994. Meralco, however, credited the initial payment of P50,000 made by respondents. It assessed respondents a balance of P11,709.11, but later reduced said amount to P5,538.20 after petitioner allowed respondents a 10% discount on their total bill. Then, petitioner received the amount of P5,538.20 as full settlement of the remaining balance. Subsequently, respondents received more electric bills covering same periods. Respondents contested such assessments. They likewise complained of a significant increase in their electric bills since petitioner installed the replacement meter on April 20, 1994.

Respondents filed against Meralco a Petition for Injunction, Recovery of a Sum of Money and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction. RTC directed the issuance of a TRO to restrain petitioner Meralco from disconnecting electricity to Permanent Light. Later, RTC directed the issuance of a writ of preliminary injunction upon the posting of a bond in the amount of P95,000.

## **ISSUE**

Whether award of damages in favor of the respondents is proper.

## **RULING**

No. The Court cannot award actual damages to respondents. The Court reiterate that actual or compensatory damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. The award is dependent upon competent proof of the damage suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. Temperate or moderate damages, which are more than nominal

but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. In this case, we are convinced that respondents sustained damages from the abnormal increase in Permanent Light's electric bills after petitioner replaced the latter's meter on April 19, 1994. However, respondents failed to establish the exact amount thereof by competent evidence. Considering the attendant circumstances, an award of temperate damages in the amount of P300,000 is just and reasonable.

Finally, we delete the award of attorney's fees for lack of basis. An award of attorney's fees has always been the exception rather than the rule. Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate. The trial court must make express findings of fact and law that bring the suit within the exception. What this demands is that factual, legal or equitable justifications for the award must be set forth not only in the fallo but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.

**INHELDER CORPORATION**, petitioner,  
vs.

**COURT OF APPEALS, DANIEL PANGANIBAN and PAULA RAMIREZ PANGANIBAN**, respondents  
**G.R. No. L-52358, FIRST DIVISION, May 30, 1983, MELENCIO-HERRERA, J**

*It should also be stressed that the mere filing of a suit does 'not render a person liable for malicious prosecution should he be unsuccessful. The law could not have meant to impose a penalty on the right to litigate. Sound principles of justice and public policy demand that persons shall have free resort to Courts of law for redress of wrongs and vindication of their rights without fear of later on standing trial for damages should their actions lose ground.*

## **FACTS**

What commenced the instant proceedings is a case (hereinafter referred to as the DAMAGE CASE) instituted by private respondents (hereinafter referred to as the PANGANIBANS), residents of Calapan, Oriental Mindoro, against petitioner (hereinafter referred to as INHELDER), domiciled in Mandaluyong, Rizal, before the Court of First Instance of Oriental Mindoro (hereinafter referred to as the MINDORO COURT). The Complaint alleged that INHELDER had filed a case (hereinafter referred to as the COLLECTION CASE) against the PANGANIBANS before the Municipal Court of Mandaluyong, Rizal (hereinafter referred to as MANDALUYONG COURT), which was subsequently dismiss; that the COLLECTION CASE (Civil Case No. 5582), was clearly unfounded,- and that the PANGANIBANS were entitled, as against INHELDER, to quantified damages totalling P169,550.00. As will be seen, the complaint of the PANGANIBANS was essentially for actual and compensatory damages, moral damages and exemplary damages, based on the alleged *clearly unfounded* COLLECTION CASE.

After declaring INHELDER in default in the DAMAGE CASE, the MINDORO COURT rendered judgment in favor of the PANGANIBANS. On appeal by INHELDER, the Appellate Court reduced the total damages awarded to the PANGANIBANS from P212,650.00 to P41,550.00 by modifying the judgment of the MINDORO COURT.



**ISSUE**

Whether award of damages in favor of the private respondents is proper.

**RULING**

No. On the above facts and circumstances, it should be difficult to conclude that the COLLECTION CASE was a *clearly unfounded* civil action. It is not clear that the account of the PANGANIBANS had already been paid as of February 12, 1975. Under Article 1249 of the Civil Code, payment should be held effective only when PNB Check No. 32058 was actually cashed by, or credited to the account of, INHELDER. If that did not eventuate on or before February 12, 1975, and there is no proof that it did, the account would still be unpaid, and the complaint in the COLLECTION CASE, technically, could not be considered as substantially *unfounded*.

It is true that when the check of the PANGANIBANS was received on February 5, 1975, the better procedure would have been to withhold a complaint pending determination of whether or not the check was good. If dishonored, that would be the time to file the complaint. That procedure was not followed because of the failure of the corresponding advice which could have been given to Atty. Fajardo by the INHELDER Credit and Collection Manager. But the lack of that advice should not justify qualifying the COLLECTION CASE as *clearly unfounded*. If the check had bounced, the COLLECTION CASE would have been tried and acted upon by the MANDALUYONG COURT on the merits.

Neither may it be said that the COLLECTION CASE was malicious. Malicious prosecution, to be the basis of a suit, requires the elements of malice and want of probable cause. There must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and groundless.

In the present case, there is no evidence on record, clearly establishing these two elements. Although there may be want of probable cause, there is no proof that petitioner deliberately initiated the COLLECTION CASE knowing that the same was false and groundless.

It should also be stressed that the mere filing of a suit does 'not render a person liable for malicious prosecution should he be unsuccessful. The law could not have meant to impose a penalty on the right to litigate. Sound principles of justice and public policy demand that persons shall have free resort to Courts of law for redress of wrongs and vindication of their rights without fear of later on standing trial for damages should their actions lose ground.

**RAMON TAN**, petitioner, vs. **THE HONORABLE COURT OF APPEALS and RIZAL COMMERCIAL BANKING CORPORATION**, respondents.

**G.R. No. 108555, FIRST DIVISION, December 20, 1994, KAPUNAN, J.**

*Petitioner has the right to recover moral damages even if the bank's negligence may not have been attended with malice and bad faith. In American Express International, Inc. v. IAC, we held: While petitioner was not in bad faith, its negligence caused the private respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation, for which he is entitled to recover, reasonable moral damages (Art. 2217, Civil Code).*

**FACTS**

Ramon Tan, a businessman from Puerto Princesa, secured a Cashier's Check from Philippine Commercial Industrial Bank (PCIBank) to P30,000 payable to his order to avoid carrying cash while en route to Manila. He deposited the check in his account in Rizal Commercial Banking Corporation (RCBC) in its Binondo Branch. RCBC sent the check for clearing to the Central Bank which was returned for having been "missent" or "misrouted."

RCBC debited Tan's account without informing him. Relying on common knowledge that a cashier's check was as good as cash, and a month after depositing the check, he issued two personal checks in the name of Go Lak and MS Development Trading Corporation. Both checks bounced due to "insufficiency of funds." Tan filed a suit for damages against RCBC.

**ISSUE**

Whether the petitioner is entitled for damages.

**RULING**

Yes. An ordinary check is not a mere undertaking to pay an amount of money. There is an element of certainty or assurance that it will be paid upon presentation; that is why it is perceived as a convenient substitute for currency in commercial and financial transactions. Herein, what is involved is more than an ordinary check, but a cashier's check. A cashier's check is a primary obligation of the issuing bank and accepted in advance by its mere issuance. By its very nature, a cashier's check is a bank's order to pay what is drawn upon itself, committing in effect its total resources, integrity and honor beyond the check.

Herein, PCIB by issuing the check created an unconditional credit in favor any collecting bank. Reliance on the layman's perception that a cashier's check is as good as cash is not entirely misplaced, as it is rooted in practice, tradition and principle.

We hold that petitioner has the right to recover moral damages even if the bank's negligence may not have been attended with malice and bad faith. In *American Express International, Inc. v. IAC*, we held:

While petitioner was not in bad faith, its negligence caused the private respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation, for which he is entitled to recover, reasonable moral damages (Art. 2217, Civil Code).

In *Zenith Insurance Corporation v. CA*, we also said that moral damages are not meant to enrich a complainant at the expense of defendant. It is only intended to alleviate the moral suffering he has undergone. In the instant case, we find the award of P700,000.00 as moral damages excessive and, accordingly, reduce it to one hundred thousand (P100,000.00) pesos. We find the award of exemplary damages of P200,000.00 unjustified in the absence of malice, bad faith or gross negligence. The award of reasonable attorney's fees is proper for the petitioner was compelled to litigate to protect his interest.

IN VIEW WHEREOF, we REVERSE the decision of respondent Court of Appeals and hereby order private respondent RCBC, Binondo Branch, to pay petitioner the amount of one hundred thousand (P100,000.00) pesos as moral damages and the sum of fifty thousand (P50,000.00) pesos as attorney's fees, plus costs.

**SPOUSES DIONISIO ESTRADA and JOVITA R. ESTRADA v. PHILIPPINE RABBIT BUS LINES, INC.  
and EDUARDO R. SAYLAN,  
G.R. No. 203902, July 19, 2017, *Del Castillo, J.***

*Moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract. However, as an exception, such damages are recoverable in cases in which the mishap results in the death of a passenger and in cases in which the carrier is guilty of fraud or bad faith.*

**FACTS:**

A mishap occurred, between a passenger bus, driven by one Saylan and owned by Philippine Rabbit Bus, Lines, Inc. and an Isuzu truck driven by Urez and registered in the name of Cuyton. Before the collision, the bus was following closely a jeepney. When the jeepney stopped, the bus suddenly swerved to the left encroaching upon the rightful lane of the Isuzu truck, which resulted in the collision of the two vehicles. Estrada, who was among the passengers of the bus, as evidenced by the ticket issued to him, was injured on his right arm (which had to be amputated) as a consequence of the accident. For the treatment of his injury, he incurred expenses as evidenced by various receipts.

Estrada then filed complaint for damages in the RTC for the injury that he sustained. He argued that pursuant to the contract of carriage between him and Philippine Rabbit, respondents were duty-bound to carry him safely as far as human care and foresight can provide, with utmost diligence of a very cautious person, and with due regard for all the circumstances. However, through the fault and negligence of Philippine Rabbit's driver, respondents failed to transport him safely and resulted in the amputation of his right arm. The RTC ruled in favour of Estrada wherein it found that Saylan was negligent in driving the bus. The RTC also held Philippine Rabbit jointly and severally liable with Saylan in paying for moral and actual damages, and attorney's fees.

On appeal, Philippine Rabbit imputed error upon the RTC in granting moral damages. It argued that moral damages are not recoverable in an action for damages predicated on breach of contract except when death results or when the carrier is guilty of fraud or bad faith. Since none of the two aforementioned circumstances are present in this case, Philippine Rabbit contended that it is Eduardo alone who should be held civilly liable.

The CA ruled that Philippine Rabbit is correct in its contention that moral damages are not recoverable in actions for damages predicated on a breach of contract, unless death of a passenger results, or it is proved that the carrier was guilty of fraud or bad faith, even if death does not result. The CA held that there was no evidence on record indicative of fraud or bad faith on Philippine Rabbit's part. Bad faith should be established by clear and convincing evidence. Further, the CA ruled that the driver may not be held liable under the contract of carriage as he is not a party to the same. As such, the CA modified the RTC decision and held that Philippine Rabbit as solely and exclusively liable for actual damages and deleted the award of moral damages and attorney's fees.

**ISSUE:**



Whether the decision of the CA was correct?

**RULING:**

Yes. Under Article 2219 of the Civil Code, moral damages are recoverable in the following and analogous cases: (a) a criminal offense resulting in physical injuries; (b) quasi-delicts causing physical injuries; (c) seduction, abduction, rape or other lascivious acts; (d) adultery or concubinage; (e) illegal or arbitrary detention or arrest; (f) illegal search; (g) libel, slander, or any other form of defamation; (h) malicious prosecution; (i) acts mentioned in Article 309.

Since breach of contract is not one of the items enumerated under Article 2219, moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract. However, as an exception, such damages are recoverable in cases in which the mishap results in the death of a passenger and in cases in which the carrier is guilty of fraud or bad faith.

It is obvious that this case does not come under the first of the abovementioned exceptions since Estrada did not die in the mishap but merely suffered an injury. Nevertheless, Estrada contends that it falls under the second category since they aver that Philippine Rabbit is guilty of fraud or bad faith.

It has been held, however, that "allegations of bad faith and fraud must be proved by clear and convincing evidence." They are never presumed considering that they are serious accusations that can be so conveniently and casually invoked. And unless convincingly substantiated by whoever is alleging them, they amount to mere slogans or mudslinging.

In this case, the fraud or bad faith that must be convincingly proved by petitioners should be one which was committed by Philippine Rabbit in breaching its contract of carriage with Estrada. Unfortunately for petitioners, the Court finds no persuasive proof of such fraud or bad faith.

Nonetheless, since it was established that Estrada lost his right arm, temperate damages in lieu of actual damages for loss/impairment of earning capacity may be awarded in his favor. Under Article 2224, "temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

**SPOUSES DIONISIO ESTRADA and JOVITA R. ESTRADA v. PHILIPPINE RABBIT BUS LINES, INC.  
and EDUARDO R. SA YLAN  
G.R. No. 203902, July 19, 2017, FIRST DIVISION, DEL CASTILLO, J.**

*The Court restates in this petition two principles on the grant of damages. First, moral damages, as a general rule, are not recoverable in an action for damages predicated on breach of contract. Second, temperate damages in lieu of actual damages for loss of earning capacity may be awarded where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.*

**FACTS:**

A mishap occurred along the national highway in Barangay Alipangpang, Pozorrubio, Pangasinan, between the passenger bus driven by [respondent] Eduardo Saylan and owned by [respondent] Philippine Rabbit Bus, Lines, Inc., and the Isuzu truck where Petitioner Dionisio Estrada was a passenger. Before the collision, the bus was following closely a jeepney. When the jeepney stopped, the bus suddenly swerved to the left encroaching upon the rightful lane of the Isuzu truck (which was on the opposite lane/direction of the bus), which resulted in their collision. Dionisio Estrada was injured on the right arm as a consequence of the accident. His injured right arm was amputated. He incurred expenses as evidenced by various receipts.

Dionisio argued that there was a breach of contract of carriage. And since demands for Philippine Rabbit to pay him damages for the injury he sustained remained unheeded, Dionisio filed a complaint for damages wherein he prayed for the following awards: moral damages of ₱500,000.00 actual damages of ₱60,000.00, and attorney's fees of ₱25,000.00.

Denying any liability, Philippine Rabbit averred that it carried Dionisio safely as far as human care and foresight could provide with the utmost diligence of a very cautious person and with due regard for all the circumstances prevailing. While it did not contest that its bus figured in an accident, Philippine Rabbit nevertheless argued that the cause collision was an extraordinary circumstance independent of its driver's action or a fortuitous event. Hence, it claimed to be exempt from any liability arising therefrom.

The RTC ruled that Philippine Rabbit and Eduardo were jointly and severally liable. For actual and moral damages. On appeal, the CA ruled that Philippine Rabbit is solely liable for actual damages since Eduardo Saylan is not a party to the contract of carriage. However, CA ruled in favor of Philippine Rabbit's contention that moral damages are not recoverable in actions for damages predicated on a breach of contract, unless death of a passenger results, or it is proved that the carrier was guilty of fraud or bad faith, even if death does not result. There was no finding of bad faith on the part of Philippine Rabbit, hence, the award of moral damages was deleted.

Petitioners filed a Motion for Reconsideration but the same was denied by the CA for lack of merit, Hence, this Petition for Review on *Certiorari*.

#### **ISSUES:**

1. Whether or not moral damages are recoverable by Dionisio.
2. Whether or not temperate damages in lieu of actual damages for loss of earning capacity may be awarded.

#### **RULING:**

1. NO.

Under Article 2219 of the Civil Code, moral damages are recoverable 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; and (1) acts and actions referred to in Articles 21, 26, 27 , 28, 29, 30, 32, 34, and 35. Case law establishes the following

requisites for the award of moral damages: (1) there must be an injury clearly sustained by the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

Since breach of contract is not one of the items enumerated under Article 2219, moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract. As an exception, such damages are recoverable [in an action for breach of contract:] (1) in cases in which the mishap results in the death of a passenger, as provided in Article 1764, in relation to Article 2206(3) of the Civil Code; and (2) in cases in which the carrier is guilty of fraud or bad faith, as provided in Article 2220. It is obvious that this case does not come under the first of the abovementioned exceptions since Dionisio did not die in the mishap but merely suffered an injury. Nevertheless, petitioners contend that it falls under the second category since they aver that Philippine Rabbit is guilty of fraud or bad faith.

It has been held, however, that "allegations of bad faith and fraud must be proved by clear and convincing evidence." They are never presumed considering that they are serious accusations that can be so conveniently and casually invoked. And unless convincingly substantiated by whoever is alleging them, they amount to mere slogans or mudslinging. In this case, the fraud or bad faith that must be convincingly proved by petitioners should be one which was committed by Philippine Rabbit in breaching its contract of carriage with Dionisio. Unfortunately for petitioners, the Court finds no persuasive proof of such fraud or bad faith. There is no showing here that Philippine Rabbit induced Dionisio to enter into a contract of carriage with the former through insidious machination. Neither is there any indication or even an allegation of deceit or concealment or omission of material facts by reason of which Dionisio boarded the bus owned by Philippine Rabbit. Likewise, it was not shown that Philippine Rabbit's breach of its known duty, which was to transport Dionisio from Urdaneta to La Union, was attended by some motive, interest, or ill will. From these, no fraud or bad faith can be attributed to Philippine Rabbit.

Still, petitioners insist that since the defenses it pleaded in its Answer were designed to evade liability, Philippine Rabbit is guilty of fraud or bad faith. Again, it bears to mention that the fraud or bad faith must be one which attended the contractual breach or one which induced Dionisio to enter into contract in the first place.

2. YES.

***Actual damages for loss/impairment of earning capacity are also not recoverable. In lieu thereof, the Court awards temperate damages.***

In an attempt to recover the ₱500,000.00 awarded by the RTC as moral damages but deleted by the CA, petitioners would instead wanted the Supreme Court to grant them the same amount as just and proper compensation for the loss of Dionisio's right arm. While petitioners denominated their claim for ₱500,000.00 as moral damages, their computation was actually based on the supposed loss/impairment of Dionisio's earning capacity. It is, however, settled that damages for loss [or impairment] of earning capacity is in the nature of actual damages. Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice, aimed at repairing the wrong done. To be recoverable, they



must be duly proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered, and on evidence of the actual amount thereof.

Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss [or impairment] of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased [or the injured] was self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased was employed as a daily worker earning less than the minimum wage under current labor laws.

Here, it is unlikely that petitioners presented evidence to prove a claim for actual damages based on loss/impairment of earning capacity since what they were claiming at the outset was an award for moral damages. Unfortunately, no documentary evidence supporting Dionisio's actual income is extant on the records. It must be emphasized, though, that documentary proof of Dionisio's actual income cannot be dispensed with since Dionisio does not fall under any of the two exceptions aforementioned. Thus, as it stands, there is no competent proof substantiating his actual income and because of this, an award for actual damages for loss/ impairment of earning capacity cannot be made. Nonetheless, since it was established that Dionisio lost his right arm, temperate damages in lieu of actual damages for loss/impairment of earning capacity may be awarded in his favor.

***Actual damages by way of medical expenses must be supported by official receipts.***

Anent petitioners' assertion that actual damages should be awarded to them for the cost of replacement of Dionisio's amputated right arm, suffice it to state that petitioners failed to show during trial that the said amputated right arm was actually replaced by an artificial one. All that petitioners submitted was a quotation of ₱160,000.00 for a unit of elbow prosthesis and nothing more. It has been held that actual proof of expenses incurred for medicines and other medical supplies necessary for treatment and rehabilitation must be presented by the claimant, in the form of official receipts, to show the exact cost of his medication and to prove that he indeed went through medication and rehabilitation. In the absence of the same, such claim must be negated. At any rate, the RTC already granted petitioners actual damages by way of medical expenses based on the official hospital receipts submitted.

Dispositive Portion: **WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The assailed May 16, 2012 Decision and October 1, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 95520 are **AFFIRMED with MODIFICATIONS** as follows: (1) petitioners are declared entitled to temperate damages of ₱500,000.00; (2) the award of actual damages is set at the amount of ₱57,658.25; and (3) all damages awarded are subject to legal interest of 6% *per annum* from the finality of this Decision until full satisfaction.

**JUDITH D. DARINES AND JOYCE D. DARINES v. PRESENT: EDUARDO QUIÑONES AND ROLANDO QUITAN**

**G.R. No. 206468, August 02, 2017, FIRST DIVISION, DEL CASTILLO, J.**

*An action for breach of contract of carriage, moral damages may be awarded only in case (1) an accident results in the death of a passenger; or (2) the carrier is guilty of fraud or bad faith, is pursuant to Article 1764, in relation to Article 2206(3) of the Civil Code, and Article 2220 thereof. To*

*award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by [Article 2220 of the Civil Code], would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.*

**FACTS:**

Judith D. Darines and her daughter, Joyce D. Darines alleged in their that they boarded the Amianan Bus Line as paying passengers en route from Carmen, Rosales, Pangasinan to Baguio City. Respondent Rolando M. Quitan was the driver of the bus. While travelling on Camp 3, Tuba, Benguet along Kennon Road, the bus crashed into a truck which was parked on the shoulder of Kennon Road. As a result, both vehicles were damaged; two passengers of the bus died; and the other passengers, including petitioners, were injured. Joyce suffered cerebral concussion while Judith had an eye wound which required an operation.

Petitioners argued that Quitan and respondent Eduardo Quinones, the operator of Amianan Bus Line, breached their contract of carriage as they failed to bring them safely to their destination. They also contended that Quitan's reckless and negligent driving caused the collision. Consequently, they prayed for actual, moral, exemplary and temperate damages, and costs of suit.

For their part, Quinones and Quitan disputed that, during the incident, Quitan was driving in a careful, prudent, and dutiful manner at the normal speed of 40 kilometers per hour. According to them, the proximate cause of the incident was the negligence of the truck driver, who parked the truck at the roadside right after the curve without having installed any early warning device.

The RTC awarded moral damages grounded on Judith's testimony regarding her pain and suffering. It likewise awarded exemplary damages by way of correction, and to serve as example to common carriers to be extraordinarily diligent in transporting passengers. It also granted petitioner's attorney's fees plus costs of suit on the ground that petitioners were compelled to litigate the case.

The CA reversed and set aside the RTC Decision stressing that respondents did not dispute that they were liable for breach of contract of carriage; in fact, they paid for the medical and hospital expenses of petitioners. Nonetheless, the CA deleted the award of moral damages because petitioners failed to prove that respondents acted fraudulently or in bad faith, as shown by the fact that respondents paid petitioners' medical and hospitalization expenses. The CA held that, since no moral damages was awarded, then there was no basis to grant exemplary damages. Finally, it ruled that because moral and exemplary damages were not granted, then the award of attorney's fees must also be deleted.

**ISSUE:**

Whether or not award of moral damages may be recovered in this case.

**RULING:**

NO. The principle that, in an action for breach of contract of carriage, moral damages may be awarded only in case (1) an accident results in the death of a passenger; or (2) the carrier is guilty of fraud or bad faith, is pursuant to Article 1764, in relation to Article 2206(3) of the Civil Code, and Article 2220 thereof, as follows:

Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier. (Emphasis supplied)

Article 2206. 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:

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

Article 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. (Emphasis supplied)

The aforesaid concepts of fraud or bad faith and negligence are basic as they are distinctly differentiated by law. Specifically, fraud or bad faith connotes "deliberate or wanton wrong doing" or such deliberate disregard of contractual obligations while negligence amounts to sheer carelessness. Fraud includes "inducement through insidious machination." In turn, insidious machination refers to such deceitful strategy or such plan with an evil purpose. On the other hand, bad faith does not merely pertain to bad judgment or negligence but relates to a dishonest purpose, and a deliberate doing of a wrongful act. Bad faith involves "breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."

In other cases, the Court disallowed the recovery of moral damages in actions for breach of contract for lack of showing that the common carrier committed fraud or bad faith in performing its obligation. Similarly, the Court did not also grant moral damages in an action for breach of contract as there was neither allegation nor proof that the common carrier committed fraud or bad faith. The Court declared that "[t]o award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by [Article 2220 of the Civil Code], would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

The Court also sustains the CA's finding that petitioners are not entitled to exemplary damages. Pursuant to Articles 2229 and 2234 of the Civil Code, exemplary damages may be awarded only in addition to moral, temperate, liquidated, or compensatory damages. Since petitioners are not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit.

Finally, considering the absence of any of the circumstances under Article 2208 of the Civil Code where attorney's fees may be awarded, the same cannot be granted to petitioners. All told, the CA correctly ruled that petitioners are not entitled to moral and exemplary damages as well as attorney's fees.

**RADIO COMMUNICATIONS OF THE PHILS., INC. (RCPI), petitioner, vs. COURT OF APPEALS and LORETO DIONELA, respondents.**  
**G.R. No. L-44748, SECOND DIVISION, August 29, 1986, PARAS, J.**

*As a corporation, the petitioner can act only through its employees. Hence the acts of its employees in receiving and transmitting messages are the acts of the petitioner. To hold that the petitioner is not*



*liable directly for the acts of its employees in the pursuit of petitioner's business is to deprive the general public availing of the services of the petitioner of an effective and adequate remedy. In most cases, negligence must be proved in order that plaintiff may recover.*

## **FACTS**

Loreto Dionela filed a complaint of damages against Radio Communications of the Philippines, Inc. (RCPI) due to the telegram sent through its Manila Office to the former, reading as follows:

176 AS JR 1215PM 9 PAID MANDALUYONG JUL 22-66 LORETO DIONELA CABANGAN LEGASPI CITY WIRE ARRIVAL OF CHECK FER LORETO DIONELA-CABANGAN-WIRE ARRIVAL OF CHECK-PER 115 PM SA IYO WALANG PAKINABANG DUMATING KA DIYAN-WALA-KANG PADALA DITO KAHIT BULBUL MO

Loreto Dionela alleges that the defamatory words on the telegram sent to him wounded his feelings, caused him undue embarrassment and affected adversely his business because other people have come to know of said defamatory words. RCPI alleges that the additional words in Tagalog was a private joke between the sending and receiving operators, that they were not addressed to or intended for plaintiff and therefore did not form part of the telegram, and that the Tagalog words are not defamatory.

The RTC ruled that the additional words are libelous for any person reading the same would logically think that they refer to Dionela, thus RCPI was ordered to pay moral damages in the amount of P40, 000.00. The Court of Appeals affirmed the decision ruling that the company was negligent and failed to take precautionary steps to avoid the occurrence of the humiliating incident, and the fact that a copy of the telegram is filed among other telegrams and open to public is sufficient publication; however reducing the amount awarded to P15, 000.00

## **ISSUE**

Whether RCPI shall be held liable.

## **RULING**

Yes. Petitioner's contentions do not merit our consideration. The action for damages was filed in the lower court directly against respondent corporation not as an employer subsidiarily liable under the provisions of Article 1161 of the New Civil Code in relation to Art. 103 of the Revised Penal Code. The cause of action of the private respondent is based on Arts. 19 and 20 of the New Civil Code. As well as on respondent's breach of contract thru the negligence of its own employees.

Petitioner is a domestic corporation engaged in the business of receiving and transmitting messages. Everytime a person transmits a message through the facilities of the petitioner, a contract is entered into. Upon receipt of the rate or fee fixed, the petitioner undertakes to transmit the message accurately. There is no question that in the case at bar, libelous matters were included in the message transmitted, without the consent or knowledge of the sender. There is a clear case of breach of contract by the petitioner in adding extraneous and libelous matters in the message sent to the private respondent.

As a corporation, the petitioner can act only through its employees. Hence the acts of its employees in receiving and transmitting messages are the acts of the petitioner. To hold that the petitioner is not liable directly for the acts of its employees in the pursuit of petitioner's business is to deprive the general public availing of the services of the petitioner of an effective and adequate remedy. In most cases, negligence must be proved in order that plaintiff may recover. However, since negligence may be hard to substantiate in some cases, we may apply the doctrine of RES IPSA LOQUITUR (the thing speaks for itself), by considering the presence of facts or circumstances surrounding the injury.

