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"(6) Other circumstances render a dissolution equitable."

There shall be a liquidation and winding up of partnership affairs, return of capital, and other incidents of dissolution because the continuation of the partnership has become inequitable.

WHEREFORE, the petition for review is hereby DISMISSED for lack of merit. The decision of the respondent court is AFFIRMED with a MODIFICATION that as indicated above, the partnership of the parties is ordered dissolved.

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin, and *Cortes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 72828. January 31, 1989]

ESTELITA S. MONZON, EDGARDO MONZON, RAMON MONZON, BEATRIZ MONZON, CARMEN MONZON, LOURDES MONZON, MANUEL MONZON, ARTURO MONZON JR., and CRISTINA MONZON, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT & THEO H. DAVIES & CO., FAR EAST LTD.,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; EARNING CAPACITY; LIFE EXPECTANCY; NEED OF FORMULA THEREFOR BY WAY OF ARRIVING AT A LOGICAL AND WORKABLE AVERAGE. — We agree with respondent court in saying that life expectancy "fluctuates with several factors"

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but it is for that very reason that a generally accepted formula cited earlier was established by this court in a long line of cases. Otherwise stated, while respondent court suggests that Arturo Monzon might have lived for less than 26.4 years more, or until the age of 66, there is also the possibility that he would have lived for much more than 26.4 years. Hence, the need of the formula by way of arriving at a logical and workable average. Furthermore, it would be most unfair and illogical for respondent court to have reduced the compensation due petitioners for the loss of the earning capacity of Arturo Monzon by discarding the well established formula by taking a pessimistic and depressed view of every situation instead of an average standard. Moreover, as a man grows older, and gains more experience, his income generally increases, with each passing year.

2. **ID.; ID.; MORAL AND EXEMPLARY DAMAGES; AMOUNT THEREOF MAY BE DISCRETIONARY UPON COURT; EXCEPTIONS.** — Similarly, respondent court erred in reducing the award of moral and exemplary damages to petitioners. While it is true that the amount of moral and exemplary damages may be discretionary upon the court, the circumstances attendant in the case at bar such as the wanton negligence of respondent Davies; its repeated violations of law and aircraft industry established practice; the social standing of the deceased and his heirs; and the present lack of purchasing power of the peso more than justify the restoration of the damages to the original amounts.

3. **ID.; ID.; INTEREST THEREON BEGINS TO ACCRUE UPON DEMAND, EXTRA-JUDICIAL OR JUDICIAL; COMPLAINT, A JUDICIAL DEMAND.** — Finally, the elimination of the interest on the various damages from the date of the filing of the suit was clearly unwarranted. It must be borne in mind that interest begins to accrue upon demand, extrajudicial or judicial. A complaint is a judicial demand.

APPEARANCES OF COUNSEL

Gonzalo W. Gonzalez & Associates for petitioners.
Angara, Concepcion, Regala & Cruz for private respondent.

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DECISION

PARAS, *J.*:

This is a petition for review by way of *certiorari* seeking the reversal of the decision of respondent Intermediate Appellate Court[1] to the end that damages and interests awarded petitioners be restored to their original amounts as adjudicated by the trial court and as originally affirmed *in toto* by respondent Intermediate Appellate Court in its main decision dated February 28, 1985.

Records disclose that prior to April 8, 1967, the piper Aztec aircraft PI-C766, owned by Dole Philippines met a slight accident during a landing causing the bending of the blades of its left propeller. The pilot, Jose Quimpo, together with his companions, straightened the bent blades with the use of hammers. On April 8, 1967, Quimpo brought the plane to the maintenance shop of respondent Theo H. Davies & Co., Far East Ltd. (Davies for short) at the Manila Domestic Airport. Thereupon, Emilio Narvaez, Davies' chief mechanic, repaired the damaged propeller by filing off by about ¼ of an inch the tips of the blades thereat. After the repair, the plane continued to be used by its owner in the ordinary course of business.

On September 13, 1967, at around 7:00 o'clock in the morning, the deceased Arturo Monzon, with 5 others, including the pilot, Jose Quimpo, boarded the piper Aztec PI-C766 at Dole's airfield in Polomolok, Cotabato. Shortly after being airborne, the plane crashed, killing all the 6 passengers. The accident was caused by the loss while in flight of the plane's right head aileron, an essential part of the plane's control mechanism.

As a result of the wrongful death, petitioners (widow and children of Arturo Monzon) filed a complaint on December 26, 1969 before the then Court of First Instance of Pasig, Rizal against Dole and respondent Davies alleging wanton negligence,

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[1] Penned by Justice Porfirio V. Sison and concurred in by Justices Abdulwahid A. Bidin and Marcelino R. Veloso.

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in violation of Civil Aeronautics Administration regulations and established aircraft industry practices on the part of private respondent and Dole. Dole entered into a compromise agreement with the petitioners while respondent Davies decided to proceed with the case.

After trial, the Court of First Instance rendered its decision dated December 20, 1977, the dispositive portion of which reads —

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant, Theo H. Davies & Co., Far East Ltd., sentencing the latter to pay the plaintiffs the following sums:

1) Twelve Thousand (₱12,000.00) Pesos for indemnity;

2) Five Million Six Hundred Ninety One Thousand Seven Hundred Twenty Six and 84/100 (₱5,691,726.84) Pesos for loss of earning capacity;

3) Two Million Two Hundred Fifty Thousand (₱2,250,000.00) Pesos for moral damages;

4) Two Hundred Fifty Thousand (₱250,000.00) Pesos for exemplary damages; and

5) One Hundred Thousand (₱100,000.00) for attorney's fees and expenses of litigation.

Costs against the said defendant.

SO ORDERED." (p. 113, Record on Appeal, Plaintiffs)

Both parties filed Motions for reconsideration. On June 29, 1978, the trial court denied Davies motion.

Petitioners' motion asked for interest at 12% per annum from the filing of their complaint on each of the amounts awarded them, asserting that the demonstrated gross negligence of Davies, as found by the court below, and the inflationary tendency of all currencies, including the Philippine peso, and the fact that the case may remain pending for some time, justify the adjudication of interest. The lower court partially granted the petitioners' motion in an Order dated July 5, 1978 reading:

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"WHEREFORE, as prayed for by the plaintiffs the decision of December 20, 1977, is hereby reconsidered and amended so as to make its dispositive portion read as follows:

'WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant, Theo H. Davies & Co. Far East Ltd., ordering the latter to pay the plaintiffs the following sums:

'1) Twelve Thousand (₱12,000.00) pesos for indemnity with interest at twelve (12%) percent per annum from December 26, 1976 until fully paid;

'2) Five Million Six Hundred Ninety One Thousand Seven Hundred Twenty Six and 84/100 (₱5,691,726.84) Pesos for loss of earning capacity, with interest at twelve (12%) percent per annum from December 26, 1976 until fully paid;

'3) Two Million Two Hundred Fifty Thousand (₱2,250,000.00) Pesos for moral damages;

'4) Two Hundred Fifty Thousand (₱250,000.00) Pesos for exemplary damages; and

'5) One Hundred Thousand (₱100,000.00) Pesos for attorney's fees and expenses of litigation.

'Costs against the said defendant.'

SO ORDERED." (pp. 127-128, Record on Appeal Plaintiffs)

However, on July 18, 1978, petitioners filed a second motion for reconsideration, asking that interest be granted petitioners insofar as the indemnity of ₱12,000.00 and the amount representing loss of earning capacity of ₱5,691,726.84 are concerned, to run from the filing of their complaint on December 26, 1969, instead of December 26, 1976 as stated in the order of July 5, 1978.

The lower court in an Order dated October 13, 1978, found the second motion to be well-taken, thus —

"WHEREFORE, as prayed for, the Order of July 5, 1978, is hereby reconsidered and amended so as to make the dispositive portion of the Decision of December 20, 1977 read as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant Theo H. Davies & Co., Far East Ltd., ordering the latter to pay the plaintiffs the following sums:

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'1) Twelve Thousand (₱12,000.00) Pesos for indemnity;

'2) Five Million Six Hundred Ninety One Thousand Seven Hundred Twenty Six and 84/100 (₱5,691,726.84) Pesos for loss of earnings capacity; both sums to earn interest at six (6%) per cent per annum from December 26, 1969 up to and including July 28, 1974, and at twelve (12%) percent per annum from July 29, 1974 until fully paid;

'3) Two Million Two Hundred Fifty Thousand (₱2,250,000.00) Pesos for moral damages;

'4) Two Hundred Fifty Thousand (₱250,000.00) Pesos for exemplary damages; and

'5) One Hundred Thousand (₱100,000.00) for attorney's fees and expenses of litigation.

'Costs against the said defendant.'

SO ORDERED." (pp. 162-163, Record on Appeal, Plaintiffs)

Meanwhile, respondent Davies interposed an appeal to the then Intermediate Appellate Court after the denial of its motion for reconsideration. In a decision promulgated on February 28, 1985, the Intermediate Appellate Court affirmed the award of damages of the trial court *in toto*.

Based on the motion for reconsideration filed by respondent Davies, respondent Intermediate Appellate Court, without giving the petitioners the opportunity to comment on said motion, drastically reduced the amounts in its resolution of August 29, 1985, the pertinent portion of which reads —

"We realize the lower court's award was excessive and We hereby reduce the amount representing the loss of expected earning capacity of the deceased from ₱5,691,726.84 to the more reasonable and realistic sum of ₱2,500,000.00. We likewise reduce the moral damage from ₱2,250,000.00 to ₱350,000.00 and exemplary damages from ₱250,000.00 to ₱50,000.00.

"Lastly, the award for attorney's fees of ₱100,000.00 remains but We strike out the order to pay interests on the modified damages herein awarded." (p. 5, respondent court's Resolution promulgated August 29, 1985)

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On September 24, 1985, petitioners filed a motion for reconsideration but the same was summarily denied by respondent Court in its resolution promulgated on October 29, 1985. Hence, the present appeal by *certiorari*.

The petition hinges on the propriety of the reduction of the award of damages and the exoneration of private respondent from the payment of interest on compensatory damages or compensation for unearned income.

We find the instant petition impressed with merit.

It is worth noting that Arturo Monzon, at the time of his death, was 40 years old and in good health. He left a widow and 8 children with ages from 5 to 19. He had a flourishing legal practice, specializing in taxation and was retained by a number of large companies. He had a total net income, as formally declared in his tax returns, ₱213,493.13 for the year 1967. Pursuant to the formula established and repeatedly applied by this Court (*Villa Rey Transit v. Court of Appeals*, 31 SCRA 511; *Davila vs. Philippine Airlines,* 49 SCRA 497; *Abeto v. Philippine Airlines*, 115 SCRA 389; *Philippine Airlines v. Court of Appeals*, 106 SCRA 391), the loss of earning capacity (as provided for in Article 2206, New Civil Code) arising from the death of Arturo Monzon was computed by the trial court in the following manner:

"Loss of earning capacity equals 2/3 x [80-40] x ₱213,493.13 equals ₱5,691,726.84." (p. 9, *Rollo*)

Inevitably, We cannot disturb the findings of the lower court as to the amount of compensatory damages recoverable by petitioners for the same were in accordance with the law and jurisprudence. In trying to justify the reduction of damages, respondent court stated in its decision that plaintiffs-appellees (petitioners herein) previously asked for a lower compensation than in their later demand in the lower court. However, respondent court failed to point out that the request was made "by way of amicable settlement." (p. 11, *Rollo*) Obviously, the complaint which was filed with the lower court subsequent to respondent

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Davies' refusal to enter into an amicable settlement would represent a higher amount.

In further attempting to justify its reduction of damages, respondent court went on to say:

"Moreover, the determination of life expectancy of a person who perishes in an accident like the case at bar cannot be definite as it fluctuates with several factors and for this reason the amount always lies within the discretion of the courts (*Bernabe vs. Phil. National Railways*, 66 OG Nov. 15, 1970).

"The deceased in this case was a practicing lawyer. True he was bright and still young, but he did not have a fixed income; it depended largely on cases that come in and their outcome. We have no fixed standard or yardstick for accurately measuring more or less his expected income had he lived except some rough estimate based on experience and expectation.

"The income tax returns may give an idea of the earning capacity of a person for a particular year, but such return is by no means fixed or permanent for the many uncertain years that follow later." (p. 4 respondent court's Resolution promulgated on August 29, 1985, Annex III attached; p. 12, *Rollo*)

We agree with respondent court in saying that life expectancy "fluctuates with several factors" (p. 72, *Rollo*) but it is for that very reason that a generally accepted formula cited earlier was established by this court in a long line of cases. Otherwise stated, while respondent court suggests that Arturo Monzon might have lived for less than 26.4 years more, or until the age of 66, there is also the possibility that he would have lived for much more than 26.4 years. Hence, the need of the formula by way of arriving at a logical and workable average. Furthermore, it would be most unfair and illogical for respondent court to have reduced the compensation due petitioners for the loss of the earning capacity of Arturo Monzon by discarding the well established formula by taking a pessimistic and depressed view of every situation instead of an average standard. Moreover, as a man grows older, and gains more experience, his income generally increases, with each passing year.

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Respondent court likewise premised the reduction of the amount representing the loss of earning capacity by more than 50 per centum to the fact the petitioners agreed to compromise with Dole where the latter paid One Million (₱1,000,000.00) Pesos to the former in effect sustaining the claim of respondent Davies that the amount paid by Dole must be credited to its account. However, such position does not hold water. Respondent Davies and Dole are not joint tortfeasors. There was no evidence whatsoever that Dole was responsible with respondent Davies for quasi-delict, nor did respondent Davies pursue its cross-claim against Dole.

Similarly, respondent court erred in reducing the award of moral and exemplary damages to petitioners. While it is true that the amount of moral and exemplary damages may be discretionary upon the court, the circumstances attendant in the case at bar such as the wanton negligence of respondent Davies; its repeated violations of law and aircraft industry established practice; the social standing of the deceased and his heirs; and the present lack of purchasing power of the peso more than justify the restoration of the damages to the original amounts.

In this light, the pronouncement of the trial court in awarding moral and exemplary damages of ₱2,250,000.00 and ₱250,000.00 respectively is of equal importance:

"Plaintiff Ramon Monzon estimates the sum of half a million peso for each of the plaintiffs for the extreme mental anguish and sorrow inflicted on them for the death of the deceased on whom they were dependent for support and maintenance and whose death suddenly necessarily deprived plaintiffs of his support and maintenance, consortium and companionship; as well as guidance, protection, care and comfort. Considering, however, that the compensatory damages awarded is already substantial, the Court believes that a reasonable figure for moral damages would be only ₱250,000.00 for each plaintiff." (p. 21, *Rollo*)

Thus, the plight of the widow and her eight (8) children resulting from the untimely death of Arturo Monzon present a case deserving of moral and exemplary damages.

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Finally, the elimination of the interest on the various damages from the date of the filing of the suit was clearly unwarranted. It must be borne in mind that interest begins to accrue upon demand, extrajudicial or judicial. A complaint is a judicial demand.

WHEREFORE, We hereby *REINSTATE the dispositive portion of the decision of the trial court* with the modification that the death indemnity of ₱12,000.00 is hereby increased to ₱30,000.00 conformably with recent jurisprudence.

SO ORDERED.

Melencio-Herrera (Chairman), Sarmiento, and *Regalado, JJ.,* concur.

Padilla, J., no part, by reason of close personal relation to the deceased.

SECOND DIVISION

[G.R. No. 73886. January 31, 1989]

JOHN C. QUIRANTE and DANTE CRUZ, *petitioners, vs.* **THE HONORABLE INTERMEDIATE APPELLATE COURT, MANUEL C. CASASOLA, and ESTRELLITA C. CASASOLA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEY AND CLIENT; ATTORNEY'S FEES; MAY BE ASSERTED EITHER IN THE VERY ACTION IN WHICH SERVICES IN QUESTION HAVE BEEN RENDERED, OR IN A SEPARATE ACTION. — Well settled is the rule that counsel's "claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. If the first alternative is chosen,