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WHEREFORE, premises considered, the Petition is *DENIED* for lack of merit. The CA Decision dated June 10, 2005 in CA-G.R. SP No. 89248 is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170071. March 9, 2011]

HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA, *petitioners, vs.* **G & S TRANSPORT CORPORATION,** *respondent.*

[G.R. No. 170125. March 9, 2011]

G & S TRANSPORT CORPORATION, *petitioner, vs.* **HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A RE-EXAMINATION OF THE FACTUAL FINDINGS CANNOT BE DONE THROUGH A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.— We have reviewed said issues and we find that the determination of the first, third and fourth issues raised entails re-examination of the evidence presented because they all involve questions of fact. In *Microsoft Corporation v. Maxicorp,*

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Inc., we held that: Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in *Paterno v. Paterno* is illustrative on this point: Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proof on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such a gravity as to justify refusing to give said proofs weight – all these are issues of fact. In this case, the said three issues boil down to the determination of the following questions: *What is the proximate cause of the death of Jose Marcial*? *Is the testimony of prosecution witness Clave credible*? *Did G & S exercise the diligence of a good father of a family in the selection and supervision of its employees*? Suffice it to say that these are all questions of fact which require this Court to inquire into the probative value of the evidence presented before the trial court. As we have consistently held, "[t]his Court is not a trier of facts. It is not a function of this court to analyze or weigh evidence. When we give due course to such situations, it is solely by way of exception. Such exceptions apply only in the presence of extremely meritorious circumstances." Here, we note that although G & S enumerated in its Consolidated Memorandum the exceptions to the rule that a petition for review on *certiorari* should only raise questions of law, it nevertheless did not point out under what exception its case falls. And, upon review of the records of the case, we are convinced that it does not fall under any. Hence, we cannot proceed to resolve said issues and disturb the findings and conclusions of the CA with respect thereto. As we declared in *Diokno v. Cacdac:* It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule

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45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.*

2. CIVIL LAW; CONTRACTS; COMMON CARRIERS; PRESUMED TO BE AT FAULT OR IS NEGLIGENT WHEN A PASSENGER DIES OR IS INJURED; THE STATUTORY PRESUMPTION MAY ONLY BE OVERCOME BY EVIDENCE THAT THE CARRIER EXERCISED EXTRAORDINARY DILIGENCE.— What is clear from the records is that there existed a contract of carriage between G & S, as the owner and operator of the Avis taxicab, and Jose Marcial, as the passenger of said vehicle. As a common carrier, G & S "is bound to carry [Jose Marcial] safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances." However, Jose Marcial was not able to reach his destination safely as he died during the course of the travel. "In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence." Unfortunately, G & S miserably failed to overcome this presumption. Both the trial court and the CA found that the accident which led to Jose Marcial's death was due to the reckless driving and gross negligence of G & S' driver, Padilla, thereby holding G & S liable to the heirs of Jose Marcial for breach of contract of carriage.

3. ID.; HUMAN RELATIONS; ACQUITTAL OF COMMON CARRIER'S DRIVER IN THE CRIMINAL CASE IS IMMATERIAL TO THE INSTANT CASE FOR BREACH OF CONTRACT; WHEN THE CIVIL ACTION IS BASED ON AN OBLIGATION NOT ARISING FROM THE ACT OR OMISSION COMPLAINED OF AS A FELONY, SUCH CIVIL ACTION MAY PROCEED INDEPENDENTLY OF THE CRIMINAL PROCEEDINGS AND REGARDLESS OF THE RESULT OF THE LATTER; CASE AT BAR.— This thus now leaves us with the remaining issue raised by G & S, that is,

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whether the CA gravely erred in not taking note of the fact that Padilla has already been acquitted of the crime of reckless imprudence resulting in homicide, a charge which arose from the same incident subject of this case. Article 31 of the Civil Code provides, *viz:* When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. Thus, in *Cancio, Jr. v. Isip,* we declared: In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on culpa criminal, **a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, culpa contractual**. In this case, the action filed by the heirs is primarily for the recovery of damages arising from breach of contract of carriage allegedly committed by G & S. Clearly, it is an independent civil action arising from contract which is separate and distinct from the criminal action for reckless imprudence resulting in homicide filed by the heirs against Padilla by reason of the same incident. Hence, regardless of Padilla's acquittal or conviction in said criminal case, same has no bearing in the resolution of the present case. There was therefore no error on the part of the CA when it resolved this case without regard to the fact that Padilla has already been acquitted by the RTC in the criminal case. Moreover, while the CA quoted some portions of the MTC Decision in said criminal case, we however find that those quoted portions were only meant to belie G & S' claim that the proximate cause of the accident was the negligence of the driver of the delivery van which allegedly hit the Avis taxicab. Even without those quoted portions, the appellate court's ultimate finding that it was Padilla's negligence which was the proximate cause of the mishap would still be the same. This is because the CA has, in fact, already made this declaration in the earlier part of its assailed Decision. The fact that the MTC Decision from which the subject quoted portions were lifted has already been reversed by the RTC is therefore immaterial.

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4. ID.; ID.; THE DENIAL BY THE COURT OF APPEALS OF THE HEIR'S CLAIM FOR LOST OF EARNINGS IS UNWARRANTED.— In *Ereño,* we denied the claim for loss of income because the handwritten estimate of the deceased's daily income as a self-employed vendor was not supported by competent evidence like income tax returns or receipts. This was in view of the rule that compensation for lost income is in the nature of damages and as such requires due proof of damages suffered. We reiterated this rule in *People v. Yrat* where we likewise denied the same claim because the only evidence presented to show that the deceased was earning ₱50,000.00 a month was the testimony of the wife. There we stated that for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough. In *People v. Caraig,* we declared that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages therefor may be awarded despite the absence of documentary evidence, provided that there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws."* However, we subsequently ruled in *Pleyto v. Lomboy* that "failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." Hence, we held as sufficient to establish a basis for an estimate of damages for loss of earning capacity the testimony of the victim's widow that her husband was earning a monthly income of ₱8,000.00. Later, in *Victory Liner, Inc. v. Gammad,* after finding that the deceased's earnings does not fall within the exceptions laid down in *Caraig,* we deleted the award for compensatory damages for loss of earning capacity as same was awarded by the lower courts only on the basis of the husband's testimony that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue with a salary of ₱83,088.00 per annum at the time of

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her death. This same rule was also applied in the 2008 case of *Licyayo v. People.*

5. ID.; ID.; THE USAID CERTIFICATION CANNOT BE SAID TO BE SELF-SERVING BECAUSE IT DOES NOT REFER TO AN ACT OR DECLARATION MADE OUT OF COURT BY THE HEIRS THEMSELVES AS PARTIES TO THIS CASE.— In all of the cases mentioned except for *Ereño*, the sole basis for the claim for loss of earning capacity were the testimonies of the claimants. This is not the case here. Just like in *Ereño* where the testimony of the mother of the deceased was accompanied by a handwritten estimate of her daughter's alleged income as a fish vendor, the testimony of Jose Marcial's wife that he was earning around ₱450,000.00 a year was corroborated by a Certification issued by the USAID. However in *Ereño*, we declared as self-serving the handwritten estimate submitted by the mother hence we denied the claim for such award. Based on said ruling, the CA in this case deleted the award for lost income after it found the USAID Certification to be self-serving and unreliable. We disagree. The CA sweepingly concluded that the USAID Certification is self-serving and unreliable without elaborating on how it was able to arrive at such a conclusion. A research on USAID reveals that it is the "principal [United States] agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms." It is an "independent federal government agency that receives over-all foreign policy guidance from the Secretary of the State [of the United States]." Given this background, it is highly improbable that such an agency will issue a certification containing unreliable information regarding an employee's income. Besides, there exists a presumption that official duty has been regularly performed. Absent any showing to the contrary, it is presumed that Cruz, as Chief of Human Resources Division of USAID, has regularly performed his duty relative to the issuance of said certification and therefore, the correctness of its contents can be relied upon. This presumption remains especially so where the authenticity, due execution and correctness of said certification have not been put in issue either before the trial court or the CA. As to its being self-serving, our discussion on "self-serving evidence" in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien* is enlightening, *viz*: 'Self-serving evidence,' perhaps owing to

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its descriptive formulation, is a concept much misunderstood. Not infrequently, the term is employed as a weapon to devalue and discredit a party's testimony favorable to his cause. That, it seems, is the sense in which petitioners are using it now. This is a grave error. "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. **The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*** x x x. Verily, the USAID certification cannot be said to be self-serving because it does not refer to an act or declaration made out of court by the heirs themselves as parties to this case. Clearly, the CA erred in deleting the award for lost income on the ground that the USAID Certification supporting such claim is self-serving and unreliable. On the contrary, we find said certification sufficient basis for the court to make a fair and reasonable estimate of Jose Marcial's loss of earning capacity just like in *Tamayo v. Señora* where we based the victim's gross annual income on his pay slip from the Philippine National Police. Hence, we uphold the trial court's award for Jose Marcial's loss of earning capacity.

6. ID.; DAMAGES; MORAL AND EXEMPLARY DAMAGES ARE BASED ON DIFFERENT JURAL FOUNDATIONS AND ARE DIFFERENT IN NATURE AND REQUIRE SEPARATE DETERMINATION; THE AMOUNT OF ONE CANNOT BE MADE TO DEPEND ON THE OTHER.— While we deemed it proper to modify the amount of moral damages awarded by the trial court as discussed below, we nevertheless agree with the heirs that the CA should not have pegged said award in proportion to the award of exemplary damages. Moral and exemplary damages are based on different jural foundations. They are different in nature and require separate determination. The amount of one cannot be made to depend on the other. In *Victory Liner Inc. v. Gammad* we awarded ₱100,000.00 by way of moral damages to the husband and three children of the deceased, a 39-year old Section Chief of the Bureau of Internal Revenue, to compensate said heirs for the grief caused by her death. This is pursuant to the provisions of Articles 1764 and 2206(3) which provide: Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Articles 2206 shall also apply to the death of a passenger caused by the breach of contract

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by a common carrier. Art. 2206. x x x (3) The spouse, legitimate and illegitimate descendants and the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Here, there is no question that the heirs are likewise entitled to moral damages pursuant to the above provisions, considering the mental anguish suffered by them by reason of Jose Marcial's untimely death, as can be deduced from the testimony of his wife Ruby.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra and Suarez for Heirs of Jose Marcial K. Ochoa.

Gepty & Jose Law Offices for G & S Transport Corp.

D E C I S I O N

DEL CASTILLO, *J.*:

An accident which claimed the life of a passenger is the root of these two petitions - one brought before us by the common carrier and the other by the heirs of the deceased.

These consolidated Petitions for Review on *Certiorari* assail the Court of Appeals' (CA) Decision[1] dated June 29, 2005 in CA-G.R. CV No. 75602 which affirmed with modification the December 21, 2001 Decision and March 5, 2002 Order of the trial court. Likewise assailed is the Resolution[2] dated October 12, 2005 denying the parties' respective Motions for Reconsideration thereto.

Factual Antecedents

Jose Marcial K. Ochoa (Jose Marcial) died on the night of March 10, 1995 while on board an Avis taxicab owned and

[1] CA *rollo*, pp. 216-233; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[2] *Id.* at 309.

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operated by G & S Transport Corporation (G & S), a common carrier. As narrated by the trial court, the circumstances attending Jose Marcial's death are as follows:

> It appears that sometime in the evening of March 10, 1995, at the Manila Domestic Airport, the late Jose Marcial K. Ochoa boarded and rode a taxicab with Plate No. PKR-534, a passenger vehicle for hire owned and operated by defendant corporation under the business name "Avis Coupon Taxi" (Avis) and driven by its employee and authorized driver Bibiano Padilla, Jr. on his way home to Teacher's Village, Diliman, Quezon City.
>
> At about 11:00 p.m., the taxicab was cruising along Epifanio delos Santos Avenue [EDSA], in front of Camp Aguinaldo in Quezon City at high speed. While going up the Boni Serrano (Santolan) fly-over, it overtook another cab driven by Pablo Clave and tried to pass another vehicle, a ten-wheeler cargo truck. Because of the narrow space between the left side railing of the fly-over and the ten-wheeler truck, the Avis cab was unable to pass and because of its speed, its driver (Padilla) was unable to control it. To avoid colliding with the truck, Padilla turned the wheel to the left causing his taxicab to ram the railing throwing itself off the fly-over and fell on the middle surface of EDSA below. The forceful drop of the vehicle on the floor of the road broke and split it into two parts. Both driver Padilla and passenger Jose Marcial K. Ochoa were injured and rushed to the hospital. At the East Avenue Medical Center, Ochoa was not as lucky as Padilla who was alive. He was declared dead on arrival from the accident. The death certificate issued by the Office of the Civil Registrar of Quezon City cited the cause of his death as vehicular accident.[3]

On May 13, 1999, Jose Marcial's wife, Ruby Bueno Ochoa, and his two minor children, Micaela B. Ochoa and Jomar B. Ochoa (the heirs), through counsel, sent G & S a letter[4] demanding that the latter indemnify them for Jose Marcial's death, his loss of earning capacity, and funeral expenses in the total amount of ₱15,000,000.00. As G & S failed to heed the

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[3] RTC Decision dated December 7, 2001; penned by Judge Librado S. Correa, records, pp. 298-303.

[4] *Id.* at 18-19.

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same, the heirs filed a *Complaint*[5] for Damages before the Regional Trial Court (RTC) of Pasig City which was raffled to Branch 164 of said court.

The heirs alleged that G & S, as a common carrier, is under legal obligation to observe and exercise extraordinary diligence in transporting its passengers to their destination safely and securely. However, G & S failed to observe and exercise this extraordinary diligence because its employee failed to transport Jose Marcial to his destination safely. They averred that G & S is liable to them for having breached the contract of common carriage. As an alternative cause of action, they asserted that G & S is likewise liable for damages based on *quasi*-delict pursuant to Article 2180[6] in relation to Article 2176[7] of the Civil Code. The heirs thus prayed for G & S to pay them actual damages, moral damages, exemplary damages, and attorney's fees and expenses of litigation.

In its Answer With Compulsory Counterclaims,[8] G & S claimed that Jose Marcial boarded an Avis taxicab driven by its employee, Bibiano Padilla (Padilla), at the Domestic Airport to bring him to Teacher's Village in Quezon City. While passing the Santolan

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[5] *Id.* at 1-8.

[6] **Art. 2180** – The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

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

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[7] **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 preexisting contractual relation between the parties, is called quasi-delict x x x.

[8] Records, pp. 48-54.

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fly-over, however, the Avis taxicab was bumped by an on-rushing delivery van at the right portion causing the taxicab to veer to the left, ram through the left side of the railings of the fly-over and fall to the center of the island below. The taxicab was split into two and Jose Marcial was thrown 10 meters away. G & S posited that the proximate cause of Jose Marcial's death is a fortuitous event and/or the fault or negligence of the driver of the delivery van that hit the taxicab. It likewise claimed that it exercised the diligence required of a good father of a family in the selection and supervision of its employees including Padilla. By way of compulsory counterclaim, G & S sought to recover from the heirs the amount of ₱300,000.00 as attorney's fees and costs of suit.

Ruling of the Regional Trial Court

On December 27, 2001, the trial court rendered a Decision[9] finding the vehicular mishap not caused by a fortuitous event but by the negligence of Padilla. It likewise found the evidence adduced by G & S to show that it exercised the diligence of a good father of a family in the selection and supervision of its employees as insufficient. Hence, the trial court declared G & S civilly liable to the heirs. However, for lack of receipts or any proof of funeral expenses and other actual damages, the trial court denied the heirs' claim for actual damages. It also denied them moral and exemplary damages for lack of legal basis. The dispositive portion of said Decision reads:

> WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:
>
> 1. ₱50,000.00 as civil indemnity for the death of deceased Jose Marcial K. Ochoa;
> 2. ₱6,537,244.96 for the loss of earning capacity of the deceased;
> 3. ₱100,000.00 for attorney's fees;
> 4. And the cost of litigation.
>
> SO ORDERED.[10]

[9] *Id.* at 298-303.

[10] *Id.* at 303.

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G & S filed a Notice of Appeal[11] while the heirs filed a Motion for Partial Reconsideration.[12] The heirs averred that they are entitled to moral damages pursuant to Article 1764[13] in relation to Article 2206(3)[14] of the Civil Code. They also cited applicable jurisprudence providing that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage where the mishap results in the death of the passenger.With respect to their claim for exemplary damages, the heirs relied upon Article 2232 of the Civil Code which provides that in contracts and *quasi*-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. And, since Padilla was declared by the trial court to have been grossly negligent in driving the taxicab, the heirs claimed that they are likewise entitled to exemplary damages.

After G & S filed its Opposition (To Plaintiffs' Motion for Partial Reconsideration),[15] the trial court issued an Order[16] on March 5, 2002. It found merit in the heirs' Motion for Partial Reconsideration and thus declared them entitled to moral and exemplary damages, *viz*:

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[11] *Id.* at 307-308.

[12] *Id.* at 316-323.

[13] **Art. 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.

[14] **Art. 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:

x x x x x x x x x

(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.

[15] Records, pp. 331-341.

[16] *Id.* at 342-343.

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WHEREFORE, the decision dated December 27, 2001 is hereby modified so as to order defendant Corporation to pay plaintiffs the amount of ₱300,000.00 as moral damages and ₱50,000.00 as exemplary damages. The dispositive portion of said decision is hereby amended to read as follows:

> 'WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:
>
> 1. ₱50,000.00 as civil indemnity for the death of the deceased Jose Marcial K. Ochoa;
>
> 2. ₱6,537,244.96 for the loss of earning capacity of the deceased.
>
> 3. ₱300,000.00 as moral damages;
>
> 4. ₱50,000.00 as exemplary damages;
>
> 5. ₱100,000.00 for attorney's fees;
>
> 6. And the costs of litigation.'

SO ORDERED.[17]

Because of this, G & S filed another Notice of Appeal[18] and same was given due course by the trial court in an Order[19] dated April 23, 2002.

Ruling of the Court of Appeals

Before the CA, G & S continued to insist that it exercised the diligence of a good father of the family in the selection and supervision of its employees. It averred that it has been carrying out not only seminars for its drivers even before they were made to work, but also periodic evaluations for their performance. Aside from these, it has also been conducting monthly check-up of its automobiles and has regularly issued rules regarding the conduct of its drivers. G & S claimed that it was able to establish a good name in the industry and maintain a clientele.

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[17] *Id.* at 343.

[18] *Id.* at 344-346.

[19] *Id.* at 353.

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In an effort to build up Padilla's character as an experienced and careful driver, G & S averred that: (1) before G & S employed Padilla, he was a delivery truck driver of Inter Island Gas Service for 11 years; (2) Padilla has been an employee of G & S from 1989 to 1996 and during said period, there was no recorded incident of his being a negligent driver; (3) despite his qualifications, G & S still required Padilla to submit an NBI clearance, driver's license and police clearance; (4) Padilla's being a good driver-employee was manifest in his years of service with G & S, as in fact, he has received congratulatory messages from the latter as shown by the inter-office memos dated August 23, 1990 and February 1, 1993; and that (5) Padilla attended a seminar at the Pope Pius Center sometime in December 1999 as part of the NAIA Taxi Operation Program.

G & S also argued that the proximate cause of Jose Marcial's death is a fortuitous event and/or the fault or negligence of another and not of its employee. According to G & S, the collision was totally unforeseen since Padilla had every right to expect that the delivery van would just overtake him and not hit the right side of the taxicab. Therefore, what transpired was beyond Padilla's control. There was no negligence on his part but on the part of the driver of the delivery van. For this reason, G & S opined that it was not liable to the heirs.

On the other hand, the heirs maintained that Padilla was grossly negligent in driving the Avis taxicab on the night of March 10, 1995. They claimed that Padilla, while running at a very high speed, acted negligently when he tried to overtake a ten-wheeler truck at the foot of the fly-over. This forced him to swerve to the left and as a consequence, the Avis taxicab hit the center of the railing and was split into two upon hitting the ground. The manner by which Padilla drove the taxicab clearly showed that he acted without regard to the safety of his passenger.

The heirs also averred that in order for a fortuitous event to exempt one from liability, it is necessary that he has committed no negligence or conduct that may have occasioned the loss. Thus, to be exempt from liability for the death of Jose Marcial

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on this ground, G & S must clearly show that the proximate cause of the casualty was entirely independent of human will and that it was impossible to avoid. And since in the case at bar it was Padilla's inexcusable poor judgment, utter lack of foresight and extreme negligence which were the immediate and proximate causes of the accident, same cannot be considered to be due to a fortuitous event. This is bolstered by the fact that the court trying the case for criminal negligence arising from the same incident convicted Padilla for said charge.[20]

At any rate, the heirs contended that regardless of whether G & S observed due diligence in the selection of its employees, it should nonetheless be held liable for the death of Jose Marcial pursuant to Article 1759 of the Civil Code which provides:

> ART. 1759 – Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.
>
> This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

In sum, the heirs prayed that the appeal be dismissed for lack of merit and the assailed Decision and Order of the trial court be affirmed *in toto*.

In a Decision[21] dated June 29, 2005, the CA ruled in favor of the heirs. The appellate court gave weight to their argument that in order for a fortuitous event to exempt one from liability, it is necessary that he committed no negligence or misconduct that may have occasioned the loss. In this case, the CA noted

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[20] Decision of the Metropolitan Trial Court (MTC)-Quezon City, Branch 39 in Criminal Case No. 0011769 for Reckless Imprudence Resulting in Homicide, CA *rollo*, pp. 112-120. However, this MTC Decision was later reversed and set aside by the RTC, Quezon City, Branch 222 in Criminal Case No. Q03-118524 on December 11, 2003 where Padilla was accordingly acquitted; *id.* at 194-200.

[21] *Id.* at 216-233.

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that Padilla failed to employ reasonable foresight, diligence and care needed to exempt G & S from liability for Jose Marcial's death. Said court also quoted pertinent portions of the MTC decision convicting Padilla of reckless imprudence resulting in homicide to negate G & S' claim that the proximate cause of the accident was the fault of the driver of the delivery van who allegedly hit the right side of the taxicab. And just like the trial court, the CA found insufficient the evidence adduced by G & S to support its claim that it exercised due diligence in the selection and supervision of its employees.

With respect to the award of ₱6,537,244.96 for Jose Marcial's loss of earning capacity, the CA declared the same unwarranted. It found the Certification[22] issued by Jose Marcial's employer, the United States Agency for International Development (USAID) through its Chief of Human Resources Division Jonas Cruz (Cruz), as self-serving, unreliable, and biased. While said certification states that Jose Marcial was earning an annual salary of ₱450,844.49 at the time of his untimely demise, the CA noted that same is unsupported by competent evidence such as income tax returns or receipts. This is in view of the ruling in *People v. Ereño*[23] where it was held that "there must be unbiased proof of the deceased's average income." Anent moral damages, the CA found the award of ₱300,000.00 excessive and thus reduced the same to ₱200,000.00 as to make it proportionate to the award of exemplary damages which is ₱50,000.00. The dispositive portion of said Decision reads:

> WHEREFORE, the assailed Decision dated December 27, 2001 and Order dated March 5, 2002 are AFFIRMED with the following MODIFICATION: appellant is ordered to pay appellees the sum of ₱50,000.00 as civil indemnity for the death of the deceased Jose Marcial K. Ochoa, ₱200,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱100,000.00 for attorney's fees and the costs of litigation. The trial court's award of ₱6,537,244.96 for the loss of earning capacity of the deceased is DELETED for lack of basis.

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[22] Records, p. 150.

[23] 383 Phil. 30, 46 (2000).

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SO ORDERED.

Both parties moved for reconsideration[24] but the CA denied their respective motions for reconsideration in a Resolution[25] dated October 12, 2005.

Hence, G & S and the heirs filed their respective Petitions for Review on *Certiorari* before this Court. The heirs' petition was docketed as G.R. No. 170071 and that of G & S as G.R. No. 170125. These petitions were later consolidated pursuant to this Court's Resolution of November 21, 2005.[26]

G.R. No. 170125

G & S anchors its petition on the following grounds:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE PROXIMATE CAUSE OF DEATH OF MR. JOSE MARCIAL K. OCHOA WAS A FORTUITOUS EVENT AND/OR WAS DUE TO THE FAULT OR NEGLIGENCE OF ANOTHER AND SHOULD THUS EXEMPT THE PETITIONER FROM LIABILITY.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT TAKING NOTE OF THE FACT THAT THE PETITIONER'S EMPLOYEE HAD BEEN ACQUITTED OF THE CRIME OF RECKLESS IMPRUDENCE RESULTING (IN) HOMICIDE.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE TESTIMONY OF A WITNESS WHO SURFACED MONTHS AFTER THE INCIDENT WHILE DISREGARDING THAT OF AN EYEWITNESS WHO WAS PRESENT AT THE TIME AND PLACE OF THE ACCIDENT.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE PETITIONER EXERCISED THE

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[24] G & S' Motion for Reconsideration, CA *rollo*, pp. 240-249 and the heirs' Motion for Partial Reconsideration, *id.* at 250-263.

[25] *Id.* at 309.

[26] *Rollo* of G.R. No. 170071, pp. 114-115 and *rollo* of G.R. No. 170125, pp. 6-7.

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DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES PARTICULARLY MR. BIBIANO PADILLA.[27]

G & S reiterates its arguments that the proximate cause of the accident is a fortuitous event and/or the negligence of the driver of the delivery van which bumped the right portion of its taxicab and, that it exercised the diligence of a good father of a family in the selection and supervision of its employees. It faults the CA when it overlooked the fact that the MTC Decision convicting Padilla of reckless imprudence has already been reversed on appeal by the RTC with Padilla having been accordingly acquitted of the crime charged. Moreover, it claims that the appellate court erred in according respect to the testimony of the lone prosecution witness, Pablo Clave (Clave), when it concluded that Padilla was driving negligently at the time of the accident. It asserts that Clave is not a credible witness and so is his testimony. Thus, G & S prays that the assailed CA Decision and Resolution be reversed and set aside.

On the other hand, the heirs posit that the determination of the issues raised by G & S necessarily entails a re-examination of the factual findings which this Court cannot do in this petition for review on *certiorari*. At any rate, they maintain that the trial court itself is convinced of Clave's credibility. They stress the settled rule that the evaluation of the credibility of witnesses is a matter that particularly falls within the authority of the trial court because it had the opportunity to observe the demeanor of the witnesses on the stand.

The heirs assert that fortuitous event was not the proximate cause of the mishap. They point out that as correctly found by the trial court, Padilla was running at an extremely high speed. This was why the impact was so strong when the taxicab rammed the fly-over railings and was split into two when it hit the ground. Also, while it is true that the MTC Decision in the criminal case for reckless imprudence has been reversed by the RTC, this does not excuse G & S from its liability to the

[27] *Rollo* of G.R. No. 170125, p. 16.

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heirs because its liability arises from its breach of contract of carriage and from its negligence in the selection and supervision of its employees. Also, since the acquittal of Padilla is based on reasonable doubt, same does not in any way rule out his negligence as this may merely mean that the prosecution failed to meet the requisite quantum of evidence to sustain his conviction. Therefore, G & S cannot bank on said acquittal to disprove its liability.

G.R. No. 170071

The heirs, on the other hand, advance the following grounds in support of their petition:

THE COURT OF APPEALS MANIFESTLY AND GRAVELY ERRED IN COMPLETELY DELETING THE TRIAL COURT'S AWARD FOR THE LOSS OF EARNING CAPACITY OF THE DECEASED.

THE COURT OF APPEALS MANIFESTLY AND GRAVELY ERRED IN REDUCING THE TRIAL COURT'S AWARD FOR MORAL DAMAGES.[28]

The focal point of the heirs' petition is the CA's deletion of the award of ₱6,537,244.96 for Jose Marcial's loss of earning capacity as well as the reduction of the award of moral damages from ₱300,000.00 to ₱200,000.00.

The heirs aver that the appellate court gravely erred in relying upon *Ereño* as said case is not on all fours with the present case. They contend that in *Ereño*, this Court disallowed the award for loss of income because the only proof presented was a handwritten statement of the victim's spouse stating the daily income of the deceased as a self-employed fish vendor. The heirs argue that the reason why this Court declared said handwritten statement as self-serving is because the one who prepared it, the deceased's wife, was also the one who would directly and personally benefit from such an award.[29] This cannot be said in the case at bar

[28] *Rollo* of G.R. No. 170071, pp. 11-12.

[29] A reading of Ereño, however, reveals that it was the victim's mother, not the spouse, who submitted a handwritten statement of her daughter's daily income and claimed for the award for lost income.

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since the same bias and personal interest cannot be attributed to Jose Marcial's employer, the USAID. Unlike in *Ereño*, USAID here does not stand to be benefited by an award for Jose Marcial's loss of earning capacity. Clearly, the Certification issued by it is far from being self-serving. At any rate, the heirs contend that *Ereño* has already been superseded by *Pleyto v. Lomboy*[30] where this Court held that in awarding damages for loss of earning capacity, "mere testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." In addition, the heirs point out that the authenticity and accuracy of said Certification was neither questioned by G & S nor discredited by any controverting evidence. In fact, its admission by the trial court was not even assigned by G & S as an error in their appeal before the CA.

As to the reduction of moral damages, the heirs claim that since the CA agreed with the factual circumstances of the case as found by the trial court, there is therefore no reason for it to alter the award of damages arising from such factual circumstances. They aver that the CA may only modify the damages awarded by the trial court when it is excessive and scandalous as held in *Meneses v. Court of Appeals.*[31] Here, they claim that the award of moral damages in the amount of ₱300,000.00 cannot be considered as excessive and unreasonable but only commensurate to the sufferings caused by the incident to a wife who became a young widow at the age of 33 and to two minor children who lost a father. Moreover, the heirs aver that the CA should not have reduced the award of moral damages just to make said amount proportionate to the exemplary damages awarded. This is because there is no such rule which dictates that the amount of moral damages should be proportionate to that of the exemplary damages. The heirs pray that the assailed CA Decision and Resolution be reversed and set aside insofar

[30] 476 Phil. 373, 389 (2004).

[31] 316 Phil. 210, 225 (1995).

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as they deleted the award for loss of earning capacity and reduced the award for moral damages.

For its part, G & S avers that the Certification issued by USAID is self-serving because the USAID officer who issued it has not been put on the witness stand to validate the contents thereof. Moreover, said Certification was not supported by competent evidence such as income tax returns and receipts. G & S likewise finds the reduction of the award of moral damages appropriate in view of the settled rule that moral damages are not meant to enrich the complainant at the expense of the defendant. Hence, it prays that the petition be dismissed for lack of merit.

Our Ruling

We shall first tackle the issues raised by G & S in its petition.

The first, third and fourth issues raised by G & S involve questions of fact

We have reviewed said issues and we find that the determination of the first, third and fourth issues raised entails re-examination of the evidence presented because they all involve questions of fact. In *Microsoft Corporation v. Maxicorp, Inc.*,[32] we held that:

> Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in *Paterno v. Paterno* is illustrative on this point:
>
> > Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proof on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party,

[32] 481 Phil. 550, 561-562 (2004).

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> weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such a gravity as to justify refusing to give said proofs weight – all these are issues of fact. (Citations omitted)

In this case, the said three issues boil down to the determination of the following questions: *What is the proximate cause of the death of Jose Marcial*? *Is the testimony of prosecution witness Clave credible*? *Did G & S exercise the diligence of a good father of a family in the selection and supervision of its employees*? Suffice it to say that these are all questions of fact which require this Court to inquire into the probative value of the evidence presented before the trial court. As we have consistently held, "[t]his Court is not a trier of facts. It is not a function of this court to analyze or weigh evidence. When we give due course to such situations, it is solely by way of exception. Such exceptions apply only in the presence of extremely meritorious circumstances."[33] Here, we note that although G & S enumerated in its Consolidated Memorandum[34] the exceptions[35] to the rule that a petition for

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[33] *Id.* at 563.

[34] *Rollo* of G.R. No. 170125, pp. 273-298; *rollo* of G.R. No. 170071, pp. 168-195.

[35] The rule that a petition for review on *certiorari* should raise only questions of law admits of exceptions, among which are: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record, *Marquez v. Espejo*. G.R. No. 168387, August 25, 2010.

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review on *certiorari* should only raise questions of law, it nevertheless did not point out under what exception its case falls. And, upon review of the records of the case, we are convinced that it does not fall under any. Hence, we cannot proceed to resolve said issues and disturb the findings and conclusions of the CA with respect thereto. As we declared in *Diokno v. Cacdac:*[36]

> It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.* [Citations omitted.]

There is a contract of carriage between G & S and Jose Marcial

What is clear from the records is that there existed a contract of carriage between G & S, as the owner and operator of the Avis taxicab, and Jose Marcial, as the passenger of said vehicle. As a common carrier, G & S "is bound to carry [Jose Marcial] safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances."[37] However, Jose Marcial was not able to reach his destination safely as he died during the course of the travel. "In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence."[38] Unfortunately, G & S miserably failed to overcome this presumption. Both the trial court and the CA found that

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[36] G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461.

[37] CIVIL CODE, Article 1755.

[38] *Diaz v. Court of Appeals*, G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

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the accident which led to Jose Marcial's death was due to the reckless driving and gross negligence of G & S' driver, Padilla, thereby holding G & S liable to the heirs of Jose Marcial for breach of contract of carriage.

The acquittal of Padilla in the criminal case is immaterial to the instant case for breach of contract

This thus now leaves us with the remaining issue raised by G & S, that is, *whether the CA gravely erred in not taking note of the fact that Padilla has already been acquitted of the crime of reckless imprudence resulting in homicide,* a charge which arose from the same incident subject of this case.

Article 31 of the Civil Code provides, *viz:*

When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

Thus, in *Cancio, Jr. v. Isip*,[39] we declared:

In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on culpa criminal, **a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, culpa contractual**. (Emphasis supplied; Citations omitted.)

In this case, the action filed by the heirs is primarily for the recovery of damages arising from breach of contract of carriage allegedly committed by G & S. Clearly, it is an independent civil action arising from contract which is separate and distinct from the criminal action for reckless imprudence resulting in homicide filed by the heirs against Padilla by reason of the same incident. Hence, regardless of Padilla's acquittal or

[39] 440 Phil. 29, 40 (2002).

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conviction in said criminal case, same has no bearing in the resolution of the present case. There was therefore no error on the part of the CA when it resolved this case without regard to the fact that Padilla has already been acquitted by the RTC in the criminal case. Moreover, while the CA quoted some portions of the MTC Decision in said criminal case, we however find that those quoted portions were only meant to belie G & S' claim that the proximate cause of the accident was the negligence of the driver of the delivery van which allegedly hit the Avis taxicab. Even without those quoted portions, the appellate court's ultimate finding that it was Padilla's negligence which was the proximate cause of the mishap would still be the same. This is because the CA has, in fact, already made this declaration in the earlier part of its assailed Decision. The fact that the MTC Decision from which the subject quoted portions were lifted has already been reversed by the RTC is therefore immaterial.

In view of the foregoing, we deny G & S' petition for lack of merit.

The denial by the CA of the heirs' claim for lost earnings is unwarranted

Going now to the petition filed by the heirs, we note at the outset that the issues of whether the CA erred in deleting the award for loss of earning capacity and in reducing the award for moral damages made by the trial court likewise raise questions of fact as they "involve an examination of the probative value of the evidence presented by the parties."[40] However, we find that the heirs' case falls under one of the exceptions because the findings of the CA conflict with the findings of the RTC.[41] Since the heirs properly raised the conflicting findings of the lower courts, it is proper for this Court to resolve such contradiction.[42]

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[40] *Spouses Caoili v. Court of Appeals,* 373 Phil. 122, 131 (1999).

[41] *Meneses v. Court of Appeals, supra* note 31.

[42] *Id*.

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In *Ereño,* we denied the claim for loss of income because the handwritten estimate of the deceased's daily income as a self-employed vendor was not supported by competent evidence like income tax returns or receipts. This was in view of the rule that compensation for lost income is in the nature of damages and as such requires due proof of damages suffered. We reiterated this rule in *People v. Yrat*[43] where we likewise denied the same claim because the only evidence presented to show that the deceased was earning ₱50,000.00 a month was the testimony of the wife. There we stated that for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough. In *People v. Caraig,*[44] we declared that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages therefor may be awarded despite the absence of documentary evidence, provided that there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws."* However, we subsequently ruled in *Pleyto v. Lomboy*[45] that "failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." Hence, we held as sufficient to establish a basis for an estimate of damages for loss of earning capacity the testimony of the victim's widow that her husband was earning a monthly income of ₱8,000.00. Later, in *Victory Liner, Inc. v. Gammad,*[46] after

[43] 419 Phil. 435, 443 (2001).

[44] 448 Phil. 78, 97 (2003).

[45] *Supra* note 30.

[46] 486 Phil. 574, 591 (2004).

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finding that the deceased's earnings does not fall within the exceptions laid down in *Caraig*, we deleted the award for compensatory damages for loss of earning capacity as same was awarded by the lower courts only on the basis of the husband's testimony that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue with a salary of ₱83,088.00 per annum at the time of her death. This same rule was also applied in the 2008 case of *Licyayo v. People*.[47]

In all of the cases mentioned except for *Ereño*, the sole basis for the claim for loss of earning capacity were the testimonies of the claimants. This is not the case here. Just like in *Ereño* where the testimony of the mother of the deceased was accompanied by a handwritten estimate of her daughter's alleged income as a fish vendor, the testimony of Jose Marcial's wife that he was earning around ₱450,000.00 a year was corroborated by a Certification issued by the USAID. However in *Ereño*, we declared as self-serving the handwritten estimate submitted by the mother hence we denied the claim for such award. Based on said ruling, the CA in this case deleted the award for lost income after it found the USAID Certification to be self-serving and unreliable.

We disagree. The CA sweepingly concluded that the USAID Certification is self-serving and unreliable without elaborating on how it was able to arrive at such a conclusion. A research on USAID reveals that it is the "principal [United States] agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms."[48] It is an "independent federal government agency that receives over-all foreign policy guidance from the Secretary of the State [of the United States]."[49] Given this background, it is highly improbable that such an agency will issue a certification

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[47] G.R. No. 169425, March 4, 2008, 547 SCRA 598, 615-616.

[48] *USAID: About USAID,* Last updated on December 8, 2010,*http://www.usaid.gov/(visited February 4, 2011)*.

[49] *Id.*

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containing unreliable information regarding an employee's income. Besides, there exists a presumption that official duty has been regularly performed.[50] Absent any showing to the contrary, it is presumed that Cruz, as Chief of Human Resources Division of USAID, has regularly performed his duty relative to the issuance of said certification and therefore, the correctness of its contents can be relied upon. This presumption remains especially so where the authenticity, due execution and correctness of said certification have not been put in issue either before the trial court or the CA. As to its being self-serving, our discussion on "self-serving evidence" in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien*[51] is enlightening, *viz*:

> 'Self-serving evidence,' perhaps owing to its descriptive formulation, is a concept much misunderstood. Not infrequently, the term is employed as a weapon to devalue and discredit a party's testimony favorable to his cause. That, it seems, is the sense in which petitioners are using it now. This is a grave error. "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. **The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*** x x x. (Citations omitted; emphasis supplied.)

Verily, the USAID certification cannot be said to be self-serving because it does not refer to an act or declaration made out of court by the heirs themselves as parties to this case.

Clearly, the CA erred in deleting the award for lost income on the ground that the USAID Certification supporting such claim is self-serving and unreliable. On the contrary, we find said certification sufficient basis for the court to make a fair and reasonable estimate of Jose Marcial's loss of earning capacity just like in *Tamayo v. Señora*[52] where we based the

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[50] RULES OF COURT, Rule 131, Sec. 3(m).

[51] G.R. No. 155508, September 11, 2006, 501 SCRA 405, 416.

[52] G.R. No. 176946, November 15, 2010.

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victim's gross annual income on his pay slip from the Philippine National Police. Hence, we uphold the trial court's award for Jose Marcial's loss of earning capacity.

While the trial court applied the formula generally used by the courts to determine net earning capacity which is, to wit:

Net Earning Capacity = life expectancy* x (gross annual income - reasonable living expenses),[53]

*Life expectancy = 2/3 (80 – age of the deceased)

we, however, find incorrect the amount of ₱6,537, 244.96 arrived at. The award should be ₱6,611,634.59 as borne out by the following computation:

Net earning capacity = $2\left(\frac{80-36^{54}}{3}\right) \times 450,844.49^{55}-50\%^{56}$

$= \frac{88}{3} \times 225,422.25$

$= 29.33 \times 225,422.25$

= **₱6,611,634.59**

The award of moral damages should be modified

While we deemed it proper to modify the amount of moral damages awarded by the trial court as discussed below, we nevertheless agree with the heirs that the CA should not have pegged said award in proportion to the award of exemplary damages. Moral and exemplary damages are based on different jural foundations.[57] They are different in nature and require

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[53] *Id*.

[54] Jose Marcial's age at the time of his death.

[55] Jose Marcial's annual income per Certification from USAID.

[56] If there is no proof of living expenses, as in this case, the net income is estimated to be 50% of the gross annual income, *People v. Templo*, 400 Phil. 471, 494 (2000).

[57] *Victory Liner Inc. v. Gammad, supra* note 46 at 592-593.

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separate determination.[58] The amount of one cannot be made to depend on the other.

In *Victory Liner Inc. v. Gammad*[59] we awarded ₱100,000.00 by way of moral damages to the husband and three children of the deceased, a 39-year old Section Chief of the Bureau of Internal Revenue, to compensate said heirs for the grief caused by her death. This is pursuant to the provisions of Articles 1764 and 2206(3) which provide:

> Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Articles 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.
>
> Art. 2206. x x x
>
> (3) The spouse, legitimate and illegitimate descendants and the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

Here, there is no question that the heirs are likewise entitled to moral damages pursuant to the above provisions, considering the mental anguish suffered by them by reason of Jose Marcial's untimely death, as can be deduced from the following testimony of his wife Ruby:

Atty. Suarez:

Q: How would you describe Jose Marcial Ochoa?

(Ruby) A: My husband was a very loving husband, faithful husband, a very [good] provider[.] I depended on him so much financially [and] emotionally[.] He was practically my life then.

Q: How is he as a father?

A: A very good father, he is very committed to Micaela [. H]e has always time for her[. H]e is a family man, so it's really a great [loss] to me and to Micaela.

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[58] *Id*.

[59] *Id*.

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Q: What was your reaction upon learning of your husband's death?

A: Immediately after I learned of his death, I tried very hard to keep a clear mind for my little girl, she was 3 ½ and she could not grasp what death is, so I found [it] so hard to explain to her [at] that time what happened [e]specially [because] she just talked to her father from the airport telling her that he is coming home, *tapos hindi na pala*.

Q: How did it affect you?

A: It was a painful struggle everyday just to get up and move on when someone who [you] really really love and [who] is important to you … it is very hard to move on and [it is even] harder to move on [when] I found out that I was pregnant with my second child, *parang tinabunan ka [ng] lahat eh*[. I]t's [too] hard to find happiness, you're pregnant, when you know *wala naman talagang* father *yung bata* later on x x x

xxx xxx xxx

Q: How did this affect your family?

A: *Yung* effect *kay* Micaela, she [used] to be a gregarious child, *yung* happy *ganyan*, but *nung wala na yong* father *niya* that time, [during] graduation ng nursery that time *naging* very very [quiet] *siya*, so a lot of emotional support from my own family was given to her at the time *para* makacope-up *siya sa* loss *kasi* she is very close to the father.

Q: Financially, how did it affect you?

A: I had to make do of what was left by my husband, I couldn't also work so much at the time because I was….and *hirap eh*, I cannot find enthusiasm in what I do, *tapos* pregnant *pa ako*, and *hirap talaga.*

Q: How else did it affect you?

A: We had to move houses like we used to live in Quezon City at (the) time of his death, *tapos kinuha kami* ni Gorjie my brother-in-law sa compound *nila para hindi*… [to] support us emotionally (at that time) *kasi nga* I was pregnant and then I also decided to move (to make it

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> easy for me) to adjust *yung* lifestyle *ng mga bata*, because I cannot cope [here] financially on my own[. *N]ahihirapan na ako dito* because the living expenses here are quite high compared *sa probinsiya* so I decided to move.
>
> Q: If you would assign that pain and suffering that you suffered as a result of the death of your husband, what will be the monetary consideration?
>
> A: I struggled with that *kasi*….I can honestly say no amount of money can ever repay the [loss] that my children suffered, future *nila yan eh*, and my son was not given a chance to get to know his father, so I cannot imagine *kung ano yung sinasabi n'yong* amount that will compensate the suffering that I have to go through and my children will go through, '*yon* and *mahirap bayaran*.[60]

Under this circumstance, we thus find as sufficient and "somehow proportional to and in approximation of the suffering inflicted"[61] an award of moral damages in an amount similar to that awarded in *Victory* which is ₱100,000.00.

From the above discussion, we, thus, partly grant the heirs' petition.

WHEREFORE, the petition for review on *certiorari* in G.R. No. 170071 is *PARTLY GRANTED* while the petition in G.R. No. 170125 is *DENIED*. The assailed Decision and Resolution dated June 29, 2005 and October 12, 2005 of the Court of Appeals in CA-G.R. CV No. 75602 are *AFFIRMED with the MODIFICATIONS* that G & S is ordered to pay the heirs of Jose Marcial K. Ochoa the sum of ₱6,611,634.59 for loss of earning capacity of the deceased and ₱100,000.00 as moral damages.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[60] TSN, May 12, 2000, pp. 18-21.

[61] *Go v. Cordero,* G.R. Nos. 164703 &164747, May 4, 2010.