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No pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, and *De Castro, JJ.*, concur.

Makasiar, J., took no part.

FIRST DIVISION

[G.R. No. L-49496. May 31, 1979]

MD TRANSIT, INC., *petitioner, vs.* **THE HONORABLE COURT OF APPEALS* and SERGIO MARIANO (for himself and in representation of his minors SERGIO, JR. and MICHAEL all surnamed MARIANO),** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; COMPENSATORY DAMAGES; FACTORS TO DETERMINE AMOUNT OF AWARD. — The factors to be considered in determining the award of compensatory damages for lost earnings on account of death by wrongful act are: (1) life expectancy, which is not only relevant but also an important element in fixing the amount recoverable and (b) earning capacity, which is the net earning capacity or capacity of deceased to earn money, less the necessary expenses for his own living. Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have

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* Ninth Division composed of then Court of Appeals Associate Justice Pacifico P. de Castro (now a member of this Court) and Associate Justices Samuel F. Reyes and Carlos L. Sundiam, *ponente*.

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received. In other words, only net earnings, not gross earnings, are to be considered, that is, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.

2. ID.; ID.; ID.; DIVIDED EQUALLY AMONG SURVIVING SPOUSE AND CHILDREN. — The award of ₱200,000 as compensatory damages shall pertain in three equal one-third shares to deceased's surviving spouse and the two minor children born of the surviving spouse's marriage with the deceased.

APPEARANCES OF COUNSEL

Bernardo T. Dominguez for petitioner.
Filoteo Banzon for private respondents.

D E C I S I O N

TEEHANKEE, *J.*:

The Court modifies the award to respondent of compensatory damages for lost earnings of his deceased wife Carmen G. Mariano (who was recklessly hit, while crossing the street on a pedestrian lane on Ayala Avenue in Makati, by petitioner's bus, thrown six meters away and instantly killed) from ₱309,920.00 to ₱200,000.00. The award is based on the two main factors of life expectancy and lost net earning capacity of the deceased as set forth in the controlling case of *Villa Rey Transit, Inc. vs. Court of Appeals*.

Respondent Court of Appeals, in its decision of August 31, 1978, affirmed *in toto* the judgment of December 15, 1976 of the Court of First Instance of Bataan in favor of respondent Sergio Mariano (for himself and in representation of his two minor children) as plaintiffs-appellees against herein petitioner MD Transit, Inc. as defendant-appellant, as follows:

"WHEREFORE, PREMISES ABOVE CONSIDERED, finding the defendant MD Transit, Inc. civilly liable for having failed to exercise the diligence of a good father of a family in the supervision of its employee, Renato Dote, who drove in a reckless manner defendant's

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MD Bus bumping and killing Carmen G. Mariano, the court hereby awards the following damages, to be paid by said defendant to herein plaintiffs, to wit:

a) ₱50,000.00 as moral damages;
b) ₱309,920.00 as compensatory damages for lost earnings;
c) ₱20,160.00 as actual damages;
d) ₱10,000.00 as attorney's fees; and
e) Costs of suit."

Petitioner filed on January 8, 1979 with this Court the present petition for review on *certiorari* of respondent appellate court's judgment. Upon receipt of respondents' comment as required in its Resolution of January 17, 1979, the Court in its March 5, 1979 Resolution resolved "to GIVE LIMITED DUE COURSE to the petition, only as to Item (b) of the judgment of the lower court as affirmed by the Court of Appeals, referring to the allegedly excessive compensatory damages awarded in the amount of ₱309,920.00 x x x," and required the parties to submit their respective memoranda on this limited issue which were filed in due course.

Respondent court found as "reasonable" the amount of ₱309,920.00 awarded as compensatory damages by the trial court, which had estimated the same in this wise:

"When the life of Carmen Mariano was untimely snapped she was only 39 years of age, in good health (Exhibit 'E' — 'E-2') and gainfully employed with the General Telephone Directory Co. receiving a monthly salary of ₱1,160.00 (Exhibit 'F'). Without taking into consideration anymore the regular annual increase of salary of the deceased (Exhibit 'F-2'), had not her untimely death supervened, in her next 26 more years until her 65th year, she would have earned ₱309,920.00 deducting already some ₱2,000.00 as taxes (Exhibit 'K') and miscellaneous from her annual income of ₱13,920.00 [26 years x ₱11,920.00 = ₱309,920.00]."[1]

Respondent court had further rejected petitioner's objection to the Court's estimate of the deceased's life expectancy at 26 years more, affirming the trial court's findings on the basis of the evidence that the deceased was in good physical health, thus:

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[1] *Record on Appeal, p. 57, note in brackets supplied.*

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"As regards the compensatory damages awarded, while appellant does not dispute the findings of the court *a quo* that Carmen G. Mariano's earnings per month was ₱1,160.00 with the General Telephone Directory and she was only 39 years old when she met the untimely death, it however assails the ruling that the victim would still live for 26 years since her death on April 5, 1975, on the ground that while the victim was still living she did not deliver a baby normally but by Caesarian operation. A cursory reading of the Medical History and Physical Examination record (Exh. E, E-2) of the victim submitted by Mr. Mariano reveals that indeed the victim was in good physical health otherwise the phrase 'fit to continue present occupation' could not have been placed in the 'remarks' portion of the record by the examining doctor."

In the controlling case of *Villa Rey Transit Inc. vs. Court of Appeals*[2] (where ₱33,333.33 for loss of net earnings of ₱1,000.00 per year x 33-1/3 years of life expectancy were awarded) as reaffirmed in *Davila vs. Philippine Air Lines*[3] (where ₱195,000.00-damages were awarded based on net earnings of ₱7,200.00 per year x 25 years of life expectancy), the Court stressed two factors in the award of such compensatory damages, to wit, (1) "life expectancy is not only relevant but also an important element in fixing the amount recoverable" and (2) "earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, 'less the necessary expense for his own living.' Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses."

Petitioner, citing the Villa Rey doctrine, contends in its petition that the maximum damages that should be awarded would amount to only ₱103,680.00 based on its contention that the victim's life expectancy should be 24 years (not 26 years) and net earnings only at ₱4,320.00 a year, thus:

[2] 31 SCRA 511 (1970), per *C.J.* Concepcion (retired).

[3] 49 SCRA 497 (1973).

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"The deceased Carmen G. Mariano, at the time of her death, was 39 years old. On the basis of the above formula (2/3 x 80-30) the deceased's normal life expectancy would be 24 years and not 27 years [sic]) at that age of 39 years old, x x x, in the case at bar, the amount of at least *₱800.00* should be considered as reasonable monthly deduction from the income of the deceased or the sum of *₱9,600.00* a year.

"The deceased's yearly income was ₱13,920.00. Less the above amount of ₱9,600.00, the deceased's net earning capacity would, therefore, be only ₱4,320.00 a year. Multiply this amount by 24 years (the deceased's normal life expectancy at age 39 years old, as above computed), the amount due private respondent, as compensatory damages, will then be ₱103,680.00 x x x."[4]

In its memorandum, petitioner would further reduce the life expectancy of the deceased Carmen G. Mariano to 20 years instead of 24 years, arguing that "while it may be said that at the time of her death, Carmen G. Mariano was in relatively good health, yet undergoing a major surgery such as caesarian operation is a circumstance that would have affected her normal life expectancy and this fact should be considered as further allowance and hence, for purposes of this case, her life expectancy may be reduced further to *20 years*," and on this basis "(T)he deceased's yearly income was ₱13,920.00. Less the amount of ₱9,600.00, the deceased's *net earning* capacity would, therefore, be only ₱4,320.00 a year. Multiply this amount by *20 years* (her normal life expectancy as hereinbefore computed by us), the amount due private respondent, as compensatory damages, will then be only *₱86,400.00*."[5]

Respondents, on the other hand, contend that in the absence of a clear showing that the determination of the amount of compensatory damages based on life expectancy and the net earning capacity of the deceased is manifestly arbitrary or excessive, such award should be sustained.

All factors considered, the Court believes that it is fair and reasonable to fix the deductible living and other expenses of

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[4] Petition. *Rollo*, pp. 11-12, italics supplied.

[5] *Rollo*, pp. 78-79, italics supplied.

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the deceased at the sum of ₱4,800.00 a year or ₱400.00 a month (one-half of the amount of ₱9,600.00 a year or ₱800.00 a month urged by petitioners), since the deceased's husband had also his own earnings and this sum would be her fair share of the family's expenses. Petitioner has expressly conceded the deceased's life expectancy to be at 20 to 24 years, *supra*. All in all, the Court believes that an award of ₱200,000.00 as compensatory damages by way of the deceased's lost earnings is completely justified, under the facts of the case at bar. (This would be roughly based on an annual net earning of ₱9,120.00 [₱13,920.00 gross earnings less ₱4,800.00 annual expenses] x 22 years of life expectancy = ₱200,640.00). Such award of ₱200,000.00 for compensatory damages incidentally coincides with the exact amount prayed for as compensatory damages for loss of earning capacity in respondent's complaint.[6]

This award of ₱200,000.00 as compensatory damages shall pertain in three equal one-third shares to respondent and the two minor children born of respondent's marriage with the deceased, namely Sergio Mariano, Jr. and Michael Mariano.

ACCORDINGLY, judgment is hereby rendered reducing the lower court's award of compensatory damages, as affirmed by respondent court, to respondent and his two minor children, Sergio, Jr. and Michael, both surnamed Mariano to the sum of ₱200,000.00 in three equal one-third shares among them. Since the other items of damages awarded to respondent (₱50,000.00 — moral damages, ₱20,160.00-actual damages, ₱10,000.00 — attorney's fees and costs of suit) in the trial court's judgment as affirmed by respondent court have long become final and executory with the Court's denial of the petition to review these items per its Resolution of March 5, 1979, this judgment shall be immediately executory.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

De Castro, J., took no part.

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[6] Record on Appeal, p. 5.