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EN BANC

[G.R. No. 200942. June 16, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JORIE WAHIMAN *y* RAYOS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; THE APPELLANT'S CONVICTION WAS NOT BASED SOLELY ON HIS EXTRAJUDICIAL CONFESSION, BUT ALSO BASED ON EYEWITNESS ACCOUNTS.—** [W]e agree with the findings of the RTC and the CA that appellant's extrajudicial confession was voluntarily and duly executed and replete with details that only appellant could supply x x x In any event, it must be stressed that appellant's conviction was not based solely on his extrajudicial confession. The prosecution likewise presented the eyewitness account of Azucena who testified that immediately after hearing gunshots, he saw appellant about 5 meters away from the Isuzu pick-up of the victim. Appellant was riding in tandem aboard a black motorcycle and was holding a gun. The ballistic report also confirmed that the slugs found at the crime scene were fired from the firearm earlier confiscated from the appellant. Moreover, appellant was not able to establish that it was physically impossible for him to be present at the crime scene at the time of its commission.

2. **ID.; CIVIL LIABILITY; DAMAGES; THE GENERAL RULE IS THERE MUST BE DOCUMENTARY PROOF TO SUPPORT INDEMNITY FOR LOSS OF EARNING CAPACITY; APPLICATION IN CASE AT BAR.—** Regarding the award for lost earnings, the general rule is that there must be documentary proof to support indemnity for loss of earning capacity. Admittedly, there are exceptions to this rule x x x Notably, this case does not fall under any of the exceptions. The deceased victim could not be considered as a self-employed earning less than the minimum wage; neither could he be considered employed as a daily wage worker. However, we are inclined to award lost earnings considering that the deceased, as testified by his widow, was the manager of Stanfilco-Dole, Phils. in

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Malaybalay City and was receiving a monthly salary of ₱95,000.00. He was 54 years of age when gunned down by appellant. This testimony was not objected to by appellant or questioned during cross-examination or on appeal. Clearly, the existence of factual basis of the award has been satisfactorily established. However, the amount of the award for lost earnings must be modified following the formula [T2/3x 80 – age] x [gross annual income - necessary expenses equivalent to 50% of the gross annual income]. Thus: [T2/3x (80-54)] [(₱95,000 x 12) – 50% (₱95,000 x 12)] = ₱9,878,100.00.

3. ID.; ID.; ID.; AWARD OF ACTUAL, CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR.— In addition, the awards of actual damages in the amount of ₱25,000.00 must be deleted for lack of proof; in lieu thereof, temperate damages in the amount of ₱25,000.00 is awarded. The awards of civil indemnity in the amount of ₱75,000.00, and moral damages in the amount of ₱75,000.00, are in line with prevailing jurisprudence. In addition, the heirs of the victim are entitled to exemplary damages in the amount of ₱30,000.00. Finally, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this resolution until full payment.

LEONEN, *J.*, *concurring opinion*:

1. CRIMINAL LAW; REVISED PENAL CODE; WHILE THE CRIMINAL AND CIVIL ACTIONS CAN BE LITIGATED IN THE SAME PROCEEDINGS, THE QUANTA OF EVIDENCE FOR THE ACTIONS ARE NOT THE SAME; ELUCIDATED.— Under Article 100 of the Revised Penal Code, "[e]very person criminally liable for a felony is also civilly liable." Institution of a criminal case includes the civil action for the recovery of the civil liability arising from the offense charged. The inclusion of the civil action is to avoid multiplicity of suits. While the criminal and civil actions can be litigated in the same proceedings, the quanta of evidence for the two actions are not the same. For the court to find criminal liability against the accused, there must be proof beyond reasonable doubt: x x x On the other hand, the finding of civil liability only requires preponderance of evidence or "superior weight of evidence on the issues involved." x x x Despite the singularity of the proceedings of both the criminal case and the civil case, it is

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possible for there to be an acquittal on the criminal case and yet a finding of civil liability. The respective weights of the evidence in the criminal and civil cases are evaluated independently.

2. **ID.; ID.; CIVIL LIABILITY; LOSS OF EARNING CAPACITY; TO PROVE THE LOSS OF EARNING CAPACITY, THE QUANTUM OF EVIDENCE REQUIRED IS PREPONDERANCE OF EVIDENCE.—** A claim for damages, including actual damages for loss of earning capacity, is part of the civil aspect of the case. Hence, to prove loss of earning capacity, the quantum of evidence required is preponderance of evidence, not proof beyond reasonable doubt. Loss of earning capacity is a form of actual or compensatory damages under the Civil Code, which states that: x x x The courts have assessed loss of earning capacity either through testimonial or documentary evidence presented during trial. There are varying precedents on the type of evidence required to prove loss of earning capacity.

3. **ID.; ID.; ID.; ID.; WHILE IT MAY NOT ALWAYS BE THE CASE, THE LAW DEVISED THE CONCEPT OF ACTUAL DAMAGES IN THE FORM OF LOSS OF EARNING CAPACITY TO ENSURE THAT A PART OF THE FAMILY'S LOSS IS MITIGATED; EXPLAINED.—** The law allows recovery of actual damages for loss of earning capacity in consideration of the heirs of the deceased or those who are legally entitled to support from the deceased. The damages do not pertain to the full amount of foregone earnings, "but of the support they received or would have received from [the deceased] had he not died in consequence of the negligence [or fault] of [the tortfeasor or the accused]." This form of actual damages quantifies the loss of the deceased's family in terms of financial support they will receive from the deceased. A widow does not only grieve for the loss of her husband; she also has to worry about finding an additional source of livelihood. The condition is often worsened when the deceased is the sole breadwinner of the family and the family is already experiencing difficulties making ends meet. While this might not always be the case, the law devised the concept of actual damages in the form of loss of earning capacity to ensure that a part of the family's loss is mitigated. The computation for loss of earning capacity was

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extensively discussed in the 1970 case of *Villa Rey Transit v. Court of Appeals.* In *Villa Rey Transit,* this court considered two factors in determining loss of earning capacity, which are: "(1) the *number of years* on the basis of which the damages shall be computed; and (2) the *rate* at which the losses sustained by said respondents should be fixed." The number of years is often pegged at life expectancy (instead of work expectancy), while the rate of losses is derived from annual income.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Appellant Jorie Wahiman *y* Rayos (appellant) was charged with the crime of murder for the death of Jose Buensuceso (Buensuceso). During his arraignment, appellant pleaded not guilty.[1] Trial on the merits ensued.

The prosecution established that on April 2, 2003, at around 10 o'clock in the evening, Buensuceso, the manager of Stanfilco-Dole, Phils. in Malaybalay City, was on his way back to the company staff house on board his Isuzu pick-up after attending a *despedida* for one of his employees. While he was about to enter the gate of the staff house, he was gunned down by persons riding in tandem on a black motorcycle. The guard on duty, David Azucena (Azucena), who was then opening the gate, identified one of the assailants as herein appellant.

During trial, the prosecution submitted in evidence the extrajudicial confession of appellant taken during the preliminary investigation of the case, admitting to the killing of Buensuceso.

However, when it was appellant's turn to testify, he narrated that at the time of the killing, he was at Landing Casisang,

[1] Records, pp. 100, 102.

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Malaybalay City attending the birthday celebration of his brother-in-law.

Ruling of the Regional Trial Court (RTC)

On February 16, 2009, the RTC rendered its Decision[2] finding appellant guilty as charged, *viz.:*

> WHEREFORE, Judgment is issued finding the accused Jorie Wahiman *y* Rayos guilty beyond reasonable doubt of the crime of murder and imposes upon him the penalty of Reclusion Perpetua and directing him to pay the heirs of the victim the sum of ₱75,000.00 as moral damages, ₱75,000.00 [as] civil indemnity and actual damages as follows:
>
> ₱59,280,000.00 lost earning capacity of the deceased;
>
> [₱]25,000.00 actual damages; no receipt was presented for ₱220,000[;]
>
> ₱ 1,500.00 Appearance fee; and
>
> ₱ 50,000.00 Attorney's fee.
>
> He shall serve his penalty in the National Penitentiary of Davao Penal [C]olony.
>
> SO ORDERED.[3]

Ruling of the Court of Appeals (CA)

In his appeal, appellant argued that when his supposed extrajudicial confession was being taken, Atty. Michael Florentino Dumlao (Atty. Dumlao), the lawyer who supposedly assisted him, was not around. He arrived only when appellant was about to sign the extrajudicial confession. Appellant also insisted that Azucena, the prosecution's alleged eyewitness, did not actually see him shooting the victim.

Appellant's contentions were, however, disregarded by the CA.

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[2] *Id*. at 235-255; Regional Trial Court of Malaybalay, Branch 8; docketed as Crim. Case No. 13794-03; penned by Judge Pelagio B. Estopia.

[3] *Id*. at 255.

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In its Decision[4] dated October 13, 2011, the CA found no reason to depart from the trial court's findings. It held that appellant's contention that he lacked legal intervention and assistance during the taking of his extrajudicial confession was totally belied by the testimony of Atty. Dumlao that he rendered assistance to the appellant throughout the entire proceedings and carefully explained to the latter the consequences of his admission. Besides, the voluntariness of the execution of the extrajudicial confession was apparent considering that it is replete with details that only appellant would know. The appellate court brushed aside appellant's assertion of torture, the same being unsupported by medical certificate or marks of physical abuse. In any case, he never bothered to narrate how he was tortured or to identify his alleged tormentors. Moreover, the ballistic examination proved that the slugs used in killing Buensuceso were fired from the firearm earlier confiscated from appellant. The CA also found no merit in appellant's claim that Azucena did not actually see him shoot the victim. The CA opined that although Azucena did not see appellant actually shoot the victim, he nonetheless saw appellant within seconds from hearing the gunshots fleeing from the immediate vicinity of the crime scene aboard a motorcycle with a gun in hand. Based on the foregoing, the appellate court found appellant's denial and alibi undeserving of credence.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, premises considered, the February 16, [2009] decision rendered by Branch [8], Regional Trial Court, 9th Judicial Region, Malaybalay City, is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[5]

Hence, this appeal.

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[4] CA *rollo*, pp. 82-98; docketed as CA-G.R. CR H.C. No. 00830-MIN; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida Galapate-Laguilles.

[5] *Id*. at 98.

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Our Ruling

We totally agree with the RTC and the CA in finding that the guilt of appellant for the crime of murder was proved beyond reasonable doubt. There is no doubt that on April 2, 2003, at around 10 o'clock in the evening, appellant shot Buensuceso while the latter was about to enter the gate of the staff house of Stanfilco-Dole in Malaybalay City, Bukidnon. Moreover, we agree with the findings of the RTC and the CA that appellant's extrajudicial confession[6] was voluntarily and duly executed and replete with details that only appellant could supply, *viz.*:

x x x But before proceeding in questioning you, I am informing you that under our new constitution, you have the right to the following:

A. You have the right to remain silent and not answer x x x my questions; it might be that I might use your answers as evidence against you or favorable to you.

01. QUESTION: Do you understand your right?

ANSWER: Yes[,] Sir.

02. QUESTION: Are you going to use your right?

ANSWER: I would rather not[,] sir[,] because I would tell the truth as to what had happened.

B. You have the right to avail [of] the services of a counsel of your choice to help you in this investigation, and if you can't afford to hire the services of a lawyer, the government will provide you with free legal services of a lawyer from the Integrated Bar of the Philippines (IBP).

03. QUESTION: Do you understand your right?

ANSWER: Yes[,] sir.

04: QUESTION: Are you going to use your right?

ANSWER: I have my own lawyer, he is Atty. Michael Florentino Dumlao III, we already had a talk and he made me understand x x x my rights, and he also made me understand about this investigation where I will voluntarily narrate what I x x x [know].

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[6] Records, pp. 166-177; with English translation in pp. 178-184.

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05. QUESTION: Did anybody give you money or promised to give you a reward, or did anybody intimidate you in giving this affidavit?

ANSWER: Nobody[,] sir.

06. QUESTION: Did you understand your rights that I told you?

ANSWER: Yes[,] sir.[7]

Appellant then proceeded to narrate that he was hired by Alex Laranjo (Laranjo) and Kid Canadilla (Canadilla), for and in behalf of a certain Alonzo who owns a quarry in San Isidro, Valencia, to kill the victim for a fee. According to appellant, Alonzo wanted the victim killed because the latter withheld the release of his collectibles from Stanfilco-Dole. Appellant then narrated how he met with Laranjo, Canadilla and Alonzo; how he received payments and instructions; how he planned the killing; and how he executed the plan. Appellant signed his extrajudicial confession, with the assistance of Atty. Dumlao, and subscribed the same before Atty. Dennis B. Caayupan at the Office of the Clerk of Court.[8]

Moreover, Atty. Dumlao testified that he ably provided legal assistance to appellant all throughout the proceedings and carefully explained to him the ramifications of his admission. He informed appellant of his rights and that anything he says may be used in evidence against him. Notwithstanding, appellant insisted on giving his extrajudicial confession.[9]

In any event, it must be stressed that appellant's conviction was not based solely on his extrajudicial confession. The prosecution likewise presented the eyewitness account of Azucena who testified that immediately after hearing gunshots, he saw appellant about 5 meters away from the Isuzu pick-up of the victim. Appellant was riding in tandem aboard a black motorcycle and was holding a gun. The ballistic report also

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[7] *Id*. at 178.

[8] *Id*. at 177; see TSN, May 26, 2008, p. 33.

[9] TSN, May 26, 2008, pp. 8-12.

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confirmed that the slugs found at the crime scene were fired from the firearm earlier confiscated from the appellant. Moreover, appellant was not able to establish that it was physically impossible for him to be present at the crime scene at the time of its commission.

The RTC and the CA thus properly found appellant guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. However, it must be stated that appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346 or the Act Prohibiting the Imposition of Death Penalty in the Philippines.

Anent the damages awarded, we find that modification is in order.

Regarding the award for lost earnings, the general rule is that there must be documentary proof to support indemnity for loss of earning capacity. Admittedly, there are exceptions to this rule, *viz.*:

> By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[10]

Notably, this case does not fall under any of the exceptions. The deceased victim could not be considered as a self-employed earning less than the minimum wage; neither could he be considered employed as a daily wage worker. However, we are inclined to award lost earnings considering that the deceased, as testified by his widow, was the manager of Stanfilco-Dole, Phils. in Malaybalay City and was receiving a monthly salary of ₱95,000.00. He was 54 years of age when gunned down

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[10] *People v. Vergara,* G.R. No. 177763, July 3, 2013, 700 SCRA 412, 424, citing *Serra v. Mumar*, G.R. No. 193861, March 14, 2012, 668 SCRA 335, 347-348; *People v. Lopez*, G.R. No. 188902, February 16, 2011, 643 SCRA 524, 528-529.

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by appellant. This testimony was not objected to by appellant or questioned during cross-examination or on appeal. Clearly, the existence of factual basis of the award has been satisfactorily established. However, the amount of the award for lost earnings must be modified following the formula [2/3x 80 – age] x [gross annual income - necessary expenses equivalent to 50% of the gross annual income]. Thus: [2/3x (80-54)] [(₱95,000 x 12) – 50% (₱95,000 x 12)] = ₱9,878,100.00.

In addition, the awards of actual damages in the amount of ₱25,000.00 must be deleted for lack of proof; in lieu thereof, temperate damages in the amount of ₱25,000.00 is awarded. The awards of civil indemnity in the amount of ₱75,000.00, and moral damages in the amount of ₱75,000.00, are in line with prevailing jurisprudence. In addition, the heirs of the victim are entitled to exemplary damages in the amount of ₱30,000.00. Finally, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this resolution until full payment.

WHEREFORE, the assailed October 13, 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00830-MIN finding appellant Jorie Wahiman *y* Rayos guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with **MODIFICATIONS** in that appellant is not eligible for parole; the award for lost earnings is reduced to ₱9,878,100.00; the award of actual damages is deleted; in lieu thereof, appellant is ordered to pay the heirs of the victim ₱25,000.00 as temperate damages; he is likewise ordered to pay the heirs of the victim exemplary damages in the amount of ₱30,000.00; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this resolution until full payment.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonen, J., C.J. Sereno certifies that *J*. Leonen left his concurring vote; see his concurring opinion (on official leave).

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Jardaleza, J., no part, prior OSG action.

Peralta, J., on official leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the ponencia but I write separately to state further my reasons for the grant of an award for loss of earning capacity.

The prosecution presented testimonial evidence to prove the income of the deceased for an award of loss of earning capacity and met the requisite quantum of evidence, preponderance of evidence, for civil actions. Allowing testimonial evidence to prove loss of earning capacity is more consistent to the nature of civil actions, as opposed to the previous doctrine that requires claims for loss of earning capacity to be proven through documentary evidence.

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Under Article 100 of the Revised Penal Code, "[e]very person criminally liable for a felony is also civilly liable." Institution of a criminal case includes the civil action for the recovery of the civil liability arising from the offense charged.[1] The inclusion of the civil action is to avoid multiplicity of suits.[2]

While the criminal and civil actions can be litigated in the same proceedings, the quanta of evidence for the two actions are not the same. For the court to find criminal liability against the accused, there must be proof beyond reasonable doubt:[3]

> Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[4]

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[1] REV. RULES OF COURT, Rule 111, Sec. 1(a).

[2] *Ricarze v. Court of Appeals,* 544 Phil. 237 (2007) [Per *J.* Callejo, Third Division].

[3] REV. RULES OF COURT, Rule 133, Sec. 2.

[4] REV. RULES OF COURT, Rule 133, Sec. 2.

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On the other hand, the finding of civil liability only requires preponderance of evidence or "superior weight of evidence on the issues involved."[5]

> [T]he court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial.[6]

Despite the singularity of the proceedings of both the criminal case and the civil case, it is possible for there to be an acquittal on the criminal case and yet a finding of civil liability. The respective weights of the evidence in the criminal and civil cases are evaluated independently.

A claim for damages, including actual damages for loss of earning capacity, is part of the civil aspect of the case. Hence, to prove loss of earning capacity, the quantum of evidence required is preponderance of evidence, not proof beyond reasonable doubt.

Loss of earning capacity is a form of actual or compensatory damages under the Civil Code, which states that:

> Art. 2206. . . .
>
> (1) The defendant shall be liable for the loss of earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death[.]

The courts have assessed loss of earning capacity either through testimonial or documentary evidence presented during trial. There are varying precedents on the type of evidence required to prove loss of earning capacity.

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[5] REV. RULES OF COURT, Rule 133, Sec. 1.

[6] REV. RULES OF COURT, Rule 133, Sec. 1.

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In the first set of cases, this court ruled that there has to be an unbiased documentary evidence of the annual income of the deceased to prove loss of earning capacity. These documents are income tax returns, receipts, or pay slips.

People v. Villanueva[7] is a murder case. During trial, the widow testified that she and her deceased husband earned ₱5,000.00 a week from selling fish, and attributed half of those earnings to her husband's efforts. The Regional Trial Court awarded actual damages for loss of earning capacity relying on the widow's testimony. The award was never questioned on appeal. However, this court deleted the award of loss of earning capacity holding that the award was unjustified since the wife "gave only a self-serving, hence unreliable, statement of her husband's income."[8]

The decision in *People v. Listerio*[9] is consistent with *Villanueva*'s ruling. Here, the deceased is a 'pre-cast' businessman, and his sister testified as to his alleged income. This court affirmed the trial court's disregard for this testimony and ruled that there was insufficient proof of loss of earning capacity. The testimony of the sister should have been supported by income tax returns or receipts.[10]

The rule requiring income tax returns or receipts was reiterated in *People v. Ereño*[11] and *People v. Mindanao.*[12] In *Ereño,* the deceased was a fish vendor. In *Mindanao,* the deceased

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[7] 362 Phil. 17 (1999) [Per *C.J.* Davide, Jr., First Division].

[8] *Id*. at 37.

[9] 390 Phil. 337 (2000) [Per *J.* Ynares-Santiago, First Division].

[10] *Id*. Another similar case is *People v. Sanchez*, 372 Phil. 129 (1999) [Per *J*. Pardo, First Division], wherein the wife testified that her husband, as a businessman, earned ₱1 million a year, but did not present income tax returns or other proofs. This court cited *Villanueva* as basis that there must be unbiased proof of average income.

[11] 383 Phil. 30 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[12] 390 Phil. 510 (2000) [Per *J.* Pardo, First Division].

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was a meat vendor. In both cases, only relatives of the deceased testified as to the annual income of the deceased, and this court stated that these statements were self-serving and unreliable.

In *Tamayo v. Señora,*[13] this court allowed the presentation of pay slips in lieu of income tax returns. They were considered documents proving the deceased's income.

In the second set of cases, the evidence accepted to prove the deceased's annual income was relaxed. This court still required "unbiased proof," and as long as the quantum of evidence was met, it was deemed acceptable.

In *Heirs of Jose Marcial K. Ochoa v. G & S Transport Corporation,*[14] this court allowed an employer's certification of the annual income of the deceased as acceptable evidence for loss of earning capacity. This court ruled that the certification is not self-serving, and it is highly improbable for the employer to give unreliable information regarding the income of the deceased.

In *Philippine Airlines v. Court of Appeals,*[15] the payroll and income tax returns of the decedent were not presented in court. There was no certification or document coming from the employer either. However, officers of the employer testified as to the income of the decedent. This court stated:

> The witnesses Mate and Reyes, who were respectively the manager and auditor of Allied Overseas Trading Company and Padilla Shipping Company, were competent to testify on matters within their personal knowledge because of their positions, such as the income and salary of the deceased, Nicanor A. Padilla (Sec. 30, Rule 130, Rules of Court). *As observed by the Court of Appeals, since they were cross-examined by petitioner's counsel, any objections to their competence and the admissibility of their testimonies, were deemed waived.* The payrolls of the companies and the decedent's income tax returns could, it is

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[13] G.R. No. 176946, November 15, 2010, 634 SCRA 625 [Per *J.* Nachura, Second Division].

[14] 660 Phil. 387 (2011) [Per *J.* Del Castillo, First Division].

[15] 263 Phil. 806 (1990) [Per *J.* Griño-Aquino, First Division].

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true, have constituted the best evidence of his salaries, but there is no rule disqualifying competent officers of the corporation from testifying on the compensation of the deceased as an officer of the same corporation, and in any event, no timely objection was made to their testimonies.[16] (Emphasis supplied).

Aside from the liberality in allowing testimonial evidence, this court also discussed the requirement of preponderance of evidence to prove earning capacity. *Philippine Airlines* was a torts case. When the tortfeasor did not object to the competence and admissibility of the testimony of the officers of the deceased's employer, any objection was deemed waived. The testimonies of the employer's officers were accepted to prove loss of earning capacity.

The third set of cases allowed testimonial evidence as an exception to a general rule that annual income for an award of loss of earning capacity must be proven by documentary evidence. However, the circumstances where testimonial evidence is allowed were limited.

People v. Dizon[17] involved the felonious death of a 15-year-old construction worker with a daily wage of ₱100.00. The fact was established through testimonial evidence, and no documentary evidence was presented. In *Dizon,* this court allowed the non-presentation of documentary evidence but limited only to instances where: "(a) the victim was self-employed earning less than the minimum wage under current labor laws and judicial notice was taken of the fact that in the victim's line of work, no documentary evidence is available; or (b) the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws."[18] This court also awarded actual damages for loss of earning capacity in *Licyayo v. People*[19] because the victim was a gardener earning

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[16] *Id.* at 819.

[17] 378 Phil. 261 (1999) [*Per Curiam, En Banc*].

[18] *Id.* at 278.

[19] 571 Phil. 310 (2009) [Per *J.* Chico-Nazario, Third Division].

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₱30,000.00 annually. Hence, he was covered by the *Dizon* exceptions.

This rule implies that if the decedent was earning more than minimum wage, even if he or she was self-employed, documentary evidence is required in proving annual income from the grant of loss of earning capacity.

In *People v. Caraig,*[20] since the victims were an employee of the Social Security System, a president of a family-owned corporation, and a taxi driver, this court ruled that they were earning more than minimum wage and were not covered by the exceptions drawn in *Dizon*. Documentary evidence should have been presented to prove the victims' annual income. The same ruling was made in *Victory Liner, Inc. v. Gammad*[21] when only testimonial evidence was presented to show that the deceased was a Section Chief of the Bureau of Internal Revenue who earned an annual income of ₱83,088.00. In both cases, the actual damages for loss of earning capacity was not awarded.

Finally, the fourth set of cases admits testimonial evidence to prove the victim's annual income. These cases do not consider whether the victim was a minimum wage earner or if the witness testifying to the income was biased or not.

In *People v. Gutierrez,*[22] this court considered the testimony of the wife as to the income of her deceased husband. The deceased was a teacher by profession, but was a sitting municipal councilor at the time of his death. This court awarded actual damages as loss of earning capacity using the higher salary estimate given by the widow. This court stated that:

> Although the prosecution did not present evidence to support the widow's claim for loss of earning capacity, such failure does not necessarily prevent recovery of the damages if the testimony of the

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[20] 448 Phil. 78 (2003) [Per *C.J.* Davide, Jr., First Division].

[21] 486 Phil. 574 (2004) [Per *J.* Ynares-Santiago, First Division].

[22] 362 Phil. 259 (1999) [Per *J.* Mendoza, Second Division].

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surviving spouse is sufficient to establish a basis from which the court can make a *fair and reasonable estimate* of the damages for the loss of earning capacity of the victim.[23] (Emphasis supplied)

People v. Bangcado[24] added that aside from considering testimonial evidence, the courts could also consider "the nature of [the victim's] occupation, his educational attainment and the state of his health at the time of his death."[25] In this case, the testimony of the victim's father sufficiently supported the claim for actual damages for loss of earning capacity.

The rule of allowing testimonial evidence as long as the court can make a "fair and reasonable estimate of damages for loss of earning capacity" was applied in *Pleyto v. Lomboy*[26] and *People v. Garcia*.[27] Despite the absence of documentary evidence to support the widows' claims, the court still awarded loss of earning capacity.

The fourth set of cases is more consistent with the rule that to prove loss of earning capacity, only preponderance of evidence is required. Nothing in the Rules of Court requires that only documentary evidence is allowed in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence. In addition, the Civil Code does not prohibit a claim for loss of earning capacity on the basis that it is not proven by documentary evidence.

Testimonial evidence, if not questioned for credibility, bears the same weight as documentary evidence. Testimonies given by the deceased's spouse, parent, or child should be given weight because these individuals are presumed to know the income of their spouse, child, or parent.

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[23] *Id*. at 283.

[24] 399 Phil. 768 (2000) [Per *J*. Bellosillo, Second Division].

[25] *Id*.

[26] 476 Phil. 373 (2004) [Per *J*. Quisumbing, Second Division].

[27] 414 Phil. 130 (2001) [Per *J*. De Leon, Jr., Second Division].

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If the amount of income testified to seemed incredible or unrealistic, the defense could always raise their objections and discredit the witness or, better yet, present evidence that would outweigh the evidence of the prosecution.

If the defense did not question the credibility of the witnesses during trial, they could question it during appeal as a last resort.

Parenthetically, if both the documentary and testimonial evidence on the income of the decedent were unavailable, expert evidence could be considered.[28] There are experts who are familiar with data generated by the Bureau of Labor and Employment Statistics of the Department of Labor and Employment. This bureau collects annual data relating to labor and employment, which includes data relating to the wages and salaries received in specific occupations. These experts can testify to the average annual income of the deceased if their usual occupations are known.

The heirs could also present expert witnesses familiar with the Family Income and Expenditure Survey or FIES. The FIES contains average incomes and expenditures of Filipino families in the different regions of the country.

Nothing in our definition of preponderance of evidence excludes the admission of expert testimony. Hence, these could also be considered in evaluating the loss of earning capacity of a deceased.

II

The law allows recovery of actual damages for loss of earning capacity in consideration of the heirs of the deceased or those who are legally entitled to support from the deceased. The damages do not pertain to the full amount of foregone earnings,

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[28] *Metro Manila Transit Corporation, et al. v. Court of Appeals*, 359 Phil. 18 (1998) [Per *J.* Mendoza, Second Division], *citing* RICHARD A. POSNER, *TORT LAW: CASES AND ECONOMIC ANALYSIS*, 123–25 (1982). The context in this case was with respect to loss of earning capacity for those who were unemployed, such as children. According to Judge Posner, there could be expert witnesses that could project the income of these individuals.

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"but of the support they received or would have received from [the deceased] had he not died in consequence of the negligence [or fault] of [the tortfeasor or the accused]."[29]

This form of actual damages quantifies the loss of the deceased's family in terms of financial support they will receive from the deceased. A widow does not only grieve for the loss of her husband; she also has to worry about finding an additional source of livelihood. The condition is often worsened when the deceased is the sole breadwinner of the family and the family is already experiencing difficulties making ends meet. While this might not always be the case, the law devised the concept of actual damages in the form of loss of earning capacity to ensure that a part of the family's loss is mitigated.

The computation for loss of earning capacity was extensively discussed in the 1970 case of *Villa Rey Transit v. Court of Appeals*.[30] In *Villa Rey Transit,* this court considered two factors in determining loss of earning capacity, which are: "(1) the *number of years* on the basis of which the damages shall be computed; and (2) the *rate* at which the losses sustained by said respondents should be fixed."[31] The number of years is often pegged at life expectancy (instead of work expectancy), while the rate of losses is derived from annual income. The general formula applied is:

Net Earning Capacity *= Life Expectancy × [Gross Annual Income – Necessary Expenses]*

To approximate the first factor of life expectancy, this court has applied the formula in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality.[32] Hence:

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[29] *Villa Rey Transit v. Court of Appeals,* 142 Phil. 494, 500 (1970) [Per *C.J.* Concepcion, Second Division].

[30] 142 Phil. 494 (1970) [Per *C.J.* Concepcion, Second Division].

[31] *Id.* at 500.

[32] *Id*.

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$$\text{Life Expectancy} = \frac{2}{3} \times (80 - \text{age of the deceased at time of death})$$

Later, in *People v. Quilaton,*[33] the use of the 1980 Commissioner's Standard Ordinary Mortality Table was suggested to take into consideration longer life expectancy in the Philippines.[34] However, the formula used was not shown and the table was not published for easier reference. Hence, succeeding cases reverted back to the formula in *Villa Rey Transit.*

The problem with both *Villa Rey Transit* and *Quilaton* is that these cases relied on American mortality tables. In addition, these tables were antiquated and were devised under conditions prevailing during that time. The American Expectancy Table of Mortality used in *Villa Rey Transit* was developed in 1860.[35] The Commissioner's Standard Ordinary Mortality Table was a slight improvement, considering that the table was developed in 1980. The standard of living and modern medicine has prolonged life expectancy in the past 150 years; hence, it is not reliable to base life expectancy on a formula made in 1860. In addition, living conditions in the Philippines are different from living conditions in the United States. Continued reliance on the *Villa Rey Transit* doctrine to determine life expectancy might already be incompatible to modern Filipinos.

One author suggested that an alternative to the *Villa Rey Transit* equation to determine life expectancy is the use of the Philippine Intercompany Mortality Table.[36] The Commission

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[33] G.R. No. 69666, January 23, 1992, 205 SCRA 279 [Per *J.* Feliciano, Third Division].

[34] *Id.* at 289.

[35] Romeo C. Buenaflor, *Estimating Life Expectancy and Earning Capacity: Observations on the Supreme Court's Determination of Compensatory Damages for Death and Injury,* 70 Phil. L. J. 99, 116 (1995).

[36] *Id.* at 119.

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on Population also creates life table estimates for the Philippines, and the data is classified by geography and sex, which can also be used as basis for life expectancy in the Philippines.

With respect to the second factor, or the rate at which the losses sustained by said respondents should be fixed, this court used the general formula of gross annual income less necessary expenses.

Villa Rey Transit explains why necessary expenses should be deducted from annual income. The beneficiaries are only entitled to receive what they would have received if the deceased had stayed alive. Hence:

> . . . it has been consistently held that 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 the 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.[37]

In *Negros Navigation v. Court of Appeals,*[38] this court made a general rule that only 50% of gross annual income redounds to the benefit of the beneficiaries, while 50% is considered reasonable and necessary expenses for the support and maintenance of the deceased earner. "To hold that she would have used only a small part of her income for herself, a larger part going to the support of her children would be conjectural and unreasonable."[39] *People v. Aringue*[40] translated it into formula form:

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[37] 142 Phil. 494, 500 (1970) [Per *J.* Mendoza, Second Division].

[38] 346 Phil. 551 (1997) [Per *J.* Puno, Second Division].

[39] *Id.* at 568.

[40] 347 Phil. 571 (1997) [Per *J.* Pardo, First Division].

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Net Earning Capacity *= Life Expectancy × [Gross Annual Income – Reasonable and Necessary Living Expenses (50% of Gross Annual Income)]*

A majority of cases involving loss of earning capacity adopted the life expectancy formula set in *Villa Rey* and the formula for net annual income set in *Aringue.*

The Regional Trial Court used a simplified formula to compute for loss of earning capacity citing *People v. Reanzares.*[41]

Loss of earning capacity

$$= \left[\frac{2}{3} \text{ x } (80 \text{ — age of the deceased})\right] \text{ x } \frac{1}{2} \text{ annual gross income}$$

The simplification of the formula is correct. However, the trial court's computation was erroneous.

This is a step-by-step guide to compute an award for loss of earning capacity.

(1) Subtract the age of the deceased from 80.
(2) Multiply the answer in **(1)** by 2, and divide it by 3 (these operations are interchangeable).
(3) Multiply 50% to the *annual* gross income of the deceased.
(4) Multiply the answer in **(2)** by the answer in **(3).** This is the loss of earning capacity to be awarded.

When the evidence on record only shows *monthly* gross income, annual gross income is derived from multiplying the monthly gross income by 12. When the daily wage is the only information provided during trial, such amount may be multiplied by 260, or the number of usual workdays in a year,[42] to arrive at annual gross income.

For this case, the victim was 54 years old at his time of death. The prosecution was able to prove that his monthly

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[41] 390 Phil. 115 (2000) [Per *J.* Bellosillo, *En Banc*].

[42] This is under the presumption that an average laborer works 5 days a week and 52 weeks in a year. This value should change if the laborer's work days are different.

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income was ₱95,000.00. With the amount multiplied by 12, the victim's annual gross income is ₱1,140,000.00.

To compute for life expectancy, or steps 1 and 2, we would get:

$$\text{Life Expectancy} = \frac{2}{3} \times (80 - 54)$$

$$\text{Life Expectancy} = \frac{2}{3} \times (26)$$

$$\text{Life Expectancy} = \mathbf{17\ \frac{1}{3}\ years}$$

Applying the victim's life expectancy and annual gross income to the general formula, or step 3:

$$\text{Loss of Earning Capacity} = \text{Life expectancy} \times \frac{1}{2} \text{ annual gross income}$$

$$\text{Loss of Earning Capacity} = 17\frac{1}{3} \times \frac{1}{2} (₱1{,}140{,}000.00)$$

$$\text{Loss of Earning Capacity} = 17\frac{1}{3} \times ₱570{,}000.00$$

Loss of Earning capacity = ₱9,880,000.00

The accused confessed to killing the victim for ₱5,000.00 because he was facing financial difficulties at that time. We recognize that it might be impossible for him to pay almost 10 million to the heirs of the victim. Nevertheless, it is part of our legal system that those who willfully and feloniously caused wrongful death must pay for all the damages caused. The damages are not based on the capacity of the accused to pay; it is based on the injury the accused caused to the family. Deleting the award for actual damages for loss of earning capacity based on a procedural rule of requiring documentary evidence is unfair and unjust to the heirs of the victim.

ACCORDINGLY, I concur with the Resolution.