Supreme Court E-Library

of the crime of simple illegal possession of firearms and ammunitions is AFFIRMED EXCEPT that petitioner's indeterminate penalty is MODIFIED to "ten (10) years and one (1) day, as minimum, to eighteen (18) years, eight (8) months and one (1) day, as maximum.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Panganiban, JJ.,* concur.

THIRD DIVISION

[G.R. No. 99301. March 13, 1997]

VICTOR KIERULF, LUCILA H. KIERULF and **PORFIRIO LEGASPI,** *petitioners, vs.* **THE COURT OF APPEALS** and **PANTRANCO NORTH EXPRESS, INCORPORATED,** *respondents.*

[G.R. No. 99343. March 13, 1997]

PANTRANCO NORTH EXPRESS, INCORPORATED, *petitioner, vs.* **VICTOR KIERULF, LUCILA H. KIERULF and PORFIRIO LEGASPI,** *respondents.*

SYLLABUS

1. **CIVIL LAW; TRANSPORTATION; COMMON CARRIER; GROSS NEGLIGENCE OF PANTRANCO'S DRIVER WAS THE CAUSE OF THE ACCIDENT.**— Although the Court may review factual issues in some instances, the case at bar does not fall under any one of them. The fact that there is no conflict between the findings of the trial court and respondent Court bolsters our position that a review of the facts found by respondent Court is not necessary. There being no conflict between the findings of the Court of Appeals and the trial court that gross negligence was the real cause of the collision, we see no reason to digress from the standard rule.

Supreme Court E-Library

2. **ID.; MORAL DAMAGES; THE ESTABLISHED GUIDELINES IN AWARDING MORAL DAMAGES.—** The established guideline in awarding moral damages takes into consideration several factors, some of which are the social and financial standing of the injured parties and their wounded moral feelings and personal pride. This Court cannot remind the bench and the bar often enough that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. In *Francisco vs. GSIS*, the Court held that there must be clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his/her social humiliation, wounded feelings and anxiety, moral damages cannot be awarded. In *Cocoland Development Corporation vs. National Labor Relations Commission*, the Court held that "additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, x x x social humiliation, wounded feelings, grave anxiety, etc., that resulted therefrom."

3. **ID.; DAMAGES FOR LOSS OF CONSORTIUM; FOR LACK OF FACTUAL BASIS, SUCH CLAIM FOR DAMAGES CANNOT BE RULED UPON BY THIS COURT AT THIS TIME.—** Victor's claim for deprivation of his right to consortium, although argued before Respondent Court, is not supported by the evidence on record. His wife might have been badly disfigured, but he had not testified that, in consequence thereof, his right to marital consortium was affected. Clearly, Victor (and for that matter, Lucila) had failed to make out a case for loss of consortium, unlike the Rodriguez spouse. Again, we emphasize that this claim is factual in origin and must find basis not only in the evidence presented but also in the findings of the Respondent Court. For lack of factual basis, such claim cannot be ruled upon by this Court at this time.

4. **ID.; THE SOCIAL AND FINANCIAL STANDING OF LUCILA CANNOT BE CONSIDERED IN AWARDING MORAL**

Supreme Court E-Library

DAMAGES; REASON.— The social and financial standing of Lucila cannot be considered in awarding moral damages. The factual circumstances prior to the accident show that no "rude and rough" reception, no "menacing attitude," no supercilious manner," no "abusive language and highly scornful reference" was given her. The social and financial standing of a claimant of moral damages may be considered in awarding moral damages only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.

5. **ID.; BUT MORAL DAMAGES MAY BE AWARDED HER FOR HER PHYSICAL SUFFERINGS, MENTAL ANGUISH, FRIGHT, SERIOUS ANXIETY AND WOUNDED FEELINGS.**— Be that as it may, it is still proper to award moral damages to Petitioner Lucila for her physical sufferings, mental anguish, fright, serious anxiety and wounded feelings. She sustained multiple injuries on the scalp, limbs and ribs. She lost all her teeth. She had to undergo several corrective operations and treatments. Despite treatment and surgery, her chin was still numb and thick. She felt that she has not fully recovered from her injuries. She even had to undergo a second operation on her gums for her dentures to fit. She suffered sleepless nights and shock as a consequence of the vehicular accident. In this light and considering further the length of time spent in prosecuting the complaint and this appeal, we find the sum of P400,000.00 as moral damages for Petitioner Lucila to be fair and just under the circumstances.

6. **ID.; EXEMPLARY DAMAGES; IN VIEW OF THE FINDING OF GROSS NEGLIGENCE ON THE PART OF PANTRANCO, THE AWARD OF EXEMPLARY DAMAGES IS JUSTIFIED.**— Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender. However, it cannot be recovered as a matter of right. It is based entirely on the discretion of the court. The claim of Lucila has been favorably considered in view of the finding of gross negligence by Respondent Court on the part of Pantranco. This is made clear by Respondent Court in granting Lucila's claim of exemplary damages: "(P)ublic utility operators like the defendant, have made a mockery of our laws, rules and regulations governing operations of motor vehicles and have ignored either deliberately or through negligent disregard of their duties to exercise extraordinary degree of diligence for the safety of the travelling

Supreme Court E-Library

public and their passengers x x x." To give teeth to this warning, the exemplary damages awarded to Petitioner Lucila is increased to P200,000.00. The fact of gross negligence duly proven, we believe that Legaspi, being also a victim of gross negligence, should also receive exemplary damages. Under the facts proven, the Court awards him P25,000 as exemplary damages.

7. **ID.; LOSS OF EARNINGS AS A COMPONENT OF DAMAGES; THE ALLEGED LOSS MUST BE ESTABLISHED BY FACTUAL EVIDENCE FOR IT PARTAKES OF ACTUAL DAMAGES.**— We agree with the findings of Respondent Court that Lucila's claim of loss of earning capacity has not been duly proven. The alleged loss must be established by factual evidence for it partakes of actual damages. A party is entitled to adequate compensation for such pecuniary loss actually suffered and duly proved. Such damages, to be recoverable must not only be capable of proof, but must actually be shown with a reasonable degree of certainty. We have emphasized that these damages cannot be presumed, and courts in making an award must point out specific facts which can serve as basis for measuring whatever compensatory or actual damages are borne. Mere proof of Lucila's earnings consisting of her 1983 and 1984 income tax returns would not suffice to prove earnings for the years 1985 and 1986. The incident happened on February 28, 1987. If indeed Lucila had been earning P50,000.00 every month prior to the accident, as she alleged, there are evidentiary proofs for such earnings other than income tax returns such as, but not limited to, payroll receipts, payments to the SSS, or withholding tax paid every month. Sad to say, these other proofs have not been presented, and we cannot presume that they exist on the strength of the word of Lucila alone.

APPEARANCES OF COUNSEL

Amado R. Fojas for petitioners Victor Kierulf, et al.

Gupit, Navarrete and Diaz as collaborating counsel for Victor Kierulf, et al.

Antonio P. Pekas for Pantranco North Express, Inc.

D E C I S I O N

PANGANIBAN, *J.*:

How much moral, exemplary and actual damages are victims of vehicular accidents entitled to?

Supreme Court E-Library

In G.R. No. 99301, the victims of the vehicular mishap pray for an increase in the award of damages, over and above those granted by the appellate court. In this case, the husband of the victim of the vehicular accident claims compensation/damages for the loss of his right to marital consortium which, according to him, has been diminished due to the disfigurement suffered by his wife. In G.R. No. 99343, the transport company, which owned the bus that collided with the victims' pickup truck, asks for exoneration by invoking an alleged fortuitous event as the cause of the mishap.

Petitioners in both cases assail the Decision,[1] dated March 13, 1991, in CA-GR CV No. 23361 of the Court of Appeals, Sixth Division[2] ordering the following:[3]

"For reasons indicated and in the light of the law and jurisprudence applicable to the case at bar, the judgment of the trial court is hereby modified as follows:

Under the first cause of action, the defendant is hereby ordered to pay Lucila H. Kierulf the following:

(1) For actual damages incurred for hospitalization, medical case (sic) and doctor's fees, the sum of P241,861.81;

(2) For moral damages the sum of P200,000.00;

(3) For exemplary damages the amount of P100,000.00.

Under the second cause of action, to pay Victor Kierulf, by way of indemnification damage to the Isuzu Carry All with plate No. UV PGS 798, the amount of P96,825.15.

Under the third cause of action, to pay Porfirio Legaspi the following:

(1) For moral damages in the amount of P25,000.00;

(2) To reimburse the plaintiff the amount of P6,328.19 for actual damages incurred in the treatment and hospitalization of the driver Porfirio Legaspi.

---

[1] *Rollo*, G.R. No. 99301, pp. 44-56; *Rollo*, G.R. No. 99343, pp. 16-28.

[2] Composed of *J.* Jose C. Campos, Jr., *ponente*, and *JJ.* Venancio D. Aldecoa, Jr. and Filemon H. Mendoza.

[3] *Rollo*, G.R. No. 99301, pp. 55-56.

Supreme Court E-Library

The defendant is further ordered to pay the amount of P50,000.00 as fair and reasonable attorney's fees.

And to pay the costs of suit."

Respondent Court of Appeals modified the decision of the Regional Trial Court of Quezon City, Branch 92,[4] rendered on May 24, 1989 in Civil Case No. Q-50732 for damages. The dispositive portion of the said decision is quoted below:[5]

"WHEREFORE, in view of the foregoing, judgment is hereby rendered against the defendant, ordering Pantranco to pay:

Under the First Cause of Action

1. In favor of plaintiff Lucila H. Kierulf actual damages in the amount of ONE HUNDRED SEVENTY FOUR THOUSAND ONE HUNDRED and 77/100 (P174,100.77) PESOS;
2. To pay said plaintiff moral damages in the amount of ONE HUNDRED THOUSAND and 00/100 (P100,000.00) PESOS;
3. To pay exemplary damages in the amount of TEN THOUSAND and 00/100 (P10,000.00) PESOS.

Under the Second Cause of Action

1. To pay plaintiff Victor Kierulf the amount of NINETY SIX THOUSAND EIGHT HUNDRED TWENTY FIVE and 15/100 (P96,825.15) PESOS by way of indemnification for the damages to the Isuzu Carry All with plate No. UV PGS 796 registered in his name.

Under the Third Cause of Action

1. To pay the plaintiff spouses by way of reimbursement for actual damages incurred for the treatment of injuries sustained by their driver Porfirio Legaspi in the amount of SIX THOUSAND THREE HUNDRED TWENTY EIGHT and 19/100 (P6,328.19) PESOS; and
2. To pay plaintiff Porfirio Legaspi moral damages in the amount of TEN THOUSAND and 00/100 (P10,000.00) PESOS.

---

[4] Presided by Judge Pacita Canizares-Nye, now Associate Justice of the Court of Appeals.

[5] *Rollo*, G.R. No. 99301, pp. 44-45.

Supreme Court E-Library

Defendant is further ordered to pay the amount of P25,000.00 for and as attorney's fees, and to pay costs.

All other claims and counterclaims are dismissed."

The Facts

The following may be culled from the undisputed factual findings of the trial court and Respondent Court of Appeals:

The initial investigation conducted by Pfc. D.O. Cornelio disclosed that at about 7:45 p.m. of 28 February 1987, the Pantranco bus, bearing plate number AVE-845 (TB PIL 86), was traveling along Epifanio de los Santos Avenue (EDSA) from Congressional Avenue towards Clover Leaf, Balintawak. Before it reached the corner of Oliveros Drive, the driver lost control of the bus, causing it to swerve to the left, and then to fly over the center island occupying the east-bound lane of EDSA. The front of the bus bumped the front portion of an Isuzu pickup driven by Legaspi, which was moving along Congressional Avenue heading towards Roosevelt Avenue. As a result, the points of contact of both vehicles were damaged and physical injuries were inflicted on Legaspi and his passenger Lucila Kierulf, both of whom were treated at the Quezon City General Hospital. The bus also hit and injured a pedestrian who was then crossing EDSA.

Despite the impact, said bus continued to move forward and its front portion rammed against a Caltex gasoline station, damaging its building and gasoline dispensing equipment.

As a consequence of the incident, Lucila suffered injuries, as stated in the medical report[6] of the examining physician, Dr. Pedro P. Solis of the Quezon City General Hospital. The injuries sustained by Lucila required major surgeries like "tracheotomy, open reduction, mandibular fracture, intermaxillary repair of multiple

---

[6] *Rollo*, G.R. No. 99301, p. 49.

"FINDINGS:

Wound, lacerated, 10.0 cm., running forwards and upwards, located at the temporal region, scalp, right side; 10.0 cm., from the median line; C-shaped 13.0 cm., located at the parietal region, scalp, right side; 4.0 cm., from the median line; 2.0 cm., located at the angle of themmouth (sic), left and right side.

Supreme Court E-Library

laceration" and prolonged treatment by specialists. Per medical report of Dr. Alex L. Castillo, Legaspi also suffered injuries.[7]

The front portion of the pickup truck, owned by Spouses Kierulf, bearing plate number UV PGS 798, was smashed to pieces. The cost of repair was estimated at P107,583.50.

Abrasion, extensive, involving the anterolateral aspect of the neck and supraclavicular region, left side; extensive involving the medial aspect, distal third of the forearm; extensive involving the anterior aspect of the kneesand (sic) lateral aspect of the upper half, left side, 0.5 cm., numbering in two, anterior aspect, knee, right side; 1.0 cm., numbering in two, located at the medial aspect, knee right side; multilinear ranging from 1.0 to 4.0 cm., running horizontally located at the lateral aspect, proximal third, leg, right side; 5.0 cm., located at the mid clavicular line at the level of the second rib, left side.

Contusion, involving the posterior aspect, hand, left side; s.0 (sic) cm., in diameter, located at the antero-medial aspect, proximal third leg, right side.

SKULL	#227609 (3-1-87)
CHEST	No demonstrable skull fracture.
FOR	
RIBS	
CERVICAL	There is a complete transverse fracture of the left third posterior rib with mild subpleural hematoma. Incidental note of normal cardiopulmonary findings.
BOTH	Limited view of the cervical vertebrae with
	C6 and
CLAVICLES	C7 not visualized in the lateral view, show
	no evident fracture nor dislocation.
WRIST	No demonstrable fracture in both clavicles and wrist. There is a double fracture of the mandible with some separation and displacement. Suggest panorex view.

CONCLUSIONS:

1. The above described physical injuries are found in the body of the subject, the age of which is compatible to the alleged date of infliction.

2. Under normal conditions, without subsequent complication and/or deeper involvement present, but not clinically apparent at the time of the examination, the above-described physical injuries will require medical attendance or will incapacitate the victim for a period not less than 31 (thirty one) days." (Annex "B")."

[7] G.R. No. 99301, *Rollo*, p. 51.

"DIAGNOSIS:

— Fracture open, comminuted inferior pole, patalla (R)
— Wound lacerated, sutured 2.5 cm. pariental (sic) (L)
— Wound, lacerated, sutured 1.5 cm. parietal (R)

Supreme Court E-Library

Pantranco, in its petition,[8] adds that on said day, the abovementioned bus was driven by Jose Malanum. While cruising along EDSA, a used engine differential accidentally and suddenly dropped from a junk truck in front of the bus. Said differential hit the underchassis of the bus, throwing Malanum off his seat and making him lose control of said bus. The bus swerved to the left, hit the center island, and bumped the pickup of the spouses.

The Issues

Spouses Kierulf and their driver Legaspi raise the following assignment of errors in this appeal:[9]

"A

The respondent court of appeals erred in awarding only P200,000.00 and P25,000.00 as and for moral damages for the petitioners Kierulf and Legaspi respectively when it should at least have been P1,000,000.00 and P100,000.00 respectively.

B

The respondent court of appeals erred in awarding only P100,000.00 to the petitioners Kierulf and nothing to petitioner Legaspi as and for exemplary damages when it should have at least been P500,000.00 and P50,000.00 respectively.

C

The respondent court of appeals erred in not awarding any amount for the lost income due to the petitioner Lucila H. Kierulf.

D

The respondent court of appeals erred in not awarding the amount of P107,583.50 for the damages sustained by the Isuzu carry-all pick-up truck.

E

The respondent court of appeals erred in not awarding any legal interest on the sums awarded."

OPERATION PERFORMED: Partial pallectomy
PROBABLE DISABILITY/PERIOD OF HEARING:
Not less that 30 days. (Annex "D")."

[8] *Rollo*, G.R. No. 99343, pp. 8-9.

Supreme Court E-Library

On the other hand, Pantranco raises the following assignment of errors:[10]

"4.1 The Honorable Court of Appeals erred in holding that the driver of Pantranco was negligent.

4.2 The Honorable Court of Appeals erred in holding that the proximate cause of the accident was the negligence of Pantranco and not a fortuitous event; and

4.2 (sic) The Honorable Court of Appeals erred in awarding excessive damages."

In sum, Spouses Kierulf and Legaspi argue that the damages awarded were inadequate while Pantranco counters that they were astronomical, bloated and not duly proved.[11]

The Court's Ruling

First Issue: Negligence and Proximate Cause Are Factual Issues

Even on appeal, Pantranco insists that its driver was not negligent and that the mishap was due to a fortuitous event. February 28, 1987, the date of the incident, was a Saturday; hence, driving at the speed of 40-50 kilometers per hour (kph) was prudent. It contends that the proximate cause was the accidental dropping of a used engine differential by a junk truck immediately ahead of the bus.[12]

As to what really caused the bus to careen to the opposite lane of EDSA and collide with the pickup truck driven by Legaspi is a *factual issue* which this Court cannot pass upon. As a rule, the jurisdiction of this Court is limited to the review of *errors of law* allegedly committed by the appellate court. This Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below.[13]

---

[9] *Rollo*, G.R. No. 99301, pp. 19-20.

[10] *Rollo*, G.R No. 99343 pp. 9-10.

[11] *Rollo*, G.R. No. 99343, p. 69.

[12] *Rollo*, G.R. No. 99343, pp. 10-12.

[13] *Gaw vs. IAC*, 220 SCRA 405, March 24, 1993.

Supreme Court E-Library

Although the Court may review factual issues in some instances,[14] the case at bar does not fall under any one of them. The fact that there is no conflict between the findings of the trial court and respondent Court bolsters our position that a review of the facts found by respondent Court is not necessary.[15] There being no conflict between the findings of the Court of Appeals and the trial court that gross negligence was the real cause of the collision, we see no reason to digress from the standard rule.

We quote with concurrence the factual findings of the appellate and trial courts, showing that the accident was, contrary to the belief of Pantranco, the result of the gross negligence of its driver. To wit:[16]

"The vehicular accident was certainly not due to a fortuitous event. We agree with the trial court's findings that the proximate cause was the negligence of the defendant's driver, such as: (1) Driving at that part of EDSA at 7:45 P.M. from Congressional Avenue towards Clover Leaf overpass in the direction of Balintawak at 40-50 kph is certainly not a manifestation of good driving habit of a careful and prudent man exercising the extraordinary diligence required by law. Traffic in that place and at that time of the day is always heavy. (2) Losing control of the wheel in such a place crowded with moving vehicles, jumping over the island which separates the East bound from the West bound lane of EDSA indicate that the defendant's bus was traveling at a speed limit beyond what a prudent and careful driver is expected of, if such driver were exercising due diligence required by law. (3) Finally, crossing over the island and traversing the opposite lane and hitting an oncoming vehicle with such force as to smash the front of such vehicle and finally being forced to stop by bumping against a Caltex service station — all show not only negligence, but recklessness of the defendant's driver. (4) If defendant's driver was not driving fast, was not recklessly negligent

---

[14] *Maximo Fuentes vs. Court of Appeals, et al.*, G.R. No. 109849, February 26, 1997.

[15] *Co vs. Court of Appeals*, 247 SCRA 195, 200, August 11, 1995; *Meneses vs. Court of Appeals*, 246 SCRA 162, 171, July 14, 1995; *Consolidated Bank and Trust Corporation (Solidbank) vs. Court of Appeals*, 246 SCRA 193, 198-199, July 14, 1995; *Sulpicio Lines, Inc. vs. Court of Appeals*, 246 SCRA 376, 380, July 14, 1995; and *Gobonseng, Jr. vs. Court of Appeals*, 246 SCRA 472, 474-475, July 17, 1995.

[16] *Rollo*, G.R. No. 99301, pp. 51-52.

Supreme Court E-Library

and had exercised due care and prudence, with due respect to human life and to others travelling in the same place, the driver could have stopped the bus the moment it crossed the island, and avoided crossing over to the other lane and bumping against vehicles travelling in opposite direction. The defendant's driver did not take any evasive action and utterly failed to adopt any measure to avoid injuries and damage to others because he 'lost control of the bus,' which was like a juggernaut, let loose in a big crowd, smashing everything on its path."

Second Issue: Moral Damages

Complainants aver that the moral damages awarded by Respondent Court are "clearly and woefully not enough." The established guideline in awarding moral damages takes into consideration several factors, some of which are the social and financial standing of the injured parties and[17] their wounded moral feelings and personal pride.[18] The Kierulf spouses add that the Respondent Court should have considered another factor: the loss of their conjugal fellowship and the impairment or destruction of their sexual life.[19]

The spouses aver that the disfigurement of Lucila's physical appearance cannot but affect their marital right to "consortium" which would have remained normal were it not for the accident. Thus the moral damages awarded in favor of Lucila should be increased to P1,000,000.00, not only for Lucila but also for her husband Victor who also suffered "psychologically." A California case, *Rodriguez vs. Bethlehem Steel Corporation*,[20] is cited as authority for the claim of damages by reason of loss of marital consortium, i.e. loss of conjugal fellowship and sexual relations.[21]

---

[17] *Lopez vs. Pan American World Airways*, 16 SCRA 431, 444, March 30, 1966.

[18] *Yutuk vs. Manila Electric Co.*, 2 SCRA 337, 346, May 31, 1961.

[19] Petitioners cite the following American jurisprudence: *Togstad vs. Vesely*, 291 NW 2d 686, Minn 1980; *Guevin vs. Manchester Street Railway Company*, 78 NH 289, 99 Atl. 298, LRA 1917 C 410; *Nees vs. Julian Goldman Stores*, 109 Wva 329, 154 SE 769; and *Budek vs. Chicago*, 279 Ill App 410.

[20] 115 Cal. Rptr. 765; 525 P. 2d 669.

[21] *Rollo*, G.R. No. 99301, p. 111.

Supreme Court E-Library

Pantranco rebuts that Victor's claim of moral damages on alleged loss of consortium is without legal basis. Article 2219 of the Civil Code provides that only the person suffering the injury may claim moral damages. Additionally, no evidence was adduced to show that the consortium had indeed been impaired and the Court cannot presume that marital relations disappeared with the accident.[22]

The Courts notes that the *Rodriguez* case clearly reversed the *original common law view* first enunciated in the case of *Deshotel vs. Atchison*,[23] that a wife could not recover for the loss of her husband's services by the act of a third party. Rodriguez ruled that when a person is injured to the extent that he/she is no longer capable of giving love, affection, comfort and sexual relations to his or her spouse, that spouse has suffered a direct and real personal loss. The loss is immediate and consequential rather than remote and unforeseeable; it is personal to the spouse and separate and distinct from that of the injured person.

Rodriguez involved a couple in their early 20s, who were married for only 16 months and full of dreams of building a family of their own, when the husband was struck and almost paralyzed by a falling 600-pound pipe. The wife testified how her life had deteriorated because her husband became a lifelong invalid, confined to the home, bedridden and in constant need of assistance for his bodily functions; and how her social, recreational and sexual life had been severely restricted. It also deprived her of the chance to bear their children. As a constant witness to her husband's pain, mental anguish and frustration, she was always nervous, tense, depressed and had trouble sleeping, eating and concentrating. Thus, the California court awarded her damages for loss of consortium.

Whether *Rodriguez* may be cited as authority to support the award of moral damages to Victor and/or Lucila Kierulf for "loss of consortium," however, cannot be properly considered in this case.

---

[22] *Rollo*, G.R. No. 99343, pp. 65-66.

[23] 2d 664, 328 P. 2d 449 [1958].

Supreme Court E-Library

Victor's claim for deprivation of his right to consortium, although argued before Respondent Court, is not supported by the evidence on record. His wife might have been badly disfigured, but he had not testified that, in consequence thereof, his right to marital consortium was affected. Clearly, Victor (and for that matter, Lucila) had failed to make out a case for loss of consortium, unlike the Rodriguez spouse. Again, we emphasize that this claim is factual in origin and must find basis not only in the evidence presented but also in the findings of the Respondent Court. For lack of factual basis, such claim cannot be ruled upon by this Court at this time.

Third Issue: No Consideration of Social and Financial Standing in this Case

The social and financial standing of Lucila cannot be considered in awarding moral damages. The factual circumstances prior to the accident show that no "rude and rough" reception, no "menacing attitude," no supercilious manner," no "abusive language and highly scornful reference" was given her. The social and financial standing of a claimant of moral damages may be considered in awarding moral damages only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.[24]

Be that as it may, it is still proper to award moral damages to Petitioner Lucila for her physical sufferings, mental anguish, fright, serious anxiety and wounded feelings. She sustained multiple injuries on the scalp, limbs and ribs. She lost all her teeth. She had to undergo several corrective operations and treatments. Despite treatment and surgery, her chin was still numb and thick. She felt that she has not fully recovered from her injuries. She even had to undergo a second operation on her gums for her dentures to fit. She suffered sleepless nights and shock as a consequence of the vehicular accident.[25] In this light and considering further the length of time spent in prosecuting the complaint and this appeal, we find the sum of P400,000.00 as moral damages for Petitioner Lucila to be fair and just under the circumstances.

---

[24] *Cf. Zulueta vs. Pan American World Airways, Inc.*, 43 SCRA 397, February 29, 1972.

[25] TSN, October 21, 1988, pp. 5-8.

Supreme Court E-Library

Fourth Issue: Exemplary Damages

Complainants also pray for an increase of exemplary damages to P500,000.00 and P50,000.00 for Spouses Kierulf and Legaspi, respectively. This prayer is based on the pronouncement of this Court in *Batangas Transportation Company vs. Caguimbal* [26] that "it is high time to impress effectively upon public utility operators the nature and extent of their responsibility in respect of the safety of their passengers and their duty to exercise greater care in the selection of drivers and conductors x x x."

Pantranco opposes this, for under Article 2231 of the Civil Code, "exemplary damages may be granted if the defendant acted with gross negligence." And allegedly, gross negligence is sorely lacking in the instant case.

Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender.[27] However, it cannot be recovered as a matter of right. It is based entirely on the discretion of the court.[28] Jurisprudence sets certain requirements before exemplary damages may be awarded, to wit:[29]

"(1) (T)hey may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant;

(2) the claimant must first establish his right to moral, temporate, liquidated or compensatory damages; and

---

[26] 22 SCRA 171, 176-177, January 29, 1968.

[27] *People vs. Teehankee, Jr.*, 249 SCRA 54, 116, October 6, 1995.

[28] Article 2233 of the New Civil Code.

[29] Tolentino, *Civil Code of the Philippines*, Volume V, 1992 Edition, pp. 663-664, citing *Octot vs. Ybañez*, 111 SCRA 79, 84, January 18, 1982; *De Leon vs. Court of Appeals*, 165 SCRA 166, 179, August 31, 1988; *Northwest Airlines Inc. vs. Cuenca*, 14 SCRA 1063, 1066, August 31, 1965; *Pan Pacific Company (Phil.) vs. Phil. Advertising Corporation*, 23 SCRA 977, 992, June 12, 1968; *Marchan vs. Mendoza*, 26 SCRA 731, 734, January 31, 1969; *Magbanua vs. Intermediate Appellate Court*, 137 SCRA 328, 332, June 29, 1985; *Globe Mackay vs. Court of Appeals*, 176 SCRA 779, 791, August 25, 1989.

Supreme Court E-Library

(3) the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner."

The claim of Lucila has been favorably considered in view of the finding of gross negligence by Respondent Court on the part of Pantranco. This is made clear by Respondent Court in granting Lucila's claim of exemplary damages:[30]

"(P)ublic utility operators like the defendant, have made a mockery of our laws, rules and regulations governing operations of motor vehicles and have ignored either deliberately or through negligent disregard of their duties to exercise extraordinary degree of diligence for the safety of the travelling public and their passengers x x x."

To give teeth to this warning, the exemplary damages awarded to Petitioner Lucila is increased to P200,000.00. The fact of gross negligence duly proven, we believe that Legaspi, being also a victim of gross negligence, should also receive exemplary damages. Under the facts proven, the Court awards him P25,000 as exemplary damages.

Fifth Issue: Loss of Earnings as a Component of Damages

Lost income in the amount of P16,500.00 is also claimed by Legaspi stating that his "whole future has been jeopardized."[31] This, in turn, is not rebutted by Pantranco.

It should be noted that Respondent Court already considered this when it stated that the award of P25,000.00 included compensation for "mental anguish and emotional strain of not earning anything with a family to support." Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury and are not meant to enrich complainant at the expense of defendant.[32]

---

[30] *Rollo*, G.R. No. 99301, p. 54.

[31] *Rollo*, G.R. No. 99301, p. 112.

[32] *Tan vs. Court of Appeals*, 239 SCRA 310, 324, December 20, 1994; *Zenith Insurance Corporation vs. CA*, 185 SCRA 398, 402, May 14, 1990; and *Robleza vs. Court of Appeals*, 174 SCRA 354, 369, June 28, 1989.

Supreme Court E-Library

We find, however, the claim of Legaspi to be duly substantiated. Pantranco failed to rebut the claim of Porfirio that he had been incapacitated for ten (10) months and that during said period he did not have any income. Considering that, prior to the accident, he was employed as a driver and was earning P1,650.00 a month, his claim for P16,500.00 as compensation for loss of earning capacity for said period is amply supported by the records[33] and is demandable under Article 2205 of the Civil Code.[34]

Complainants contend that Lucila is also entitled to damages for "loss or impairment of earning capacity in cases of temporary or permanent personal injury" under Article 2205 of the Civil Code. Notably, both the trial court and public respondent denied this prayer because of her failure to produce her income tax returns for the years 1985 and 1986, notwithstanding the production of her 1983 and 1984 income tax returns.

Pantranco opposes the above claim for loss of earning capacity on the ground that there is no proof "that for the two years immediately preceding the accident Lucila was indeed deriving income from some source which was cut off by the accident."[35]

We agree with the findings of Respondent Court that Lucila's claim of loss of earning capacity has not been duly proven. The alleged loss must be established by factual evidence for it partakes of actual damages. A party is entitled to adequate compensation for such pecuniary loss actually suffered and duly proved. Such damages, to be recoverable must not only be capable of proof, but must actually be shown with a reasonable degree of certainty. We have emphasized that these damages cannot be presumed, and courts in making an award must point out specific facts which can serve as basis for measuring whatever compensatory or actual

---

[33] TSN, January 8, 1988, p. 11; *Rollo*, G.R. No. 99301, p. 121.

[34] "Article 2205. Damages may be recovered:

(1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;

(2) For injury to the plaintiff's business standing or commercial credit."

[35] *Rollo*, G.R. No. 99343, pp. 67-68.

Supreme Court E-Library

damages are borne. [36] Mere proof of Lucila's earnings consisting of her 1983 and 1984 income tax returns would not suffice to prove earnings for the years 1985 and 1986. The incident happened on February 28, 1987. If indeed Lucila had been earning P50,000.00 every month prior to the accident, as she alleged, there are evidentiary proofs for such earnings other than income tax returns such as, but not limited to, payroll receipts, payments to the SSS, or withholding tax paid every month. Sad to say, these other proofs have not been presented, and we cannot presume that they exist on the strength of the word of Lucila alone.

Sixth Issue: Reduction of Actual Damages on the Pickup Based on an Estimate

Complainants contend that the reduction of 10% from the written estimate of the cost of repairs by the trial court is pure speculation.[37] Pantranco opposes this by pointing out that judicial notice is made by respondent Court of the propensity of motor repair shops to exaggerate their estimates.[38]

An estimate, as it is categorized, is not an actual expense incurred or to be incurred in the repair. The reduction made by respondent Court is reasonable considering that in this instance such estimate was secured by the complainants themselves.

Epilogue

This Court cannot remind the bench and the bar often enough that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court,[39] it is nevertheless essential that the claimant should satisfactorily show the existence of the

---

[36] *Del Mundo vs. Court of Appeals*, 240 SCRA 348, 356, January 20, 1995; *Refractories Corporation vs. Intermediate Appellate Court*, 176 SCRA 539, 545-546, August 17, 1989; and *Capco vs. Macasaet*, 189 SCRA 561, 570, September 13, 1990.

[37] *Rollo*, G.R. No. 99301, pp. 121-122.

[38] *Rollo*, G.R. No. 99343, p. 68.

[39] Art. 2216, Civil Code.

Supreme Court E-Library

factual basis of damages [40] and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.[41] In *Francisco vs. GSIS*,[42] the Court held that there must be clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his/her social humiliation, wounded feelings and anxiety, moral damages cannot be awarded. In *Cocoland Development Corporation vs. National Labor Relations Commission*,[43] the Court held that "additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, x x x social humiliation, wounded feelings, grave anxiety, etc., that resulted therefrom."

Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering he/she has undergone, by reason of the defendant's culpable action.[44] Its award is aimed at restoration, as much as possible, of the spiritual *status quo ante*; thus, it must be proportionate to the suffering inflicted.[45] Since each case must be governed by its own peculiar circumstances, there is no hard and fast rule in determining the proper amount. The yardstick should be that the amount awarded should not be so palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial judge.[46] Neither should it be so little or so paltry that it rubs salt to the injury already inflicted on plaintiffs.

---

[40] Art. 2217, Civil Code.

[41] *San Miguel Brewery, Inc. vs. Magno*, 21 SCRA 292, 300, September 29, 1967; *Radio Communications vs. Rodriguez*, 182 SCRA 899, 907, February 28, 1990.

[42] G.R. L-18155, March 30, 1939.

[43] G.R. No. 98458, July 17, 1996, p. 15, citing *Primero vs. Intermediate Appellate Court*, 156 SCRA 435, 444, December 14, 1987 and *Garcia vs. National Labor Relations Commission*, 234 SCRA 632, 638, August 1, 1994.

[44] *Radio Communications vs. Rodriguez, supra.*

[45] *Makabali vs. Court of Appeals*, 157 SCRA 253, 260, January 22, 1988.

[46] *Pleno vs. Court of Appeals*, 161 SCRA 208, 223, May 9, 1988.

Supreme Court E-Library

WHEREFORE, premises considered, the petition for review in G.R. No. 99301 is *PARTIALLY GRANTED*, while that of Pantranco North Express, Inc., in G.R. No. 99343 is *DISMISSED*. The Decision appealed from is *AFFIRMED* with *MODIFICATION*. The award of moral damages to Lucila and Legaspi is hereby *INCREASED* to P400,000.00 and P50,000.00 respectively; exemplary damages to Lucila is *INCREASED* to P200,000.00. Legaspi is awarded exemplary damages of P50,000.00. The amount of P16,500.00 as actual or compensatory damages is also *GRANTED* to Legaspi. All other awards of Respondent Court of Appeals are *AFFIRMED*. Pantranco shall also PAY legal interest of 6% per annum on all sums awarded from the date of promulgation of the decision of the trial court, May 24, 1989, until actual payment.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.*, concur.

THIRD DIVISION

[G.R. No. 100333. March 13, 1997]

HILARIO MAGCALAS, PROSPERO MARINDA, CELSO GAMALO, EPIFANIO OMEGA, VIRGILIO CAMPOS, ANTONIO LLAGAS, BERNARD BENDANILLO, SHALDY AUTENCIO, CIRIACO REYES, JUANITO DE LEON, EDMUNDO GUZMAN, ALFREDO SANTOS, BENEDICTO DAGCUTAN, NORBIE LOPENA, ISMAEL ALONZO, ELMER BALETA, GENITO DALMERO, and CESAR LEDESMA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and KOPPEL, INC.,** *respondents.*