

THIRD DIVISION

[G.R. No. 188493, December 13, 2017]

**VIVIAN B. TORREON AND FELOMINA F. ABELLANA,
PETITIONERS, V. GENEROSO APARRA, JR., FELIX CABALLES,
AND CARMELO SIMOLDE, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

Lack of documentary evidence is not fatal to a claim for the deceased's lost earning capacity. Testimony from a competent witness familiar with his salary is a sufficient basis to determine the deceased's income before his death.

This is a Petition for Review on Certiorari^[1] under Rule 45 of the 1997 Rules of Court, praying that the April 3, 2008 Decision^[2] and the May 28, 2009 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 71090 be partially modified. Petitioner Vivian B. Torreon (Vivian) prays that: (1) an award of actual or compensatory damages for loss of earning capacity worth P2,079,675.00 be granted; (2) the award of moral damages be increased to P1,000,000.00; (3) the award of exemplary damages be increased to P1,000,000.00; and (4) the awarded attorney's fees and litigation expenses be increased to P100,000.00 and P50,000.00, respectively.^[4]

On November 1, 1989, Vivian's husband, Rodolfo Torreon (Rodolfo), and daughters, Monalisa Torreon (Monalisa) and Johanna Ava Torreon (Johanna), arrived with Felomina Abellana (Abellana) at the municipal wharf of Jetafe, Bohol. They came from Cebu City aboard M/B Island Traders, a motor boat owned and operated by Carmelo Simolde (Simolde).^[5]

After they disembarked from the motor boat, they looked for a vehicle that would transport them from the wharf to the poblacion of Jetafe. A cargo truck entered the wharf and their fellow passengers boarded it. Abellana, Rodolfo, and his daughters chose not to board the already-overcrowded truck. Instead, they waited for a different vehicle to bring them to the poblacion. However, they were informed that only the cargo truck, which was also owned and operated by Simolde, would enter the wharf.^[6]

Approximately 10 minutes later, the same cargo truck returned to the wharf. Again, fellow passengers from M/B Island Traders started embarking it. This time, Rodolfo, Monalisa, Johanna, and Abellana also boarded it. Abellana was seated in front, while Rodolfo and his daughters were with the rest of the passengers at the back of the truck. Because there were no proper seats at the back of the truck, the 30 or more passengers were either standing or sitting on their bags.^[7]

While passengers were getting on the truck, Simolde called Felix Caballes (Caballes), the official truck driver. Caballes approached Simolde but left the engine

running. While Simolde and Caballes were talking, Generoso Aparra, Jr. (Aparra), Simolde's chief diesel mechanic, started driving the truck. Upon seeing the truck move, Caballes rushed to the truck and sat beside Aparra. However, instead of taking control of the vehicle, Caballes allowed Aparra to drive.^[8]

Shortly thereafter, Aparra maneuvered the truck to the right side of the road to avoid hitting a parked bicycle. But as he turned, Aparra had to swerve to the left to avoid hitting Marcelo Subiano, who was allegedly standing on the side of the road. Because the road was only four (4) meters and 24 inches wide, rough, and full of potholes, Aparra lost control of the truck and they fell off the wharf.^[9]

Consequently, Rodolfo and Monalisa died while Johanna and Abellana were injured.^[10]

On April 3, 1990, Vivian and Abellana filed a criminal complaint for Reckless Imprudence resulting to Double Homicide, Multiple Serious Physical Injuries and Damage to Property against Aparra and Caballes,^[11] docketed as Criminal Case No. 6555 before the Regional Trial Court, Tagbilaran City, Bohol.^[12]

On January 4, 1991, Vivian and Abellana filed a separate complaint for damages against Simolde, Caballes, and Aparra^[13] docketed as Civil Case No. 3593 before Branch 3, Regional Trial Court, Butuan City.^[14]

Simolde, Caballes, and Aparra filed a Motion to Dismiss and to Suspend Proceedings (Motion to Dismiss) in Civil Case No. 3593. They argued that when Abellana instituted Criminal Case No. 6555 before the Regional Trial Court of Bohol, she failed to make a reservation to file an independent civil action for damages. Thus, Abellana was barred from instituting the civil action.^[15]

On January 22, 1992, the Regional Trial Court of Butuan City denied the Motion to Dismiss. However, upon reconsideration, the Regional Trial Court dismissed the case, ruling that the civil action was impliedly instituted with Criminal Case No. 6555.^[16]

Abellana and Vivian filed a Petition for Certiorari before the Court of Appeals, assailing the dismissal of the case. On June 18, 1993, the Court of Appeals reinstated Civil Case No. 3593 but only with respect to Vivian.^[17]

During the trial for the civil case, SPO2 Federico T. Torniado (SPO2 Torniado) testified that he was the "acting traffic investigator of the PNP" assigned to the case.^[18] According to SPO2 Torniado, he had previously seen the pick-up truck transport passengers from the wharf to the poblacion.^[19] The road, which was four (4) meters wide, could only accommodate one (1) vehicle. Other than the truck, there were no other vehicles that came in and out of the wharf.^[20] He further testified that on the day of the accident, he asked to see Aparra's license but Aparra only presented a student driver's permit.^[21]

Abellana testified that Rodolfo was the General Manager of her businesses in Butuan City. As manager, Rodolfo was in charge of three (3) drugstores, an apartment, and rice fields. He was earning a basic salary of P10,000.00 and received a 20% commission on the profit of the businesses, thus, earning more or less P15,000.00. Abellana claimed that she could not present her accounting books to the court because she had already disposed of them.^[22]

On November 17, 2000, the Regional Trial Court ruled that Caballes and Aparra committed acts constituting a quasi-delict.^[23] Since these acts were the proximate cause of the deaths of Rodolfo and Monalisa and the injuries sustained by Abellana and Johanna, Simolde, Caballes, and Aparra were held liable for damages. The dispositive portion of the trial court Decision stated:

Wherefore, on the basis therefore of the foregoing evidence, both [testimonial and documentary [,] [t]his Court does hereby render judgment in favor of the plaintiffs and against defendants and hereby ordering the defendants as follows:

1. To pay jointly and severally to plaintiffs the amount of P300,000.00 as actual damages;
2. To pay jointly and severally to plaintiffs the sum of P50,000.00 as moral damages; and to pay in solidum to plaintiffs by way of litigation expenses in the sum of P10,000.00;
3. To pay in solidum into plaintiffs [Vivian] Torreon and Felomina Abellana the sum of P25,000.00 and P10,000.00 by way of Attorney's fees; and
4. To pay in solidum into plaintiffs the sum of P10,000.00 as exemplary damages.

SO ORDERED.^[24]

Simolde, Caballes, and Aparra filed a Notice of Appeal on November 27, 2000.^[25]

On April 3, 2008, the Court of Appeals promulgated a Decision^[26] holding Simolde solidarity liable with Caballes and Aparra. According to the Court of Appeals, Caballes and Aparra were clearly negligent in transporting the passengers. Given that the road was narrow and full of pot holes, it was apparent that an experienced driver was needed to safely navigate the vehicle out of the wharf. In allowing Aparra to drive the truck despite having only a student driver's permit, Caballes risked the lives of the passengers on board the truck. The Court of Appeals also held Simolde solidarity liable with his employees for failing to exercise due diligence in supervising them.^[27] However, the Court of Appeals deleted the award of actual damages for Rodolfo's loss of earning capacity. According to the Court of Appeals, documentary evidence should be presented to substantiate a claim for loss of earning capacity. The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, in view of the foregoing, the decision of the Court *a quo* in Civil Case No. 3593 is SET ASIDE and another one is RENDERED ordering appellants Carmelo T. Simolde, Felix Caballes and Generoso Aparra, Jr., to pay, solidarity, appellee Vivian Torreon the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity for the death of Rod[o]lfo Torreon; another Fifty Thousand (P50,000.00) Pesos as civil indemnity for the death of Monalisa Torreon; Twenty-five Thousand (P25,000.00) Pesos as temperate or moderate damages for pecuniary loss sustained due to the death of Rod[o]lfo Torreon and another Twenty-five Thousand (P25,000.00) Pesos as temperate or moderate damages for pecuniary

loss sustained due to the death of Monalisa Torreon; Fifty Thousand (P50,000.00) Pesos as moral damages; Ten Thousand (P10,000.00) Pesos as exemplary damages; Ten Thousand . . . (P10,000.00) Pesos as attorney's fees and Twenty[-]Five Thousand (P25,000.00) Pesos as litigation expenses, with legal interest at the rate of SIX PERCENT(6%) per annum starting from the date of the promulgation of the court *a quo's Decision* or from 17 November 2000. A TWELVE PERCENT (12%) interest, in lieu of SIX PERCENT (6%), shall be imposed on such amount upon finality of this decision until actual payment thereof.

SO ORDERED.^[28]

Vivian and Abellana filed a Motion for Partial Reconsideration,^[29] asking the Court of Appeals to modify its April 3, 2008 Decision by increasing the award of the damages to the following amounts:

- (a) Php2,079,675.00, as compensatory damages for loss or impairment of earning capacity (*lucro cesant*); instead of Php25,000.00.
- (b) Php300,000.00 as actual damages for funeral and burial expenses; or in the alternative, a reasonable or just amount as temperate damages.
- (c) Php1,000,000.00 as moral damages; instead of Php50,000.00.
- (d) Php1,000,000.00 as exemplary damages; instead of Php10,000.00.
- (e) Php100,000.00 and Php50,000.00 as attorney's fees and litigation expenses; instead of Php10,000.00 and Php25,000.00, respectively[.]^[30]

In its May 28, 2009 Resolution,^[31] the Court of Appeals denied the motion.

Hence, this Petition was filed before this Court.

Petitioner Vivian argues that the Court of Appeals gravely erred in deleting the compensatory damages awarded for Rodolfo's loss of earning capacity.^[32] She posits that Abellana's testimony is enough to prove Rodolfo's income. As Rodolfo's employer, Abellana had direct and personal knowledge of the compensation that he was receiving prior to his death; thus, she is qualified to testify on his income.^[33] Petitioner Vivian cites *Philippine Airlines, Inc. v. Court of Appeals*^[34] to point out that the Court of Appeals gravely erred in concluding that Abellana's testimony, without any documentary evidence, did not suffice to claim damages for lack of earning capacity.^[35] Based on Abellana's testimony, Rodolfo had an estimated gross monthly income of P15,000.00 or an annual gross income of P195,000.00.^[36] Using the formula^[37] laid down in *Negros Navigation Co., Inc. v. Court of Appeals*,^[38] Rodolfo's lost earnings would amount to P2,079,675.00.^[39]

Petitioner Vivian cites four (4) reasons why the damages awarded to her should be increased. First, she points to the gravity of the loss she suffered. The difficulties she has gone through, following the death of her husband and her young daughter, are immeasurable and deserve a higher compensation. Second, the degree of the negligence committed by respondents, as affirmed by the Court of Appeals, is gross and inexcusable, thereby warranting harsher penalties.^[40] Third, Simolde has an undisputable substantial financial capacity to pay more. Allegedly, Simolde has a "virtual monopoly of the business at Jetafe wharf."^[41] He has the capacity to pay the increased amounts petitioner Vivian is praying for. Lastly, the length of the litigation, which spanned almost two (2) decades at the time this petition was filed to this Court, has whittled down the real value of the monetary award.^[42]

On the other hand, respondents argue that the Court of Appeals committed no reversible error in the assailed Decision. They claim that there is no sufficient proof to sustain the award of damages.^[43] Respondents also contend that the inclusion of Abellana as a petitioner is baseless. The Court of Appeals in CA-G.R. SP No. 28859 already ruled that the present case is reinstated only with respect to Vivian.^[44]

In its February 17, 2010 Resolution, this Court required petitioners to file a Reply to respondents' Comment.^[45]

On April 28, 2010, petitioners filed their Reply and claimed that Abellana's inclusion as a petitioner is "a non-issue."^[46] Abellana was only joined as a petitioner because she was already a co-petitioner in the lower courts. However, as seen "in the prayer of the Petition for Review, Felomina Abellana is not mentioned as being entitled [to] payment for damages from respondents."^[47]

The issues for this Court's resolution are as follows:

First, whether or not actual damages for loss of earning capacity should be awarded to petitioner Vivian B. Torreon; and

Second, whether or not the value of the other awarded damages should be increased.

Before proceeding with the discussion regarding civil damages, this Court will briefly discuss Abellana's standing in this case. Notably, the Court of Appeals already ruled on this matter. However, since respondents raised it in their Comment,^[48] it is best to address this concern.

I

On April 3, 1990, petitioners instituted a criminal case against respondents. However, petitioner Abellana did not reserve her right to file a separate civil action for damages arising from the crime.^[49] Rule 111, Section 1(a) of the Rules of Court provides:

Section 1. Institution of criminal and civil actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.