

## THIRD DIVISION

[ G.R. No. 190521, January 12, 2011 ]

**LETICIA TAN, MYRNA MEDINA, MARILOU SPOONER, ROSALINDA TAN, and MARY JANE TAN, MARY LYN TAN, CELEDONIO TAN, JR., MARY JOY TAN, AND MARK ALLAN TAN, REPRESENTED HEREIN BY THEIR MOTHER, LETICIA TAN, PETITIONERS, VS. OMC CARRIERS, INC. AND BONIFACIO ARAMBALA, RESPONDENTS.**

### RESOLUTION

**BRION, J.:**

We resolve the motion for reconsideration<sup>[1]</sup> - filed by Leticia Tan, Myrna Medina, Marilou Spooner, Rosalinda Tan, Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan, and Mark Allan Tan (*petitioners*), all heirs of the late Celedonio Tan - asking us to reverse and set aside our Resolution of February 17, 2010.<sup>[2]</sup> We denied in this Resolution their petition for review on *certiorari* for failing to show any reversible error in the assailed Court of Appeals (CA) decision of June 22, 2009<sup>[3]</sup> sufficient to warrant the exercise of our discretionary appellate jurisdiction.

The CA decision, in turn, affirmed with modification the decision of the Regional Trial Court (RTC) of Muntinlupa City in Civil Case No. 96-186, finding the respondents - OMC Carriers, Inc. (OMC) and Bonifacio Arambala - guilty of gross negligence and awarding damages to the petitioners.

### THE FACTS

On September 27, 1996, the petitioners filed a complaint for damages with the RTC against OMC and Bonifacio Arambala.<sup>[4]</sup> The complaint states that on November 24, 1995, at around 6:15 a.m., Arambala was driving a truck<sup>[5]</sup> with a trailer<sup>[6]</sup> owned by OMC, along Meralco Road, Sucat, Muntinlupa City. When Arambala noticed that the truck had suddenly lost its brakes, he told his companion to jump out. Soon thereafter, he also jumped out and abandoned the truck. Driverless, the truck rammed into the house and tailoring shop owned by petitioner Leticia Tan and her husband Celedonio Tan, instantly killing Celedonio who was standing at the doorway of the house at the time.<sup>[7]</sup>

The petitioners alleged that the collision occurred due to OMC's gross negligence in not properly maintaining the truck, and to Arambala's recklessness when he abandoned the moving truck. Thus, they claimed that the respondents should be held jointly and severally liable for the actual damages that they suffered, which include the damage to their properties, the funeral expenses they incurred for Celedonio Tan's burial, as well as the loss of his earning capacity. The petitioners also asked for moral and exemplary damages, and attorney's fees.<sup>[8]</sup>

The respondents denied any liability for the collision, essentially claiming that the damage to the petitioners was caused by a fortuitous event, since the truck skidded due to the slippery condition of the road caused by spilled motor oil.<sup>[9]</sup>

### **THE RTC DECISION**

After trial, the RTC found OMC and Arambala jointly and severally liable to the petitioners for damages.<sup>[10]</sup> Relying on the doctrine of *res ipsa loquitur*, the RTC held that it was unusual for a truck to suddenly lose its brakes; the fact that the truck rammed into the petitioners' house raised the presumption of negligence on the part of the respondents. These, the respondents failed to refute.<sup>[11]</sup>

The RTC did not agree with the respondents' claim of a fortuitous event, pointing out that even with oil on the road, Arambala did not slow down or take any precautionary measure to prevent the truck from skidding off the road. The alleged oil on the road did not also explain why the truck lost its brakes. Had OMC done a more rigid inspection of the truck before its use, the defective brake could have been discovered. The RTC, thus, held OMC jointly and severally liable with Arambala for the damage caused to the petitioners, based on the principle of vicarious liability embodied in Article 2180<sup>[12]</sup> of the Civil Code.<sup>[13]</sup>

The dispositive portion of the decision stated:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering:

1. The defendants to pay the plaintiffs jointly and severally the amount of P50,000.00 for the death of Celedonio Tan;
2. The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 for the loss of earning capacity of Celedonio Tan, plus interest thereon from the date of death of Celedonio Tan;
3. The defendants to pay the plaintiff Leticia Tan jointly and severally the amount of P355,895.00 as actual damages;
4. The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 as moral damages;
5. The defendants to pay the plaintiffs jointly and severally the amount of P500,000.00 as exemplary damages; and
6. The defendants to pay the plaintiffs jointly and solidarily the amount of P500,000.00 as attorney's fees.

Costs against the defendants.

SO ORDERED.<sup>[14]</sup>

### **THE COURT OF APPEALS DECISION**

On appeal, the CA affirmed the RTC's findings on the issues of the respondents' negligence and liability for damages. However, the CA modified the damages awarded to the petitioners by reducing the actual damages award from P355,895.00

to P72,295.00. The CA observed that only the latter amount was duly supported by official receipts.<sup>[15]</sup>

The CA also deleted the RTC's award for loss of earning capacity. The CA explained that the petitioners failed to substantiate Celedonio Tan's claimed earning capacity with reasonable certainty; no documentary evidence was ever presented on this point. Instead, the RTC merely relied on Leticia Tan's testimony regarding Celedonio Tan's income. The CA characterized this testimony as self-serving.<sup>[16]</sup>

The CA further reduced the exemplary damages from P500,000.00 to P200,000.00, and deleted the award of attorney's fees because the RTC merely included the award in the dispositive portion of the decision without discussing its legal basis.<sup>[17]</sup>

### **THE PETITION**

In the petition for review on *certiorari* before us,<sup>[18]</sup> the petitioners assert that the CA erred when it modified the RTC's awarded damages. The petitioners submit the reasons outlined below.

*First*, the CA erred when it reduced the RTC's award of actual damages from P355,895.00 to P72,295.00. The petitioners claim that they sought compensation for the damage done to petitioner Leticia Tan's house, tailoring shop, sewing machines, as well as other household appliances. Since the damages primarily refer to the value of their destroyed property, and not the cost of repairing or replacing them, the value cannot be evidenced by receipts. Accordingly, the RTC correctly relied on petitioner Leticia Tan's testimony and the documentary evidence presented, consisting of pictures of the damaged property, to prove their right to recover actual damages for the destroyed property.

*Second*, the petitioners are entitled to actual damages for the loss of Celedonio Tan's earning capacity. While they admit that they did not submit any documentary evidence to substantiate this claim, the petitioners point out that Celedonio Tan was undisputably a self-employed tailor who owned a small tailor shop; in his line of work, no documentary evidence is available.

*Third*, the petitioners maintain that they are entitled to exemplary damages in the amount of P500,000.00 because the RTC and the CA consistently found that the collision was caused by the respondents' gross negligence. Moreover, the respondents acted with bad faith when they fabricated the "oil slick on the road" story to avoid paying damages to the petitioners. As observed by the CA, the Traffic Accident Investigation Report did not mention any motor oil on the road at the time of the accident. SPO4 Armando Alambro, the Investigation Officer, likewise testified that there was no oil on the road at the time of the accident. For the public good and to serve as an example, the respondents should be made to pay P500,000.00 as exemplary damages.

*Lastly*, the petitioners are entitled to attorney's fees based on Article 2208 of the Civil Code which provides, among others, that attorney's fees can be recovered when exemplary damages are awarded, and when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

We initially denied the petition in our Resolution of February 17, 2010, for the petitioners' failure to show any reversible error in the CA decision sufficient to warrant the exercise of our discretionary appellate jurisdiction. In our Resolution of August 11, 2010, we reinstated the petition on the basis of the petitioners' motion for reconsideration.

### **OUR RULING**

Finding merit in the petitioners' arguments, we **partly grant** the petition.

#### ***Procedural Issue***

As both the RTC and the CA found that the respondents' gross negligence led to the death of Celedonio Tan, as well as to the destruction of the petitioners' home and tailoring shop, we see no reason to disturb this factual finding. We, thus, concentrate on the sole issue of what damages the petitioners are entitled to.

We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages, an essentially factual question, because Section 1, Rule 45 of the Rules of Court, expressly states that -

Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. **The petition shall raise only questions of law which must be distinctly set forth.**

In light, however of the RTC's and the CA's conflicting findings on the kind and amount of damages suffered which must be compensated, we are compelled to consider the case as one of the recognized exceptions.<sup>[19]</sup> We look into the parties' presented evidence to resolve this appeal.

#### ***Temperate damages in lieu of actual damages***

We begin by discussing the petitioners' claim for actual damages arising from the damage inflicted on petitioner Leticia Tan's house and tailoring shop, taking into account the sewing machines and various household appliances affected. Our basic law tells us that to recover damages there must be pleading and proof of actual damages suffered.<sup>[20]</sup> As we explained in *Viron Transportation Co., Inc. v. Delos Santos*:<sup>[21]</sup>

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.<sup>[22]</sup>

The petitioners do not deny that they did not submit any receipt to support their claim for actual damages to prove the monetary value of the damage caused to the house and tailoring shop when the truck rammed into them. Thus, no actual damages for the destruction to petitioner Leticia Tan's house and tailoring shop can be awarded.

Nonetheless, absent competent proof on the actual damages suffered, a party still has the option of claiming temperate damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss.<sup>[23]</sup> As defined in Article 2224 of the Civil Code:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

In *Canada v. All Commodities Marketing Corporation*,<sup>[24]</sup> we disallowed the award of actual damages arising from breach of contract, where the respondent merely alleged that it was entitled to actual damages and failed to adduce proof to support its plea. In its place, we awarded temperate damages, in recognition of the pecuniary loss suffered.

The photographs the petitioners presented as evidence show the extent of the damage done to the house, the tailoring shop and the petitioners' appliances and equipment.<sup>[25]</sup> Irrefutably, this damage was directly attributable to Arambala's gross negligence in handling OMC's truck. Unfortunately, these photographs are not enough to establish the amount of the loss with certainty. From the attendant circumstances and given the property destroyed,<sup>[26]</sup> we find the amount of P200,000.00 as a fair and sufficient award by way of temperate damages.

### ***Temperate damages in lieu of loss of earning capacity***

Similarly, the CA was correct in disallowing the award of actual damages for loss of earning capacity. Damages for loss of earning capacity are awarded pursuant to Article 2206 of the Civil Code, which states that:

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

- (1) The defendant shall be liable for the loss of the 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