

FIRST DIVISION

[G.R. No. 139268, September 03, 2002]

**PHILIPPINE TELEGRAPH & TELEPHONE CORPORATION AND
LOUIE CABALIT, PETITIONERS, VS. HON. COURT OF APPEALS
AND LOLITA SIPE ESCARA, RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Assailed in the instant petition of the Philippine Telegraph & Telephone Corporation ("PT&T") and Louie Cabalit is the judgment of the Court of Appeals in CA G.R. CV No. 48313, promulgated on 15 March 1999, which has affirmed with modification the decision of the Regional Trial Court of Makati awarding damages to respondent Lolita Sipe Escara.

The facts were synthesized by the appellate court in its decision under review.

"On July 13, 1990, Felicitas B. Sipe, a resident of Surallah, South Cotabato, remitted to her sister-in-law, Lolita Sipe Escara, two telegraphic money orders through the facilities of Philippine Telegraph and Telephone Company (PT&T, for brevity). The money orders, one for P2,000.00 and the other for P1,000.00, originated from Marbel, South Cotabato, and were transmitted to the Cubao branch of PT&T. Plaintiff was then studying for a doctoral degree in Education at the University of the Philippines (U.P., for brevity), Diliman, Quezon City and was residing in one of its dormitories, the Ipil Residence Hall. According to the plaintiff, the money was sent for the purpose of paying for her tuition fee for one semester at the U.P.; paying for her fare to go back to Cotabato to enable her to complete the requirements for a job promotion; and paying for the cost of the medical consultation of her son who is sick of diabetes.

"On July 22, 1990, plaintiff's husband sent her a telegram advising her to inform him if she has received a remittance of P3,000.00. She made several phone calls to PT&T to inquire about the money but was told that no money was transmitted in her favor. On August 10, 1990, plaintiff sent her husband a telegram to inform him of her non-receipt of the money. On August 18, 1990, plaintiff's husband again sent her a telegram instructing her to claim at the PT&T Cubao branch the money transmitted on July 13, 1990.

"On August 20, 1990, plaintiff went to the PT&T office to inquire about the remittance in her favor. Since Louie Cabalit, the branch cashier, was not around, plaintiff was constrained to return the next day. It was only in the afternoon of August 21, 1990, that she was able to talk to Louie Cabalit about the remittance. Cabalit looked into his records, after which,

the branch security guard informed plaintiff that no money was transmitted to her. Upon plaintiff's request, Cabalit issued a certification that no telegraphic money order in favor of plaintiff was received from Surralah by PT&T. Nevertheless, Cabalit told her that he would re-examine his records to determine whether a remittance was made in her name.

"Subsequently, Cabalit informed plaintiff that the money being claimed by her did not come from Surralah but from Marbel, South Cotabato. On August 22, 1990, an attempt was made by PT&T to deliver the telegraphic money order at plaintiff's dormitory but she was not around. On September 10, 1990, plaintiff received from PT&T two checks representing the amount remitted to her. However, plaintiff was not able to encash the checks at once because the bank did not have a clearance from PT&T. Finally, on September 14, 1990, plaintiff was able to encash the checks."

"Aggrieved by the delay in the delivery of the remittance, plaintiff filed a complaint for damages against PT&T and Louie Cabalit. In her complaint, she alleged that the delay was the cause of her failure to enroll for one semester at the U.P.; to complete her requirements for a job promotion; and to bring her son to the doctor for medical consultation. On November 29, 1994, the lower court rendered the questioned decision, the dispositive portion of which reads:

"`WHEREFORE, this Court renders judgment in favor of the plaintiff and against the defendants, ordering the defendants, jointly and severally, to pay the plaintiff:

- ` 1. The sum of P100,000.00 in actual/compensatory damages;
- ` 2. The sum of P50,000 in moral damages;
- ` 3. The sum of P10,000.00 in exemplary damages;
- ` 4. No attorney's fees awarded being a pro bono publica case; and
- ` 5. To pay costs of suits.'"^[1]

Petitioners appealed the decision of the trial court to the Court of Appeals. The appellate court affirmed the decision with modification. Finding to be inadequate the evidence submitted by respondent Lolita Sipe Escara to prove pecuniary loss suffered by her, the Court of Appeals deleted the award of actual damages. The appellate court, however, sustained the award of moral and exemplary damages in favor of private respondent, ratiocinating thusly:

"Article 1170 of the Civil Code provides that `those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.' In the case at bar, appellant PT&T, for a fee, undertook to send plaintiff two telegraphic money orders in the sum of P3,000.00. Appellant, however, failed to deliver the money to plaintiff immediately after the money order was transmitted to its Cubao branch. It was only

on September 14, 1990, or almost two months from transmittal that plaintiff was finally able to have her money.

"We find PT&T negligent when it did not take steps to ensure the prompt delivery of the money to plaintiff from the time the checks were issued in her favor. It is quite clear that PT&T did not act with any sense of urgency but with indifference and nonchalance with respect to plaintiff's case. First of all, after Louie Cabalit endorsed the two checks to the dispatch section of PT&T and subsequently took an emergency leave, the personnel at the Cubao branch did not exert enough effort to effect the delivery of the money. In fact, the Cubao branch wired its Marbel branch only on August 3, 1990 to request for the complete address of the recipient from the sender. Apparently, it took them eighteen days to realize that the address of the recipient was insufficient.

"Furthermore, the claim of PT&T that it made several attempts to deliver the money between July 17, 1990 and August 3, 1990 is open to doubt because there is no proof showing to what extent PT&T endeavored to locate the plaintiff. Francisco Dumlao, administrative officer of the Registrar's Office of U.P., testified that the addressee of letters or telegrams labeled only as 'U.P. Diliman,' is located by referring to the records of currently enrolled students under the active file or to the records of its alumni under the inactive file. It appears that PT&T did not attempt to inquire from the Registrar's Office regarding plaintiff's whereabouts since it obviously failed to draw the inference that the University of the Philippines is a school with facilities that can be of assistance in locating its own students."^[2]

In the instant appeal, petitioners would strongly urge that the appellate court be reversed in awarding moral and exemplary damages to respondent Lolita Escara with the latter's failure to present evidence that she had suffered wounded feelings, serious anxiety, and mental anguish or that the act she had ascribed to petitioners was done in bad faith, or in wanton, fraudulent, oppressive or malevolent manner. Private respondent, however, would insist that the clearly established culpable conduct of petitioners warranted the award of both moral and exemplary damages.

There is merit in the petition.

The breach of an obligation because of fraud, negligence or delay or of a contravention by any means of the tenor of that obligation does open the defaulting obligor to possible liability for damages. The right to those damages and the extent of their recovery would depend on the kind and nature of the damages and the manner in which the injury causing it is brought about.

The Court of Appeals was correct in deleting the award made by the trial court of actual damages where proof of pecuniary loss, in an action based on *culpa contractual*, is essential. Finding the evidence to be wanting in this respect, the appellate court did not err in its judgment.

In the case of moral damages, recovery is more an exception rather than the rule. Moral damages are not punitive in nature but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. In order that an award of moral damages can be aptly