REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

SECOND DIVISION

July 26, 2017

G.R. No. 219649

AL DELA CRUZ, Petitioner
vs.
CAPT. RENATO OCTA VIANO and WILMA OCTA VIANO, Respondents

D E C I S I O N

PERALTA, *J.:*

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 12, 2015, of petitioner Al Dela Cruz that seeks to reverse and set aside the Decision[1] dated January 30, 2014 and Resolution[2] dated June 22, 2015 of the Court of Appeals *(CA)* reversing the: Decision dated February 24, 2009 of the Regional Trial Court *(RTC),* Branch 275, Las Piñas City in a civil case for damages.

The facts follow.

Around 9:00 p.m. on April 1, 1999, respondent Captain Renato Octaviano, a military dentist assigned at the Office of the Chief Dental Service, Armed Forces of the Philippines, Camp Aguinaldo, Quezon City, respondent Wilma Octaviano, Renato's mother and Janet Octaviano, Renato's sister, rode a tricycle driven by Eduardo Y. Padilla. Respondent Wilma and Janet were inside the sidecar of the vehicle, while Renato rode at the back of the tricycle driver. They then proceeded to Naga Road towards the direction of CAA and BF Homes. Renato was asking his mother for a change to complete his ₱l0.00 bill when he looked at the road and saw a light from an oncoming car which was going too fast. The car, driven by petitioner, hit the back portion of the tricycle where Renato was riding. The force of the impact caused the tricycle to tum around and land on the pavement near the gutter. Thus, Renato was thrown from the tricycle and landed on the gutter about two meters away. Renato felt severe pain in his lower extremities and went momentarily unconscious and when he regained consciousness, he heard his sister shouting for help. A man came followed by other people. The first man who answered Janet's call for help shouted to another man at a distance saying: *"Ikaw, dalhin mo yung sasakyan mo dito. Jkaw ang nakabangga sa kanila. Dalhin mo sila sa ospital."* They pulled Renato out of the gutter and carried him to the car. Petitioner brought them to his house and alighted thereat for two to three minutes and then he brought the passengers to a clinic. Renato insisted on being brought to a hospital because he realized the severity of his injuries. Thus, Renato, hb mother, and Janet were brought to Perpetual Help Medical Center where Renato's leg was amputated from below the knee on that same night. After his treatment at Perpetual Help Medical Center, Renato was brought to the AFP Medical Center at V. Luna General Hospital and stayed there for nine months for rehabilitation. Shortly before his discharge at V. Luna, he suffered bone infection. He was brought to Fort Bonifacio Hospital where he was operated on thrice for bone infection. Thereafter, he was treated at the same hospital for six months. In the year 2000, he had a prosthesics attached to his leg at V. Luna at his own expense. Renato spent a total of ₱623,268.00 for his medical bills and prosthetics.

Thus, Renato and his mother Wilma filed with the RTC a civil case for damages against petitioner and the owner of the vehicle.

Aside from their testimonies, the complainants, herein respondents presented the testimonies of S/Sgt. Joselito Lacuesta *(S/Sgt. Lacuesta)* and Antonio Fernandez.

According to S/Sgt. Lacuesta, he was somewhere along Naga Road around 9:00 p.m. when the incident occurred. He was talking with his three friends when he felt like urinating, so he moved a few paces away from his companions. When he was about to relieve himself, he saw an oncoming vehicle with bright lights and also saw a tricycle which was not moving fast and after the latter passed him by, it collided with the vehicle. He then saw someone fell down near him and when he saw that the car was about to move, he told his companions to stop the car from leaving. Thereafter, he noticed that the person who landed in front of him was already unconscious so he helped him and called one of his companions to carry the injured man to the car. He told the driver of the car *"Isakay mo ito, nabangga mo ito,"* and then proceeded to board the injured man in front of the car, while he told the other passengers of the tricycle to board at the back of the car. His companions forcibly took *("pinilas")* the license plate of the car and he also noticed that the driver of the car was drunk *("nakainom").* After the car left, he and his companions stayed in the area wherein a policeman later arrived and towed the tricycle.

Witness Antonio Fernandez, one of S/Sgt. Lacuesta's companions, corroborated the latter's testimony.

Petitioner, on the other hand, testified that on April 1, 1999, he borrowed the car of Dr. Isagani Cirilo, a Honda Civic registered under the name of the latter, to bring his mother to church. Thus, he then brought his mother to the Jehovah's Witness church in Greenview which was about 20 to 25 minute drive from their house in Naga Road, Pulanlupa. Around 6:25 p.m., he went home directly from the church and waited for the call of his mother. Thereafter, he left the house around 8:30 p.m. and went to pick up fish food that he previously ordered before fetching his mother. When he was along Naga Road, he noticed a tricycle from a distance of about 100 to 120 meters away and was going the opposite direction. He also noticed an Elf van parked along the road on the opposite side. He flashed his low beam and high beam light to signal the tricycle. The tricycle then slowed down and stopped a bit, hence, he also slowed down. Suddenly, the tricycle picked up speed from its stop position and the two vehicles collided. He then stopped his car a few meters away from the collision site and made a u-turn to confront the driver of the tricycle. He also noticed that there were already about a dozen people around the site of the collision. He saw a man sitting on the gutter and proceeded to move the car towards the former and asked him and his companions to help board the injured man and the latter's co-passengers of the tricycle in the car he was driving. Thereafter, he drove them to Perpetual Help Hospital where the man was treated for his injuries.

The testimony of Imelda Cirilo, the wife of the owner of the car, was also presented. She testified, among others, that on the night of the accident, petitioner borrowed their car to bring the latter's mother to the church and that upon learning of the incident, she went to Perpetual Help Hospital and signed on the Admission Slip so that respondent Renato could be operated on without the former admitting any liability. She also testified that she offered to help the victims, but the latter refused and that she admitted that she did not give any financial assistance for the hospital bills nor for medicines.

Renato Martinez, a traffic enforcer, was also presented and testified that he received a call through radio about an incident along Naga Road, Pulanlupa, Las Piñas City around 8:30 p.m. so he proceeded to the area and arrived there around 9:00 p.m. When he arrived at the scene, nobody was there and that the vehicles involved in the collision were no longer there. At the scene of the accident, he saw splinters of glass on the road but there was no blood and he also saw an Elf van parked along the street fronting CAA. He then proceeded to Perpetual Help Hospital after he received a call on his radio that the people involved in the accident were already at the said hospital. At the hospital, he was able to talk with petitioner. Thereafter, he called up his base and informed the base that the driver of the Honda Civic was at the hospital. Later on, Sgt. Soriano, the investigator-on-duty arrived at the hospital and instructed Sgt. Martinez to accompany petitioner to the headquarters because some relatives of respondents were asking that petitioner be brought to Fort Bonifacio. Thus, Sgt. Martinez and petitioner boarded the Honda Civic involved in the accident and proceeded to the headquarters.

The RTC, in its Decision dated February 24, 2009, dismissed the claim of respondents. According to the RTC, petitioner's version of the incident was more believable because it was corroborated by Sgt. Martinez who testified that he saw an Elf van parked along the street. The R TC also ruled that petitioner did everything that was expected of a cautious driver. The court further ruled that the owner of the Honda Civic, Isagani Cirilo could not be held liable because petitioner was a family friend who merely borrowed the car and not his driver nor his employee. It was also ruled that the liability rests on the tricycle driver who drove without license and petitioner's contributory negligence in riding at the back of the driver in violation of Municipal Ordinance No. 35-88 that limits the passengers of a tricycle to three persons including the driver.

Respondents appealed the R TC decision to the CA.

In its Decision dated January 30, 2014, the CA reversed the RTC's decision. According to the CA, petitioner was negligent as shown in the police report. It also found that petitioner was positive for alcoholic breath, thus, he violated Republic Act *(R.A.)* No. 4136 that prohibits any person from driving a motor vehicle while under the influence of alcohol or narcotic drug. It also ruled that the owner of the vehicle is equally responsible and liable for the accident and the resulting injuries that the victims sustained. As such, the CA disposed of the case as follows:

> WHEREFORE, in view of the foregoing, the decision appealed from is hereby REVERSED and SET ASIDE. Defendants are held solidarily liable to plaintiffs and ordered to pay the plaintiffs in the following

manner:

1. pay plaintiff Wilma Octaviano the following: medical expenses, ₱l,500.00, hospital expenses, ₱l,450.00 and transportation expenses, ₱6,000.00;

2. pay plaintiff Renato Octaviano the following: hospital expenses, ₱369,354.00, medical expenses, ₱60,462.23, loss of income, ₱90,000.00;

3. pay [plaintiff] Wilma Octaviano ₱50,000.00 as and by way of moral damages;

4. pay plaintiff Renato Octaviano ₱l00,000.00 as and by way of moral damages;

5. pay plaintiffs ₱20,000.00 each as and by way of exemplary damages; and

6. pay plaintiffs ₱100,000.00 as attorney's fees.

SO ORDERED.[3]

Thus, the present petition after the CA denied petitioner's motion for reconsideration.

Petitioner relies upon the following grounds:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE PETITIONER WAS NEGLIGENT WHILE DRIVING HIS CAR.

II

THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE NOT SUPPORTED BY THE EVIDENCE ADDUCED.

III

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT THE PROXIMATE CAUSE OF THE INCIDENT WAS THE FAULT OR GROSS NEGLIGENCE OF THE TRICYCLE DRIVER.

IV

THE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.[4]

Petitioner insists that he was not negligent and that the driver of the tricycle was the one at fault. He also argues that the investigation report relied upon by the CA should not have been used in determining what actually transpired because the traffic investigator was not presented as a witness and petitioner was not able to confront or cross-examine him regarding the report. Petitioner further denies that he was drunk when the incident happened and that the CA erred in appreciating the mere opinions of the witnesses that he appeared drunk at that time.

In their Comment, respondents contend that the issues raised by petitioner are factual in nature and are not the proper subjects of a petition for review under Rule 45. They also contend that the CA did not err in their finding that petitioner was negligent at the time of the incident.

A close reading of the present petition would show that the issues raised are factual in nature. This Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[5] Inasmuch as the R TC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue.[6]

The concept of negligence has been thoroughly discussed by this Court in *Romulo Abrogar, et al. v. Cosmos Bottling Company, et al.,*[7] thus:

> Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[8] Under Article 1173 of the Civil Code, it consists of the "omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place."[9] The Civil Code makes liability for negligence clear under Article 2176,[10] and Article 20.[11]
>
> To determine the existence of negligence, the following time-honored test has been set in *Picart v. Smith:*[12]
>
> > The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
> >
> > The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence, they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[13]
>
> x x x x
>
> In order for liability from negligence to arise, there must be not only proof of damage and negligence, but also proof that the damage was the consequence of the negligence. The Court has said in *Vda. de Gregorio v. Go Chong Bing:*[14]
>
> > x x x Negligence as a source of obligation both under the civil law and in American cases was carefully considered and it was held:
> >
> > > We agree with counsel for appellant that under the Civil Code, as under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:
> > >
> > > (1) Damages to the plaintiff.
> > >
> > > (2) Negligence by act or omission of which defendant personally or some person for whose acts it must respond, was guilty.
> > >
> > > (3) The connection of cause and effect between the negligence and the damage."

In this case, the RTC found no reason to conclude that petitioner was negligent. The CA, however, found the contrary. This Court must then ascertain whose evidence was preponderant, for Section 1,[15] Rule 133 of the Rules of Court mandates that in civil cases, like this one, the party having the burden of proof must establish his case by a preponderance of evidence. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[16] It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[17] Generally, the party who

denies has no burden to prove.[18] In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[19] The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the Rules of Court, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.[20]

By preponderance of evidence, according to *Raymundo* v. *Lunaria:*[21]

> x x x is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

In addition, according to *United Airlines, Inc.* v. *Court of Appeals,*[22] the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

After reviewing the records of the case, this Court affirms the findings of the CA. In ruling that petitioner was negligent, the CA correctly appreciated the pieces of evidence presented by the respondents, thus:

> First, with regard to the damage or injury, there is no question that the plaintiffs suffered damage due to the incident on April 1, 1999. Plaintiff Renato Octaviano's right leg was crushed by the impact of the Honda Civic driven by defendant Dela Cruz against the tricycle where the Octavianos were riding and as a result thereof, Renato's right leg was amputated. Plaintiff Wilma Octaviano suffered traumatic injuries/hematoma on different parts of her body as borne by the evidence submitted to the trial court. The damages or injuries were duly proved by preponderant evidence.
>
> Second, with regard to the wrongful act or omission imputable to the negligence of defendant Al Dela Cruz, We hold that the trial court missed the glaring fact that defendant Dela Cruz was guilty of negligence.
>
> The police report prepared by the traffic investigator SPO2 Vicente Soriano detailed what happened on the night of April 1, 1999, to wit:
>
> > x x x x
> >
> > On the Spot Investigation conducted by the undersigned, showed that Vehicle 2 while moving ahead and upon arriving in front of said motor shop, Vehicle 2 avoided hitting another tricycle which vehicle (Tricycle) was standing while waiting for a would-be passenger. Said Veh-2 driver swerved the car to the left and it was at this instance when said Veh-1 was sideswiped by said Veh-2.
> >
> > xxx
> >
> > Weather Condition: Fair
> >
> > Road condition: Concrete and Dry
> >
> > Driver's Condition: Veh-1, Normal; Veh-2 Positive for Alcoholic Breath (AB)"
>
> For a clearer understanding of the said police report, Vehicle-I referred to by Soriano is the tricycle where plaintiffs were riding, and Vehicle-2 is the Honda Civic driven by Dela Cruz.
>
> Was the statement in the police report that Al Dela Cruz was positive for alcoholic breath substantiated/corroborated?
>
> Yes. Two witnesses testified that Dela Cruz appeared to be drunk on that fateful night. Joey Lacuesta and Antonio Fernandez were there on the spot when the incident happened. They were the first ones to assist the victim Renato Octaviano who was slumped unconscious in the gutter. Lacuesta was the one who boarded the injured Renato into the front seat of the car and he noticed that the driver was drunk:
>
> > Q: You said that you placed the injured person in front of the Honda Civic, the driver was there in the car, what, if anything did you notice about the condition of the driver of the car?
> >
> > A: *Nakainom,* I noticed that because when I boarded the injured person into the front passenger seat, I noticed that he is drunk.

Antonio Fernandez heard his friend Aries Sy shout at the driver of the car to stop when it appeared to by continuously moving. Fernandez also noted that the driver appeared to be drunk, thus:

> Q: Now you said that the driver of the car was drunk. Did you say that when you testified?
>
> A: Yes, sir. *Lasing yung driver.*
>
> Q: What made you think that this driver of the car was drunk?
>
> A: Because of his actions and he was also mad.
>
> Q: Because he was mad, then you thought that he was drunk. x x x?
>
> A: No, Sir. You can see or you can observe the actions of a person if he is drunk.
>
> x x x x

More importantly, the law prohibits drunk driving. Republic Act No. 4136, Chapter IV, Article V, Section 53 known as Land Transportation and Traffic Code provides that no person shall drive a motor vehicle while under the influence of liquor or narcotic drug. It is established by plaintiffs evidence that defendant Dela Cruz drove the Honda Civic while under the influence of alcohol thus proving his negligence.

With regard to the third requisite, that there be a direct relation of cause and effect between the damage or injury and the fault or negligence is clearly present in the case at bar. Had defendant Dela Cruz exercised caution, his Honda Civic would not have collided with the tricycle and plaintiffs leg would not be crushed necessitating its amputation. The cause of the injury or damage to the plaintiff's leg is the negligent act of defendant Dela Cruz.

The last requisite is that there be no pre-existing contractual relation between the parties. It is undeniable that defendant and plaintiffs had no prior contractual relation, that they were strangers to each other before the incident happened. Thus, the four requisites that must concur under Article 2176 are clearly established in the present case. Plaintiffs are entitled to claim damages.[23]

Petitioner argues that the CA erred in relying on the police report without petitioner having the chance to cross-examine the police officer who prepared the same. Be that as it may, the contents of the said police report are corroborated by the testimonies of the other witnesses presented before the court. The said contents of the police report are more believable than the version of petitioner of what transpired. As correctly observed by the CA:

> Dela Cruz narrated in his testimony that he saw a parked Elf van on the opposite road and the tricycle also on the opposite road going to the opposite direction. He claims that he flashed his low beam and high beam to warn the tricycle, the tricycle stopped momentarily and then picked up speed *"umarangkada"* and that was why the two vehicles collided. However, he admitted that the point of impact of the two vehicles was *"lagpas fang konti"* from the front of the parked Elf. He could not stop. He did not know what to do. He slowed down. He did not stop but continued driving. If it were true that as far as about 100-120 meters away he already saw the parked Elf van and the tricycle, he could have slowed down or stopped to give way to the tricycle to avoid collision. In fact, if the collision point was right ahead of the front of the parked Elf van, it means that the tricycle was already past the parked Elf and it was Dela Cruz who forced his way into the two-way road. More evident is that the tricycle was hit at the back portion meaning it was already turning after passing the parked Elf. Had Dela Cruz slowed down or stopped a short while to let the tricycle pass clear of the van, then the incident would not have happened. The reasonable foresight required of a cautious driver was not exercised by defendant Dela Cruz.[24]

As to the denial of petitioner that he was drunk at the time of the accident, whether or not he was in a state of inebriation is inconsequential given the above findings. His being sober does not and will not erase the fact that he was still negligent and that the proximate cause of the collision was due to his said negligence. Proximate cause is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred."[25] As such, petitioner is wrong when he claims that the proximate cause of the accident was the fault of the tricycle driver.

Neither is it correct to impute contributory negligence on the part of the tricycle driver and respondent Renato when the latter had violated a municipal ordinance that limits the number of passengers for each tricycle for hire to three persons including the driver. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[26] To hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body.[27] To

prove contributory negligence, it is still necessary to establish a causal link, although not proximate, between the negligence of the party and the succeeding injury. In a legal sense, negligence is contributory only when it contributes proximately to the injury, and not simply a condition for its occurrence.[28] In this case, the causal link between the alleged negligence of the tricycle driver and respondent Renato was not established. This court has appreciated that negligence *per se,* arising from the mere violation of a traffic statute, need not be sufficient in itself in establishing liability for damages.[29] Also, noteworthy is the ruling of the CA as to the matter, thus:

> The trial court absolved defendants of liability because of the failure of the plaintiffs to present the tricycle driver and thus concluding that plaintiffs suppressed evidence adverse to them. This is error on the part of the trial court. The non-presentation of the tricycle driver as a witness does not affect the claim of the plaintiffs-appellants against herein defendants-appellees. Even granting that the tricycle driver was presented in court and was proved negligent, his negligence cannot cancel out the negligence of defendant Dela Cruz, because their liabilities arose from different sources. The obligation or liability of the tricycle driver arose out of the contract of carriage between him and petitioners whereas defendant Dela Cruz is liable under Article 2176 of the Civil Code or under quasi-delicts. There is ample evidence to show that defendant Dela Cruz was negligent within the purview of Article 2176 of the Civil Code, hence, he cannot escape liability.[30]

This Court further agrees with the CA that the respondents are entitled to the award of moral and exemplary damages. Moral damages, x x x, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and 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 imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219[31] and Article 2220[32] of the Civil Code, x x x[33] Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted,[34] the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant - associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud[35] - that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[36]

> In awarding the above, the CA correctly ruled that:
>
> It is extant in the records that defendants did not overturn or disprove the plaintiffs' claim for actual damages such as the hospital bills/expenses which were duly supported by documentary evidence (receipts). It was also duly proven that defendant Al Dela Cruz acted with gross disregard for the suffering of his victims when he refused to board them in his car and only did so when forced by the by-standers who assisted the victims, when he drove to his house first before driving to a clinic then to [the] hospital when it was obvious that Renato Octaviano's wound was severe and needed immediate professional attention. These insensitivity of defendant caused suffering to the plaintiffs that must be compensated.[37]

As to the award of attorney's fees, Article 2208 of the New Civil Code provides the following:

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
>
> (6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In this case, since exemplary damages are awarded, the award of attorney's fees is necessary.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 12, 2015, of petitioner Al Dela Cruz is **DENIED** for lack of merit. Consequently, the Decision dated January 30, 2014 and Resolution dated June 22, 2015 of the Court of Appeals in CAG. R. CV No. 93399 are **AFFIRMED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to the Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P.A. SERENO
Chief Justice

Footnotes

[1] Penned by Associate Justice Rosmari D. Carandang, with the concurrence of Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon; *rollo,* pp. 24-37.

[2] *Id.* at 39-40.

[3] *Id.* at 36.

[4] *Id.* at 6-7.

[5] *Philippine Shell Petroleum Corporation v. Gobonseng, Jr.,* 528 Phil. 724, 735 (2006); *Sta. Maria v. Court of Appeals,* 349 Phil. 275, 282-283 (1998); *Fuentes v. Court of Appeals,* 335 Phil. 1163, 1168- 1169 (1997);

Reyes v. Court of Appeals, 328 Phil. 171, 180 (1996); *Floro v. Llenado,* 314 Phil. 715, 727- 728 (1995); *Remalante v. Ti be,* 241 Phil. 930, 935-936 (1988).

[6] *BJDC Construction v. Lanuza, et al.,* 730 Phil. 240-251 (2014), citing *Sealoader Shipping Corporation v. Grand Cement Manufacturing Corporation, et al.,* 653 Phil. 155, 180 (2010).

[7] G.R. No. 164749, March 15, 2017

[8] *Philippine National Railways Corp., et al. v. Vizcara, et al.,* 682 Phil. 343, 352 (2012), citing *Layugan v. Intermediate Appellate Court,* 249 Phil. 363, 373 (1988).

[9] Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. When negligence shows bad faith, the provision of Articles 1171 and 2201, paragraph 2, shall apply.

[10] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called *quasi-delict* and is governed by the provisions of this Chapter.

[11] Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[12] 37 Phil. 809 (1918).

[13] *Id.* at 813.

[14] 102 Phil. 556 (1957).

[15] Section 1. Preponderance of evidence, how determined. - In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the 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 there 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. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[16] *BJDC Construction v. Lanuza, et al., supra* note 3, at 252, citing *People v. Macagaling,* 307 Phil. 316,338 (1994).

[17] *Id.,* citing *Luxuria Homes, Inc. v. Court of Appeals,* 361 Phil. 989, 1000; *Coronel v. Court of Appeals,* 331Phil.294, 318-319 (1996).

[18] *Id.,* citing *Martin v. Court of Appeals,* 282 Phil. 610, 615 (1992).

[19] *Id.,* citing *Pacific Banking Corporation Employees Organization v. Court of Appeals,* 351 Phil. 438, 447 (1998).

[20] *Sambar v. Levi Strauss & Co.,* 428 Phil. 425, 433 (2006).

[21] 590 Phil. 546, 552-553 (2008).

[22] 409 Phil. 88, 100 (2001).

[23] *Rollo,* pp. 31-34. (Citations omitted)

[24] *Id.* at 33-34.

[25] II Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), citing *Butcher v. R. Co.,* 37 W.Va. 180, 16 S.E. 457, 18 L.R.A. 519; L*utz v. R. Co.,* 6 N.M. 496, 30 Pac. 912, 16 L.R.A. 819.

[26] *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

[27] *Estacion v. Bernardo,* 518 Phil. 388, 401-402 (2006); *Añonuevo v. Court of Appeals,* 483 Phil. 756, 773 (2004).

[28] *Id.* at 769-769.

[29] *Id.* at 768-769.

[30] *Rollo,* pp. 35-36. (Citation omitted)

[31] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1)A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26,27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this a1ticle, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[32] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[33] *Del Mundo v. Court of Appeals,* 310 Phil. 367, 376-377 (1995).

[34] *People v. Dalisay,* 620 Phil. 831, 844 (2009). citing *People v. Catubig,* 416 Phil. 102, 119 (200 I), citing *American Cent. Corp. v. Stevens Van Lines, Inc.,* 103 Mich App 507, 303 NW2d 234; *Morris v. Duncan,* 126 Ga 467, 54 SE 1045; *Faircloth v. Greiner,* 174 Ga app 845, 332 SE 2d 905; §731, 22 Am Jur 2d, p. 784; *American Surety Co. v. Gold,* 375 F 2d 523, 20 ALR 3d 335; *Erwin v. Michigan,* 188 Ark 658, 67SW2d592.

[35] §762, 22 Am Jur 2d pp. 817-818.

[36] §733. 22 Am Jur 2d, p. 785; Symposium: Punitive Damages, 56 So Cal LR 1, November 1982.

[37] *Rollo,* p. 36.

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