

SECOND DIVISION

**G.R. No. 197813 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. EDWIN IBÁÑEZ Y ALBANTE AND ALFREDO (FREDDIE)
NULLA Y IBÁÑEZ, Accused-appellants.**

Promulgated:

SEP 25 2013



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CONCURRING and DISSENTING OPINION

LEONEN, J.:

I concur with the *ponencia* in its discussion affirming the lower courts in finding accused-appellants guilty beyond reasonable doubt for the crime of murder, sentencing them to suffer imprisonment of *reclusion perpetua* and to indemnify the heirs of Wilfredo D. Atendido.

I express my dissent, however, in so far as the deletion of the award for loss of earning capacity in the amount of ₱1,946,180.00. This award was taken back for having no anchor but the bare assertions of Wilfredo's wife that her husband earned ₱400.00 to ₱500.00 daily as a doormat vendor.

Section 2206 of the Civil Code provides the basis of damages for loss of earning capacity as follows:

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 account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death[.]

As a *general rule*, this Court holds that “documentary evidence should

be presented to substantiate a claim for loss of earning capacity [but] by way of *exception*, [this] may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws."¹

There have been occasions when We denied an award for unearned income unsupported by evidence except for the sole testimony by the spouse of the deceased. The recent ones include *Victory Liner v. Gammad*.² In this case, no other evidence was presented except respondent's testimony that the deceased was Section Chief of the Bureau of Internal Revenue in Tuguegarao with an annual salary of ₱83,088.00.³ In *People v. Oco*,⁴ the wife's bare testimony that the deceased earned ₱8,000.00 monthly as a legal researcher of a private corporation was considered insufficient to justify the award.⁵ Similarly, We denied the award in *People v. Caraig*⁶ finding that Agustin received ₱5,000.00 monthly as a Social System employee, Raagas was compensated ₱30,000.00 monthly as president of a family-owned corporation, while Castro earned ₱7,500.00 monthly as a taxi driver.⁷

In all these cases, this Court found that none of the exceptions were present. The deceased were neither self-employed earning less than the minimum wage nor employed as daily wage workers earning less than the minimum wage. They were, in fact, capable of producing competent evidence such as income tax returns or receipts but failed to do so.

Wilfredo was a doormat vendor. His source of income was irregular and largely dependent on how many doormats he could sell in a day, if any. These doormats were peddled. They were not highly priced. It is most likely that Wilfredo did not file income tax returns nor issue official receipts. In any case, minimum wage earners are exempt from the payment of income tax.⁸ Thus, they do not need to file an income tax return.

The *ponencia* recognized that Wilfredo's occupation may fall under the first exception; that is, the deceased is self-employed and earning less

¹ See *Tan v. OMC Carriers Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 483 citing *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576 and *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598. See also *Victory Liner Inc. v. Gammad*, 486 Phil. 574, 590 (2004) citing *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003, 412 SCRA 190, 222.

² *Victory Liner Inc. v. Gammad*, 486 Phil. 574 (2004).

³ *Id.* at 591.

⁴ *People v. Oco*, 458 Phil. 815 (2003).

⁵ *Id.* at 855.

⁶ *People v. Caraig*, 448 Phil. 78 (2003).

⁷ *Id.* at 98.

⁸ See Republic Act No. 8424, as amended, Sec. 24 (A)(2).

than the minimum wage, and judicial notice may be taken of the fact that in his line of work, no documentary evidence is available. However, according to the *ponencia*, Rowena's claim of ₱400.00 to ₱500.00 daily income is above the minimum wage for Region III whose minimum wage is below ₱400.00.⁹

In the 2000 case of *People v. Ereño*,¹⁰ the victim was a self-employed fish vendor who died in 1995. This Court denied the claim for unearned income based solely on his mother's handwritten estimate that the deceased earned ₱600.00 daily during the last eight years prior to his death.¹¹ Even compared with today's minimum wage, this claim still exceeds the rate by a relevant margin. In the 2011 case of *Tan v. OMC Carriers*,¹² the deceased was a self-employed tailor who also died in 1995. This Court found that the claim of ₱13,000.00 as monthly income greatly exceeded the prevailing minimum wage in 1995 of ₱145.00 per day or ₱3,770.00 a month.¹³

The amount claimed by Wilfredo's wife does not vary too far from the minimum wage in Bulacan, Region III. In fact, it would pass for minimum wage in the National Capital Region.¹⁴ I am of the view that evidence presented, if seen as credible by the trial court judge, should stand in the absence of clear basis to refute it.¹⁵ The accused should have presented evidence to refute the evidence in chief presented.

In any event, this Court has, in the past, awarded temperate damages in lieu of an award for unearned income "where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income."¹⁶ ₱200,000.00 was awarded in the 2001 case of *People v. Singh*,¹⁷ ₱500,000.00 in the 2004 case of *Victory Liner v. Gammad*,¹⁸ and ₱300,000.00 in the 2011 case of *Tan v. OMC Carriers*.¹⁹

The income-earning capacity of Wilfredo was never disputed. It would seem that ₱25,000.00 as temperate damages is too meager an amount for the loss suffered by Wilfredo's heirs as a result of his untimely death in 2004.

⁹ See Wage Order No. 17. This Order was effective October 11, 2012. Available at: <http://www.nwpc.dole.gov.ph/pages/region_3/cmwr_table_r3.html>

¹⁰ 383 Phil. 30 (2000).

¹¹ *People v. Ereño*, 383 Phil. 30, 45-46 (2000).

¹² *Tan v. OMC Carriers, Inc.*, supra note 1.

¹³ Id. at 483-484.

¹⁴ See Wage Order No. NCR-18. This Order was effective October 4, 2013. Available at: <http://www.nwpc.dole.gov.ph/pages/ncr/cmwr_table.html>.

¹⁵ See *Jara v. People of the Philippines*, G.R. No. 172896, April 19, 2010, 618 SCRA 406, 408.

"x x x factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record."

¹⁶ *Tan v. OMC Carriers, Inc.*, supra note 1, at 484.

¹⁷ 412 Phil. 842, 859 (2001).

¹⁸ *Victory Liner Inc. v. Gammad*, 486 Phil. 574, 591 (2004).

¹⁹ *Tan v. OMC Carriers, Inc.*, supra note 1, at 484-485.

Thus, I concur in affirming the lower courts in finding accused-appellants guilty beyond reasonable doubt for the crime of murder, but I dissent in so far as the deletion of the award for loss of earning capacity in favor of the heirs of Wilfredo D. Atendido.



MARVIC MARIO VICTOR FAMORCA LEONEN
Associate Justice