



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**MARIANO C. MENDOZA and  
ELVIRA LIM,**

Petitioners,

-versus-

**G.R. No. 160110**

**Present:**

BRION, J.\*  
*Acting Chairperson,*  
DEL CASTILLO,  
PEREZ,  
MENDOZA, \*\* and  
PERLAS-BERNABE, JJ.

**SPOUSES LEONORA J. GOMEZ  
and GABRIEL V. GOMEZ**

Respondents.

Promulgated:

JUN 18 2014

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**DECISION**

**PEREZ, J.:**

Assailed in the present appeal by *certiorari* is the Decision<sup>1</sup> dated 29 September 2003 of the Special Fourth Division of the Court of Appeals (CA) in CA-G.R. CV No. 71877, which affirmed with modification the Decision<sup>2</sup> dated 31 January 2001 of the Regional Trial Court (RTC), Branch 172, Valenzuela City in Civil Case No. 5352-V-97, and which effectively allowed the award of actual, moral, and exemplary damages, as well as attorney's fees and costs of the suit in favor of respondent Spouses Leonora and Gabriel Gomez (respondents).

\* Per Special Order No. 1698 dated 13 June 2014.

\*\* Per Special Order No. 1696 dated 13 June 2014.

<sup>1</sup> *Rollo*, pp. 17-23; penned by Associate Justice Elvi John S. Asuncion with Associate Justices Mercedes Gozo-Dadole and Lucas P. Bersamin (now a member of this Court) concurring.

<sup>2</sup> *Records*, pp. 86-88; penned by Judge Floro P. Alejo.

### **Antecedent Facts**

On 7 March 1997, an Isuzu Elf truck (Isuzu truck) with plate number UAW 582,<sup>3</sup> owned by respondent Leonora J. Gomez (Leonora)<sup>4</sup> and driven by Antenojenes Perez (Perez),<sup>5</sup> was hit by a Mayamy Transportation bus (Mayamy bus) with temporary plate number 1376-1280,<sup>6</sup> registered under the name of petitioner Elvira Lim (Lim)<sup>7</sup> and driven by petitioner Mariano C. Mendoza (Mendoza).<sup>8</sup>

Owing to the incident, an Information for reckless imprudence resulting in damage to property and multiple physical injuries was filed against Mendoza.<sup>9</sup> Mendoza, however, eluded arrest, thus, respondents filed a separate complaint for damages against Mendoza and Lim, seeking actual damages, compensation for lost income, moral damages, exemplary damages, attorney's fees and costs of the suit.<sup>10</sup> This was docketed as Civil Case No. 5352-V-97.

According to PO1 Melchor F. Rosales (PO1 Rosales), investigating officer of the case, at around 5:30 a.m., the Isuzu truck, coming from Katipunan Road and heading towards E. Rodriguez, Sr. Avenue, was travelling along the downward portion of Boni Serrano Avenue when, upon reaching the corner of Riviera Street, fronting St. Ignatius Village, its left front portion was hit by the Mayamy bus.<sup>11</sup> According to PO1 Rosales, the Mayamy bus, while traversing the opposite lane, intruded on the lane occupied by the Isuzu truck.<sup>12</sup>

PO1 Rosales also reported that Mendoza tried to escape by speeding away, but he was apprehended in Katipunan Road corner C. P. Garcia Avenue by one Traffic Enforcer Galante and a security guard of St. Ignatius Village.<sup>13</sup>

As a result of the incident, Perez, as well as the helpers on board the Isuzu truck, namely Melchor V. Anla (Anla), Romeo J. Banca (Banca), and

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<sup>3</sup> Folder of Exhibits, pp. 1-2; Exhibits "A-3" and "B-1."

<sup>4</sup> Id. at 1; Exhibit "A-2."

<sup>5</sup> Id. at 6; Exhibit "E."

<sup>6</sup> Id.

<sup>7</sup> Id. at 10; Exhibit "I."

<sup>8</sup> Id. at 6; Exhibits "E" and "E-2."

<sup>9</sup> Records, pp. 9-10.

<sup>10</sup> Id. at 1-4 and 57-59.

<sup>11</sup> Folder of Exhibits, p. 6; Exhibit "E."

<sup>12</sup> TSN, 18 September 1998, p. 8; Testimony of PO1 Rosales.

<sup>13</sup> Folder of Exhibits, p. 6; Exhibit "E-3."

Jimmy Repisada (Repisada), sustained injuries necessitating medical treatment amounting to ₱11,267.35, which amount was shouldered by respondents. Moreover, the Isuzu truck sustained extensive damages on its cowl, chassis, lights and steering wheel, amounting to ₱142,757.40.<sup>14</sup>

Additionally, respondents averred that the mishap deprived them of a daily income of ₱1,000.00. Engaged in the business of buying plastic scraps and delivering them to recycling plants, respondents claimed that the Isuzu truck was vital in the furtherance of their business.

For their part, petitioners capitalized on the issue of ownership of the bus in question. Respondents argued that although the registered owner was Lim, the actual owner of the bus was SPO1 Cirilo Enriquez (Enriquez), who had the bus attached with Mayamy Transportation Company (Mayamy Transport) under the so-called “*kabit* system.” Respondents then impleaded both Lim and Enriquez.

Petitioners, on the other hand, presented Teresita Gutierrez (Gutierrez), whose testimony was offered to prove that Mayamy Bus or Mayamy Transport is a business name registered under her name, and that such business is a sole proprietorship. Such was presented by petitioners to rebut the allegation of respondents that Mayamy Transport is a corporation;<sup>15</sup> and to show, moreover, that although Gutierrez is the sole proprietor of Mayamy Transport, she was not impleaded by respondents in the case at bar.<sup>16</sup>

After weighing the evidence, the RTC found Mendoza liable for direct personal negligence under Article 2176 of the Civil Code, and it also found Lim vicariously liable under Article 2180 of the same Code.

As regards Lim, the RTC relied on the Certificate of Registration issued by the Land Transportation Office on 9 December 1996<sup>17</sup> in concluding that she is the registered owner of the bus in question. Although actually owned by Enriquez, following the established principle in transportation law, Lim, as the registered owner, is the one who can be held liable.

Thus, the RTC disposed of the case as follows:

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<sup>14</sup> Records, p. 86; RTC Decision.

<sup>15</sup> TSN, 13 April 1999, p. 2; Testimony of Gutierrez.

<sup>16</sup> Records, p. 73.

<sup>17</sup> Folder of Exhibits, p. 10; Exhibit “I.”

WHEREFORE, judgment is hereby rendered in favor of the [respondents] and against the [petitioners]:

1. Ordering the [petitioners] except Enriquez to pay [respondents], jointly and severally, the costs of repair of the damaged vehicle in the amount of ₱142,757.40;
2. Ordering the defendants except Enriquez to pay [respondents], jointly and severally, the amount of ₱1,000.00 per day from March 7, 1997 up to November 1997 representing the unrealized income of the [respondents] when the incident transpired up to the time the damaged Isuzu truck was repaired;
3. Ordering the [petitioners] except Enriquez to pay [respondents], jointly and severally, the amount of ₱100,000.00 as moral damages, plus a separate amount of ₱50,000.00 as exemplary damages;
4. Ordering the [petitioners] except Enriquez to pay [respondents], jointly and severally, the amount of ₱50,000.00 as attorney's fees;
5. Ordering the [petitioners] except Enriquez to pay [respondents] the costs of suit.<sup>18</sup>

Displeased, petitioners appealed to the CA, which appeal was docketed as CA-G.R. CV No. 71877. After evaluating the damages awarded by the RTC, such were affirmed by the CA with the exception of the award of unrealized income which the CA ordered deleted, *viz*:

**WHEREFORE**, premises considered, the appeal is **PARTLY GRANTED**. The judgment of the Regional Trial Court of Valenzuela City, Branch 172 dated January 31, 2001, is **MODIFIED**, in that the award of P1,000.00 per day from March 1997 up to November 1997 representing unrealized income is **DELETED**. The award of P142,757.40 for the cost of repair of the damaged vehicle, the award of P100,000.00 as moral damages, the award of P50,000.00 as exemplary damages, the award of P50,000.00 as attorney's fees and the costs of the suit are hereby **MAINTAINED**.<sup>19</sup>

### **The Present Petition**

Unsatisfied with the CA ruling, petitioners filed an appeal by *certiorari* before the Court, raising the following issues:<sup>20</sup>

1. The court a quo has decided questions of substance in a way not in accord with law or with the applicable decisions of the Supreme Court when it awarded:

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<sup>18</sup> Records, p. 88.

<sup>19</sup> *Rollo*, p. 22.

<sup>20</sup> *Id.* at 10.

a. Moral damages in spite of the fact that the [respondents'] cause of action is clearly based on **quasi-delict** and [respondents] **did not sustain physical injuries** to be entitled thereto pursuant to Article 2219 (2) of the New Civil Code and pertinent decisions of the Supreme Court to that effect. The court a quo erroneously concluded that the driver acted in bad faith and erroneously applied the provision of Article 21 of the same code to justify the award for bad faith is not consistent with quasi-delict which is founded on fault or negligence.

b. Exemplary damages in spite of the fact that there is no finding that the vehicular accident was due to petitioner-driver's gross negligence to be entitled thereto pursuant to Article 2231 of the New Civil Code and pertinent decisions of the Supreme Court to that effect. The factual basis of the court a quo that "the act of the driver of the bus in attempting to escape after causing the accident in wanton disregard of the consequences of his negligent act is such gross negligence that justifies an award of exemplary damages" is an act after the fact which is not within the contemplation of Article 2231 of the New Civil Code.

c. Attorney's fees in spite of the fact that the assailed decisions of the trial court and the court a quo are bereft with jurisdictions for the award of attorney's fees pursuant to the pertinent decisions of the Supreme Court on the matter and provision Article 2208 of the New Civil Code. The court a quo erroneously applied the decision of the Supreme Court in *Bañas, Jr. vs. Court of Appeals*, 325 SCRA 259.

### **The Court's Ruling**

The petition is partially meritorious.

Respondents anchor their claim for damages on Mendoza's negligence, banking on Article 2176 of the Civil Code, to wit:

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 a quasi-delict and is governed by the provisions of this Chapter.

In impleading Lim, on the other hand, respondents invoke the latter's vicarious liability as espoused in Article 2180 of the same Code:

The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business of industry.

The first question to address, then, is whether or not Mendoza's negligence was duly proven. Negligence is defined as 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.<sup>21</sup>

As found by the RTC, and affirmed by the CA, Mendoza was negligent in driving the subject Mayamy bus, as demonstrated by the fact that, at the time of the collision, the bus intruded on the lane intended for the Isuzu truck. Having encroached on the opposite lane, Mendoza was clearly in violation of traffic laws. Article 2185 of the Civil Code provides that unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. In the case at bar, Mendoza's violation of traffic laws was the proximate cause of the harm.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.<sup>22</sup>

The evidence on record shows that before the collision, the Isuzu truck was in its rightful lane, and was even at a stop, having been flagged down by a security guard of St. Ignatius Village.<sup>23</sup> The mishap occurred when the Mayamy bus, travelling at a fast speed as shown by the impact of

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<sup>21</sup> TOLENTINO, Civil Code of the Philippines, Vol. V, p. 594.

<sup>22</sup> *Dumayag v. People*, G.R. No. 172778, 26 November 2012, 686 SCRA 347, 359, citing *Vallacar Transit v. Catubig*, G.R. No. 175512, 30 May 2011, 649 SCRA 281, 295-296.

<sup>23</sup> TSN, 18 September 1998, p. 1; Testimony of Anlap.

the collision, and going in the opposite direction as that of the Isuzu truck, encroached on the lane rightfully occupied by said Isuzu truck, and caused the latter to spin, injuring Perez, Anla, Banca, and Repisada, and considerably damaging the Isuzu truck.

Having settled the fact of Mendoza's negligence, then, the next question that confronts us is who may be held liable. According to Manresa, liability for personal acts and omissions is founded on that indisputable principle of justice recognized by all legislations that when a person by his act or omission causes damage or prejudice to another, a juridical relation is created by virtue of which the injured person acquires a right to be indemnified and the person causing the damage is charged with the corresponding duty of repairing the damage. The reason for this is found in the obvious truth that man should subordinate his acts to the precepts of prudence and if he fails to observe them and causes damage to another, he must repair the damage.<sup>24</sup> His negligence having caused the damage, Mendoza is certainly liable to repair said damage.

Additionally, Mendoza's employer may also be held liable under the doctrine of vicarious liability or imputed negligence. Under such doctrine, a person who has not committed the act or omission which caused damage or injury to another may nevertheless be held civilly liable to the latter either directly or subsidiarily under certain circumstances.<sup>25</sup> In our jurisdiction, vicarious liability or imputed negligence is embodied in Article 2180 of the Civil Code and the basis for damages in the action under said article is the direct and primary negligence of the employer in the selection or supervision, or both, of his employee.<sup>26</sup>

In the case at bar, who is deemed as Mendoza's employer? Is it Enriquez, the actual owner of the bus or Lim, the registered owner of the bus?

In *Filcar Transport Services v. Espinas*,<sup>27</sup> we held that the registered owner is deemed the employer of the negligent driver, and is thus vicariously liable under Article 2176, in relation to Article 2180, of the Civil Code. Citing *Equitable Leasing Corporation v. Suyom*,<sup>28</sup> the Court ruled that in so far as third persons are concerned, the registered owner of the motor vehicle is the employer of the negligent driver, and the actual

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<sup>24</sup> SANGCO, Torts and Damages, Vol. I, p. 1.

<sup>25</sup> Id., Vol. II, p. 433.

<sup>26</sup> Id., Vol. II, p. 466.

<sup>27</sup> G.R. No. 174156, 20 June 2012, 674 SCRA 117, 128.

<sup>28</sup> 437 Phil. 244, 252 (2002)

employer is considered merely as an agent of such owner. Thus, whether there is an employer-employee relationship between the registered owner and the driver is irrelevant in determining the liability of the registered owner who the law holds primarily and directly responsible for any accident, injury or death caused by the operation of the vehicle in the streets and highways.<sup>29</sup>

As early as *Erezo v. Jepte*,<sup>30</sup> the Court, speaking through Justice Alejo Labrador summarized the justification for holding the registered owner directly liable, to wit:

x x x The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicles on the public highways, responsibility therefore can be fixed on a definite individual, the registered owner. Instances are numerous where vehicle running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.

“One of the principal purposes of motor vehicles legislation is identification of the vehicle and of the operator, in case of accident; and another is that the knowledge that means of detection are always available may act as a deterrent from lax observance of the law and of the rules of conservative and safe operation. Whatever purpose there may be in these statutes, it is subordinate at the last to the primary purpose of rendering it certain that the violator of the law or of the rules of safety shall not escape because of lack of means to discover him.” The purpose of the statute is thwarted, and the displayed number becomes a “snare and delusion,” if courts will entertain such defenses as that put forward by appellee in this case. No responsible person or corporation could be held liable for the most outrageous acts of negligence, if they should be allowed to place a “middleman” between them and the public, and escape liability by the manner in which they recompense their servants.<sup>31</sup>

Generally, when an injury is caused by the negligence of a servant or employee, there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee (*culpa in eligiendo*) or in the supervision over him after the selection (*culpa vigilando*), or both. The presumption is *juris tantum* and

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<sup>29</sup> *Filcar Transport Services v. Espinas*, supra note 28 at 130.

<sup>30</sup> 102 Phil. 103, 108-109 (1957).

<sup>31</sup> Id. at 109, citing *King v. Brenham Automobile Co.*, 145 S. W. 278, 279.



not *juris et de jure*; consequently, it may be rebutted. Accordingly, the general rule is that if the employer shows to the satisfaction of the court that in the selection and supervision of his employee he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved of liability.<sup>32</sup> However, with the enactment of the motor vehicle registration law, the defenses available under Article 2180 of the Civil Code - that the employee acts beyond the scope of his assigned task or that it exercised the due diligence of a good father of a family to prevent damage - are no longer available to the registered owner of the motor vehicle, because the motor vehicle registration law, to a certain extent, modified Article 2180.<sup>33</sup>

As such, there can be no other conclusion but to hold Lim vicariously liable with Mendoza.

This does not mean, however, that Lim is left without any recourse against Enriquez and Mendoza. Under the civil law principle of unjust enrichment, the registered owner of the motor vehicle has a right to be indemnified by the actual employer of the driver; and under Article 2181 of the Civil Code, whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim.

Having identified the persons liable, our next question is what may be awarded.

**Actual or Compensatory Damages.** Actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They simply make good or replace the loss caused by the wrong.<sup>34</sup>

Article 2202 of the Civil Code provides that in crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant. Article 2199 of the same Code, however, sets the limitation that, except as provided by law or by stipulation, one is

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<sup>32</sup> SANGCO, Torts and Damages, Vol. II, pp. 553-554.

<sup>33</sup> *Filcar Transport Services v. Espinas*, supra note 28 at 131.

<sup>34</sup> TOLENTINO, Civil Code of the Philippines, Vol. V, p. 633.

entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. As such, to warrant an award of actual or compensatory damages, the claimant must prove that the damage sustained is the natural and probable consequences of the negligent act and, moreover, the claimant must adequately prove the amount of such damage.

In the case at bar, the RTC, basing on the receipts submitted by respondents and which receipts petitioners had the opportunity to examine, found that the total repairs on the Isuzu truck amounted to ₱142,757.40, and that the full hospitalization and medical expenses of Perez, Anla, Banca, and Repisada amounted to ₱11,267.35. As such, these are the amounts that respondents are entitled to as actual and compensatory damages.

Although respondents alleged in their complaint that the damage to their Isuzu truck caused them the loss of a daily income of ₱1,000.00, such claim was not duly substantiated by any evidence on record, and thus cannot be awarded in their favor.

**Moral Damages.** Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action.<sup>35</sup>

In prayers for moral damages, however, recovery is more an exception rather than the rule. Moral damages are not meant to be punitive 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. To be entitled to such an award, the claimant must satisfactorily prove that he has suffered damages and that the injury causing it has sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code. Moreover, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must thus establish the factual basis of the damages and its causal tie with the acts of the defendant.<sup>36</sup>

In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2) a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the

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<sup>35</sup> *Kierulf v. CA*, 336 Phil. 414, 432 (1997).

<sup>36</sup> *Regala v. Carin*, G.R. No. 188715, 6 April 2011, 647 SCRA 419, 426-427.

proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.<sup>37</sup>

A review of the complaint and the transcript of stenographic notes yields the pronouncement that respondents neither alleged nor offered any evidence of besmirched reputation or physical, mental or psychological suffering incurred by them. All that Leonora and her counsel had to say on the matter of damages other than actual or compensatory damages is this:<sup>38</sup>

Q: Did you ever spend covering attorney's fees?

A: Yes, sir. ₱50,000.00.

Q: Aside from the actual damage that you have mentioned x x x, how much more would you like this Court to award you by way of moral damages?

A: ₱100,000.00, sir.

Q: How about exemplary damages?

A: ₱50,000.00, sir.

Q: What happened to you, what did you feel when the defendants failed to immediately repair your vehicle that was damaged Madam Witness?

A: I have incurred expenses and I was forced to apply for a loan, sir.

In *Kierulf v. CA*,<sup>39</sup> we observed that this Court cannot remind the bench and the bar often enough that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. Citing *Francisco v. GSIS*,<sup>40</sup> the Court held that there must be clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his social humiliation, wounded feelings and anxiety, moral damages cannot be awarded.

Moreover, respondents were not able to show that their claim properly falls under Articles 2219 and 2220 of the Civil Code. Respondents cannot rely on Article 2219 (2) of the Civil Code which allows moral damages in *quasi-delicts* causing physical injuries because in physical injuries, moral damages are recoverable only by the injured party,<sup>41</sup> and in the case at bar, herein respondents were not the ones who were actually injured.

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<sup>37</sup> Id. at 427-428.

<sup>38</sup> TSN, 17 September 1998, pp. 12-13; Testimony of Gomez.

<sup>39</sup> Supra note 36 at 431-432.

<sup>40</sup> 117 Phil. 586, 597 (1963).

<sup>41</sup> *Soberano, et al. v. MRR Co.*, 124 Phil. 1330, 1337 (1966).

In *B.F. Metal (Corp.) v. Sps. Lomotan, et al.*,<sup>42</sup> the Court, in a claim for damages based on *quasi-delict* causing physical injuries, similarly disallowed an award of moral damages to the owners of the damaged vehicle, when neither of them figured in the accident and sustained injuries.

Neither can respondents rely on Article 21 of the Civil Code as the RTC erroneously did. Article 21 deals with acts *contra bonus mores*, and has the following elements: (1) There is an act which is legal; (2) but which is contrary to morals, good custom, public order, or public policy; (3) and it is done with intent to injure.<sup>43</sup> In the present case, it can hardly be said that Mendoza's negligent driving and violation of traffic laws are legal acts. Moreover, it was not proven that Mendoza intended to injure Perez, et al. Thus, Article 21 finds no application to the case at bar.

All in all, we find that the RTC and the CA erred in granting moral damages to respondents.

**Exemplary Damages.** Article 2229 of the Civil Code provides that exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Article 2231 of the same Code further states that in *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence.

Our jurisprudence sets certain conditions when exemplary damages may be awarded: First, they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. Second, the claimant must first establish his right to moral, temperate, liquidated or compensatory damages. Third, the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.<sup>44</sup>

In motor vehicle accident cases, exemplary damages may be awarded where the defendant's misconduct is so flagrant as to transcend simple negligence and be tantamount to positive or affirmative misconduct rather than passive or negative misconduct. In characterizing the requisite positive

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<sup>42</sup> 574 Phil. 740, 753 (2008).

<sup>43</sup> SANGCO, Torts and Damages, Vol. II, p. 754.

<sup>44</sup> Id. at 1035.

misconduct which will support a claim for punitive damages, the courts have used such descriptive terms as willful, wanton, grossly negligent, reckless, or malicious, either alone or in combination.<sup>45</sup>

Gross negligence is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.<sup>46</sup>

In the case at bar, having established respondents' right to compensatory damages, exemplary damages are also in order, given the fact that Mendoza was grossly negligent in driving the Mayamy bus. His act of intruding or encroaching on the lane rightfully occupied by the Isuzu truck shows his reckless disregard for safety.

In *Baño v. Bachelor Express, Inc., et al.*,<sup>47</sup> where an erring bus, in the process of overtaking a jeepney, also encroached on the opposite lane, and consequently collided with a dump truck, the Court held the driver of the bus grossly negligent and affirmed the award of exemplary damages.

**Attorney's Fees.** Article 2208 of the Civil Code enumerates the instances when attorney's fees may be recovered:

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 plaintiff's valid and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

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<sup>45</sup> Id. at 1041.

<sup>46</sup> *Achevara v. Ramos*, G.R. No. 175172, 29 September 2009, 601 SCRA 270, 288.

<sup>47</sup> G.R. No. 191703, 12 March 2012, 667 SCRA 782.

- (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 all cases, the attorney's fees and expenses of litigation must be reasonable.

From the very opening sentence of Article 2208 of the Civil Code, it is clearly intended to retain the award of attorney's fees as the exception in our law, as the general rule remains that attorney's fees are not recoverable in the absence of a stipulation thereto, the reason being that it is not sound policy to set a premium on the right to litigate.<sup>48</sup>

As such, in *Spouses Agustin v. CA*,<sup>49</sup> we held that, the award of attorney's fees being an exception rather than the general rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. Thus, the reason for the award of attorney's fees must be stated in the text of the court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.

In the case at bar, the RTC Decision had nil discussion on the propriety of attorney's fees, and it merely awarded such in the dispositive. The CA Decision, on the other hand, merely stated that the award of attorney's fees is merited as such is allowed when exemplary damages are awarded.<sup>50</sup> Following established jurisprudence,<sup>51</sup> however, the CA should have disallowed on appeal said award of attorney's fees as the RTC failed to substantiate said award.

**Costs of suit.** The Rules of Court provide that, generally, costs shall be allowed to the prevailing party as a matter of course, thus:<sup>52</sup>

Section 1. *Costs ordinarily follow results of suit.*- Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a

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<sup>48</sup> *Mirasol v. Judge De La Cruz*, 173 Phil. 518, 522 (1978).

<sup>49</sup> 264 Phil. 744, 752 (1990).

<sup>50</sup> *Rollo*, p. 22.

<sup>51</sup> See also *Mercury Drug Corporation v. Baking*, 551 Phil. 182 (2007).

<sup>52</sup> Sec. 1, Rule 142 of the Rules of Court.

matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law.

In the present case, the award of costs of suit to respondents, as the prevailing party, is in order.

**Interests.** Interest by way of damages has been defined as interest allowed in actions for breach of contract or tort for the unlawful detention of money already due. This type of interest is frequently called “moratory interest.” Interest as a part of damage, is allowed, not by application of arbitrary rules, but as a result of the justice of the individual case and as compensation to the injured party.<sup>53</sup>

The legal provision on interests in *quasi-delicts* is Article 2211 of the Civil Code which provides that in crimes and quasi-delicts, interest as part of the damage, may, in a proper case, be adjudicated in the discretion of the court.

Generally, interest is allowed as a matter of right for failure to pay liquidated claims when due.<sup>54</sup> For unliquidated claims, however, Article 2213 of the Civil Code provides that interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

In the case at bar, although the award of exemplary damages is unliquidated in the sense that petitioners cannot know for sure, before judgment, the exact amount that they are required to pay to respondents, the award of actual or compensatory damages, however, such as the truck repairs and medical expenses, is arguably liquidated in that they can be measured against a reasonably certain standard.<sup>55</sup> Moreover, justice would seem to require that the delay in paying for past losses which can be made reasonably certain should be compensated through an award of interest.<sup>56</sup>

**WHEREFORE,** premises considered, the Court Resolves to **PARTIALLY GRANT** the appeal by certiorari, as follows:

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<sup>53</sup> SANGCO, Torts and Damages, Vol. II, p. 1081.

<sup>54</sup> Id.

<sup>55</sup> Id. at 1088.

<sup>56</sup> Id.

- 1) **DECLARE** Mariano Mendoza and Elvira Lim solidarily liable to respondent Spouses Leonora and Gabriel Gomez ;
- 2) **MAINTAIN** the award of actual or compensatory damages in the amount of ₱142,757.40 for the repair of the Isuzu Elf truck, with legal interest beginning 31 January 2001 until fully paid;
- 3) **GRANT** additional actual or compensatory damages in the amount of ₱11,267.35 for the medical expenses shouldered by respondent Spouses Leonora and Gabriel Gomez, with legal interest beginning 31 January 2001 until fully paid;
- 4) **DELETE** the award of moral damages;
- 5) **MAINTAIN** the award of exemplary damages at ₱50,000.00;
- 6) **DELETE** the award of attorney's fees; and
- 7) **MAINTAIN** the award of costs of suit.

**SO ORDERED.**

  
**JOSE PORTUGAL BEREZ**  
Associate Justice

WE CONCUR:

  
**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice



  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

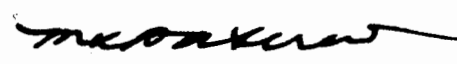
**A T T E S T A T I O N**

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.

  
**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson, Second Division

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

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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