



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**SPOUSES DIONISIO ESTRADA  
 and JOVITA R. ESTRADA,**  
*Petitioners,*

**G.R. No. 203902**

Present:

- versus -

SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, *and*  
 CAGUIOA, *JJ.*

**PHILIPPINE RABBIT BUS LINES,  
 INC. and EDUARDO R. SAYLAN,**  
*Respondents.*

Promulgated:

**JUL 19 2017**

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**DECISION**

**DEL CASTILLO, J.:**

The Court restates in this petition two principles on the grant of damages. *First*, moral damages, as a general rule, are not recoverable in an action for damages predicated on breach of contract.<sup>1</sup> *Second*, temperate damages in lieu of actual damages for loss of earning capacity may be awarded where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.<sup>2</sup>

This Petition for Review on *Certiorari* assails the May 16, 2012 Decision<sup>3</sup> and October 1, 2012 Resolution<sup>4</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 95520, which partially granted the appeal filed therewith by respondent Philippine Rabbit Bus Lines, Inc. (Philippine Rabbit) and denied petitioners spouses Dionisio C. Estrada (Dionisio) and Jovita R. Estrada's motion for reconsideration thereto.

<sup>1</sup> *Japan Airlines v. Simangan*, 575 Phil. 359, 375 (2008).

<sup>2</sup> *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 457 (2011).

<sup>3</sup> *CA rollo*, pp. 68-75; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bata, Jr.

<sup>4</sup> *Id.* at 91-92.

***Factual Antecedents***

On April 13, 2004, petitioners filed with the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, a Complaint<sup>5</sup> for Damages against Philippine Rabbit and respondent Eduardo R. Saylan (Eduardo).

The facts as succinctly summarized by the RTC are as follows:

[A] mishap occurred on April 9, 2002 along the national highway in Barangay Alipangpang, Pozorrubio, Pangasinan, between the passenger bus with plate number CVK-964 and body number 3101, driven by [respondent] Eduardo Saylan and owned by [respondent] Philippine Rabbit Bus, Lines, Inc., and the Isuzu truck with plate number UPB-974 driven by Willy U. Urez and registered in the name of Rogelio Cuyton, Jr.. At the time of the incident, the Philippine Rabbit Bus was going towards the north direction, while the Isuzu truck was travelling towards the south direction. The collision happened at the left lane or the lane properly belonging to the Isuzu truck. The right front portion of the Isuzu Truck appears to have collided with the right side portion of the body of the Philippine Rabbit bus. x x x Before the collision, the bus was following closely a jeepney. When the jeepney stopped, the bus suddenly swerved to the left encroaching upon the rightful lane of the Isuzu truck, which resulted in the collision of the two (2) vehicles. x x x The [petitioner] Dionisio Estrada, who was among the passengers of the Philippine Rabbit bus, as evidenced by the ticket issued to him, was injured on the [right] arm as a consequence of the accident. His injured right arm was amputated at the Villaflor Medical Doctor's Hospital in Dagupan City x x x. For the treatment of his injury, he incurred expenses as evidenced by x x x various receipts.<sup>6</sup>

Dionisio argued that pursuant to the contract of carriage between him and Philippine Rabbit, respondents were duty-bound to carry him safely as far as human care and foresight can provide, with utmost diligence of a very cautious person, and with due regard for all the circumstances from the point of his origin in Urdaneta City to his destination in Pugo, La Union. However, through the fault and negligence of Philippine Rabbit's driver, Eduardo, and without human care, foresight, and due regard for all circumstances, respondents failed to transport him safely by reason of the aforementioned collision which resulted in the amputation of Dionisio's right arm. And since demands for Philippine Rabbit<sup>7</sup> to pay him damages for the injury he sustained remained unheeded, Dionisio filed the said complaint wherein he prayed for the following awards: moral damages of ₱500,000.00, actual damages of ₱60,000.00, and attorney's fees of ₱25,000.00.

<sup>5</sup> Records, pp. 2-5.

<sup>6</sup> Id. at 351-352.

<sup>7</sup> Id. at 8-9.

Petitioners' claim for moral damages, in particular, was based on the following allegations:


9. [The] amount of ₱500,000.00 as moral damages for the amputation of [Dionisio's] right arm for life including his moral sufferings for such [loss] of right arm is reasonable.

Said amount is computed and derived using the formula  $(2/3 \times [80\text{-age of the complainant when the injury is sustained}] = \text{life expectancy})$  adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality. From such formula, [Dionisio] is expected to live for 18 years, which is equivalent [to] about 6570 days. For each day, [Dionisio] is claiming ₱80.00 as he is expected to work for 8 hours a day with his amputated arm or to enjoy the same for at least 8 hours a day (or is claiming P10.00 for each hour) for 18 years (6570 days). The amount that can be computed thereof would be ₱525,600.00 (6570 days x ₱80.00). [Dionisio] then [rounded] it off to ₱500,000.00, the moral damages consisted [of] his moral sufferings due to the [loss] of his right arm for life;<sup>8</sup>

Denying any liability, Philippine Rabbit in its Answer<sup>9</sup> averred that it carried Dionisio safely as far as human care and foresight could provide with the utmost diligence of a very cautious person and with due regard for all the circumstances prevailing. While it did not contest that its bus figured in an accident, Philippine Rabbit nevertheless argued that the cause thereof was an extraordinary circumstance independent of its driver's action or a fortuitous event. Hence, it claimed to be exempt from any liability arising therefrom. In any case, Philippine Rabbit averred that it was the Isuzu truck coming from the opposite direction which had the last clear chance to avoid the mishap. Instead of slowing down upon seeing the bus, the said truck continued its speed such that it bumped into the right side of the bus. The proximate cause of the accident, therefore, was the wrongful and negligent manner in which the Isuzu truck was operated by its driver. In view of this, Philippine Rabbit believed that Dionisio has no cause of action against it.

With respect to Eduardo, he was declared in default after he failed to file an Answer despite due notice.<sup>10</sup>

### ***Ruling of the Regional Trial Court***

Treating petitioners' Complaint for damages as one predicated on 

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<sup>8</sup> Id. at 3-4.

<sup>9</sup> Id. at 54-57.

<sup>10</sup> Id. at 43.

breach of contract of carriage, the RTC rendered its Decision<sup>11</sup> on December 1, 2009.

In concluding that Eduardo was negligent in driving the Philippine Rabbit bus, the said court ratiocinated, *viz.*:

Evidently, prior to the accident, [Eduardo] was tailgating the jeepney ahead of him. When the jeepney stopped, [Eduardo] suddenly swerved the bus to the left, encroaching in the process the rightful lane of the oncoming Isuzu truck, thereby resulting in the collision. The fact that [Eduardo] did not apply the brakes, but instead swerved to the other lane, fairly suggests that he was not only unnecessarily close to the jeepney, but that he was operating the bus at a speed greater than what was reasonably necessary for him to be able to bring his vehicle to a full stop to avoid hitting the vehicle he was then following. Clearly, immediately before the collision, [Eduardo] was actually violating Section 35 of the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:

Sec. 35. Restriction as to speed. – (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than [what] is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the clear distance ahead.

Too, when [Eduardo] swerved to the left and encroached on the rightful lane of the Isuzu truck, he was violating Section 41 of the same Traffic Code:

Sec. 41. Restriction on overtaking and passing. – (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle, proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

The fact that the collision occurred immediately after the bus swerved on the left lane clearly [indicates] that the other lane was not clear and free of oncoming vehicle at the time x x x [Eduardo] tried to overtake the jeepney to avoid hitting it.

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, unless there is proof to the contrary (Article 2185 of the Civil Code). [Eduardo] failed to rebut this legal presumption as he chose not to

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<sup>11</sup> Id. at 351-370; penned by Acting Judge Teodorico Alfonso P. Bauzon of RTC-Branch 48, Urdaneta City, Pangasinan.

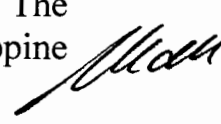
answer the complaint and to testify in court. [Philippine Rabbit was also] unsuccessful in overthrowing the said legal presumption. x x x

[Eduardo's] failure to observe the proper and safe distance from the vehicle ahead of him and in running the bus at a speed greater than what was reasonably necessary to control and stop the vehicle when warranted by the circumstances, clearly were reflective of his lack of precaution, vigilance, and foresight in operating his vehicle. As an experienced driver, he should have known about the danger posed by tailgating another vehicle and driving his vehicle at an unreasonable speed called for by the circumstances. For, the sudden stopping of a motor vehicle, for whatever [reason], is not an uncommon and [unforeseeable] occurrence in the highway. If only he had exercised diligence, vigilance and foresight, he would have refrained from tailgating another vehicle at a dangerously close range. What he should have done instead was to maintain a reasonable distance from the jeepney and drove his vehicle at a speed not greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead. This he failed to do. As a consequence, when the jeepney stopped, he was unable to control and stop the bus. Instead, he was forced to swerve the bus to the left lane blocking the path of the oncoming Isuzu truck. While he averted smashing the jeepney, he however collided with the Isuzu truck. No doubt, it was [Eduardo's] lack of precaution, vigilance and foresight that led to the accident. Otherwise stated, it was his recklessness or negligence that was the proximate cause of the mishap.

[Philippine Rabbit's] imputation of fault to the driver of the Isuzu truck, claiming that it was the latter [which] had the last clear chance to avoid the accident, deserves scant consideration. As the evidence would show, the impact occurred immediately after the bus swerved and while in the process of encroaching on the left lane. This is evidenced by the fact that the front portion of the Isuzu truck collided with the right side portion of the bus. The driver of the Isuzu truck, before the accident, was cruising on the lane properly belonging to him. He had every right to expect that all the vehicles, including the bus coming from the opposite direction would stay on their proper lane. He certainly was not expected to know what prompted the bus driver to suddenly swerve his vehicle to the left. The abruptness by which the bus swerved without a warning could not have given him the luxury of time to reflect and anticipate the bus' encroachment of his lane for him to be able to avoid it. Needless to point out, there was no last clear chance to speak of on the part of the driver of the Isuzu truck to avoid the accident. Besides, the 'last clear chance' principle is not applicable in this case since the instant suit is between the passenger and the common carrier. x x x<sup>12</sup>

The RTC then proceeded to determine whether Philippine Rabbit, as it claimed, exercised the diligence of a good father of a family in the selection and supervision of its drivers as to negate any liability for damages. The said court, however, was unconvinced after it found that (1) Philippine

<sup>12</sup> Id. at 358-361.



Rabbit failed to show that it had taken all the necessary and actual steps to thoroughly examine the qualifications of Eduardo as a driver worthy of employment; and (2) no proof relative to the existence of company rules and regulations, instructions, and policies affecting its drivers, as well as to their actual implementation and observance, were presented. Hence, Philippine Rabbit was held jointly and severally liable with Eduardo for the awards made in favor of Dionisio as follows:

The emotional anguish and suffering of x x x Dionisio Estrada as a consequence of the injury and amputation of his right arm due to the reckless driving of x x x Eduardo, which resulted in the accident, cannot be overemphasized. The loss of the use of his right arm and the humiliation of being tagged in the public [eye] as a person with only one arm would certainly be borne by him for the rest of his life. The amount of moral damages he is praying appears to be reasonable under the circumstances.

Too, the award of attorney's fees is proper considering that x x x [Dionisio] was forced to litigate after x x x [Philippine Rabbit] refused to heed his demand for the payment of damages as a consequence of the accident.

WHEREFORE, judgment is hereby rendered ordering x x x Philippine Rabbit Bus Lines, Inc. and Eduardo Saylan to pay jointly and severally x x x Dionisio Estrada the following amounts:

1. Five Hundred Thousand Pesos (₱500,000.00) as moral damages;
2. Fifty Seven Thousand Seven Hundred Sixty Six Pesos and Twenty Five Centavos (₱57,766.25), as actual damages; and
3. Twenty Five Thousand Pesos (₱25,000.00), as attorney's fees; and the costs of suit.

SO ORDERED.<sup>13</sup>

Philippine Rabbit filed a Motion for Reconsideration<sup>14</sup> but the same was denied for lack of merit in an Order<sup>15</sup> dated May 31, 2010.

### ***Ruling of the Court of Appeals***

On appeal, Philippine Rabbit imputed error upon the RTC in not finding that it exercised the diligence of a good father of a family in the

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<sup>13</sup> Id. at 369-370.

<sup>14</sup> Id. at 373-376.

<sup>15</sup> Id. at 380-383.



selection and supervision of its drivers. In any case, it argued that moral damages are not recoverable in an action for damages predicated on breach of contract except when death results or when the carrier is guilty of fraud or bad faith. Since none of the two aforementioned circumstances are present in this case, Philippine Rabbit contended that it is Eduardo alone who should be held civilly liable.

In a Decision<sup>16</sup> dated May 16, 2012, the CA partially granted the appeal on the following ratiocination:

Based from [sic] the aforesaid allegations in the complaint, it was rightly regarded by the trial court as an action to recover damages arising from breach of contract of carriage. There was in fact, an admission that [Dionisio] was a passenger of a bus owned by [Philippine Rabbit]. In an action for breach of contract of carriage, all that is required is to prove the existence of such contract and its non-performance by the carrier through the latter's failure to carry the passenger safely to his destination. In the present case, it was duly established that there was a collision and as a result of which, [Dionisio] sustained an injury.

[Philippine Rabbit] was therefore properly found liable for breach of contract of carriage. A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted, the court need not even make an express finding of fault or negligence on the part of the common carrier. This presumption may only be overcome by evidence that the carrier exercised extraordinary diligence, and this presumption remained un rebutted in this case. The trial court found that the accident which led to the amputation of [Dionisio's] arm was due to the reckless driving and negligence of [Philippine Rabbit's] driver and stated that:

No doubt, it was x x x [Eduardo's] lack of precaution, vigilance and foresight that led to the accident. Otherwise stated, it was his recklessness or negligence that was the proximate cause of the mishap.

Such negligence and recklessness is binding against [Philippine Rabbit] pursuant to Article 1759 of the Civil Code which provides:

Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

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<sup>16</sup> CA rollo, pp. 68-75.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

Thus, [Philippine Rabbit's] defense that it acted with the diligence of a good father of a family in its selection of its driver, Eduardo R. Saylan, is unavailing. [Philippine Rabbit] however is correct in its contention that moral damages are not recoverable in actions for damages predicated on a breach of contract, unless death of a passenger results, or it is proved that the carrier was guilty of fraud or bad faith, even if death does not result.

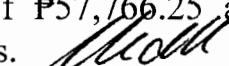
There was no evidence on record indicative of fraud or bad faith on [Philippine Rabbit's] part. Bad faith should be established by clear and convincing evidence. The settled rule is that the law always presumes good faith such that any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive. The award for attorney's fees must likewise be deleted considering that moral damages cannot be granted and none of the instances enumerated in Article 2208 of the Civil Code is present in the instant case. However, the actual damages awarded by the trial court are adequately substantiated by official receipts. Therefore, the same shall be sustained.

The driver on the other hand, may not be held liable under the contract of carriage, not being a party to the same. The basis of a cause of action of a passenger against the driver is either culpa criminal or culpa aquiliana. A passenger may file a criminal case based on culpa criminal punishable under the Revised Penal Code or a civil case based on culpa aquiliana under Articles 2176 and 2177 of the Civil Code.

A cause of action based on culpa contractual is also separate and distinct from a cause of action based on culpa aquiliana. x x x

x x x x

The trial court therefore erred in ruling that [Philippine Rabbit] bus company and [respondent] driver are jointly and severally liable. The driver cannot be held jointly and severally liable with the carrier in case of breach of the contract of carriage. The contract of carriage is between the carrier and the passenger, and in the event of contractual liability, the carrier is exclusively responsible [therefor] to the passenger, even if such breach be due to the negligence of his driver. The carrier can neither shift his liability on the contract to his driver nor share it with him for his driver's negligence is his.<sup>17</sup>

Accordingly, the CA modified the RTC Decision in that it declared Philippine Rabbit as solely and exclusively liable to Dionisio for actual damages in the amount of ₱57,766.25 and deleted the award of moral damages and attorney's fees. 

<sup>17</sup> Id. at 72-74.



Petitioners filed a Motion for Reconsideration<sup>18</sup> but the same was denied by the CA for lack of merit in a Resolution<sup>19</sup> dated October 1, 2012.

Hence, this Petition for Review on *Certiorari* raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THERE WAS NO EVIDENCE ON RECORD INDICATIVE OF FRAUD OR BAD FAITH ON [PHILIPPINE RABBIT'S] PART.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT [CONSIDERING] X X X THE [COST OF THE] REPLACEMENT OF PETITIONER [DIONISIO'S AMPUTATED RIGHT ARM] WITH [AN] ARTIFICIAL ONE AS ACTUAL DAMAGES.<sup>20</sup>

### ***The Parties' Arguments***

Petitioners dispute the findings of lack of fraud or bad faith on the part of Philippine Rabbit as to make it liable for moral damages. According to them, the assertions of Philippine Rabbit in its Answer, *i.e.*, that it carried Dionisio safely; that it was not an insurer of all risks; that the accident was caused by a fortuitous event; that in any event, it was the negligent manner by which the Isuzu truck was operated which was the proximate cause of the accident; and that Dionisio has no cause of action against Philippine Rabbit, were made with the intention to evade liability. Petitioners claim that the said assertions are clear indication of fraud or bad faith.

In justifying their claim for moral damages, petitioners aver that in their Complaint, they did not seek for moral damages in terms of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury *per se*, but for moral damages based purely on the fact that Dionisio lost his right arm. They argue that while in a strict sense, Dionisio incurred actual damages through the amputation of his right arm, such loss may rightly be considered as falling under moral damages. This is because a right arm is beyond the commerce of man and loss thereof necessarily brings physical suffering, mental anguish, besmirched reputation, social humiliation and similar injury to a person. At any rate, should this Court award the amount of ₱500,000.00 as actual damages due to the loss of Dionisio's right arm,

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<sup>18</sup> Id. at 78-84.

<sup>19</sup> Id. at 91-92.

<sup>20</sup> *Rollo*, p. 9.

petitioners also find the same proper and appropriate under the circumstances.


Now jointly represented by one counsel, respondents, on the other hand, reiterate the rule that moral damages are not recoverable in an action for damages predicated on a breach of contract, as in this case, since breach of contract is not one of the items enumerated in Article 2219 of the Civil Code. Only as an exception, moral damages may be recovered in an action for breach of contract of carriage when the mishap results in death or if the carrier acted fraudulently or in bad faith. Since Dionisio did not die in the mishap nor was Philippine Rabbit found guilty of fraud or bad faith, respondents argue that an award for moral damages is improper for having no basis in fact and in law.

### **Our Ruling**

The Court modifies the CA ruling.

***Moral damages; Instances when moral damages can be awarded in an action for breach of contract.***

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.<sup>21</sup>

Under Article 2219 of the Civil Code, moral damages are recoverable 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;<sup>22</sup> and (1) acts and actions referred to in Articles 21,<sup>23</sup> 26,<sup>24</sup> 27,<sup>25</sup> 28,<sup>26</sup> 29,<sup>27</sup> 30,<sup>28</sup> 32,<sup>29</sup> 34,<sup>30</sup> and 35.<sup>31</sup> 

<sup>21</sup> CIVIL CODE, Article 2217.

<sup>22</sup> CIVIL CODE, Article 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material or moral.

<sup>23</sup> CIVIL CODE, Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

<sup>24</sup> CIVIL CODE, Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:



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- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.
- <sup>25</sup> CIVIL CODE, Article 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.
- <sup>26</sup> CIVIL CODE, Article 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.
- <sup>27</sup> CIVIL CODE, Article 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.
- If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.
- <sup>28</sup> CIVIL CODE, Article 30. When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.
- <sup>29</sup> CIVIL CODE, Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
- (1) Freedom of religion;
  - (2) Freedom of speech;
  - (3) Freedom to writ for the press or to maintain a periodical publication;
  - (4) Freedom from arbitrary or illegal detention;
  - (5) Freedom of suffrage;
  - (6) The right against deprivation of property without due process of law;
  - (7) The right to a just compensation when private property is taken for public use;
  - (8) The right to the equal protection of the laws;
  - (9) The right to be secured in one's person, house, papers, and effects against unreasonable searches and seizures;
  - (10) The liberty of abode and of changing the same;
  - (11) The privacy of communication and correspondence;
  - (12) The right to become a member of associations or societies for purposes not contrary to law;
  - (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
  - (14) The right to be free from involuntary servitude in any form;
  - (15) The right of the accused against excessive bail;
  - (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
  - (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
  - (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
  - (19) Freedom of access to the courts.
- In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted) and may be proved by a preponderance of evidence.
- The indemnity shall include moral damages. Exemplary damages may also be adjudicated.
- The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.
- <sup>30</sup> CIVIL CODE, Article 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

x x x [C]ase law establishes the following requisites for the award of moral damages: (1) there must be an injury clearly sustained by the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.<sup>32</sup>

Since breach of contract is not one of the items enumerated under Article 2219, moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract.<sup>33</sup>

x x x As an exception, such damages are recoverable [in an action for breach of contract:] (1) in cases in which the mishap results in the death of a passenger, as provided in Article 1764,<sup>34</sup> in relation to Article 2206(3)<sup>35</sup> of the Civil Code; and (2) in x x x cases in which the carrier is guilty of fraud or bad faith, as provided in Article 2220<sup>36, 37</sup>.

***Moral damages are not recoverable  
in this case.***

It is obvious that this case does not come under the first of the above-mentioned exceptions since Dionisio did not die in the mishap but merely suffered an injury. Nevertheless, petitioners contend that it falls under the second category since they aver that Philippine Rabbit is guilty of fraud or bad faith.

<sup>31</sup> CIVIL CODE, Article 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.

If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.

<sup>32</sup> *Cathay Pacific Airways, Ltd. v. Spouses Vazquez*, 447 Phil. 306, 323-324 (2003).

<sup>33</sup> *Japan Airlines v. Simangan*, supra note 1.

<sup>34</sup> CIVIL CODE, Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

<sup>35</sup> CIVIL CODE, 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:

x x x x

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

<sup>36</sup> CIVIL CODE, Article 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.

<sup>37</sup> *Japan Airlines v. Simangan*, supra note 1 at 375-376.

It has been held, however, that “allegations of bad faith and fraud must be proved by clear and convincing evidence.”<sup>38</sup> They are never presumed considering that they are serious accusations that can be so conveniently and casually invoked.<sup>39</sup> And unless convincingly substantiated by whoever is alleging them, they amount to mere slogans or mudslinging.<sup>40</sup>

In this case, the fraud or bad faith that must be convincingly proved by petitioners should be one which was committed by Philippine Rabbit in breaching its contract of carriage with Dionisio. Unfortunately for petitioners, the Court finds no persuasive proof of such fraud or bad faith.

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.<sup>41</sup>

Bad faith, on the other hand, “does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.”<sup>42</sup>

There is no showing here that Philippine Rabbit induced Dionisio to enter into a contract of carriage with the former through insidious machination. Neither is there any indication or even an allegation of deceit or concealment or omission of material facts by reason of which Dionisio boarded the bus owned by Philippine Rabbit. Likewise, it was not shown that Philippine Rabbit’s breach of its known duty, which was to transport Dionisio from Urdaneta to La Union,<sup>43</sup> was attended by some motive, interest, or ill will. From these, no fraud or bad faith can be attributed to Philippine Rabbit.

Still, petitioners insist that since the defenses it pleaded in its Answer were designed to evade liability, Philippine Rabbit is guilty of fraud or bad faith. Suffice it to state, however, that the allegations which made up Philippine Rabbit’s defenses are hardly the kind of fraud or bad faith contemplated by law. Again, it bears to mention that the fraud or bad faith

<sup>38</sup> *Spouses Palada v. Solidbank Corporation*, 668 Phil. 172, 174 (2011).

<sup>39</sup> *Cathay Pacific Airways, Ltd. v. Sps. Vazquez*, supra note 32 at 321.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 321-322.

<sup>43</sup> See *China Airlines v. Chiok*, 455 Phil. 169, 187 (2003).

must be one which attended the contractual breach or one which induced Dionisio to enter into contract in the first place.

Clearly, moral damages are not recoverable in this case. The CA, therefore, did not err in deleting the award for moral damages.

***Actual damages for loss/impairment of earning capacity are also not recoverable. In lieu thereof, the Court awards temperate damages.***

In an attempt to recover the ₱500,000.00 awarded by the RTC as moral damages but deleted by the CA, petitioners would instead want this Court to grant them the same amount as just and proper compensation for the loss of Dionisio's right arm.

It can be recalled that in the Complaint, petitioners justified their claim for moral damages as follows:

9. [The] amount of ₱500,000.00 as moral damages for the amputation of [Dionisio's] right arm for life including his moral sufferings for such [loss] of right arm is reasonable.

Said amount is computed and derived using the formula  $(2/3 \times [80\text{-age of the complainant when the injury is sustained}] = \text{life expectancy})$  adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality. From such formula, [Dionisio] is expected to live for 18 years, which is equivalent [to] about 6570 days. For each day, [Dionisio] is claiming ₱80.00 as he is expected to work for 8 hours a day with his amputated arm or to enjoy the same for at least 8 hours a day (or is claiming ₱10.00 for each hour) for 18 years (6570 days). The amount that can be computed thereof would be ₱525,600.00 (6570 days x ₱80.00). [Dionisio] then [rounded] it off to ₱500,000.00, the moral damages consisted [of] his moral sufferings due to the [loss] of his right arm for life;<sup>44</sup>

It thus appears that while petitioners denominated their claim for ₱500,000.00 as moral damages, their computation was actually based on the supposed loss/impairment of Dionisio's earning capacity.

Loss or impairment of earning capacity finds support under Article 2205 (1) of the Civil Code, to wit:

<sup>44</sup> Records, pp. 3-4.



Art. 2205. Damages may be recovered:

(1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;

x x x x

It is, however, settled that “damages for loss [or impairment] of earning capacity is in the nature of actual damages x x x.”<sup>45</sup>

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice, aimed at repairing the wrong done. To be recoverable, they must be duly proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered, and on evidence of the actual amount thereof.<sup>46</sup>

Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss [or impairment] of earning capacity may be awarded despite the absence of documentary evidence when **(1) the deceased [or the injured] was 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 was employed as a daily worker earning less than the minimum wage under current labor laws.**<sup>47</sup>

Here, it is unlikely that petitioners presented evidence to prove a claim for actual damages based on loss/impairment of earning capacity since what they were claiming at the outset was an award for moral damages. The Court has nonetheless gone over the records to find out if they have sufficiently shown during trial that they are entitled to such compensatory damages that they are now claiming. Unfortunately, no documentary evidence supporting Dionisio’s actual income is extant on the records. What it bears is the mere testimony of Dionisio on the matter, *viz.*:

COURT:

Q: By the way, why did you submit the original copy of your exhibits to the GSIS?

A: I am claiming my GSIS compensation because I am a government employee.

<sup>45</sup> *Serra v. Mumar*, 684 Phil. 363, 374 (2012).

<sup>46</sup> *Philippine National Railways v. Brunty*, 537 Phil. 161, 177-178 (2006).

<sup>47</sup> *Enriquez v. Isarog Line Transport, Inc.*, G.R. No. 212008, November 16, 2016; emphasis supplied.

ATTY. SEVILLEJA:

Q: What particular government [agency do] you belong?

A: DECS.

Q: You are a teacher?

A: Yes sir.

Q: You are still continuing your profession as a teacher until now?

A: Yes sir.

Q: By the way Mr. witness, you are claiming x x x moral damages of ₱500,000.00? How did you compute that ₱500,000.00?

A: I based that from [sic] my income which is about ₱80.00 a day or ₱10.00 per hour.

Q: Is that x x x gross or not?

A: Net sir.

Q: What are your other sideline?

A: I know [how] to drive a tricycle.

Q: Because of [the] amputation of your right arm, you mean to say you [cannot] drive anymore a tricycle?

A: Yes sir.

Q: By the way Mr. witness, how old are you when you met [the] accident?

A: More than 53 years old sir, less than 54.

Q: If you are claiming for x x x moral damages of ₱80.00 a day, how come you are asking for ₱500,000.00?

A: If you compute that it is ₱2,400.00 monthly. If I still [live by] about 20-30 years [more], I can still [earn] that amount.<sup>48</sup>

It must be emphasized, though, that documentary proof of Dionisio's actual income cannot be dispensed with since based on the above testimony, Dionisio does not fall under any of the two exceptions aforementioned. Thus, as it stands, there is no competent proof substantiating his actual income and because of this, an award for actual damages for loss/impairment of earning capacity cannot be made.

Nonetheless, since it was established that Dionisio lost his right arm, temperate damages in lieu of actual damages for loss/impairment of earning capacity may be awarded in his favor. Under Article 2224, "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss

<sup>48</sup> TSN dated February 23, 2006, pp. 6-7.





has been suffered but its amount cannot, from the nature of the case, be proved with certainty.”

The case of *Tan v. OMC Carriers, Inc.*<sup>49</sup> enumerates several instances wherein the Court awarded temperate damages in lieu of actual damages for loss of earning capacity, *viz.*:

In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party’s actual income.

In *Pleno v. Court of Appeals*, we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiff’s income was not sufficiently proven.

We did the same in *People v. Singh*, and *People v. Almedilla*, granting temperate damages in place of actual damages for the failure of the prosecution to present sufficient evidence of the deceased’s income.

Similarly, in *Victory Liner, Inc. v. Gammad*, we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs ₱500,000.00 as temperate damages.<sup>50</sup>

Accordingly, the Court in *Tan* awarded to the heirs of the therein deceased victim, who was working as a tailor at the time of his death, temperate damages in the amount of ₱300,000.00 in lieu of compensatory damages.<sup>51</sup>

In the subsequent case of *Orix Metro Leasing and Finance Corporation v. Mangalinao*,<sup>52</sup> the Court likewise awarded temperate damages as follows:

While the net income had not been sufficiently established, the Court recognizes the fact that the Mangalinao heirs had suffered loss deserving of compensation. What the CA awarded is in actuality a form of temperate damages. Such form of damages under Article 2224 of the Civil Code is given in the absence of competent proof on the actual damages suffered. In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is

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<sup>49</sup> Supra note 2.

<sup>50</sup> Id. at 457-458.

<sup>51</sup> Id.

<sup>52</sup> 680 Phil. 89 (2012).

plainly established but no evidence was presented to support the allegation of the injured party's actual income. In this case, Roberto Mangalinao, the breadwinner of the family, was a businessman engaged in buying and selling *palay* and agricultural supplies that required high capital in its operations and was only 37 at the time of his death. Moreover, the Pathfinder which the Mangalinaos own, became a total wreck. Under the circumstances, we find the award of ₱500,000.00 as temperate damages as reasonable.<sup>53</sup>

And in the more recent case of *People v. Salahuddin*,<sup>54</sup> the lower courts' award of ₱4,398,000.00 as compensation for loss of earning capacity of a murdered lawyer was disallowed due to insufficiency of evidence. Again in lieu thereof, temperate damages of ₱1,000,000.00 was awarded.<sup>55</sup>

In view of the above rulings and under the circumstances of this case, the Court finds reasonable to award Dionisio temperate damages of ₱500,000.00 in lieu of actual damages for the loss/impairment of his earning capacity.

***Actual damages by way of medical expenses must be supported by official receipts.***

Anent petitioners' assertion that actual damages should be awarded to them for the cost of replacement of Dionisio's amputated right arm, suffice it to state that petitioners failed to show during trial that the said amputated right arm was actually replaced by an artificial one. All that petitioners submitted was a quotation of ₱160,000.00 for a unit of elbow prosthesis<sup>56</sup> and nothing more. It has been held that actual proof of expenses incurred for medicines and other medical supplies necessary for treatment and rehabilitation must be presented by the claimant, in the form of official receipts, to show the exact cost of his medication and to prove that he indeed went through medication and rehabilitation. In the absence of the same, such claim must be negated.<sup>57</sup>

At any rate, the RTC already granted petitioners actual damages by way of medical expenses based on the official hospital receipts submitted.<sup>58</sup> There is, however, a need to correct the amount, that is, the same should be ₱57,658.25 as borne by the receipts and not ₱57,766.25.

<sup>53</sup> Id. at 108-109.

<sup>54</sup> G.R. No. 206291, January 18, 2016, 781 SCRA 154.

<sup>55</sup> Id. at 185.

<sup>56</sup> Records, p. 254.

<sup>57</sup> *Wuerth Philippines, Inc. v. Ynson*, 682 Phil. 143, 161(2012).

<sup>58</sup> Records, pp. 239-245.

***Legal interest is imposed on the amounts awarded.***


In addition, the amounts of damages awarded are declared subject to legal interest of 6% *per annum* from the finality of this Decision until full satisfaction.<sup>59</sup>

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The assailed May 16, 2012 Decision and October 1, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 95520 are **AFFIRMED with MODIFICATIONS** as follows: (1) petitioners are declared entitled to temperate damages of ₱500,000.00; (2) the award of actual damages is set at the amount of ₱57,658.25; and (3) all damages awarded are subject to legal interest of 6% *per annum* from the finality of this Decision until full satisfaction.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*  
*Chairperson*

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<sup>59</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

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

*[Signature]*  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

*See separate  
opinion.*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

*[Signature]*  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

*[Signature]*