



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:*

**“G.R. No. 203309 – (MENCORP TRANSPORT SYSTEMS, INC., petitioner v. HEIRS OF LIBERATO G. LIBATIQUE, respondents).** – This resolves the Petition for Review of *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated September 16, 2011 and Resolution<sup>3</sup> dated August 30, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 85205, which affirmed the Decision<sup>4</sup> dated June 28, 2004 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33, in Civil Case No. 1288-BG, holding Mencorp Transport Systems, Inc. (Mencorp) vicariously liable for damages.

**Facts**

This petition arose from an action to recover damages based on *quasi-delict* against Mencorp and its co-defendant Manuel Edmundo Inigo Pe (Pe), for the death of Liberato Libatique (Libatique) in a vehicular accident.

The heirs of Libatique (respondents) offered the following version of the accident:

At about 11:00 o'clock in the evening of May 18, 2000, Felipe Rivera was driving a Toyota owner-type jeep with Plate No. ACM 754 proceeding to San Fernando, La Union along the national highway particularly at Baccuit Norte, Bauang, La Union, when they were bumped from behind by a Dominion bus, likewise heading towards the north. His passengers, x x x Libatique was

<sup>1</sup> *Rollo*, pp. 12-35.

<sup>2</sup> *Id.* at 39-61; penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Vicente S.E. Veloso and Edwin D. Sorongon.

<sup>3</sup> *Id.* at 62-63.

<sup>4</sup> *Id.* at 89-98; penned by Judge Rose Mary R. Molina-Alim.

seated at the back while Pidiong Gomez was seated in front. While on the eastern lane, he noticed the Dominion bus already tailing his jeepney and also saw the oncoming forward truck loaded with cement, proceeding towards the south direction. The Dominion bus overtook his jeep and at that instance, it bumped the on[-]coming truck causing his jeep to be bumped on its rear portion by the front side of the Dominion bus. Because of the impact, he was not able to control the steering wheel causing the jeep to swerve to the right shoulder of the road hitting the railings of the highway. His jeep took a full stop about (40) meters away from where it was bumped. He was shocked, his left eyebrow injured and he was brought to the hospital where he saw his companion x x x Libatique already dead. He spent Php2,000.00 for his medicines. His jeep sustained damages as evidenced by the pictures marked as Exhibit "A-2"; the front portion of his jeep as Exhibit "A-3"; while the Dominion bus is marked as Exhibit "A-4"; and the Isuzu truck as Exhibit "A-6".

At the time of the incident, he had only a student driver's license and he was not accompanied by a duly licensed driver. Although, he had an international driver's license when he worked in Taiwan, as an overseas contract worker. Prior to the incident, he had been driving for three (3) years already.

Before the incident, he noticed a forward truck coming from the opposite direction and also saw on his side mirror, the Dominion bus about five (5) meters from behind, but, he did not expect it to overtake him because of the oncoming truck.

Meantime, PO3 ELBERT DE CASTRO, 41 years old, married, PNP member of Bauang Police Station was called to investigate the collision at about 11:00 o'clock that evening. He, together with PO2 de la Cruz, SPO1 Sales and SPO1 Guimpaya boarded their patrol car and proceeded to the scene of the accident. Upon arrival, he assisted the traffic and while preparing a rough sketch of the incident, his police companion notified him about a male person found sprawled near the jeep. The man was lying on his belly with water on his face because it was raining heavily at that time. He boarded him in the ambulance and brought him to the Ilocos Regional Hospital. The final sketch (Exhibit "A-1") was prepared by one of his companions basing it on the rough sketch he made. In the sketch, the Dominion bus is marked as Exhibit "A-2", the owner type as Exhibit "A-3" and the Isuzu truck as Exhibit "A-4", the dotted figures which represent the fallen debris as Exhibit "A-5". There was also a police report (Exhibit "A") about the incident. In his investigation, he found out that the proximate cause of the accident was the collision and the Dominion bus was liable because of the fallen debris on the scene and he presumed the bus encroached on the western lane, hitting the oncoming truck and because of the impact, the bus swerved back to its proper lane, hit and bumped again the rear portion of the owner-type jeep; at the time of the accident, the Dominion Bus was proceeding north

direction while the Isuzu truck was going towards the south direction and the owner type jeep was also going northward.

PATROCINIA LIBATIQUE, wife of the victim testified [that] she last saw her husband alive on May 18, 2000 in their house. In the evening of the same day, she received a telephone call from the hospital. Immediately thereafter, she proceeded to the Ilocos Regional Hospital in San Fernando City and was shocked to see her husband already dead, his head full of blood. She felt pain of what happened to him. After regaining her composure, they brought her husband's body to the Joces Funeral Homes in Quinavite, Bauang, La Union where she made arrangements regarding his burial, as evidenced by the bill for the funeral expenses (Exhibit "D"). Due to the death of her husband, she had incurred expenses, as shown by the following receipts: O.R. No. 0901 dated June 5, 2000 - Php60,000.00 (Exhibit "D-1") for the full payment of the funeral services; O.R. No. 3181 dated May 30, 2000 - Php40,000.00 (Exhibit "D-1-A"); O.R. No. 123781 for the cemetery lot fee - Php7,150.00 (Exhibit "D-2"); O.R. No. A-12580942 - Php50.00; O.R. No. 12580950 for authentication fee; O.R. No. 1239043 - certificate of marriage and certificate of death fees; O.R. No. 12814310 - certificate of birth of her daughters and sons used in filing of SSS claims for the death of her husband (Exhibit "D-3"). She incurred a total expenses [sic] of Php106,750.00 for her husband's death (Exhibit "D-8", "D-9").

Her husband was 53 years old when he died and during his life, he was gainfully employed at the Naguillian Cellophane, then became a seaman in the Middle East from 1996 to 1999 (Exhibit "F"). He was also employed as seaman by El Greco (Exhibit "G"). Likewise, her husband worked with the DOHA Marine Services (Exhibit "G-1") with the Philippine Transmarine Carriers, Inc., (Exhibit "G-2"). Her husband was earning \$560.00 including overtime as a seaman (Exhibit "H") with the Philippine Transmarine Carriers, Inc. He was paying his income tax, as shown by the BIR Form No. 1701C (Exhibit "G-4") and the certificate of income tax on compensation (Exhibit "I"). Her husband was remitting to her the 80% of his total income and the 20% remained with him. Due to the death of her husband, she could not eat, sleep and concentrate in her teaching and she was usually scolded by the school principal for that; the pain she felt exists even up to now. Her children also felt sorrow and pain and they often cry whenever they remember their father. In connection with this case, she has engaged the services of a counsel, as evidenced by the retainer's contract dated November 15, 2000 (Exhibit "D-10").<sup>5</sup> (Underscoring, italics and emphasis omitted)

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<sup>5</sup> Id. at 90-92.

Mencorp, on the other hand, raised the defense of due diligence in the selection and supervision of its driver Pe, and likewise offered a different version of the incident, viz.:

TERENCIO ROMANO, 56 years old, married, employee of Mencorp Transport System and residing at No. 45 Salcedo St., Vigan City, testified that he is now the chief supervisor of Mencorp for 5 1/2 years. Before that, he worked with Times Transit Corporation for more or less seventeen (17) years as a bus supervisor. As such he conducts examination and evaluation of applicant drivers, supervises and maintains the buses and sees to it that they are road worthy, implements the rules and regulations issued by the company regarding defensive and safety driving, conducts lectures and seminars to their drivers and also recommends disciplinary actions to erring drivers, the same duties he does with Mencorp.

In the conduct of examination and evaluation of applicant-drivers, their company require [sic] an applicant to submit his bio-data and credentials, medical certificate and barangay clearance, NBI and police clearances and he also requires the applicant to undergo written and practical examinations.

He was responsible in hiring defendant Edmundo P. He examined and evaluated him when he applied with Mencorp sometime in October, 1999. He required Edmundo Pe to submit his bio-data (Exhibit "2") and credentials and also required him to undergo physical and medical examination, as evidenced by his neuro-psychiatric report (Exhibit "3"), X-ray diagram report (Exhibit "4"), medical report regarding the condition of his eyes (Exhibit "5") and his drug report (Exhibit "6"). He also required him to submit a neuro-psychiatric report to determine if he is in good mental condition that may affect his driving skills and as per report, defendant Pe has passed the psychiatric examination, as evidenced by the remarks indicate in the report that reads: "there are no signs or symptoms of psychiatric [dis]order (Exhibit "3-A"). Defendant Pe was also required to submit an X-ray report in order to know if he has any health problems that may affect his driving skill; a certification of an eye specialist to determine if he has an eye problem which is very important in the work he is applying for. He was also required to submit his NBI clearance (Exhibit "7"), barangay clearance (Exhibit "9"), and police clearance (Exhibit "8") to know if he has any derogatory records particularly involving vehicular accidents. He was also required to submit his driver's license (Exhibit "11" and series). Defendant Pe had passed the written examination and the actual driving examination on October 13, 1999 from Vigan, Ilocos Sur to Badoc, Ilocos Norte and vice-versa using the Dominion bus No. 8045 and also from Vigan to Narvacan, Ilocos Sur using bus No. 8044, as evidenced by the document denominated as "examiner's observation"

(Exhibit "12") and defendant Pe passed the actual driving examination (Exhibit "12", Exhibit "12-A"). They also required him to undergo apprenticeship driving for (2) weeks to familiarize himself with the different rules of operation of Mencorp (Exhibit "13"). After (2) weeks, they hired him as a bus driver and issued him a driver's manual (Exhibit "14").

Being a bus supervisor, he attends regular seminars conducted by the Department of Transportation and Land Transportation Authority (Exhibit "15")[,] was issued a certificate of attendance on the defensive driving course sponsored by the Safety Organization of the Philippines (Exhibit "16"), diploma in taking technical course on electronic service (Exhibit "17"), certificate on engine overhauling seminar conducted by the Pilipinas Hino, Inc. (Exhibit "18"), certificate of completion conducted by Mitsubishi Motors (Exhibit "19"), certificate of attendance on preventive maintenance conducted by Cummins (Exhibit "20"), certificate of attendance in the Caltex Lubrication of Equipment Conservation seminar (Exhibit "21") and the certificate of attendance on Tire Management seminar (Exhibit "22"). These seminars were helpful in maintaining the roadworthiness of vehicles. He also conducted seminars and training to their drivers emphasizing the seven (7) rules of defensive driving in order to avoid road accidents. He and their (18) mechanics maintain the roadworthiness of their buses. They have (2) mechanics for every terminal in their (4) terminals and they have (10) mechanics in Manila. Their mechanics were hired as in-house mechanics. They provide a daily check-up after and every use of the bus. Everytime the bus arrives at the terminal, they conduct the check up [sic] of the engine, one mechanic will conduct the engine electrical system and the other mechanic to check the under-chassis mechanisms.

CARLITO C. CARDANO, the Personnel Officer of defendant Mencorp since September 1997, said in the selection and hiring of their employees, they require them to have at least (5) years experience in driving buses and to pass through mechanical driving test and all other requirements before they hire applicants as regular employees. Defendant Manuel Edmundo Pe was a former driver of a dominion bus. He identified Pe's personal records (Exhibit "2" to "13"). Defendant Pe reported to him, he had figured in an accident and as a policy of their company, they require the driver or conductor to report to the personnel officer in Manila who will interview them about the nature of the accident. Defendant Pe told him the accident was due to the fault of the jeepney driver because when he (Pe) allegedly was about to overtake the jeepney, he flashed his horn and headlights, but, despite his warning the driver of the jeep tried to race against him (Pe), in complete disregard of traffic rules and regulations. The verbal explanation of defendant Pe was satisfactory being supported by the police sketch which stated he was not at fault; he

was already ahead of the jeepney when he tried to swerve going back to his lane. Pe is now on AWOL. They had already sent Pe notice to report their office on August 3, 2000 (Exhibit "25") which he received (Exhibit "25-A"). They have (26) mechanics assigned in their stations and at least (12) field supervisors to monitor their drivers and conductors if the[y] are complying with the rules and regulations of the company.<sup>6</sup> (Underscoring, italics and emphasis omitted.)

After trial, the RTC rendered a Decision in favor of herein respondent and their co-plaintiff Felipe Rivera (Rivera). The trial court found Pe negligent and that his negligence was the proximate cause of the accident. It gave credence to respondent's claim that the opposite lane was not clear when the bus driven by Pe tried to overtake the jeep boarded by the deceased Libatique and, in the course of overtaking, the bus hit and bumped a cargo truck coming from the opposite direction, swerved to the right then bumped the rear portion of the jeep. The trial court likewise found Mencorp negligent as Pe's employer in the supervision of the latter in the course of his employment. Thus, Mencorp and Pe were held jointly and severally liable for damages. The indemnity included, *inter alia*, compensatory damages for Libatique's loss of earning capacity, based on the trial court's finding that the deceased was only on vacation as a seaman when the incident happened and was certainly to return to work and to earn more or less \$580.00 a month.<sup>7</sup> The decretal portion of the trial court's Decision is as follows:

**WHEREFORE**, in view of the foregoing considerations, judgement is here by **RENDERED IN FAVOR** of the plaintiffs and **AGAINST** the defendants, **ORDERING** the latter to pay jointly and severally to the former, the following amounts:

1. Php50,000.00 for death indemnity of the victim Liberato Libatique;
2. Php106,750.00 as actual damages to the heirs of Liberato Libatique and Php500.00 to plaintiff Felipe Rivera;
3. Php50,000.00 as moral damages to Patrocinia Libatique;
4. Php2,192,400.00 as loss of earning capacity of the victim;

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<sup>6</sup> Id. at 92-94.

<sup>7</sup> Id. at 95-97.

5. Php15,000.00 as attorney's fees and another 25% of whatever amount may be recovered from the defendants; and to pay the costs.

**SO ORDERED.**<sup>8</sup>

Mencorp forthwith filed an appeal with the CA. In a Decision rendered on September 16, 2011, the appellate court denied petitioner's appeal, disposing as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision of the court *a quo* dated 28 June 2004 is hereby ***affirmed in toto***.<sup>9</sup>

The CA sustained the trial court's finding of negligence on the part of Mencorp's driver Pe. In rejecting the defendants' averment that the road was clear when the Dominion bus overtook the jeep and that Rivera, the jeep's driver, was at fault for racing against the overtaking bus, the CA noted that Pe himself was never presented during the trial of the case to attest to the truth of the alleged defenses. The CA likewise upheld the trial court's assailed findings that Mencorp failed to exercise the diligence of a good father of a family in the supervision of Pe, and that the deceased Libatique was gainfully employed at the time of his death.<sup>10</sup>

Mencorp sought reconsideration of the CA Decision, but its motion was denied.

Undaunted, Mencorp filed the present Petition for Review on *Certiorari*, raising the following alleged errors:

I.

THE HONORABLE COURT OF APPEALS MISERABLY ERRED IN INTERPRETING THE ESTABLISHED FACTS ON RECORD WHEN IT HELD THAT DRIVER PE WAS NEGLIGENT AND WHEN IT DID NOT CONSIDER THE NEGLIGENCE OF FELIPE RIVERA AT THE TIME OF THE ACCIDENT WHICH WAS ADMITTED ON RECORD.

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<sup>8</sup> Id. at 98.

<sup>9</sup> Id. at 60.

<sup>10</sup> Id. at 52-57.



## II.

THE HONORABLE COURT OF APPEAL'S FINDING THAT PETITIONER DID NOT EXERCISE THE DUE DILIGENCE OF A GOOD FAHTER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES IS NOT SUPPORTED BY THE ESTABLISHED FACTS AND EVIDENCES [sic] ON RECORD.

## III.

THE DAMAGES FOR ACTUAL, LOSS OF EARNING CAPACITY, MORAL, EXEMPLARY DAMAGES & ATTORNEY'S FEES & OTHERS AWARDED BY THE HONORABLE COURT OF APPEALS IS NOT IN ACCORD WITH THE ESTABLISHED FACTS AND EVIDENCES [sic] ON RECORD.<sup>11</sup>

### **Our Ruling**

The petition is partly meritorious.

On its first assigned error, Mencorp pleads this Court to overturn the findings of facts of both the trial court and the CA, and to give credence instead to its version of the incident. Mencorp maintains its claim that proximate cause of the accident was the negligence of the Rivera, the driver of the owner-type jeep. It insists that the road was clear at the time that the Dominion bus overtook the owner-type jeep, and that Rivera raced against the overtaking bus, which prevented the latter to pass in safety. Mencorp likewise harps heavily on the fact that Rivera was driving without the required license at the time of the incident. Thus, it asserts that it should not be held liable for damages, since the proximate cause of the accident was not negligence of its bus driver Pe.

As a general rule, the factual findings of the trial court, especially when affirmed by the appellate court, are binding and conclusive on the Supreme Court. Not being a trier of facts, this Court will not allow a review thereof unless: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the [CA] went beyond the issues of the case and its findings are contrary to the admissions of

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<sup>11</sup> Id. at 21-22.



both appellant and appellees; (7) the findings of fact of the [CA] are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the [CA] are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>12</sup>

None of the foregoing exceptions has been shown to obtain in this case to warrant departure from the general rule. In uniformly adopting respondent's version of facts, the lower courts carefully weighed and considered the evidence adduced by both parties, as can be gathered from the disquisition of the CA, as quoted hereunder:

For one, the appellant failed to present a testimony which will directly support its theory. Even Pe, the driver of its bus, was not presented in court to testify on the veracity of appellant's explanation. In other words, the evidentiary records prove otherwise. Secondly, the Police Report and Police Sketch speak clearly of what had transpired during the incident: while the bus was negotiating to overtake the owner-type jeep, it collided with a southbound isuzu 6-wheeler truck such that it (the bus) swerved back to the right and hit the jeep. Thirdly, the testimony of Rivera, the driver of the owner-type jeep, which was never rebutted by the appellant, is clear on this matter. Rivera said that he noticed the appellant's bus tailing him at a distance of 5 meters behind, while 3 meters from him was the isuzu cargo truck coming from the opposite direction. Undoubtedly, when the appellant's bus tried to overtake the owner-type jeep, the left lane was not clear as there was in fact an approaching isuzu truck.

Under section 41(a), Article II of the Land Transportation and Traffic Code, the driver of a vehicle shall not drive to the left side of the center line of the highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible, and is free from oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

Evidently, with the foregoing circumstances, the appellant's bus driver, Mr. Pe, was negligent as he had in fact violated the aforequoted traffic rule. x x x<sup>13</sup>

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<sup>12</sup> *Manliclic v. Calaunan*, 541 Phil. 617, 634-635 (2007).

<sup>13</sup> *Rollo*, pp. 53-54.

Preponderant evidence has amply established the version of the mishap espoused by respondent. Notably, only the evidence presented by respondent to prove the factual circumstances of the accident are admissible; in contrast, Mencorp's evidence consisting of the hearsay testimony of Carlito Cardano, to whom Pe supposedly reported incident after it happened, is inadmissible and undeserving of probative weight. Hence, as between the two opposing narratives—where one is supported by competent evidence, while the other rests solely on the testimony of a witness having no personal knowledge of the incident—the former prevails by preponderance of evidence.

Furthermore, Mencorp's imputation of negligence on the part of the Rivera for driving with only a student's license is inconsequential.

While under Article 2185<sup>14</sup> of the Civil Code, a violation of a traffic regulation—such as driving without a proper license<sup>15</sup>—at the time of a mishap gives rise to a legal presumption of negligence, we have previously held that negligence *per se*, arising from the mere violation of a traffic statute, is not sufficient in itself in establishing liability for damages.<sup>16</sup> Jurisprudence dictates that a causal connection must exist between the injury received and the violation of the traffic regulation. In other words, it must be proven that the violation of the traffic regulation was the proximate or legal cause of the injury or that it substantially contributed thereto. Hence, negligence, consisting in whole or in part, of violation of law, like any other negligence, is without legal consequence unless it is a contributing cause of the injury.<sup>17</sup>

While this Court recognizes that the rule on negligence *per se* (and Article 2185, for that matter) is undeniably useful as a judicial guide in adjudging liability, for it seeks to impute culpability arising from the failure of the actor to perform up to a standard established by a legal fiat, it should not be rendered inflexible so as to deny relief when in fact there is no causal relation between the statutory violation and the injury sustained. Presumptions in law, while convenient, are not intractable so as to forbid rebuttal rooted in fact. After all, tort law is remunerative in spirit, aiming to provide compensation for the harm

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<sup>14</sup> Art. 2185. 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.

<sup>15</sup> *Tison v. Sps. Pomasin*, 671 Phil. 686, 704 (2011).

<sup>16</sup> *Dela Cruz v. Capt. Octaviano*, 814 Phil. 891, 910 (2017).

<sup>17</sup> *Tison v. Sps. Pomasin*, supra at 703, citing *Sanitary Steam Laundry, Inc. v. CA*, 360 Phil. 199, 208 (1998).



suffered by those whose interests have been invaded owing to the conduct of other.<sup>18</sup>

Applying the foregoing principle in this case, Mencorp cannot evade liability by simply invoking Rivera's lack of a Philippine driver's license. Such deficiency alone is not determinative of Rivera's negligence in relation to the accident. While ostensibly, Mencorp would want this Court to believe that the accident was caused by Rivera's inexperience as a driver, such theory fails in the light of the undisputed fact that he was at that time not just a holder of a student's license but also of an international driver's license, which sufficiently proves that he has acquired driving experience prior to the mishap.

Mencorp next contends that the lower courts erred in finding it solidarily liable for damages with its driver/employee, Pe, pursuant to Article 2180<sup>19</sup> of the Civil Code. Mencorp argues that even on the assumption that Pe was negligent, it had for its part adduced adequate evidence in availing of the defense that it exercised the diligence of a good father of a family in the selection and supervision of its employees.

We are not convinced.

Indeed, the presumption of negligence on the part of an employer that arises whenever an employee's negligence causes damage or injury to another, is only *juris tantum*.<sup>20</sup> As such, an employer may rebut the same by presenting proof that in the selection and supervision of the employee, he/she has exercised the care and diligence of a good father of a family.<sup>21</sup>

The Court recognizes that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid

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<sup>18</sup> *Añonuevo v. Court of Appeals*, 483 Phil. 756, 770 (2004).

<sup>19</sup> Art. 2180. 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 or industry.

<sup>20</sup> *Mendoza v. Sps. Gomez*, 736 Phil. 460, 478 (2014).

<sup>21</sup> *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corp.*, 654 Phil. 67, 79 (2011).

defense to the legal presumption of negligence on the part of an employer or master whose employee has, by his negligence, caused damage to another. Jurisprudence nevertheless shows that testimonial evidence, without more, is insufficient to meet the required quantum of proof.<sup>22</sup> After all, the well-settled rule on evidence is that clear and convincing evidence is required to overthrow a legal presumption.

Proceeding from the above context, We again subscribe to the uniform ruling of the RTC and CA that the evidence of Mencorp was only sufficient to substantiate that it exercised the required diligence in the selection of Pe as one of its drivers, but not to prove its exercise of the same degree of diligence in the supervision of the latter. A review of the facts shows that Mencorp laboriously presented documentary evidence consisting, among other things, of tests and pre-qualification requirements, that persuasively discharge its onus of proving due diligence in the selection of Pe. Nonetheless, it only attempted to prove that it diligently supervised Pe on the job by mere testimonial evidence. Without any corroborating object or documentary evidence to obviate the apparent biased nature of the testimonies offered on the matter, We hold that such testimonial evidence failed to meet the required quantum of proof. To this Court, the measures taken by a bus company in the supervision of its bus drivers could be successfully substantiated by more concrete proof had the obligation been actually satisfied.

It may not be amiss to state on this score that proving diligence in the selection of its employee only satisfied half of the requirement under Article 2180 of the Civil Code<sup>23</sup> and is inadequate to relieve Mencorp of its liability when the other requisite of due diligence in the supervision of the employee has not been shown to concur. Accordingly, Mencorp's solidary liability for the *quasi-delict* committed by Pe is sustained.

This brings us to the award of damages in favor of respondents.

Mencorp primarily challenges the award of compensatory damages for the victim's loss of earning capacity. According to Mencorp, the indemnity lacks evidentiary basis considering that the

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<sup>22</sup> *Reyes v. Doctolero*, 815 Phil. 166, 178 (2017).

<sup>23</sup> *Reyes v. Doctolero*, supra note 22 at 181.

employment contract presented to establish Libatique's income had already expired prior to his death.

The argument is well-taken.

Damages for loss or impairment of earning capacity is in the nature of actual damages.<sup>24</sup> Thus, as a rule, documentary evidence should be presented to substantiate a claim therefor.<sup>25</sup> In this case, however, the documentary evidence that substantiated the award for loss of earning capacity is the April 1998 employment contract of Libatique, which was no longer in force at the time of his death in May 2000. It only goes to show that Libatique had no subsisting contract of employment when he died. For this reason, We find the award of compensatory damages for loss of earning capacity speculative. Accordingly, such indemnity in the amount of ₱2,192,400.00, which was computed on the basis of an expired contract of service, should be disallowed.

Be that as it may, 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.<sup>26</sup>

In *Tan v. OMC Carriers, Inc.*,<sup>27</sup> We awarded the heirs of the deceased, a self-employed tailor, temperate damages in the amount of ₱300,000.00, or roughly the gross income for two (2) years, to compensate for loss of the earning capacity of the deceased.<sup>28</sup> Similarly, in *Victory Liner, Inc. v. Gammad*,<sup>29</sup> 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,<sup>30</sup> We awarded the heirs ₱500,000.00 as temperate damages.<sup>31</sup> Further, in *People v. Almedilla*<sup>32</sup> and *People v. Singh*,<sup>33</sup> We granted temperate damages amounting to ₱25,000.00 and ₱200,000.00, respectively, in place of actual damages

<sup>24</sup> *Sps. Estrada v. Phil. Rabbit Bus Line, Inc.*, 813 Phil. 950, 970 (2017).

<sup>25</sup> *People v. Salahuddin*, 778 Phil. 529, 555 (2016).

<sup>26</sup> *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 2011.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 457-458.

<sup>29</sup> 486 Phil. 574 (2004).

<sup>30</sup> *Id.* at 590.

<sup>31</sup> See *Tan v. OMC Carriers, Inc.*, supra note 26 at 457

<sup>32</sup> 456 Phil. 719 (2003).

<sup>33</sup> 412 Phil. 842 (2001).



for the failure of the prosecution to present sufficient evidence of the deceased's income.<sup>34</sup> In the more recent case of *People v. Salahuddin*,<sup>35</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.<sup>36</sup> Again in lieu thereof, temperate damages of ₱1,000,000.00 was awarded.<sup>37</sup>

There were also instances where this Court allowed the grant of temperate damages as compensation for loss of earning capacity even if such loss did not result from death. Thus, in *Sps. Estrada v. Phil. Rabbit Bus Lines, Inc.*,<sup>38</sup> We awarded ₱500,000.00 as temperate damages to the injured party, a teacher whose right arm was amputated as a result of a vehicular mishap.<sup>39</sup> In *Pleno v. Court of Appeals*,<sup>40</sup> We affirmed the trial court's award of ₱200,000.00 as temperate damages on impairment of earning capacity because it was established that the injured party was an entrepreneur who sustained a permanent deformity due to a shortened left leg and double vision in his left eye.<sup>41</sup>

It must be stressed that the grant of temperate damages, albeit subject to the discretion of the court,<sup>42</sup> must always be reasonable<sup>43</sup> and **based on the facts and circumstances of each case.**<sup>44</sup> Indeed, this Court's discretion is subject to the condition that the award for damages is not excessive under the attendant facts and circumstance of the case.<sup>45</sup>

Here, Libatique's income-earning capacity has been sufficiently established. As the CA aptly pronounced, the nature of Libatique's job as a seafarer is that "*although their contracts may have expired as they take a break from their jobs on board, most, if not all, of them go back to their respective work station after a brief period of interruption.*" For this reason, this Court finds it reasonable to award

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<sup>34</sup> See *Tan v. OMC Carriers, Inc.*, supra.

<sup>35</sup> Supra note 25.

<sup>36</sup> Id. at 555.

<sup>37</sup> See *Sps. Estrada v. Phil. Rabbit Bus Lines, Inc.*, supra note 24 at 974.

<sup>38</sup> Id.

<sup>39</sup> Id. at 976.

<sup>40</sup> 24 Phil. 213 (1988).

<sup>41</sup> Id. at 231.

<sup>42</sup> Id. at 229.

<sup>43</sup> CIVIL CODE, Article 2225.

<sup>44</sup> See *Pleno v. Court of Appeals*, supra at 229.

<sup>45</sup> Id.

₱1,000,000.00 as temperate damages *in lieu* of actual damages for loss of earning capacity.

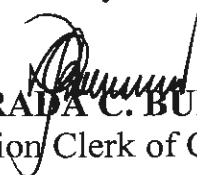
All other monetary awards are sustained for having sufficient factual and legal bases.

Finally, an interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded from the time of finality of this Resolution until fully paid.<sup>46</sup>

**WHEREFORE**, premises considered, the Decision dated September 16, 2011 and the Resolution dated August 30, 2012 of the Court of Appeals in CA-G.R. CV No. 85205 are **AFFIRMED with the following MODIFICATIONS**: (1) to award ₱1,000,000.00 as temperate damages in lieu of the award of ₱2,192,400.00 as compensation for loss of earning capacity of Liberato Libatique; and (2) to impose the legal interest rate of six percent (6%) *per annum* on all the damages awarded from the finality of this Resolution until fully paid.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *ff. 5/24*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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<sup>46</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 280 (2013).

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The Presiding Judge  
Regional Trial Court, Branch 33  
Bauang, 2501 La Union  
(Civil Case No. 1288-BG)

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JLP