



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GIL APOLINARIO,

Petitioner,

G.R. No. 219686

Present:

- versus -

GESMUNDO, C.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO,* and
MARQUEZ, JJ.

**HEIRS OF FRANCISCO DE LOS
SANTOS, represented by EDWIN
DELOS SANTOS,**

Respondents.

Promulgated:

NOV 27 2024

noted

X ----- X

DECISION

HERNANDO, J.:

This resolves the Petition for Review on *Certiorari*¹ assailing the Decision² and the Resolution³ of the Court of Appeals (CA), which modified the Regional Trial Court's Decision⁴ that granted the Heirs of Francisco De Los Santos' (Heirs) complaint for damages against Gil Apolinario (Apolinario).

* On official business.

¹ *Rollo*, pp. 9-26.

² *Id.* at 27-45. The May 28, 2014 Decision in CA G.R. CV No. 03433 was penned by Associate Justice Edgardo L. Delos Santos (a retired member of this Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez (now a member of this Court) of the Nineteenth Division, Court of Appeals, Cebu City.

³ *Id.* at 46-47. The June 24, 2015 Resolution in CA G.R. CV No. 03433 was penned by Associate Justice Edgardo L. Delos Santos (a retired a member of this Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y Lopez (now a member of this Court).

⁴ *Id.* at 48-61. The January 25, 2010 Decision in Civil Case No. 99-274 was penned by Judge Reynaldo B. Clemens of Branch 31, Regional Trial Court, Calbayog City.

The Antecedents

On July 4, 1998 at around 7:30 a.m., Rico Villahermosa (Rico), the 16-year old son of Teresita Villahermosa (Teresita), was cutting down a banana plant on the side of Maharlika Highway upon the instruction and under the supervision of Apolinario, his school principal. The banana plant fell and hit Francisco De Los Santos (Francisco) who was driving his motorcycle along Maharlika Highway at the time.⁵

As a result, Francisco fell from his motorcycle and unto the cemented highway. He suffered from head injuries and passed away on July 8, 1998, with his death certificate indicating "post-traumatic brain swelling" and "diffuse cerebral contusion" as his cause of death.⁶

Aggrieved, the Heirs of Francisco filed a complaint for damages against Apolinario and Teresita. They averred that Apolinario was negligent when he instructed Rico to cut down the banana plant situated at the side of the highway without taking the necessary precautions to ensure the safety of passing motorists and pedestrians, and that Rico's and Apolinario's gross negligence was the proximate cause of the injuries and death of Francisco.⁷

The Heirs further averred that due to Francisco's accident and death, they incurred PHP 50,000.00 in hospital and medical expenses and PHP 47,000.00 as funeral expenses, and prayed for the payment of PHP 428,800 as compensation for the loss of expected income of the deceased as member of the Sangguniang Bayan of Sta. Margarita, Samar; PHP 50,000 for moral damages, PHP 20,000 for exemplary damages; PHP 20,000.00 for attorney's fees, and PHP 10,000.00 for the litigation expenses.⁸ Anent Francisco's income, respondents alleged that he was earning monthly emoluments of PHP 12,620.00 and expected to receive the same continuously until end the of his term on June 1, 2001.⁹

Elias Udjay (Elias) testified that his son Arnel also attended Barangay Palale Elementary School, and that he was only two arms' length away from Apolinario and Rico at the time of the incident.¹⁰ A teacher called for *pintakasi*, an event supervised by Apolinario as the head of the teachers.¹¹ Elias was cutting grass along the school vicinity when he witnessed Apolinario instructing Rico to cut a banana plant just outside the fence of the school and across the highway opposite the school. While Rico was cutting down the plant, it hit

⁵ *Id.* at 32.

⁶ *Id.* at 28.

⁷ *Id.* at 29.

⁸ *Id.*

⁹ RTC records, p. 8.

¹⁰ TSN, Elias Udjay, May 29, 2003, pp. 19-22.

¹¹ *Id.* at 21.

Francisco.¹²

Edwin de los Santos (Edwin), the son of the deceased Francisco, testified that at the time of his father's death, Francisco was a member of the Sangguniang Bayan of Sta. Margarita.¹³ He also brought with him his father's death certificate.¹⁴

Rico, who was not impleaded as a defendant but appeared in court as a witness, testified that he was 15 years old at the time of the incident.¹⁵ The day prior to *pintakasi*, Apolinario conducted a meeting for the activity which his mother attended.¹⁶ His mother told him that the attendees were advised that adult students may join the *pintakasi* and their parents need not go to school; hence, Rico attended the activity since he was old enough.¹⁷ Rico likewise testified that during the activity, Apolinario instructed him to cut down the banana plant.¹⁸ He crossed the road directly across the school and started cutting the banana plant, and he only saw Francisco when the banana plant was about to fall down.¹⁹ After Francisco was hit at the back of his neck, Apolinario was at the side of the road and did not help Francisco. Afterwards, the police brought Francisco to the hospital. Thereafter, the *pintakasi* continued and Apolinario still issued orders to the participants.²⁰

Teresita prayed for the dismissal of the complaint against her. She averred that her minor son cut down the banana plant on instruction of Apolinario and under his supervision as school principal.²¹

In his defense, Apolinario asserted that: (a) he could not have been supervising and instructing Rico on how to cut the banana plant since he was not present when the incident happened; (b) at the time of the incident, he was 10 meters away supervising the construction of a fence, while Rico was in the actual supervision of two teachers; (c) the incident did not take place on a school day; it was a Saturday, during an activity by parents, teachers, and the adult community of Brgy. Palale, Sta. Margarita, Samar; (d) his co-defendant Teresita should be the one held liable, as she sent Rico to the event without informing the school, parents, teachers, and adult community organization of such fact; (e) assuming that Rico was under the school's control and supervision during the activity, the responsibility attaches only to the teacher-in-charge. Apolinario

¹² *Id.* at 21–24, 31.

¹³ TSN, Edwin de los Santos, July 26, 2004, p. 4.

¹⁴ *Id.* at 3.

¹⁵ TSN, Rico Villahermosa, December 3, 2007, p. 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8, 11.

¹⁹ *Id.* at 11, 12, 15.

²⁰ *Id.* at 17–18.

²¹ *Id.* at 30.

also filed a counterclaim for the award of moral damages.²²

For his part, Apolinario testified that he was the principal of Brgy. Palale Elementary School, Sta. Margarita, Samar at the time of the incident, which was a public elementary school and not a school of trade and industry.²³ He did not handle any classes, and the principal's office was not involved in the *pintakasi* as he did not attend any meeting with regard to the parent-teacher association. The teachers were the ones in charge of supervising the activities. A day before the activity, the teachers informed him that the *pintakasi* would be held, which involved the teachers and parents of their pupils.²⁴

Apolinario asserted that when the late Francisco was hit by the felled banana plant at around 7:30 a.m., he was on his way to the central school. After he entered his office, a parent informed him that a boy was cutting a banana plant, and the trunk of the banana plant fell on Francisco along the highway, causing him to slip. He inspected the place of the incident.²⁵

Ruling of the Regional Trial Court

The trial court held Apolinario liable for damages, *viz.*:

WHEREFORE, this court renders judgment in favor of the plaintiffs and against the defendant Gil Apolinario and orders the latter to pay plaintiffs the following:

1. [PHP] 25,000.00 as temperate damages;
2. [PHP] 428,880.00 as unearned income of Francisco de los Santos;
3. [PHP] 50,000.00 as civil indemnity;
4. [PHP] 50,000.00 as moral damages;
5. [PHP] 20,000.00 as exemplary damages;
6. [PHP] 50,000.00 as attorney's fees; And
7. [PHP] 5,000.00 as litigations expenses

On the other hand, the counterclaims of Gil Apolinario are dismissed for lack of basis.

SO ORDERED.²⁶

The trial court observed that: (a) Rico was negligent for failing to take the necessary precautions to safeguard the safety of passersby, such as the installation of early warning devices; (b) Apolinario was also negligent for directing Rico, a minor, to cut the banana plant without taking precautions; (c) Apolinario is primarily liable as he was the one who directed Rico to cut the

²² *Rollo*, pp. 29-30.

²³ TSN, Gil Apolinario, October 6, 2008, p. 4.

²⁴ *Id.* at 4, 25-27.

²⁵ *Id.* at 4-9.

²⁶ *Rollo*, p. 61.

plant, in line with Articles 218 and 219 of the Family Code; and (d) the damages to be paid to the heirs of Francisco will be shouldered only by Apolinario since Rico was not impleaded as a defendant while Teresita's liability is only subsidiary to that of her own son, Rico.²⁷

Notably, the trial court also awarded PHP 428,880.00 as actual damages for loss of earning capacity since it was undisputed that the deceased was a member of the Sangguniang Bayan of Sta. Margarita, Samar at the time of his death. The trial court took judicial notice that he was receiving PHP 12,620.00 a month, and computed the judgment award based on the victim's expected term of three years.²⁸

Thus, Apolinario's appeal before the CA.²⁹

Ruling of the Court of Appeals

The appellate court affirmed the finding of negligence against Apolinario but deleted the award of exemplary damages and attorney's fees, viz.:

WHEREFORE, premises considered, the instant Appeal is partly GRANTED. The Decision dated 25 January 2010 rendered by the Regional Trial Court (RTC), Branch 31, 8th Judicial Region, Calbayog City, in Civil Case No. 99-724 is hereby AFFIRMED with MODIFICATION in that the award of exemplary damages and attorney's fees are deleted.

*SO ORDERED.*³⁰ (Emphasis in the original)

The CA ruled that: (a) Apolinario, as the school principal, called for the preparatory meeting prior to the school event, instructed Rico to cut the banana plant, and exercised authority during the school activity; (b) Apolinario's responsibility to supervise and his liability for the acts of the pupils present did not cease even if there were no classes and the event was held on a Saturday; (c) the award of damages and litigation expenses, except for the exemplary damages and attorney's fees, were adequately explained by the trial court.³¹

Apolinario moved for reconsideration which the appellate court denied in its June 24, 2015 Resolution.³²

Hence, this Petition.³³

²⁷ *Id.* at 56-61.

²⁸ *Id.* at 60.

²⁹ *Id.* at 44.

³⁰ *Id.* at 26.

³¹ *Id.* at 35-44.

³² *Id.* at 46-47.

³³ *Id.* at 9-26.

Apolinario asserts that: (a) the damages for loss of earning capacity of the deceased Francisco, which was awarded by the trial court by virtue of judicial notice, should be deleted since the Heirs did not prove Francisco's loss of earning capacity by documentary evidence;³⁴ and (b) Apolinario should not shoulder the subsidiary liability of Teresita just because Rico was not impleaded in the instant case, and since Teresita was also impleaded as a defendant.³⁵

For their part, the Heirs of Francisco maintain that: (a) in *Ochoa v. G&S Transport Corporation*,³⁶ the Court held that testimonial evidence may suffice to establish a basis for the court to make a fair and reasonable estimate of the loss of earning capacity; (b) the deceased's income at the time of his death as a member of the Sangguniang Bayan of Sta. Margarita, Samar is a matter of judicial notice and public knowledge; (c) as found by the trial court, it was Apolinario who ordered Rico to cut down the banana plant, and that as the school principal, he called and organized the activity and the undertaking took place under his authority.³⁷

Issues

The Court is called to resolve the following:

1. Is Apolinario, to the exclusion of Teresita, principally liable for damages to the Heirs of Francisco?
2. Is the award of PHP 428,880.00 for loss of earning capacity in accordance with law and jurisprudence?

Our Ruling

The petition is partly granted.

Apolinario, as the teacher-in-charge of Rico at the time of the commission of the latter's tortious act, is vicariously liable for damages

Preliminarily, the trial court's finding of negligence, when affirmed by the CA, is a question of fact that the Court cannot pass upon without going into factual matters touching on the finding of negligence. In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to

³⁴ *Id.* at 18-21.

³⁵ *Id.* at 21-24.

³⁶ *Heirs of Ochoa v. G & S Transport Corp.*, 660 Phil. 387, 406 (2011) [Per J. Del Castillo, First Division].

³⁷ *Rollo*, pp. 69-72.

reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.³⁸

Here, the RTC and the CA uniformly held that Apolinario was negligent in directing Rico to cut the plant without observing the degree of care required under the circumstances to prevent the incident leading to Francisco's death, and thus liable for damages. We find no reason to disturb the findings of the RTC and CA. However, considering Apolinario's assertion that it is Teresita and not him who should be held liable for damages for Rico's act, a discussion on the nature and basis of his liability and Teresita's is in order.

A teacher-in-charge's civil liability for quasi-delicts committed by pupils in their custody is anchored in Articles 2176 and 2180 of the Civil Code:

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

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.

....

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)

The foregoing provisions embody the concept of vicarious liability or imputed negligence under civil law.³⁹ Under this concept, school heads and teachers are liable for the tortious acts of their pupils while they remain in their custody, because they stand *in loco parentis* to their pupils and are thus called upon to exercise reasonable supervision over the conduct of the child.⁴⁰ A student is deemed in the custody of the school authorities as long as he is under the control and influence of the school and within its premises, whether the semester has not yet begun or has already ended.⁴¹

³⁸ *Calang v. People*, 640 Phil. 710, 714 (2010) [Per J. Brion, Third Division]

³⁹ *De Belen v. Fuchs*, G.R. No. 258557, October 23, 2023 [Per J. Lopez, J., Second Division] at 10. This pinpoint citation refers to the copy of the Supreme Court Decision uploaded to the Supreme Court website.

⁴⁰ *Palisoc v. Brillantes*, 148-B Phil. 1029, 1039 (1971) [Per J. Teehankee, *En Banc*]; *See also Philippine School of Business Administration v. Court of Appeals*, 282 Phil. 759, 764 (1992) [Per J. Padilla, Second Division].

⁴¹ *Amadora v. Court of Appeals*, 243 Phil. 468, 480 (1988) [Per J. Cruz, *En Banc*].

However, pursuant to Article 2180 of the Civil Code, teachers shall be freed of liability arising from the tortious acts of their students if they can prove that they observed all the diligence of a good father of a family to prevent damage. As long as the defendant can show that he had taken the necessary precautions to prevent the injury complained of, he can exonerate himself/herself from the liability imposed by Article 2180.⁴²

In addition, Articles 218 and 219 of the Family Code provide that the school, its administrator, and teachers have *special parental authority* and responsibility over the minor child while under their supervision, instruction, and custody, and are thus principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. In turn, the parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable for damages.⁴³

Guided by the foregoing, to determine whether Apolinario should be held vicariously liable for Rico's tortious act, the following must be established:

First, Rico committed an act for which a claim for damages based on quasi-delict can be sustained;

Second, Apolinario is a teacher-in-charge under the law who had custody over Rico at the time of the commission of the act; and

Third, Apolinario failed to show that he observed the diligence of a good father of a family to prevent damages.

All these obtain here.

At the outset, a claim for damages on the basis of quasi-delict for Rico's act can be sustained as the following requisites are present: (1) damage to plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose acts he must respond was guilty; and (3) connection of cause and effect between such negligence and damage.⁴⁴

⁴² *Id.* at 481.

⁴³ FAMILY CODE, art. 218 and art. 219 provides:

Article 218. The School, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody. Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

Article 219. Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable. The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

⁴⁴ *Philippine National Railways v. Brunty*, 537 Phil. 161, 174 (2006) [Per J. Callejo, Sr., First Division]. In connection with the foregoing, negligence is the omission to do something which a reasonable human, guided by those considerations that ordinarily regulate the conduct of human affairs, would do, or doing of something which a prudent and reasonable human would not do [*The Real Bank (A Thrift Bank), Inc. v.*

First, as discussed by the courts *a quo*, the Heirs incurred damages when Francisco sustained injuries and passed away from the incident. *Second*, Rico was negligent when he cut the banana plant without taking the necessary precautions, such as setting up early warning devices to adequately advise motorists along Maharlika Highway or requesting the assistance of an adult in directing motorists that may be affected. *Third*, Rico's act of cutting down the banana plant without taking the necessary precautions resulted in the injuries and death of Francisco and without which damages would not have been incurred.

Moreover, Apolinario falls squarely within the definition of a teacher-in-charge contemplated in Article 2176 of the Civil Code. The teacher-in-charge is the one designated by the dean, principal, or other administrative superior to exercise supervision over the pupils in the specific classes or sections to which they are assigned.⁴⁵ While Apolinario is the principal of the school, it is clear from the record that he closely supervised the *pintakasi* and his pupil Rico, and in fact directly instructed Rico to cut down the plant immediately prior to the incident.

Finally, Apolinario failed to show that he exercised the diligence of a good father of a family to prevent the injuries and death of Francisco. As the principal of the school who supervised the activity, Apolinario is expected to take the necessary precautions to ensure not just the safety of the participants but likewise third persons in the immediate vicinity who may be affected by the *pintakasi*, and to take due care in supervising and instructing those participating in the activity in the execution of their tasks, especially for minor participants. Apolinario should have taken other measures, such as instructing Rico to install early warning devices along Maharlika Highway, or requesting another adult to assist and supervise Rico during the cutting of the banana plant and to warn incoming motorists who may be affected, or assigned the task to an adult instead. However, he failed to do so.

All told, the RTC and CA did not err in holding Apolinario liable for damages on account of quasi-delict.

While parents may be held subsidiarily liable under Article 219 of the Family Code, Teresita may not be held liable as she is not a party to the proceedings before Us

Maningas, G.R. No. 211837, March 16, 2022 [Per J. Hernando, Second Division], at 13. This pinpoint citation refers to the copy of the Supreme Court Decision uploaded to the Supreme Court website.

⁴⁵ *Amadora v. Court of Appeals*, 243 Phil. 468, 481 (1988) [Per J. Cruz, *En Banc*].

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Apolinario's argument that it is Teresita who should be held liable for damages is untenable. It is true that parents can be sued and held primarily liable on their own account for the tortious acts of their minor children, as the civil liability of parents for quasi-delicts of their minor children under Article 2180 of the Civil Code, in relation to Article 221 of the Family Code, is primary and not subsidiary.⁴⁶ The failure to implead the minor in the complaint for damages, as in this case, is thus not an obstacle to holding the parent primarily liable for quasi-delict under Article 2180 of the Civil Code.

However, it is crucial to note that the incident occurred while Rico was in Apolinario's custody and direct supervision. When the parent places the child under the effective authority of the teacher, the teacher should be the one answerable for the torts committed by the pupil while under his/her custody, since the parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction.⁴⁷ Hence, Teresita may not be held primarily liable for Rico's tortious acts.

If Teresita was a party to the Rule 45 petition before Us and served copies of the petition and other pleadings, she could have been held liable under Article 219 of the Family Code, which provides that parents may be held subsidiarily liable for damages caused by the acts or omissions of the unemancipated minor:

Article 219. Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. *The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.* The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances. (Emphasis supplied)

However, it is evident that Teresita was no longer included as a party and thus not served copies of the Petition or other pleadings and notices in the proceedings before Us. In fact, since Apolinario filed his Notice of Appeal with the trial court and proceeded with his appeal before the CA, Teresita or her counsel no longer participated nor received any notices of the proceedings.⁴⁸ Neither does it appear that Teresita filed an appeal of her own.

⁴⁶ *Libi v. Intermediate Appellate Court*, 288 Phil. 780, 792 (1992) [Per J. Regalado, *En Banc*]. See also FAMILY CODE, art. 221, which provides:

ARTICLE 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

⁴⁷ *Palisoc v. Brillantes*, 148-B Phil. 1029, 1039-1040 (1971) [Per J. Teehankee, *En Banc*]

⁴⁸ RTC records, pp. 6, 421-422. It is likewise noted that while the CA took efforts to copy furnish Teresita with the pertinent notices while the case was pending with the CA, it appears that the CA did so as it erroneously considered petitioner and Teresita as defendant-appellants with the same interests, with a Registry Return Receipt addressed to both petitioner and Teresita, and received only by petitioner. Moreover, the CA erroneously sent notices intended for Teresita to Atty. Rosales, as the appellate court

It is settled that a judgment binds only those who were parties to the case, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he/she is not a party. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he or she has not been made a party conforms to the constitutional guarantee of due process of law.⁴⁹

In fine, the Court shall not hold Teresita subsidiarily liable for damages to the Heirs, since she is not a party to the proceedings before the Court. To rule otherwise would be to countenance deprivation of property without ample notice, and antithetical to fair play and due process.⁵⁰

The award of PHP 428,880 for loss of earning capacity should be deleted for lack of basis. However, temperate damages way be awarded in lieu thereof

Finally, Apolinario asserts that damages for loss of earning capacity of the deceased Francisco, which was awarded by the trial court by virtue of judicial notice, should be deleted since the Heirs did not prove Francisco's loss of earning capacity by documentary evidence. We agree.

The prevailing formula for loss of earning capacity⁵¹ is as follows:

$$\begin{aligned} \text{Net} &= \text{Life Expectancy} \times [\text{Gross Annual Income} \\ \text{earning} &= \text{(GAI) - Living Expenses (50\% of GAI)} \\ \text{capacity} &= [2/3 (80 - \text{the age of the deceased})] \times \\ &= [\text{GAI} - (50\% \text{ of GAI})] \end{aligned}$$

Thus, to determine loss of earning capacity of the deceased, the deceased's age at the time of his death as well as his Gross Annual Income should be established. Awards for loss of earning capacity partake of damages which must be proven not only by credible and satisfactory evidence, but also by unbiased proof. Even the testimony by a relative of the deceased on the alleged income of the deceased is insufficient.⁵² As a rule, documentary evidence should be

treated Atty. Rosales as the counsel of both petitioner and Teresita, instead of sending the same to Atty. Clemens, Teresita's counsel (CA rollo, pp. 16-27, 59, 76, 81, 97-99).

⁴⁹ *The Mercantile Insurance Co., Inc. v. DMCI-Laing Construction, Inc.*, 863 Phil. 20, 47 (2019) [Per J. Caguioa, Second Division]

⁵⁰ *See Guy v. Gacott*, 778 Phil. 308, 320-322 (2016) [Per J. Mendoza, Second Division].

⁵¹ *UCPB Leasing and Finance Corp. v. Heirs of Leporgo, Sr.*, G.R. No. 210976, January 12, 2021 [Per J. Carandang, First Division]

⁵² *People v. Singh*, 412 Phil. 842, 858-859 (2001) [Per J. Buena, Second Division]

presented to substantiate a claim for damages for loss of earning capacity, subject to certain exceptions.⁵³

Guided by the foregoing precepts, the Heirs failed to establish Francisco's gross annual income at the time of his death. Aside from the bare allegation in their complaint that Francisco was receiving monthly emoluments of PHP 12,620.00 at the time of his death as well as Edwin's testimony that Francisco was a member of the Sangguniang Bayan at the time of his death, the Heirs failed to present any evidence to convincingly prove Francisco's income at the time of his death.

The Court is not swayed by the Heirs' invocation of *Ochoa* to claim that testimonial evidence may suffice to establish a basis for the court to make a fair and reasonable estimate of the loss of earning capacity. In contrast to the case at bench where there was neither documentary or testimonial evidence to establish the actual income of the deceased, the claimant's testimony on the income of the deceased in *Ochoa* was corroborated by a certification issued by the deceased's employer that stated the deceased victim's annual salary at the time of death.⁵⁴ Moreover, the Court in *Ochoa* clarified that while the Court previously held in *Pleyto v. Lomboy*⁵⁵ that testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity, the Court in later cases deleted the award for loss of earning capacity when its sole basis for the claim were the testimonies of the claimants.⁵⁶

In addition, the RTC's act of taking judicial notice of the salary of Francisco simply because of his son's testimony that he was a member of the Sangguniang Bayan, and respondents' bare allegation that the deceased's salary as a member of the Sangguniang Bayan of Sta. Margarita, Samar is fixed at PHP 12,620 at the time of his death and is a matter of public knowledge, is erroneous and bereft of basis.

Under Section 2, Rule 129 of the Revised Rules on Evidence, courts may take judicial notice of matters of public knowledge. These are facts so commonly known in the community as to make it unprofitable to require proof, and so certainly known to as to make it indisputable among reasonable men and

⁵³ *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 590 (2004) [Per J. Ynares-Santiago, First Division]. In this case, the Court further ruled that damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

⁵⁴ *Heirs of Ochoa v. G & S Transport Corp.*, 660 Phil. 387, 413-414 (2011) [Per J. Del Castillo, First Division].

⁵⁵ 476 Phil. 373, 389 (2004) [Per J. Quisumbing, Second Division].

⁵⁶ *Heirs of Ochoa v. G & S Transport Corp.*, 660 Phil. 387, 412-413 (2011) [Per J. Del Castillo, First Division].

women.⁵⁷ However, the power to take judicial notice must be exercised with caution; care must be taken that the requisite notoriety exists, and every reasonable doubt on the subject should be promptly resolved in the negative. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he/she is not authorized to make his/her individual knowledge of a fact, not generally or professionally known, the basis of his/her action.⁵⁸ Guided by the foregoing, the income of a Sangguniang Member of Sta. Margarita, Samar at the time of Francisco's death may not be considered indisputable or of such common knowledge to the general public that would make it worthy of judicial notice.

Moreover, while courts are mandated to take judicial notice of official acts of the legislative, executive, and judicial departments of the National Government of the Philippines,⁵⁹ Francisco's income as a member of the Sangguniang Bayan of Sta. Margarita, Samar is not solely determinable by national laws. While Republic Act No. 6758⁶⁰ provides for the maximum rates and the salary schedule for government officials, including members of municipal councils, the rates of pay of officials of each local government unit vary depending on its class and financial capability.⁶¹ Republic Act No. 7160 further provides that the compensation of local government officials and employees shall be determined by the *sanggunian* concerned, subject to certain limitations.⁶² On this point, the Court has previously held that while courts are required to take judicial notice of the laws enacted by Congress, ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court.⁶³

Even assuming that there is a statute that requires a court to take judicial notice of municipal ordinances, this cannot be taken to mean that the party concerned is relieved of the duty to inform the court about the ordinance and

⁵⁷ *Saludo, Jr. v. American Express International, Inc.*, 521 Phil. 585, 604 (2006) [Per J. Callejo, Sr., First Division]. See also RULES OF COURT, Rule 129, sec. 2.

⁵⁸ *Philippine National Construction Corp. v. Pasos*, G.R. No. 226617, August 4, 2021 [Notice, Third Division].

⁵⁹ RULES OF COURT, Rule 129, sec. 1 provides:

Section 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

⁶⁰ The Compensation and Position Classification Act of 1989 (1989).

⁶¹ Republic Act No. 6758, sec. 7 and sec. 10.

⁶² Section 81, LOCAL GOV'T. CODE. See also Section 443, LOCAL GOV'T. CODE, which provides in part:

SECTION 443. *Officials of the Municipal Government.* - (e) Elective and appointive municipal officials shall receive such compensation, allowances and other emoluments as may be determined by law or ordinance, subject to the budgetary limitations on personal services as prescribed in Title Five, Book Two of this Code: Provided, That no increase in compensation of the mayor, vice-mayor, and sangguniang bayan members shall take effect until after the expiration of the full term of all the elective local officials approving such increase.

⁶³ *Social Justice Society v. Atienza, Jr.*, 568 Phil. 658, 685-686 (2008) [Per J. Corona, First Division]

that the trial court should have taken steps to procure a copy of the ordinance on its own. A court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice must supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.⁶⁴ In the present case, respondents did not present a copy of the ordinance or at the very least a certification regarding the salary of Francisco at the time of his death.

In fine, the award of PHP 428,880.00 for loss of earning capacity should be deleted. In lieu thereof, and pursuant to Article 2224 of the Civil Code, temperate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty.⁶⁵

In *Victory Liner v. Gammad*⁶⁶ and *Pleno v. Court of Appeals*,⁶⁷ the Court awarded PHP 500,000.00 and PHP 200,000.00 respectively as temperate damages in lieu of actual damages for loss of earning capacity, since the income of the victim was not sufficiently proven. In light of the foregoing and considering the circumstances of the case, the PHP 25,000.00 temperate damages initially awarded to the Heirs on account of expenses incurred in relation to the deceased's hospitalization and death shall be increased to PHP 250,000.00, to include temperate damages for the loss of earning capacity of the victim upon his death.

The Court finds no reason to disturb the PHP 50,000.00 civil indemnity, PHP 50,000.00 moral damages, and PHP 5,000.00 litigation expenses previously awarded.

ACCORDINGLY, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The May 28, 2014 Decision and the June 24, 2015 Resolution of the Court of Appeals in CA G.R. CV No. 03433 are **AFFIRMED** with **MODIFICATION**.

Petitioner Gil Apolinario is ordered to pay respondent heirs of Francisco de los Santos the following: (a) PHP 250,000.00 as temperate damages; (b) PHP 50,000.00 as civil indemnity; (c) PHP 50,000.00 as moral damages; and (d) PHP 5,000.00 as litigation expenses. Interest at the rate of six percent per *annum* shall be imposed on all damages awarded from the finality of this Decision until fully paid.

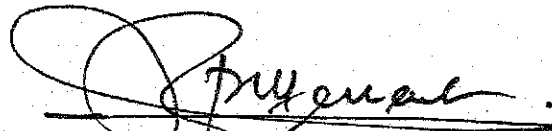
⁶⁴ *Id.*

⁶⁵ *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 591 (2004) [Per J. Ynares-Santiago, First Division].

⁶⁶ *Id.* at 591-592.

⁶⁷ 244 Phil. 213, 230-231 (1988) [Per J. Gutierrez, Jr., Third Division].

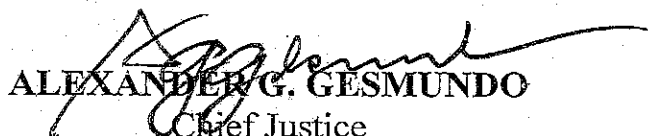
SO ORDERED.



RAMON PAUL L. HERNANDO

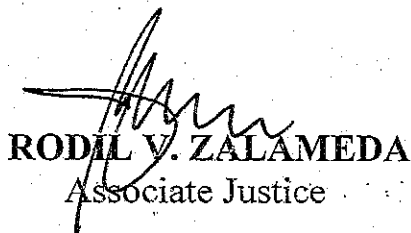
Associate Justice
Working Chairperson

WE CONCUR:



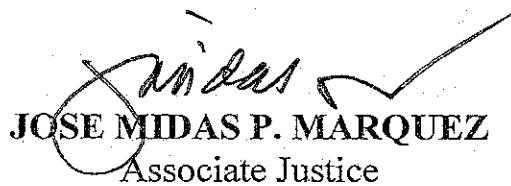
ALEXANDER G. GESMUNDO

Chief Justice
Chairperson



RODIL V. ZALAMEDA
Associate Justice

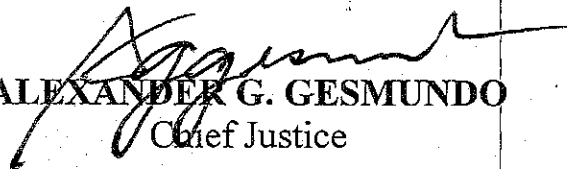
(on official business)
RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice