

## TWELFTH DIVISION

**[ CA-G.R. CV NO. 66967, August 18, 2006 ]**

**MERCELITA V. SILVESTRE, PLAINTIFF-APPELLEE, VS. ARTURO TAN AND RAFAEL R. GUILLERMO, DEFENDANTS-APPELLANTS.**

### DECISION

**TAYAG, J.:**

In a complaint for damages filed by plaintiff-appellee Mercelita V. Silvestre against defendants-appellants Arturo Tan and Rafael R. Guillermo, the Regional Trial Court of Makati City on May 30, 1999<sup>[1]</sup> rendered judgment, the dispositive portion of which reads:

"WHEREFORE, premises considered, finding preponderance of evidence to sustain the instant complaint, judgment is hereby rendered in favor of plaintiff, ordering defendants, jointly and severally:

1. to pay plaintiff the amount of P29,633.17 as and by way of actual damages;
2. to pay plaintiff the amount of P200,000.00 as and by way of compensatory damages;
3. to pay plaintiff the amount of P200,000.00 as and by way of moral damages;
4. to pay plaintiff the amount of P50,000.00 as and by way of exemplary damages;
5. to pay plaintiff the amount of P100,000.00 as and by way of attorney's fees; and
6. to pay the costs of suit.

SO ORDERED."<sup>[2]</sup>

The suit stemmed from a vehicular accident that occurred on July 28, 1995 along the Maharlika Highway at Barangay Rosario, Gumaca, Quezon involving a Toyota Jeepney with Plate No. UV-PTD-185 driven by the son of plaintiff-appellee and in which plaintiff-appellee was a passenger and a Fuso Pick Up owned by defendant-appellant Arturo Tan and driven by Rafael Guillermo.

During the pre-trial conference, only the plaintiff-appellee's counsel appeared, armed with a Special Power of Attorney from his client. Neither the defendants-appellants nor their counsel appeared despite proper notice. By reason of the failure of the defendants-appellants to appear, the court a quo, on plaintiff-appellee's

motion, declared the defendants-appellants "as in" default thereby allowing plaintiff-appellee to present her evidence ex-parte.

The motion by the defendants-appellants to set aside the order of default was denied by the court *a quo* on March 04, 1997. Consequently, they filed a petition for certiorari with the Court of Appeals. However, said petition was dismissed on March 13, 1998. Elevating the matter to the Honorable Supreme Court, the same was likewise dismissed.

Finding that the plaintiffs-appellees are entitled to reliefs sought as gathered from the evidence adduced and those admitted in the Commissioner's Report<sup>[3]</sup>, the court *a quo* rendered its judgment on May 30, 1999.

Not in conformity with the court *a quo*'s ruling, defendants-appellants appealed the decision. In their Brief<sup>[4]</sup>, defendants-appellants raise the following assignment of errors:

- 1. THE LOWER COURT ERRED IN ORDERING THE DEFENDANTS-APPELLANTS TO PAY PLAINTIFF-APPELLEE OF THE AMOUNT OF P29,633.17 AS AND BY WAY OF ACTUAL DAMAGES;**
- 2. THE LOWER COURT ERRED IN ORDERING DEFENDANTS-APPELLANTS TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF P200,000.00 AS AND BY WAY OF COMPENSATORY DAMAGES;**
- 3. THE LOWER COURT ERRED IN ORDERING DEFENDANTS-APPELLANTS TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF P200,000.00 AS AND BY WAY OF MORAL DAMAGES;**
- 4. THE LOWER COURT ERRED IN AWARDING PLAINTIFF-APPELLEE THE AMOUNT OF P50,000.00 AS AND BY WAY OF EXEMPLARY DAMAGES;**
- 5. THE LOWER COURT ERRED IN ORDERING THE DEFENDANTS-APPELLANTS TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF P100,000.00 AS AND BY WAY OF ATTORNEY'S FEES.<sup>[5]</sup>**

The sole issue in this appeal is whether there is a valid basis for the award of damages in favor of the plaintiff-appellee.

**The appeal is meritorious.**

Scrutinizing the evidence presented and the circumstances of the case, this Court do not find proper the grant by the court *a quo* of the amount of damages including the attorney's fees, as the evidence on record does not support the award of those amount.

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 and are aimed at repairing the wrong done.<sup>[6]</sup> To be recoverable, actual and compensatory damages must be duly proved with reasonable degree of certainty. A court cannot