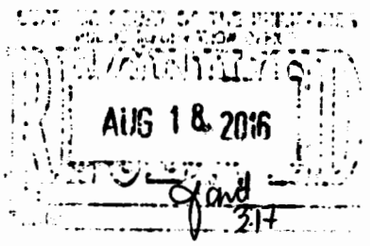
Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION




**SULPICIO LINES, INC.,**
Petitioner,

- *versus* -

**NAPOLEON SESANTE, NOW SUBSTITUTED BY MARIBEL ATILANO, KRISTEN MARIE, CHRISTIAN IONE, KENNETH KERRN AND KARISNA KATE, ALL SURNAMED SESANTE,**
Respondents.

**G.R. NO. 172682**

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*:

Promulgated:

JUL 27 2016

x----------x

# DECISION

**BERSAMIN, *J.*:**

Moral damages are meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate the moral suffering. Exemplary damages are designed to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior.

## The Case

This appeal seeks to undo and reverse the adverse decision promulgated on June 27, 2005,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment of the Regional Trial Court (RTC), Branch 91, in Quezon City holding the petitioner liable to pay temperate and moral damages due to breach of contract of carriage.[2]

---

[1] *Rollo*, pp. 49-59; penned by CA Associate Justice Roberto A. Barrios (retired/deceased), with Associate Justice Amelita G. Tolentino (retired) and Associate Justice Vicente S. Veloso (retired) concurring.

[2] Id. at 64-76.

## Antecedents

On September 18, 1998, at around 12:55 p.m., the M/V Princess of the Orient, a passenger vessel owned and operated by the petitioner, sank near Fortune Island in Batangas. Of the 388 recorded passengers, 150 were lost.[3] Napoleon Sesante, then a member of the Philippine National Police (PNP) and a lawyer, was one of the passengers who survived the sinking. He sued the petitioner for breach of contract and damages.[4]

Sesante alleged in his complaint that the M/V Princess of the Orient left the Port of Manila while Metro Manila was experiencing stormy weather; that at around 11:00 p.m., he had noticed the vessel listing starboard, so he had gone to the uppermost deck where he witnessed the strong winds and big waves pounding the vessel; that at the same time, he had seen how the passengers had been panicking, crying for help and frantically scrambling for life jackets in the absence of the vessel's officers and crew; that sensing danger, he had called a certain Vency Ceballos through his cellphone to request him to inform the proper authorities of the situation; that thereafter, big waves had rocked the vessel, tossing him to the floor where he was pinned by a long steel bar; that he had freed himself only after another wave had hit the vessel;[5] that he had managed to stay afloat after the vessel had sunk, and had been carried by the waves to the coastline of Cavite and Batangas until he had been rescued; that he had suffered tremendous hunger, thirst, pain, fear, shock, serious anxiety and mental anguish; that he had sustained injuries,[6] and had lost money, jewelry, important documents, police uniforms and the .45 caliber pistol issued to him by the PNP; and that because it had committed bad faith in allowing the vessel to sail despite the storm signal, the petitioner should pay him actual and moral damages of ₱500,000.00 and ₱1,000,000.00, respectively.[7]

In its defense, the petitioner insisted on the seaworthiness of the M/V Princess of the Orient due to its having been cleared to sail from the Port of Manila by the proper authorities; that the sinking had been due to *force majeure*; that it had not been negligent; and that its officers and crew had also not been negligent because they had made preparations to abandon the vessel because they had launched life rafts and had provided the passengers assistance in that regard.[8]

---

3 Id. at 49.
4 Records, pp. 1-5.
5 Id. at 2-3.
6 Id.
7 *Rollo*, pp. 51, 68.
8 Id. at 65.

## Decision of the RTC

On October 12, 2001, the RTC rendered its judgment in favor of the respondent,[9] holding as follows:

> **WHEREFORE,** judgment is hereby rendered in favor of plaintiff Napoleon Sesante and against defendant Sulpicio Lines, Inc., ordering said defendant to pay plaintiff:
>
> 1. Temperate damages in the amount of ₱400,000.00;
>
> 2. Moral damages in the amount of One Million Pesos (₱1,000,000.00);
>
> 3. Costs of suit.
>
> SO ORDERED.[10]

The RTC observed that the petitioner, being negligent, was liable to Sesante pursuant to Articles 1739 and 1759 of the *Civil Code*; that the petitioner had not established its due diligence in the selection and supervision of the vessel crew; that the ship officers had failed to inspect the stowage of cargoes despite being aware of the storm signal; that the officers and crew of the vessel had not immediately sent a distress signal to the Philippine Coast Guard; that the ship captain had not called for then "abandon ship" protocol; and that based on the report of the Board of Marine Inquiry (BMI), the erroneous maneuvering of the vessel by the captain during the extreme weather condition had been the immediate and proximate cause of the sinking.

The petitioner sought reconsideration, but the RTC only partly granted its motion by reducing the temperate damages from ₱500,000.00 to ₱300,000.00.[11]

Dissatisfied, the petitioner appealed.[12] It was pending the appeal in the CA when Sesante passed away. He was substituted by his heirs.[13]

## Judgment of the CA

On June 27, 2005, the CA promulgated its assailed decision. It lowered the temperate damages to ₱120,000.00, which approximated the cost of Sesante's lost personal belongings; and held that despite the

---

9 Id. at 76.
10 Id.
11 Id. at 77-80.
12 RTC records, pp. 292-293.
13 CA *rollo*, p. 229.

seaworthiness of the vessel, the petitioner remained civilly liable because its officers and crew had been negligent in performing their duties.[14]

Sttill aggrieved, Sulpicio Lines moved for reconsideration, but the CA denied the motion.[15]

Hence, this appeal.

**Issues**

The petitioner attributes the following errors to the CA, to wit:

I
THE ASSAILED DECISION ERRED IN SUSTAINING THE AWARD OF MORAL DAMAGES, AS THE INSTANT CASE IS FOR ALLEGED PERSONAL INJURIES PREDICATED ON BREACH OF CONTRACT OF CARRIAGE, AND THERE BEING NO PROOF OF BAD FAITH ON THE PART OF SULPICIO

II
THE ASSAILED DECISION ERRED IN SUSTAINING THE AMOUNT OF MORAL DAMAGES AWARDED, THE SAME BEING UNREASONABLE, EXCESSIVE AND UNCONSCIONABLE, AND TRANSLATES TO UNJUST ENRICHMENT AGAINST SULPICIO

III
THE ASSAILED DECISION ERRED IN SUSTAINING THE AWARD OF TEMPERATE DAMAGES AS THE SAME CANNOT SUBSTITUTE FOR A FAILED CLAIM FOR ACTUAL DAMAGES, THERE BEING NO COMPETENT PROOF TO WARRANT SAID AWARD

IV
THE AWARD OF TEMPERATE DAMAGES IS UNTENABLE AS THE REQUISITE NOTICE UNDER THE LAW WAS NOT GIVEN TO SULPICIO IN ORDER TO HOLD IT LIABLE FOR THE ALLEGED LOSS OF SESANTE'S PERSONAL BELONGINGS

V
THE ASSAILED DECISION ERRED IN SUBSTITUTING THE HEIRS OF RESPONDENT SESANTE IN THE INSTANT CASE, THE SAME BEING A PERSONAL ACTION WHICH DOES NOT SURVIVE

VI
THE ASSAILED DECISION ERRED IN APPLYING ARTICLE 1759 OF THE NEW CIVIL CODE AGAINST SULPICIO SANS A CLEAR-CUT FINDING OF SULPICIO'S BAD FAITH IN THE INCIDENT[16]

---

14 Id. at 54-58.
15 Id. at 77-80.
16 Id. at 15.

In other words, to be resolved are the following, namely: (*1*) Is the complaint for breach of contract and damages a personal action that does not survive the death of the plaintiff?; (*2*) Is the petitioner liable for damages under Article 1759 of the *Civil Code*?; and (*3*) Is there sufficient basis for awarding moral and temperate damages?

## Ruling of the Court

The appeal lacks merit.

### I
### An action for breach of contract of carriage survives the death of the plaintiff

The petitioner urges that Sesante's complaint for damages was purely personal and cannot be transferred to his heirs upon his death. Hence, the complaint should be dismissed because the death of the plaintiff abates a personal action.

The petitioner's urging is unwarranted.

Section 16, Rule 3 of the *Rules of Court* lays down the proper procedure in the event of the death of a litigant, *viz.*:

> Section 16. *Death of party; duty of counsel.* - **Whenever a party to a pending action dies, and the claim is not thereby extinguished,** it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.
>
> **The heirs of the deceased may be allowed to be substituted for the deceased,** without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.
>
> x x x x

Substitution by the heirs is not a matter of jurisdiction, but a requirement of due process.[17] It protects the right of due process belonging to any party, that in the event of death the deceased litigant continues to be protected and properly represented in the suit through the duly appointed legal representative of his estate.[18]

---

[17] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 429.

[18] Id.; see also *Sumaljag v. Diosdidit*, G.R. No. 149787, June 18, 2008, 555 SCRA 53, 59-60.

The application of the rule on substitution depends on whether or not the action survives the death of the litigant. Section 1, Rule 87 of the *Rules of Court* enumerates the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. On the one hand, Section 5, Rule 86 of the *Rules of Court* lists the actions abated by death as including: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) all claims for money against the deceased, arising from contract, express or implied.

A contract of carriage generates a relation attended with public duty, neglect or malfeasance of the carrier's employees and gives ground for an action for damages.[19] Sesante's claim against the petitioner involved his personal injury caused by the breach of the contract of carriage. Pursuant to the aforecited rules, the complaint survived his death, and could be continued by his heirs following the rule on substitution.

## II
## The petitioner is liable for breach of contract of carriage

The petitioner submits that an action for damages based on breach of contract of carriage under Article 1759 of the *Civil Code* should be read in conjunction with Article 2201 of the same code; that although Article 1759 only provides for a presumption of negligence, it does not envision automatic liability; and that it was not guilty of bad faith considering that the sinking of M/V Princess of the Orient had been due to a fortuitous event, an exempting circumstance under Article 1174 of the *Civil Code*.

The submission has no substance.

Article 1759 of the *Civil Code* does not establish a presumption of negligence because it explicitly makes the common carrier liable in the event of death or injury to passengers due to the negligence or fault of the common carrier's employees. It reads:

> Article 1759. **Common carriers are liable for the death 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.

---

[19] Tolentino, *Civil Code of the Philippines*, Book V (1992), p. 314, citing *Pan American World Airways v. Intermediate Appellate Court*, 153 SCRA 521 and *Sabena Belgian World Airlines v. Court of Appeals*, 171 SCRA 620.

> 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.

The liability of common carriers under Article 1759 is demanded by the duty of extraordinary diligence required of common carriers in safely carrying their passengers.[20]

On the other hand, Article 1756 of the *Civil Code* lays down the presumption of negligence against the common carrier in the event of death or injury of its passenger, *viz.*:

> Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.

Clearly, the trial court is not required to make an express finding of the common carrier's fault or negligence.[21] Even the mere proof of injury relieves the passengers from establishing the fault or negligence of the carrier or its employees.[22] The presumption of negligence applies so long as there is evidence showing that: (*a*) a contract exists between the passenger and the common carrier; and (*b*) the injury or death took place during the existence of such contract.[23] In such event, the burden shifts to the common carrier to prove its observance of extraordinary diligence, and that an unforeseen event or *force majeure* had caused the injury.[24]

Sesante sustained injuries due to the buffeting by the waves and consequent sinking of M/V Princess of the Orient where he was a passenger. To exculpate itself from liability, the common carrier vouched for the seaworthiness of M/V Princess of the Orient, and referred to the BMI report to the effect that the severe weather condition – a *force majeure* – had brought about the sinking of the vessel.

The petitioner was directly liable to Sesante and his heirs.

A common carrier may be relieved of any liability arising from a fortuitous event pursuant to Article 1174[25] of the *Civil Code*. But while it

---

[20] Article 1755. A common carrier is bound to carry the passengers safely as far as human care and diligence of very cautious persons, with a due regard for all the circumstances.

[21] *Diaz v. Court of Appeals*, G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

[22] *Light Rail Transit Authority v. Navidad*, G.R. No. 145804, February 6, 2003, 397 SCRA 75, 81.

[23] Aquino and Hernando, *Essentials of Transportation and Public Utilities Law,* 2011, pp. 63-64.

[24] *Light Rail Transit Authority v. Navidad, supra* .

[25] Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which, could not be foreseen, or which, though foreseen, were inevitable.

may free a common carrier from liability, the provision still requires exclusion of human agency from the cause of injury or loss.[26] Else stated, for a common carrier to be absolved from liability in case of *force majeure*, it is not enough that the accident was caused by a fortuitous event. The common carrier must still prove that it did not contribute to the occurrence of the incident due to its own or its employees' negligence.[27] We explained in *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*,[28] as follows:

> In order to be considered a fortuitous event, however, (1) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligation, must be independent of human will; (2) it must be impossible to foresee the event which constitute the *caso fortuito*, or if it can be foreseen it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in any manner; and (4) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.
>
> [T]he principle embodied in the act of God doctrine strictly requires that **the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.**[29] (bold underscoring supplied for emphasis)

The petitioner has attributed the sinking of the vessel to the storm notwithstanding its position on the seaworthiness of M/V Princess of the Orient. Yet, the findings of the BMI directly contradicted the petitioner's attribution, as follows:

> 7. ***The Immediate and the Proximate Cause of the Sinking***
>
> The Captain's erroneous maneuvers of the *M/V Princess of the Orient* minutes before she sunk [sic] had caused the accident. It should be noted that during the first two hours when the ship left North Harbor, she was navigating smoothly towards Limbones Point. During the same period, the ship was only subjected to the normal weather stress prevailing at the time. She was then inside Manila Bar. The waves were observed to be relatively small to endanger the safety of the ship. It was only when the *MV Princess of the Orient* had cleared Limbones Pt. while navigating towards the direction of the Fortune Island when this agonizing misfortune struck the ship.

---

[26] *Perla Compania De Seguros, Inc. v. Sarangaya III*, G.R. No. 147746, October 25, 2005, 474 SCRA 191, 200; *Yobido v. Court of Appeals*, G.R. No. 113003, October 17, 1997, 281 SCRA 1, 9.

[27] *Bachelor Express, Inc. v. Court of Appeals*, G.R. No. 85691, July 31, 1990, 188 SCRA 216, 222-223.

[28] G.R. No. 150255, April 22, 2005, 456 SCRA 557.

[29] Id. at 566.

> Initially, a list of three degrees was observed. The listing of the ship to her portside had continuously increased. It was at this point that the captain had misjudged the situation. While the ship continuously listed to her portside and was battered by big waves, strong southwesterly winds, prudent judgement [sic] would dictate that the Captain should have considerably reduced the ship's speed. He could have immediately ordered the Chief Engineer to slacken down the speed. Meanwhile, the *winds and waves continuously hit the ship* on her starboard side. The waves were at least seven to eight meters in height and the wind velocity was a[t] 25 knots. The *MV Princess of the Orient* being a close-type ship (seven decks, wide and high superstructure) was vulnerable and exposed to the howling winds and ravaging seas. Because of the excessive movement, the solid and liquid cargo below the decks must have shifted its weight to port, which could have contributed to the tilted position of the ship.
>
> Minutes later, the Captain finally ordered to reduce the speed of the ship to 14 knots. At the same time, he ordered to put ballast water to the starboard-heeling tank to arrest the continuous listing of the ship. This was an exercise in futility because the ship was already listing between 15 to 20 degrees to her portside. The ship had almost reached the maximum angle of her loll. At this stage, she was about to lose her stability.
>
> Despite this critical situation, the Captain executed several starboard maneuvers. Steering the course of the *Princess* to starboard had greatly added to her tilting. In the open seas, with a fast speed of 14 knots, advance maneuvers such as this would tend to bring the body of the ship in the opposite side. In navigational terms, this movement is described as the centripetal force. This force is produced by the water acting on the side of the ship away from the center of the turn. The force is considered to act at the center of lateral resistance which, in this case, is the centroid of the underwater area of the ship's side away from the center of the turn. In the case of the *Princess*, when the Captain maneuvered her to starboard, her body shifted its weight to port. Being already inclined to an angle of 15 degrees, coupled with the instantaneous movement of the ship, the cargoes below deck could have completely shifted its position and weight towards portside. By this time, the ship being ravaged simultaneously by ravaging waves and howling winds on her starboard side, finally lost her grip.[30]

Even assuming the seaworthiness of the M/V Princess of the Orient, the petitioner could not escape liability considering that, as borne out by the aforequoted findings of the BMI, the immediate and proximate cause of the sinking of the vessel had been the gross negligence of its captain in maneuvering the vessel.

The Court also notes that Metro Manila was experiencing Storm Signal No. 1 during the time of the sinking.[31] The BMI observed that a vessel like the M/V Princess of the Orient, which had a volume of 13.734 gross tons, should have been capable of withstanding a Storm Signal No. 1 considering that the responding fishing boats of less than 500 gross tons had been able to weather through the same waves and winds to go to the succor

---

30 RTC Records, p. 172.
31 Id. at 161.

of the sinking vessel and had actually rescued several of the latter's distressed passengers.[32]

## III
## The award of moral damages and temperate damages is proper

The petitioner argues that moral damages could be meted against a common carrier only in the following instances, to wit: (1) in the situations enumerated by Article 2201 of the *Civil Code*; (2) in cases of the death of a passenger; or (3)where there was bad faith on the part of the common carrier. It contends that none of these instances obtained herein; hence, the award should be deleted.

We agree with the petitioner that moral damages may be recovered in an action upon breach of contract of carriage only when: (*a*) death of a passenger results, or (*b*) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result.[33] However, moral damages may be awarded if the contractual breach is found to be wanton and deliberately injurious, or if the one responsible acted fraudulently or with malice or bad faith.[34]

The CA enumerated the negligent acts committed by the officers and crew of M/V Princess of the Orient, *viz.*:

> x x x. [W]hile this Court yields to the findings of the said investigation report, yet it should be observed that what was complied with by Sulpicio Lines were only the basic and minimal safety standards which would qualify the vessel as seaworthy. In the same report however it also revealed that the immediate and proximate cause of the sinking of the M/V Princess of the Orient was brought by the following: erroneous maneuvering command of Captain Esrum Mahilum and due to the weather condition prevailing at the time of the tragedy. There is no doubt that under the circumstances the crew of the vessel were negligent in manning it. In fact this was clearly established by the investigation of the Board of Marine Inquiry where it was found that:
>
> > The Chief Mate, when interviewed under oath, had attested that he was not able to make stability calculation of the ship vis-à-vis her cargo. He did not even know the metacentric height (GM) of the ship whether it be positive or negative.
> >
> > As cargo officer of the ship, he failed to prepare a detailed report of the ship's cargo stowage plan.

---

[32] Id at p. 163.

[33] *Sulpicio Lines, Inc. v. Curso*, G.R. No. 157009, March 17, 2010, 615 SCRA 575, 585; *Trans-Asia Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 118126, March 4, 1996, 254 SCRA 260, 273-274.

[34] *Air France v. Gillego*, G.R. No. 165266, December 15, 2010, 638 SCRA 472, 486.

> He likewise failed to conduct the soundings (measurement) of the ballast tanks before the ship departed from port. He readily presumed that the ship was full of ballast since the ship was fully ballasted when she left Cebu for Manila on 16 September 1998 and had never discharge[d] its contents since that time.
>
> Being the officer-in-charge for emergency situation (sic) like this, he failed to execute and supervise the actual abandonship (sic) procedure. There was no announcement at the public address system of abandonship (sic), no orderly distribution of life jackets and no orderly launching of life rafts. The witnesses have confirmed this finding on their sworn statements.
>
> There was miscalculation in judgment on the part of the Captain when he erroneously navigated the ship at her last crucial moment. x x x
>
> To aggravate his case, the Captain, having full command and responsibility of the MV Princess of the Orient, had failed to ensure the proper execution of the actual abandoning of the ship.
>
> The deck and engine officers (Second Mate, Third Mate, Chief Engineers, Second Engineer, Third Engineer and Fourth Engineer), being in charge of their respective abandonship (sic) post, failed to supervise the crew and passengers in the proper execution of abandonship (sic) procedure.
>
> The Radio Officer (spark) failed to send the SOS message in the internationally accepted communication network (VHF Channel 16). Instead, he used the Single Side Band (SSB) radio in informing the company about the emergency situation. x x x x[35]

The aforestated negligent acts of the officers and crew of M/V Princess of the Orient could not be ignored in view of the extraordinary duty of the common carrier to ensure the safety of the passengers. The totality of the negligence by the officers and crew of M/V Princess of the Orient, coupled with the seeming indifference of the petitioner to render assistance to Sesante,[36] warranted the award of moral damages.

While there is no hard-and-fast rule in determining what is a fair and reasonable amount of moral damages, the discretion to make the determination is lodged in the trial court with the limitation that the amount should not be palpably and scandalously excessive. The trial court then bears in mind that moral damages are not intended to impose a penalty on the wrongdoer, or to enrich the plaintiff at the expense of the defendant.[37] The

---

[35] *Rollo*, pp. 56-57.

[36] Testimony of Napoleon Sesante dated April 28, 1999, p. 46.

[37] *Yuchengco v. The Manila Chronicle Publishing Corporation*, G.R. No. 184315, November 28, 2011, 661 SCRA 392, 404; *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 75.

amount of the moral damages must always reasonably approximate the extent of injury and be proportional to the wrong committed.[38]

The Court recognizes the mental anguish, agony and pain suffered by Sesante who fought to survive in the midst of the raging waves of the sea while facing the immediate prospect of losing his life. His claim for moral and economic vindication is a bitter remnant of that most infamous tragedy that left hundreds of families broken in its wake. The anguish and moral sufferings he sustained after surviving the tragedy would always include the memory of facing the prospect of his death from drowning, or dehydration, or being preyed upon by sharks. Based on the established circumstances, his survival could only have been a miracle wrought by God's grace, by which he was guided in his desperate swim for the safety of the shore. But even with the glory of survival, he still had to grapple with not just the memory of having come face to face with almost certain death, but also with having to answer to the instinctive guilt for the rest of his days of being chosen to live among the many who perished in the tragedy.[39]

While the anguish, anxiety, pain and stress experienced by Sesante during and after the sinking cannot be quantified, the moral damages to be awarded should at least approximate the reparation of all the consequences of the petitioner's negligence. With moral damages being meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate his moral and physical sufferings,[40] the Court is called upon to ensure that proper recompense be allowed to him, through his heirs. For this purpose, the amount of ₱1,000,000.00, as granted by the RTC and affirmed by the CA, is maintained.

The petitioner contends that its liability for the loss of Sesante's personal belongings should conform with Article 1754, in relation to Articles 1998, 2000 to 2003 of the *Civil Code*, which provide:

> Article 1754. The provisions of Articles 1733 to 1753 shall apply to the passenger's baggage which is not in his personal custody or in that

---

[38] *Go v.* Cordero, G.R. No. 164703 and G.R. No. 164747, May 4, 2010, 620 SCRA 1, 31; *Cheng v. Donini*, G.R. No. 167017, June 22, 2009, 590 SCRA 406, 421.

[39] Justice Caguioa has contributed during the deliberations that most victims like Sesante relive the events for years through nightmares and flashbacks that later develop into sleeping disorders and serious psychological issues that scar them for life; that many of them feel guilt and resentment for being alive, unable to express their feelings on what they could have done to save others, while others manifest acute stress marked by agitation and panic attacks. He cites the1997 study on the **prolonged traumatic impact of a disaster** conducted by Clinical Associate Professor Viola Mecke of the Department of Psychiatry and Behavioral Sciences of the Stanford University School of Medicine, which found that "man-induced" disasters were considered more harmful in their psychological effects than "natural" disasters because the knowledge that the disaster could have been avoided seemed to release a rage and anger that were not observable in those affected by natural disasters. The study opined that the victims' experiences heightened distrust and suspicion of others and their motives; and that their unresolved grief would bring about personality changes that involved guilt, rage, demoralization and a diminished *elan vital*.

[40] *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 48.

> of his employees. As to other baggage, the rules in Articles 1998 and 2000 to 2003 concerning the responsibility of hotel-keepers shall be applicable.
>
> x x x x
>
> Article 1998. The deposit of effects made by travellers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.
>
> x x x x
>
> Article 2000. The responsibility referred to in the two preceding articles shall include the loss of, or injury to the personal property of the guests caused by the servants or employees of the keepers of hotels or inns as well as by strangers; but not that which may proceed from any *force majeure*. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotel or inn shall be considered in determining the degree of care required of him.
>
> Article 2001. The act of a thief or robber, who has entered the hotel is not deemed *force majeure*, unless it is done with the use of arms or through an irresistible force.
>
> Article 2002. The hotel-keeper is not liable for compensation if the loss is due to the acts of the guest, his family, servants or visitors, or if the loss arises from the character of the things brought into the hotel.
>
> Article 2003. The hotel-keeper cannot free himself from responsibility by posting notices to the effect that he is not liable for the articles brought by the guest. Any stipulation to the contrary between the hotel-keeper and the guest whereby the responsibility of the former as set forth in Articles 1998 to 2001 is suppressed or diminished shall be void.

The petitioner denies liability because Sesante's belongings had remained in his custody all throughout the voyage until the sinking, and he had not notified the petitioner or its employees about such belongings. Hence, absent such notice, liability did not attach to the petitioner.

Is notification required before the common carrier becomes liable for lost belongings that remained in the custody of the passenger?

We answer in the negative.

The rule that the common carrier is always responsible for the passenger's baggage during the voyage needs to be emphasized. Article 1754 of the *Civil Code* does not exempt the common carrier from liability in case of loss, but only highlights the degree of care required of it depending

on who has the custody of the belongings. Hence, the law requires the common carrier to observe the same diligence as the hotel keepers in case the baggage remains with the passenger; otherwise, extraordinary diligence must be exercised.[41] Furthermore, the liability of the common carrier attaches even if the loss or damage to the belongings resulted from the acts of the common carrier's employees, the only exception being where such loss or damages is due to *force majeure*.[42]

In *YHT Realty Corporation v. Court of Appeals*,[43] we declared the actual delivery of the goods to the innkeepers or their employees as unnecessary before liability could attach to the hotelkeepers in the event of loss of personal belongings of their guests considering that the personal effects were inside the hotel or inn because the hotelkeeper shall remain accountable.[44] Accordingly, actual notification was not necessary to render the petitioner as the common carrier liable for the lost personal belongings of Sesante. By allowing him to board the vessel with his belongings without any protest, the petitioner became sufficiently notified of such belongings. So long as the belongings were brought inside the premises of the vessel, the petitioner was thereby effectively notified and consequently duty-bound to observe the required diligence in ensuring the safety of the belongings during the voyage. Applying Article 2000 of the *Civil Code*, the petitioner assumed the liability for loss of the belongings caused by the negligence of its officers or crew. In view of our finding that the negligence of the officers and crew of the petitioner was the immediate and proximate cause of the sinking of the M/V Princess of the Orient, its liability for Sesante's lost personal belongings was beyond question.

The petitioner claims that temperate damages were erroneously awarded because Sesante had not proved pecuniary loss; and that the CA merely relied on his self-serving testimony.

The award of temperate damages was proper.

Temperate damages may be recovered when some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty.[45] Article 2224[46] of the *Civil Code* expressly authorizes the

---

41 Tolentino, *Civil Code of the Philippines*, Vol. V (1992), p. 311.

42 Article 2000, *Civil Code*.

43 G.R. No. 126780, February 17, 2005, 451 SCRA 638, 658.

44 Supra, citing *De Los Santos v. Tan Khey*, 58 O.G. No. 45-53, p. 7693.

45 *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 594; *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

46 Article 2224. Temperate or moderate 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 proved with certainty.

courts to award temperate damages despite the lack of certain proof of actual damages.[47]

Indubitably, Sesante suffered some pecuniary loss from the sinking of the vessel, but the value of the loss could not be established with certainty. The CA, which can try facts and appreciate evidence, pegged the value of the lost belongings as itemized in the police report at ₱120,000.00. The valuation approximated the costs of the lost belongings. In that context, the valuation of ₱120,000.00 is correct, but to be regarded as temperate damages.

In fine, the petitioner, as a common carrier, was required to observe extraordinary diligence in ensuring the safety of its passengers and their personal belongings. It being found herein short of the required diligence rendered it liable for the resulting injuries and damages sustained by Sesante as one of its passengers.

Should the petitioner be further held liable for exemplary damages?

In contracts and quasi-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[48] Indeed, exemplary damages cannot be recovered as a matter of right, and it is left to the court to decide whether or not to award them.[49] In consideration of these legal premises for the exercise of the judicial discretion to grant or deny exemplary damages in contracts and quasi-contracts against a defendant who acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, the Court hereby awards exemplary damages to Sesante.

First of all, exemplary damages did not have to be specifically pleaded or proved, because the courts had the discretion to award them for as long as the evidence so warranted. In *Marchan v. Mendoza*,[50] the Court has relevantly discoursed:

> x x x. **It is argued that this Court is without jurisdiction to adjudicate this exemplary damages since there was no allegation nor prayer, nor proof, nor counterclaim of error for the same by the appellees. It is to be observed however, that in the complaint, plaintiffs "prayed for such other and further relief as this Court may deem just and equitable." Now, since the body of the complaint sought to recover damages against the defendant-carrier wherein plaintiffs prayed for indemnification for the damages they suffered as a result of the**

---

47 *Philtranco Service Enterprises, Inc. v. Paras*, G.R. No. 161909, April 25, 2012, 671 SCRA 24, 43.
48 Article 2232, *Civil Code*.
49 Article 2233, *Civil Code*.
50 No. L-24471, August 30, 1968, 24 SCRA 888, 895-897; see also *New World Developers and Management, Inc. v. AMA*, G.R. No. 187930, February 23, 2015.

> **negligence of said Silverio Marchan who is appellant's employee; and since exemplary damages is intimately connected with general damages, plaintiffs may not be expected to single out by express term the kind of damages they are trying to recover against the defendant's carrier. Suffice it to state that when plaintiffs prayed in their complaint for such other relief and remedies that may be availed of under the premises, in effect, therefore, the court is called upon to exercise and use its discretion whether the imposition of punitive or exemplary damages even though not expressly prayed or pleaded in the plaintiffs' complaint."**
>
> x x x **It further appears that the amount of exemplary damages need not be proved, because its determination depends upon the amount of compensatory damages that may be awarded to the claimant. If the amount of exemplary damages need not be proved, it need not also be alleged, and the reason is obvious because it is merely incidental or dependent upon what the court may award as compensatory damages. Unless and until this premise is determined and established, what may be claimed as exemplary damages would amount to a mere surmise or speculation. It follows as a necessary consequence that the amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be determined by the court if in the use of its discretion the same is warranted by the evidence, and this is just what appellee has done.** (Bold underscoring supplied for emphasis)

And, secondly, exemplary damages are designed by our civil law to "permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior."[51] The nature and purpose for this kind of damages have been well-stated in *People v. Dalisay*,[52] to wit:

> Also known as 'punitive' or 'vindictive' damages, **exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant – associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud – that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. **In either case, these damages are intended in good measure to deter the wrongdoer and others like**

---

[51] *Trans-Asia Shipping Lines, Inc. v. Court of Appeals*, G.R. 118126, March 4, 1996, 254 SCRA 260, 271.

[52] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 819-820, citing *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 634-635.

> **him from similar conduct in the future**. (Bold underscoring supplied for emphasis)

The BMI found that the "erroneous maneuvers" during the ill-fated voyage by the captain of the petitioner's vessel had caused the sinking. After the vessel had cleared Limbones Point while navigating towards the direction of Fortune Island, the captain already noticed the listing of the vessel by three degrees to the portside of the vessel, but, according to the BMI, he did not exercise prudence as required by the situation in which his vessel was suffering the battering on the starboard side by big waves of seven to eight meters high and strong southwesterly winds of 25 knots. The BMI pointed out that he should have considerably reduced the speed of the vessel based on his experience about the vessel – a close-type ship of seven decks, and of a wide and high superstructure – being vulnerable if exposed to strong winds and high waves. He ought to have also known that maintaining a high speed under such circumstances would have shifted the solid and liquid cargo of the vessel to port, worsening the tilted position of the vessel. It was only after a few minutes thereafter that he finally ordered the speed to go down to 14 knots, and to put ballast water to the starboard-heeling tank to arrest the continuous listing at portside. By then, his moves became an exercise in futility because, according to the BMI, the vessel was already listing to her portside between 15 to 20 degrees, which was almost the maximum angle of the vessel's loll. It then became inevitable for the vessel to lose her stability.

The BMI concluded that the captain had executed several starboard maneuvers despite the critical situation of the vessel, and that the maneuvers had greatly added to the tilting of the vessel. It observed:

> x x x **In the open seas, with a fast speed of 14 knots, advance maneuvers such as this would tend to bring the body of the ship in the opposite side. In navigational terms, this movement is described as the centripetal force. This force is produced by the water acting on the side of the ship away from the center of the turn. The force is considered to act at the center of lateral resistance which, in this case, is the centroid of the underwater area of the ship's side away from the center of the turn. In the case of the *Princess*, when the Captain maneuvered her to starboard, her body shifted its weight to port. Being already inclined to an angle of 15 degrees, coupled with the instantaneous movement of the ship, the cargoes below deck could have completely shifted its position and weight towards portside. By this time, the ship being ravaged simultaneously by ravaging waves and howling winds on her starboard side, finally lost her grip.**[53]

Clearly, the petitioner and its agents on the scene acted wantonly and recklessly. *Wanton* and *reckless* are virtually synonymous in meaning as

---

[53] Supra note 30.

respects liability for conduct towards others.[54] *Wanton* means characterized by extreme recklessness and utter disregard for the rights of others; or marked by or manifesting arrogant recklessness of justice or of rights or feelings of others.[55] Conduct is *reckless* when it is an extreme departure from ordinary care, in a situation in which a high degree of danger is apparent. It must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.[56]

The actuations of the petitioner and its agents during the incident attending the unfortunate sinking of the M/V Princess of the Orient were far below the standard of care and circumspection that the law on common carriers demanded. Accordingly, we hereby fix the sum of ₱1,000,000.00 in order to serve fully the objective of exemplarity among those engaged in the business of transporting passengers and cargo by sea. The amount would not be excessive, but proper. As the Court put it in *Pereña v. Zarate*:[57]

> Anent the ₱1,000,000.00 allowed as exemplary damages, we should not reduce the amount if only to render effective the desired example for the public good. As a common carrier, the Pereñas needed to be vigorously reminded to observe their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again. Only by an award of exemplary damages in that amount would suffice to instill in them and others similarly situated like them the ever-present need for greater and constant vigilance in the conduct of a business imbued with public interest.[58] (Bold underscoring supplied for emphasis)

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on June 27, 2005 with the **MODIFICATIONS** that: (*a*) the amount of moral damages is fixed at ₱1,000,000.00; (*b*) the amount of ₱1,000,000.00 is granted as exemplary damages; and (*c*) the sum of ₱120,000.00 is allowed as temperate damages, all to be paid to the heirs of the late Napoleon Sesante. In addition, all the amounts hereby awarded shall earn interest of 6% *per annum* from the finality of this decision until fully paid. Costs of suit to be paid by the petitioner.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

---

[54] 44A Words and Phrases, 473-474; citing *Commonwealth v. Welansky*, 55 N.E. 2d 902, 910, 316 Mass. 383 (1944).

[55] Id.; citing *Griffin v. State*, 171 A.2d 717, 720, 225 Md. 422 (1961); *Harkrider v. Cox*, 321 S.W. 2d 226, 228, 230 Ark. 155 (1959).

[56] 36A Works and Phrases, 322; citing *Schick v. Ferolito*, 767 A. 2d 962, 167 N.J.7 (2001).

[57] *Pereña v. Zarate*, G.R. No. 157917, August 29, 2012, 679 SCRA 208.

[58] Id. at 236.

**WE CONCUR:**

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

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

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

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

## CERTIFICATION

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.

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