Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROMULO ABROGAR and ERLINDA ABROGAR, Petitioners,	**G.R. No. 164749**
	Present:
	VELASCO, JR., *J., Chairperson,* BERSAMIN,
- versus -	REYES, JARDELEZA, and TIJAM, *JJ.*
COSMOS BOTTLING COMPANY and INTERGAMES, INC., Respondents.	Promulgated: **March 15, 2017**

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DECISION

BERSAMIN, *J.*:

This case involves a claim for damages arising from the negligence causing the death of a participant in an organized marathon bumped by a passenger jeepney on the route of the race. The issues revolve on whether the organizer and the sponsor of the marathon were guilty of negligence, and, if so, was their negligence the proximate cause of the death of the participant; on whether the negligence of the driver of the passenger jeepney was an efficient intervening cause; on whether the doctrine of assumption of risk was applicable to the fatality; and on whether the heirs of the fatality can recover damages for loss of earning capacity of the latter who, being then a minor, had no gainful employment.

The Case

By this appeal, the parents of the late Rommel Abrogar (Rommel), a marathon runner, seek the review and reversal of the decision promulgated on March 10, 2004,[1] whereby the Court of Appeals (CA) reversed and set

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[1] *Rollo*, pp. 49-78; penned by Associate Justice Renato C. Dacudao (retired), with the concurrence of Presiding Justice Cancio C. Garcia (later a Member of the Court) and Associate Justice Danilo B. Pine (retired)

aside the judgment rendered in their favor on May 10, 1991 by the Regional Trial Court (RTC), Branch 83, in Quezon City[2] finding and declaring respondents Cosmos Bottling Company (Cosmos), a domestic soft-drinks company whose products included Pop Cola, and Intergames, Inc. (Intergames), also a domestic corporation organizing and supervising the "1st Pop Cola Junior Marathon" held on June 15, 1980 in Quezon City, solidarily liable for damages arising from the untimely death of Rommel, then a minor 18 years of age,[3] after being bumped by a recklessly driven passenger jeepney along the route of the marathon.

Antecedents

The CA narrated the antecedents in the assailed judgment,[4] *viz.*:

> [T]o promote the sales of "Pop Cola", defendant Cosmos, jointly with Intergames, organized an endurance running contest billed as the "1st Pop Cola Junior Marathon" scheduled to be held on June 15, 1980. The organizers plotted a 10-kilometer course starting from the premises of the Interim Batasang Pambansa (IBP for brevity), through public roads and streets, to end at the Quezon Memorial Circle. Plaintiffs' son Rommel applied with the defendants to be allowed to participate in the contest and after complying with defendants' requirements, his application was accepted and he was given an official number. Consequently, on June 15, 1980 at the designated time of the marathon, Rommel joined the other participants and ran the course plotted by the defendants. As it turned out, the plaintiffs' (sic) further alleged, the defendants failed to provide adequate safety and precautionary measures and to exercise the diligence required of them by the nature of their undertaking, in that they failed to insulate and protect the participants of the marathon from the vehicular and other dangers along the marathon route. Rommel was bumped by a jeepney that was then running along the route of the marathon on Don Mariano Marcos Avenue (DMMA for brevity), and in spite of medical treatment given to him at the Ospital ng Bagong Lipunan, he died later that same day due to severe head injuries.

On October 28, 1980, the petitioners sued the respondents in the then Court of First Instance of Rizal (Quezon City) to recover various damages for the untimely death of Rommel (*i.e.*, actual and compensatory damages, loss of earning capacity, moral damages, exemplary damages, attorney's fees and expenses of litigation).[5]

Cosmos denied liability, insisting that it had not been the organizer of the marathon, but only its sponsor; that its participation had been limited to

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2 Id. at 169-179; penned by Presiding Judge Estrella T. Estrada.

3 Note that the incident subject of this case occurred prior to the enactment of Republic Act No. 6809 (*An Act Lowering the Age of Majority from Twenty One to Eighteen Years, Amending for the Purpose Executive Order Numbered Two Hundred Nine, and for Other Purposes*). Effective on December 13, 1989.

4 *Rollo*, p. 50.

5 Records, Vol. I, pp. 1-6.

providing financial assistance to Intergames;[6] that the financial assistance it had extended to Intergames, the sole organizer of the marathon, had been in answer to the Government's call to the private sector to help promote sports development and physical fitness;[7] that the petitioners had no cause of action against it because there was no privity of contract between the participants in the marathon and Cosmos; and that it had nothing to do with the organization, operation and running of the event.[8]

As counterclaim, Cosmos sought attorney's fees and expenses of litigation from the petitioners for their being unwarrantedly included as a defendant in the case. It averred a cross-claim against Intergames, stating that the latter had guaranteed to hold Cosmos "completely free and harmless from any claim or action for liability for any injuries or bodily harm which may be sustained by any of the entries in the '1st Pop Cola Junior Marathon' or for any damage to the property or properties of third parties, which may likewise arise in the course of the race."[9] Thus, Cosmos sought to hold Intergames solely liable should the claim of the petitioners prosper.[10]

On its part, Intergames asserted that Rommel's death had been an accident exclusively caused by the negligence of the jeepney driver; that it was not responsible for the accident; that as the marathon organizer, it did not assume the responsibilities of an insurer of the safety of the participants; that it nevertheless caused the participants to be covered with accident insurance, but the petitioners refused to accept the proceeds thereof;[11] that there could be no cause of action against it because the acceptance and approval of Rommel's application to join the marathon had been conditioned on his waiver of all rights and causes of action arising from his participation in the marathon;[12] that it exercised due diligence in the conduct of the race that the circumstances called for and was appropriate, it having availed of all its know-how and expertise, including the adoption and implementation of all known and possible safety and precautionary measures in order to protect the participants from injuries arising from vehicular and other forms of accidents;[13] and, accordingly, the complaint should be dismissed.

In their reply and answer to counterclaim, the petitioners averred that contrary to its claims, Intergames did not provide adequate measures for the safety and protection of the race participants, considering that motor vehicles were traversing the race route and the participants were made to run along the flow of traffic, instead of against it; that Intergames did not

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6 Id. at 17-18.
7 Id. at 18.
8 Id.
9 Id. at 19-20.
10 Id.
11 Id. at 33-34.
12 Id.
13 Id..

provide adequate traffic marshals to secure the safety and protection of the participants;[14] that Intergames could not limit its liability on the basis of the accident insurance policies it had secured to cover the race participants; that the waiver signed by Rommel could not be a basis for denying liability because the same was null and void for being contrary to law, morals, customs and public policy;[15] that their complaint sufficiently stated a cause of action because in no way could they be held liable for attorney's fees, litigation expenses or any other relief due to their having abided by the law and having acted honestly, fairly, in good faith by according to Intergames its due, as demanded by the facts and circumstances.[16]

At the pre-trial held on April 12, 1981, the parties agreed that the principal issue was whether or not Cosmos and Intergames were liable for the death of Rommel because of negligence in conducting the marathon.[17]

Judgment of the RTC

In its decision dated May 10, 1991,[18] the RTC ruled as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs-spouses Romulo Abrogar and Erlinda Abrogar and against defendants Cosmos Bottling Company, Inc. and Intergames, Inc., ordering both defendants, jointly and severally, to pay and deliver to the plaintiffs the amounts of Twenty Eight Thousand Sixty One Pesos and Sixty Three Centavos (₱28,061.63) as actual damages; One Hundred Thousand Pesos (₱100,000.00) as moral damages; Fifty Thousand Pesos (₱50,000.00) as exemplary damages and Ten Percent (10%) of the total amount of One Hundred Seventy Eight Thousand Sixty One Pesos and Sixty Three Centavos (₱178,061,63) or Seventeen Thousand Eight Hundred Six Pesos and Sixteen Centavos (₱17,806.16) as attorney's fees.
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> On the cross-claim of defendant Cosmos Bottling Company, Inc., defendant Intergames, Inc, is hereby ordered to reimburse to the former any and all amounts which may be recovered by the plaintiffs from it by virtue of this Decision.
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> SO ORDERED.

The RTC observed that the safeguards allegedly instituted by Intergames in conducting the marathon had fallen short of the yardstick to satisfy the requirements of due diligence as called for by and appropriate under the circumstances; that the accident had happened because of inadequate preparation and Intergames' failure to exercise due diligence;[19]

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14 Id. at 42-43.
15 Id.
16 Id. at 44.
17 Records, Vol. I, p. 58.
18 Supra note 2, at 178-179.
19 Id. at 175-177.

that the respondents could not be excused from liability by hiding behind the waiver executed by Rommel and the permission given to him by his parents because the waiver could only be effective for risks inherent in the marathon, such as stumbling, heat stroke, heart attack during the race, severe exhaustion and similar occurrences;[20] that the liability of the respondents towards the participants and third persons was solidary, because Cosmos, the sponsor of the event, had been the principal mover of the event, and, as such, had derived benefits from the marathon that in turn had carried responsibilities towards the participants and the public; that the respondents' agreement to free Cosmos from any liability had been an agreement binding only between them, and did not bind third persons; and that Cosmos had a cause of action against Intergames for whatever could be recovered by the petitioners from Cosmos.[21]

Decision of the CA

All the parties appealed to the CA.

The petitioners contended that the RTC erred in not awarding damages for loss of earning capacity on the part of Rommel for the reason that such damages were not recoverable due to Rommel not yet having finished his schooling; and that it would be premature to award such damages upon the assumption that he would finish college and be gainfully employed.[22]

On their part, Cosmos and Intergames separately raised essentially similar errors on the part of the RTC, to wit: (1) in holding them liable for the death of Rommel; (2) in finding them negligent in conducting the marathon; (3) in holding that Rommel and his parents did not assume the risks of the marathon; (4) in not holding that the sole and proximate cause of the death of Rommel was the negligence of the jeepney driver; and (5) in making them liable, jointly and solidarily, for damages, attorney's fees and expenses of litigation.[23]

The CA reduced the issues to four, namely:

> 1. Whether or not appellant Intergames was negligent in its conduct of the "1st Pop Cola Junior Marathon" held on June 15, 1980 and if so, whether its negligence was the proximate cause of the death of Rommel Abrogar.

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20 Id. at 177.
21 Id.
22 CA *rollo*, p. 30.
23 Id. at 59-60.

2. Whether or not appellant Cosmos can be held jointly and solidarily liable with appellant Intergames for the death of Rommel Abrogar, assuming that appellant Intergames is found to have been negligent in the conduct of the Pop Cola marathon and such negligence was the proximate cause of the death of Rommel Abrogar.

3. Whether or not the appellants Abrogar are entitled to be compensated for the "loss of earning capacity" of their son Rommel.

4. Whether or not the appellants Abrogar are entitled to the actual, moral, and exemplary damages granted to them by the Trial Court.[24]

In its assailed judgment promulgated on March 10, 2004,[25] the CA ruled as follows:

As to the first issue, this Court finds that appellant Intergames was not negligent in organizing the said marathon.

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct to human affairs, would do, or doing something which a prudent and reasonable man would not do.

The whole theory of negligence presuppose some uniform standard of behavior which must be an external and objective one, rather than the individual judgment good or bad, of the particular actor; it must be, as far as possible, the same for all persons; and at the same time make proper allowance for the risk apparent to the actor for his capacity to meet it, and for the circumstances under which he must act.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and of the acts involved in the particular case.

In the case at bar, the trial court erred in finding that the appellant Intergames failed to satisfy the requirements of due diligence in the conduct of the race.

The trial court in its decision said that the accident in question could have been avoided if the route of the marathon was blocked off from the regular traffic, instead of allowing the runners to run together with the flow of traffic. Thus, the said court considered the appellant Intergames at fault for proceeding with the marathon despite the fact that the Northern Police District, MPF, Quezon City did not allow the road to be blocked off from traffic.

This Court finds that the standard of conduct used by the trial court is not the ordinary conduct of a prudent man in such a given situation. According to the said court, the only way to conduct a safe road race is to block off the traffic for the duration of the event and direct the cars and

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24 *Rollo*, pp. 70-71.
25 Supra note 1.

public utilities to take alternative routes in the meantime that the marathon event is being held. Such standard is too high and is even inapplicable in the case at bar because, there is no alternative route from IBP to Don Mariano Marcos to Quezon City Hall.

The Civil Code provides that if the law or contract does not state the diligence which is to be observed in the performance of an obligation that which is expected of a good father of the family shall only be required. Accordingly, appellant Intergames is only bound to exercise the degree of care that would be exercised by an ordinarily careful and prudent man in the same position and circumstances and not that of the cautious man of more than average prudence. Hence, appellant Intergames is only expected to observe ordinary diligence and not extraordinary diligence.

In this case, the marathon was allowed by the Northern Police District, MPF, Quezon City on the condition that the road should not be blocked off from traffic. Appellant Intergames had no choice. It had to comply with it or else the said marathon would not be allowed at all.

The trial court erred in contending that appellant Intergames should have looked for alternative places in Metro Manila given the condition set by the Northern Police District, MPF, Quezon City; precisely because as Mr. Jose Castro has testified the said route was found to be the best route after a careful study and consideration of all the factors involved. Having conducted several marathon events in said route, appellant Intergames as well as the volunteer groups and the other agencies involved were in fact familiar with the said route. And assuming that there was an alternative place suitable for the said race, the question is would they be allowed to block off the said road from traffic?

Also, the trial court erred in stating that there was no adequate number of marshals, police officers and personnel to man the race so as to prevent injury to the participants.

The general rule is that the party who relies on negligence for his cause of action has the burden of proving the existence of the same, otherwise his action fails.

Here, the appellants-spouses failed to prove that there was inadequate number of marshals, police officers, and personnel because they failed to prove what number is considered adequate.

This court considers that seven (7) traffic operatives, five (5) motorcycle policemen, fifteen (15) patrolmen deployed along the route, fifteen (15) boyscouts, twelve (12) CATs, twenty (20) barangay tanods, three (3) ambulances and three (3) medical teams were sufficient to stage a safe marathon.

Moreover, the failure of Mr. Jose R. Castro, Jr. to produce records of the lists of those constituting the volunteer help during the marathon is not fatal to the case considering that one of the volunteers, Victor Landingin of the Citizens Traffic Action (CTA) testified in court that CTA fielded five units on June 15, 1980, assigned as follows: (1) at the sphere head; (2) at the finish line; (3) tail ender;(4) & (5) roving.

The trial court again erred in concluding that the admission of P/Lt. Jesus Lipana, head of the traffic policemen assigned at the marathon, that he showed up only at the finish line means that he did not bother to check on his men and did not give them appropriate instructions. P/Lt. Lipana in his testimony explained that he did not need to be in the start of the race because he had predesignated another capable police officer to start the race.

In addition, this Court finds that the precautionary measures and preparations adopted by appellant Intergames were sufficient considering the circumstances surrounding the case.

Appellant Intergames, using its previous experiences in conducting safe and successful road races, took all the necessary precautions and made all the preparations for the race. The initial preparations included: determination of the route to be taken; and an ocular inspection of the same to see if it was well-paved, whether it had less corners for easy communication and coordination, and whether it was wide enough to accommodate runners and transportation. Appellant Intergames choose the Don Mariano Marcos Avenue primarily because it was well-paved; had wide lanes to accommodate runners and vehicular traffic; had less corners thus facilitating easy communication and coordination among the organizers and cooperating agencies; and was familiar to the race organizers and operating agencies. The race covered a ten-kilometer course from the IBP lane to the Quezon City Hall Compound passing through the Don Mariano Marcos Avenue, which constituted the main stretch of the route. Appellant Intergames scheduled the marathon on a Sunday morning, when traffic along the route was at its lightest. Permission was sought from the then Quezon City Mayor Adelina Rodriguez for the use of the Quezon City Hall Grandstand and the street fronting it as the finish line. Police assistance was also obtained to control and supervise the traffic. The Quezon City Traffic Detachment took charge of traffic control by assigning policemen to the traffic route. The particular unit assigned during the race underwent extensive training and had been involved in past marathons, including marathons in highly crowded areas. The Philippine Boy Scouts tasked to assist the police and monitor the progress of the race; and Citizens Traffic Action Group tasked with the monitoring of the race, which assigned five units consisting of ten operatives, to provide communication and assistance were likewise obtained. Finally, medical equipments and personnel were also requested from Camp Aguinaldo, the Philippine Red Cross and the Hospital ng Bagong Lipunan.

Neither does this Court find the appellant Intergames' conduct of the marathon the proximate cause of the death of Rommel Abrogar. Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.

It appears that Rommel Abrogar, while running on Don Mariano Marcos Avenue and after passing the Philippine Atomic Energy Commission Building, was bumped by a jeepney which apparently was racing against a minibus and the two vehicles were trying to crowd each other. In fact, a criminal case was filed against the jeepney driver by reason of his having killed Rommel Abrogar.

This proves that the death of Rommel Abrogar was caused by the negligence of the jeepney driver. Rommel Abrogar cannot be faulted because he was performing a legal act; the marathon was conducted with the permission and approval of all the city officials involved. He had the right to be there. Neither can the appellant Intergames be faulted, as the organizer of the said marathon, because it was not negligent in conducting the marathon.

Given the facts of this case, We believe that no amount of precaution can prevent such an accident. Even if there were fences or barriers to separate the lanes for the runners and for the vehicles, it would not prevent such an accident in the event that a negligent driver loses control of his vehicle. And even if the road was blocked off from traffic, it would still not prevent such an accident, if a jeepney driver on the other side of the road races with another vehicle loses control of his wheel and as a result hits a person on the other side of the road. Another way of saying this is: A defendant's tort cannot be considered a legal cause of plaintiff's damage if that damage would have occurred just the same even though the defendant's tort had not been committed.

This Court also finds the doctrine of assumption of risk applicable in the case at bar. As explained by a well-known authority on torts:

> "The general principle underlying the defense of assumption of risk is that a plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm. The defense may arise where a plaintiff, by contract or otherwise, expressly agrees to accept a risk or harm arising from the defendant's conduct, or where a plaintiff who fully understands a risk or harm caused by the defendant's conduct, or by a condition created by the defendant, voluntarily chooses to enter or remain, or to permit his property to enter or remain, within the area of such risk, under circumstances manifesting his willingness to accept the risk.
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> "Assumption of the risk in its primary sense arises by assuming through contract, which may be implied, the risk of a known danger. Its essence is venturousness. It implies intentional exposure to a known danger; It embraces a mental state of willingness; It pertains to the preliminary conduct of getting into a dangerous employment or relationship, it means voluntary incurring the risk of an accident, which may or may not occur, and which the person assuming the risk may be careful to avoid; and it defeats recovery because it is a previous abandonment of the right to complain if an accident occurs.
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> "Of course, if the defense is predicated upon an express agreement the agreement must be valid, and in the light of this qualification the rule has been stated that a plaintiff who, by contract or otherwise, expressly agreed to accept a risk of harm arising from the defendant's negligent or reckless conduct, cannot recover for such harm unless the agreement is invalid as contrary to public policy.

x x x x

> "The defense of assumption of risk presupposes: (1) that the plaintiff had actual knowledge of the danger; (2) that he understood and appreciated the risk from the danger; and (3) that he voluntarily exposed himself to such risk. x x x
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> "The term 'risk' as used in this connection applies to known dangers, and not to things from which danger may possibly flow. The risk referred to is the particular risk, or one of the risks, which the plaintiff accepted within the context of the situation in which he placed himself and the question is whether the specific conduct or condition which caused the injury was such a risk."

In this case, appellant Romulo Abrogar himself admitted that his son, Rommel Abrogar, surveyed the route of the marathon and even attended a briefing before the race. Consequently, he was aware that the marathon would pass through a national road and that the said road would not be blocked off from traffic. And considering that he was already eighteen years of age, had voluntarily participated in the marathon, with his parents' consent, and was well aware of the traffic hazards along the route, he thereby assumed all the risks of the race. This is precisely why permission from the participant's parents, submission of a medical certificate and a waiver of all rights and causes of action arising from the participation in the marathon which the participant or his heirs may have against appellant Intergames were required as conditions in joining the marathon.

In the decision of the trial court, it stated that the risk mentioned in the waiver signed by Rommel Abrogar only involved risks such as stumbling, suffering heatstroke, heart attack and other similar risks. It did not consider vehicular accident as one of the risks included in the said waiver.

This Court does not agree. With respect to voluntary participation in a sport, the doctrine of assumption of risk applies to any facet of the activity inherent in it and to any open and obvious condition of the place where it is carried on. We believe that the waiver included vehicular accidents for the simple reason that it was a road race run on public roads used by vehicles. Thus, it cannot be denied that vehicular accidents are involved. It was not a track race which is held on an oval and insulated from vehicular traffic. In a road race, there is always the risk of runners being hit by motor vehicles while they train or compete. That risk is inherent in the sport and known to runners. It is a risk they assume every time they voluntarily engage in their sport.

Furthermore, where a person voluntarily participates in a lawful game or contest, he assumes the ordinary risks of such game or contest so as to preclude recovery from the promoter or operator of the game or contest for injury or death resulting therefrom. Proprietors of amusements or of places where sports and games are played are not insurers of safety of the public nor of their patrons.

In Mc Leod Store v. Vinson 213 Ky 667, 281 SW 799 (1926), it was held that a boy, seventeen years of age, of ordinary intelligence and physique, who entered a race conducted by a department store, the purpose of which was to secure guinea fowl which could be turned in for cash prizes, had assumed the ordinary risks incident thereto and was barred from recovering against the department store for injuries suffered when, within catching distance, he stopped to catch a guinea, and was tripped or stumbled and fell to the pavement, six or eight others falling upon him. The court further said: "In this (the race) he was a voluntary participant. xxx The anticipated danger was as obvious to him as it was to appellant (the department store). While not an adult, he was practically 17 years of age, of ordinary intelligence, and perfectly able to determine the risks ordinarily incident to such games. An ordinary boy of that age is practically as well advised as to the hazards of baseball, basketball, football, foot races and other games of skill and endurance as is an adult x x x."

In the case at bar, the "1st Pop Cola Junior Marathon" held on June 15, 1980 was a race the winner of which was to represent the country in the annual Spirit of Pheidippides Marathon Classic in Greece, if he equals or breaks the 29-minute mark for the 10-km. race. Thus, Rommel Abrogar having voluntarily participated in the race, with his parents' consent, assumed all the risks of the race.

Anent the second issue, this Court finds that appellant Cosmos must also be absolved from any liability in the instant case.

This Court finds that the trial court erred in holding appellant Cosmos liable for being the principal mover and resultant beneficiary of the event.

In its decision it said that in view of the fact that appellant Cosmos will be deriving certain benefits from the marathon event, it has the responsibility to ensure the safety of all the participants and the public. It further said that the stipulations in the contract entered into by the two appellants, Cosmos and Intergames, relieving the former from any liability does not bind third persons.

This Court does not agree with the reasoning of the trial court. The sponsorship contract entered between appellant Cosmos and appellant Intergames specifically states that:

> 1. COSMOS BOTTLING CORPORATION shall pay INTERGAMES the amount of FIFTY FIVE THOUSAND PESOS (₱55,000.00) representing full sponsorship fee and in consideration thereof, INTERGAMES shall organize and stage a marathon race to be called '1st POP COLA JUNIOR MARATHON.
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> x x x x
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> 3. INTERGAMES shall draw up all the rules of the marathon race, eligibility requirements of participants as well as provide all the staff required in the organization and actual staging of the race. It is understood that all said staff shall be considered under the direct employ of INTERGAMES which shall have full control over them.
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> 5. INTERGAMES shall secure all the necessary permits, clearances, traffic and police assistance in all the areas covered by the entire route of the '1st POP COLA JUNIOR MARATHON.
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> 12. INTERGAMES shall hold COSMOS BOTTLING CORPORATION, completely free and harmless from any claim or action for liability for any injuries or bodily harm which may be sustained by any of the entries in the '1st POP COLA JUNIOR MARATHON', or for any damages to the property or properties of third parties, which may likewise arise in the course of the race.

From the foregoing, it is crystal clear that the role of the appellant Cosmos was limited to providing financial assistance in the form of sponsorship. Appellant Cosmos' sponsorship was merely in pursuance to the company's commitment for sports development of the youth as well as for advertising purposes. The use of the name Cosmos was done for advertising purposes only; it did not mean that it was an organizer of the said marathon. As pointed out by Intergames' President, Jose Castro Jr., appellant Cosmos did not even have the right to suggest the location and the number of runners.

To hold a defendant liable for torts, it must be clearly shown that he is the proximate cause of the harm done to the plaintiff. The nexus or connection of the cause and effect, between a negligent act and the damage done, must be established by competent evidence.

In this case, appellant Cosmos was not negligent in entering into a contract with the appellant Intergames considering that the record of the latter was clean and that it has conducted at least thirty (30) road races.

Also there is no direct or immediate causal connection between the financial sponsorship and the death of Rommel Abrogar. The singular act of providing financial assistance without participating in any manner in the conduct of the marathon cannot be palmed off as such proximate cause. In fact, the appellant spouses never relied on any representation that Cosmos organized the race. It was not even a factor considered by the appellants-spouses in allowing their son to join said marathon.

In view of the fact that both defendants are not liable for the death of Rommel Abrogar, appellants-spouses are not entitled to actual, moral, exemplary damages as well as for the "loss of earning capacity" of their son. The third and fourth issues are thus moot and academic.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, **REVERSED and SET ASIDE,** and another entered **DISMISSING** the complaint a quo. The appellants shall bear their respective costs.

SO ORDERED.[26]

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[26] *Rollo*, pp. 71-77.

Issues

In this appeal, the petitioners submit that the CA gravely erred:

A.
x x x in reversing the RTC Decision, (and) in holding that respondent Intergames was not negligent considering that:

1. Respondent Intergames failed to exercise the diligence of a good father of the family in the conduct of the marathon in that it did not block off from traffic the marathon route; and

2. Respondent Intergames' preparations for the race, including the number of marshal during the marathon, were glaringly inadequate to prevent the happening of the injury to its participants.

B.
x x x in reversing the RTC Decision, (and) in holding that the doctrine of assumption of risk finds application to the case at bar even though getting hit or run over by a vehicle is not an inherent risk in a marathon race. Even assuming *arguendo* that deceased Abrogar made such waiver as claimed, still there can be no valid waiver of one's right to life and limb for being against public policy.

C.
x x x in reversing the RTC Decision, (and) in absolving respondent Cosmos from liability to petitioners on the sole ground that respondent Cosmos' contract with respondent Intergames contained a stipulation exempting the former from liability.

D.
x x x in reversing the RTC Decision and consequently holding respondents free from liability, (and) in not awarding petitioners with actual, moral and exemplary damages for the death of their child, Rommel Abrogar.[27]

Ruling of the Court

The appeal is partly meritorious.

I
Review of factual issues is allowed because of the conflict between the findings of fact by the RTC and the CA on the issue of negligence

The petitioners contend that Intergames was negligent; that Cosmos as the sponsor and Intergames as the organizer of the marathon both had the obligation to provide a reasonably safe place for the conduct of the race by

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[27] Id. at 27.

blocking the route of the race from vehicular traffic and by providing adequate manpower and personnel to ensure the safety of the participants; and that Intergames had foreseen the harm posed by the situation but had not exercised the diligence of a good father of a family to avoid the risk;[28] hence, for such omission, Intergames was negligent.[29]

Refuting, Cosmos and Intergames submit that the latter as the organizer was not negligent because it had undertaken all the precautionary measures to ensure the safety of the race; and that there was no duty on the part of the latter as the organizer to keep a racecourse "free and clear from reasonably avoidable elements that would [occasion] or have the probable tendency, to occasion injury."[30]

The issue of whether one or both defendants were negligent is a mixed issue of fact and law. Does this not restrict the Court against reviewing the records in this appeal on *certiorari* in order to settle the issue?

The Court can proceed to review the factual findings of the CA as an exception to the general rule that it should not review issues of fact on appeal on *certiorari*. We have recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[31] Considering that the CA arrived at factual findings contrary to those of the trial court, our review of the records in this appeal should have to be made.

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[28] Id. at 32.
[29] Id. at 31, 33.
[30] Id. at 513.
[31] *Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, July 21, 2006, 496 SCRA 305, 316; *Sta. Maria v. Court of Appeals*, G. R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358; *Fuentes v. Court of Appeals*, G. R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709; *Reyes v. Court of Appeals*, G. R. No. 110207, July 11, 1996, 258 SCRA 651, 659; *Floro v. Llenado*, G.R. No. 75723, June 2, 1995, 244 SCRA 713, 720; *Remalante v. Tibe*, No. L-59514, February 25, 1988, 158 SCRA 138, 145-146.

Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[32] Under Article 1173 of the *Civil Code*, it consists of the "omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place."[33] The *Civil Code* makes liability for negligence clear under Article 2176,[34] and Article 20.[35]

To determine the existence of negligence, the following time-honored test has been set in *Picart v. Smith*:[36]

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.** The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
>
> The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. **Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect**

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[32] *Philippine National Railways v. Vizcara,* G.R. No. 190022, February 15, 2012, 666 SCRA 363, 374; citing *Layugan v. Intermediate Appellate Court*, No. L-73998, November 14, 1988, 167 SCRA 363, 372-373.

[33] Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. When negligence shows bad faith, the provision of Articles 1171 and 2201, paragraph 2, shall apply.

[34] 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 quasi-delict and is governed by the provisions of this Chapter.

[35] Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[36] 37 Phil. 809 (1918).

> **harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.**[37] (bold underscoring supplied for emphasis)

A careful review of the evidence presented, particularly the testimonies of the relevant witnesses, in accordance with the foregoing guidelines reasonably leads to the conclusion that the safety and precautionary measures undertaken by Intergames were short of the diligence demanded by the circumstances of persons, time and place under consideration. Hence, Intergames as the organizer was guilty of negligence.

The race organized by Intergames was a junior marathon participated in by young persons aged 14 to 18 years. It was plotted to cover a distance of 10 kilometers, starting from the IBP Lane,[38] then going towards the Batasang Pambansa, and on to the circular route towards the Don Mariano Marcos Highway,[39] and then all the way back to the Quezon City Hall compound where the finish line had been set.[40] In staging the event, Intergames had no employees of its own to man the race,[41] and relied only on the "cooperating agencies" and volunteers who had worked with it in previous races.[42] The cooperating agencies included the Quezon City police, barangay *tanods*, volunteers from the Boy Scouts of the Philippines, the Philippine National Red Cross, the Citizens Traffic Action Group, and the medical teams of doctors and nurses coming from the Office of the Surgeon General and the Ospital ng Bagong Lipunan.[43] According to Jose R. Castro, Jr., the President of Intergames, the preparations for the event included conducting an ocular inspection of the route of the race,[44] sending out letters to the various cooperating agencies,[45] securing permits from proper authorities,[46] putting up directional signs,[47] and setting up the water stations.[48]

We consider the "safeguards" employed and adopted by Intergames not adequate to meet the requirement of due diligence.

For one, the police authorities specifically prohibited Intergames from blocking Don Mariano Marcos Highway in order not to impair road accessibility to the residential villages located beyond the IBP Lane.[49]

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37 Id. at 813.
38 Now called Batasan Road.
39 Now called Commonwealth Avenue.
40 TSN, September 4, 1984, p. 5
41 According to Castro, Jr., Intergames had only two employees: himself as President (TSN, September 4, 1984, pp. 13-14); and his wife as the Project Coordinator (TSN, April 12, 1985, p. 4).
42 Id.
43 TSN, March 15, 1985, pp. 5-16.
44 TSN, April 12, 1985, p. 12.
45 TSN, September 4, 1984, pp. 9-11.
46 Id. at 7-8.
47 TSN, September 10, 1985, p. 6.
48 TSN, March 15, 1985, p. 7.
49 TSN, January 30, 1986, pp. 15-16.

However, contrary to the findings of the CA,[50] Intergames had a choice on where to stage the marathon, considering its admission of the sole responsibility for the conduct of the event, including the choice of location.

Moreover, the CA had no basis for holding that "the said route was found to be the best route after a careful study and consideration of all the factors involved."[51] Castro, Jr. himself attested that the route had been the best one only *within the vicinity* of the Batasan Pambansa, to wit:

> COURT
>
> q Was there any specific reason from... Was there any specific reason why you used this route from Batasan to City Hall? Was there any special reason?
>
> a We have, your Honor, conducted for example the Milo Marathon in that area in the Batasan Pambansa and **we found it to be relatively safer than any other areas within the vicinity.** As a matter of fact, we had more runners in the Milo Marathon at that time and nothing happened, your Honor.[52]

The chosen route (IBP Lane, on to Don Mariano Marcos Highway, and then to Quezon City Hall) was not the only route appropriate for the marathon. In fact, Intergames came under no obligation to use such route especially considering that the participants, who were young and inexperienced runners, would be running alongside moving vehicles.

Intergames further conceded that the marathon could have been staged on a blocked-off route like Roxas Boulevard in Manila where runners could run against the flow of vehicular traffic.[53] Castro, Jr. stated in that regard:

> COURT TO WITNESS
>
> q What law are you talking about when you say I cannot violate the law?
> a The police authority, your Honor, would not grant us permit because that is one of the conditions that if we are to conduct a race we should run the race in accordance with the flow of traffic.
>
> q Did you not inform the police this is in accordance with the standard safety measures for a marathon race?
> a I believed we argued along that line but but (sic) again, if we insist the police again would not grant us any permit like...**except in the**

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50 Supra note 1, at 72.
51 TSN, January 30, 1986, p. 58.
52 Id. at 59.
53 TSN, September 10, 1985, p. 11.

case of Roxas Boulevard when it is normally closed from 8 a.m. when you can run against the flow of traffic.

q You were aware for a runner to run on the same route of the traffic would be risky because he would not know what is coming behind him?

a I believed we talked of the risk, your Honor when the risk has been minimized to a certain level. Yes, there is greater risk when you run with the traffic than when you run against the traffic to a certain level, it is correct but most of the races in Manila or elsewhere are being run in accordance with the flow of the traffic.

x x x x

ATTY. VINLUAN

q Following the observation of the Court, considering the local condition, you will agree with me the risks here are greater than in the United States where drivers on the whole follow traffic rules?

a That is correct.

q And because of that fact, it is with all the more reason that you should take all necessary precautions to insure the safety of the runners?

a That is correct.[54]

x x x x

COURT:

x x x x

Q In your case in all the marathons that you had managed, how many cases have you encountered where the routes are blocked off for vehicular traffic?

A These are the International Marathon, Philippines Third World Marathon and the Milo Marathon. We are blocking them to a certain length of time.

Q What was the purpose of blocking the routes? Is it for the safety of the runners or just a matter of convenience?

A In blocking off the route, Your Honor, it is light easier for the runners to run without impediments to be rendered by the people or by vehicles and at the same time it would be also advantageous if the road will be blocked off for vehicle traffic permitted to us by the traffic authorities.

Q So, in this case, you actually requested for the traffic authorities to block off the route?

A As far as I remember we asked Sgt. Pascual to block off the route but considering that it is the main artery to Fairview Village, it

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[54] Id. at 11, 13-14.

would not be possible to block off the route since it will cause a lot of inconvenience for the other people in those areas and jeepney drivers.

Q In other words, if you have your way you would have opted to block off the route.

A Yes, Your Honor.

Q But the fact is that the people did not agree.

A Yes, Your Honor, and it is stated in the permit given to us.[55]

Based on the foregoing testimony of Castro, Jr., Intergames had full awareness of the higher risks involved in staging the race alongside running vehicles, and had the option to hold the race in a route where such risks could be minimized, if not eliminated. But it did not heed the danger already foreseen, if not expected, and went ahead with staging the race along the plotted route on Don Mariano Marcos Highway on the basis of its supposedly familiarity with the route. Such familiarity of the organizer with the route and the fact that previous races had been conducted therein without any untoward incident[56] were not in themselves sufficient safeguards. The standards for avoidance of injury through negligence further required Intergames to establish that it did take adequate measures to avert the foreseen danger, but it failed to do so.

Another failing on the part of Intergames was the patent inadequacy of the personnel to man the route. As borne by the records, Intergames had no personnel of its own for that purpose, and relied exclusively on the assistance of volunteers, that is, "seven (7) traffic operatives, five (5) motorcycle policemen, fifteen (15) patrolmen deployed along the route, fifteen (15) boy scouts, twelve (12) CATs, twenty (20) barangay *tanods*, three (3) ambulances and three (3) medical teams"[57] to ensure the safety of the young runners who would be running alongside moving vehicular traffic, to make the event safe and well coordinated.

Although the party relying on negligence as his cause of action had the burden of proving the existence of the same, Intergames' coordination and supervision of the personnel sourced from the cooperating agencies did not satisfy the diligence required by the relevant circumstances. In this regard, it can be pointed out that the number of deployed personnel, albeit sufficient to stage the marathon, did not *per se* ensure the safe conduct of the race without proof that such deployed volunteers had been properly coordinated and instructed on their tasks.

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55 TSN, April 15, 1986, p. 7.
56 Id. at 10.
57 Supra note 1.

That the proper coordination and instruction were crucial elements for the safe conduct of the race was well known to Intergames. Castro, Jr. stated as much, to wit:

> ATTY. LOMBOS:
> x x x x
>
> Q You also said that if you block off one side of the road, it is possible that it would be more convenient to hold the race in that matter. Will you tell the Honorable Court if it is possible also to hold a race safely if the road is not blocked off?
>
> A Yes, sir.
>
> Q How is it done.
>
> A **You can still run a race safely even if it is partially blocked off as long as you have the necessary cooperation with the police authorities, and the police assigned along the route of the race and the police assigned would be there, this will contribute the safety of the participants, and also the vehicular division,** as long as there are substantial publicities in the newspapers, normally they will take the precautions in the use of the particular route of the race.
>
> Q Let me clarify this. Did you say that it is possible to hold a marathon safely if you have this traffic assistance or coordination even if the route is blocked or not blocked?
>
> A It is preferable to have the route blocked but in some cases, it would be impossible for the portions of the road to be blocked totally. **The route of the race could still be safe for runners if a proper coordination or the agencies are notified especially police detailees to man the particular stage.**[58]

Sadly, Intergames' own evidence did not establish the conduct of proper coordination and instruction. Castro, Jr. described the action plan adopted by Intergames in the preparation for the race, as follows:

> COURT
>
> a Did you have any rehearsal let us say the race was conducted on June 15, now before June 15 you call a meeting of all these runners so you can have more or less a map-up and you would indicate or who will be stationed in their places etc. Did you have such a rehearsal?
>
> WITNESS
> a It is not being done, your honor, but you have to specify them. You meet with the group and you tell them that you wanted them to be

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[58] TSN, April 15, 1986, pp. 8-9.

placed in their particular areas which we pointed out to them for example in the case of the Barangay Tanod, I specifically assigned them in the areas and we sat down and we met.

COURT
q Did you have any action, plan or brochure which would indicate the assignment of each of the participating group?

WITNESS
a Normally, sir, many of the races don't have that except when they called them to meeting either as a whole group or the entire cooperating agency or meet them per group.

COURT
q Did you have a check list of the activities that would have to be entered before the actual marathon some kind of system where you will indicate this particular activity has to be checked etc. You did not have that?

WITNESS
q Are you asking, your honor, as a race director of I will check this because if I do that, I won't have a race because that is not being done by any race director anywhere in the world?

COURT
I am interested in your planning activities.
q In other words, what planning activities did you perform before the actual marathon?
a The planning activities we had, your honor, was to coordinate with the different agencies involved informing them where they would be more or less placed.

COURT
q Let us go to...Who was supposed to be coordinating with you as to the citizens action group who was your...you were referring to a person who was supposed to be manning these people and who was the person whom you coordinate with the Traffic Action Group?

WITNESS
a I can only remember his name...his family name is Esguerra.
q How about with the Tanods?
a With the Tanods his name is Pedring Serrano.
q And with the Boys Scouts? (sic)
a And with the Boys Scouts of the Phils. (sic) it is Mr. Greg Panelo.

COURT
q When did you last meet rather how many times did you meet with Esguerra before the marathon on June 15?

WITNESS
a The Citizens Traffic Action Group, your honor, had been with me in previous races.

COURT

q I am asking you a specific question. I am not interested in the Citizen Traffic Action Group. The marathon was on June 15, did you meet with him on June 14, June 13 or June 12?

a We met once, your honor, I cannot remember the date.

q You don't recall how many days before?

a I cannot recall at the moment.

q How about with Mr. Serrano, how many times did you meet with him before the race?

a If my mind does not fail me, your honor, I met him twice because he lives just within our area and we always see each other.

q How about with Panelo, how many times did you meet him?

a With Mr. Panelo, I did not meet with them, your honor.

q Was there an occasion where before the race you met with these three people together since you did not meet with Panelo anytime? Was there anytime where you met with Serrano and Esguerra together?

WITNESS

a No, your honor.

COURT

q When you met once with Esguerra, where did you meet? What place?

a I cannot recall at the moment, your honor, since it was already been almost six years ago.

q How about Serrano, where did you meet him?

a We met in my place.

q From your house? He went in your house?

a Yes, your honor.

q So you did not have let us say a...you don't have records of your meetings with these people?

WITNESS

a With the Citizens Traffic Action, your honor?

COURT

a Yes.

WITNESS

a I don't have, your honor.

COURT

q Because you are familiar, I was just thinking this is an activity which requires planning etc., what I was thinking when you said this was never done in any part of the world but all activities it has to be planned. There must be some planning, now are you saying that in this particular case you had no written plan or check list of activities what activities have to be implemented on a certain point and time, who are the persons whom you must meet in a certain point and time.

WITNESS

a Normally, we did not have that, your honor, except the check list of all the things that should be ready at a particular time prior to the race and the people to be involved and we have a check list to

see to it that everything would be in order before the start of the race.

COURT
Proceed.

ATTY. VINLUAN
q Following the question of the Court Mr. Castro, did you meet with Lt. Depano of the Police Department who were supposed to supervise the police officers assigned to help during the race?
a I did not meet with him, sir.
q You did not meet with him?
a I did not meet with him.
q In fact, ever before or during the race you had no occasion to talk to Lt. Depano. Is that correct?
a That is correct, sir.

ATTY. VINLUAN
Based on the question of the Court and your answer to the question of the Court, are you trying to say that this planning before any race of all these groups who have committed to help in the race, this is not done in any part of the world?

WITNESS
a In the latter years when your race became bigger and bigger, this is being done now slowly.

ATTY. VINLUAN
q But for this particular race you will admit that you failed to do it when you have to coordinate and even have a dry run of the race you failed to do all of that in this particular race, yes or no?
a Because there was...

COURT
It was already answered by him when I asked him. The Court has...Everybody has a copy how of this time planner. Any activity or even meeting a girlfriend or most people plan.

ATTY. F.M. LOMBOS
If your honor please, before we proceed...

WITNESS
In the latter years, your honor, when your race became bigger and bigger, this is being done now slowly.
q For this particular race you will admit that you failed to do it?
a Because there was no need, sir.[59]

Probably sensing that he might have thereby contradicted himself, Castro, Jr. clarified on re-direct examination:

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[59] TSN, January 30, 1986, pp. 26-31.

ATTY. LOMBOS
Q Now, you also responded to a question during the same hearing and this appears on page 26 of the transcript that you did not hold any rehearsal or dry run for this particular marathon. Could you tell the Court why you did not hold any such rehearsal or dry run?
A Because I believe there was no need for us to do that since we have been doing this for many years and we have been the same people, same organization with us for so many years conducting several races including some races in that area consisting of longer distances and consisting of more runners, a lot more runners in that areay (sic) so these people, they know exactly what to do and there was no need for us to have a rehearsal. I believe this rehearsal would only be applicable if I am new and these people are new then, we have to rehearse.

ATTY. LOMBOS
q You also stated Mr. Castro that you did not have any action plan or brochure which you would indicate, an assignment of each of the participating group as to what to do during the race. Will you please explain what you meant when you said you have no action plan or brochure?

WITNESS
a What I mean of action plan, I did not have any written action plan but I was fully aware of what to do. I mean, those people did not just go there out of nowhere. Obviously, there was an action on my part because I have to communicate with them previously and to tell them exactly what the race is all about; where to start; where it would end, and that is the reason why we have the ambulances, we have the Boy Scouts, we have the CTA, we have the police, so it was very obvious that there was a plan of action but not written because I know pretty well exactly what to do. I was dealing with people who have been doing this for a long period of time.[60]

While the level of trust Intergames had on its volunteers was admirable, the coordination among the cooperating agencies was predicated on circumstances unilaterally assumed by Intergames. It was obvious that Intergames' inaction had been impelled by its belief that it did not need any action plan because it had been dealing with people who had been manning similar races for a long period of time.

The evidence presented undoubtedly established that Intergames' notion of coordination only involved informing the cooperating agencies of the date of the race, the starting and ending points of the route, and the places along the route to man. Intergames did not conduct any general assembly with all of them, being content with holding a few sporadic meetings with the leaders of the coordinating agencies. It held no briefings of any kind on the actual duties to be performed by each group of volunteers prior to the race. It did not instruct the volunteers on how to minimize, if not

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[60] TSN, June 23, 1986, pp. 12-13.

avert, the risks of danger in manning the race, despite such being precisely why their assistance had been obtained in the first place.

Intergames had no right to assume that the volunteers had already been aware of what exactly they would be doing during the race. It had the responsibility and duty to give to them the proper instructions despite their experience from the past races it had organized considering that the particular race related to runners of a different level of experience, and involved different weather and environmental conditions, and traffic situations. It should have remembered that the personnel manning the race were not its own employees paid to perform their tasks, but volunteers whose nature of work was remotely associated with the safe conduct of road races. Verily, that the volunteers showed up and assumed their proper places or that they were sufficient in number was not really enough. It is worthy to stress that proper coordination in the context of the event did not consist in the mere presence of the volunteers, but included making sure that they had been properly instructed on their duties and tasks in order to ensure the safety of the young runners.

It is relevant to note that the participants of the 1st Pop Cola Junior Marathon were mostly minors aged 14 to 18 years joining a race of that kind for the first time. The combined factors of their youth, eagerness and inexperience ought to have put a reasonably prudent organizer on higher guard as to their safety and security needs during the race, especially considering Intergames' awareness of the risks already foreseen and of other risks already known to it as of similar events in the past organizer. There was no question at all that a higher degree of diligence was required given that practically all of the participants were children or minors like Rommel; and that the law imposes a duty of care towards children and minors even if ordinarily there was no such duty under the same circumstances had the persons involved been adults of sufficient discretion.[61] In that respect, Intergames did not observe the degree of care necessary as the organizer, rendering it liable for negligence. As the Court has emphasized in *Corliss v. The Manila Railroad Company*,[62] where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances.[63]

The circumstances of the persons, time and place required far more than what Intergames undertook in staging the race. Due diligence would have made a reasonably prudent organizer of the race participated in by young, inexperienced or beginner runners to conduct the race in a route suitably blocked off from vehicular traffic for the safety and security not only of the participants but the motoring public as well. Since the marathon

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61 Aquino, *Torts and Damages*, 2013, p. 64.
62 No. L-21291, March 28, 1969, 27 SCRA 674.
63 Id. at 681.

would be run alongside moving vehicular traffic, at the very least, Intergames ought to have seen to the constant and closer coordination among the personnel manning the route to prevent the foreseen risks from befalling the participants. But this it sadly failed to do.

II
The negligence of Intergames as the organizer was the proximate cause of the death of Rommel

As earlier mentioned, the CA found that Rommel, while running the marathon on Don Mariano Marcos Avenue and after passing the Philippine Atomic Energy Commission Building, was bumped by a passenger jeepney that was racing with a minibus and two other vehicles as if trying to crowd each other out. As such, the death of Rommel was caused by the negligence of the jeepney driver.

Intergames staunchly insists that it was not liable, maintaining that even assuming *arguendo* that it was negligent, the negligence of the jeepney driver was the proximate cause of the death of Rommel; hence, it should not be held liable.

Did the negligence of Intergames give rise to its liability for the death of Rommel notwithstanding the negligence of the jeepney driver?

In order for liability from negligence to arise, there must be not only proof of damage and negligence, but also proof that the damage was the consequence of the negligence. The Court has said in *Vda. de Gregorio v. Go Chong Bing*:[64]

> x x x Negligence as a source of obligation both under the civil law and in American cases was carefully considered and it was held:
>
> > We agree with counsel for appellant that under the Civil Code, as under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:
> >
> > (1) Damages to the plaintiff.
> >
> > (2) Negligence by act or omission of which defendant personally or some person for whose acts it must respond, was guilty.

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[64] 102 Phil. 556 (1957).

> (3) **The connection of cause and effect between the negligence and the damage**." (Taylor vs. Manila Electric Railroad and Light Co., *supra,* p. 15.)
>
> In accordance with the decision of the Supreme Court of Spain, in order that a person may be held guilty for damage through negligence, it is necessary that there be an act or omission on the part of the person who is to be charged with the liability and that damage is produced by the said act or omission.[65] (Emphasis supplied)

We hold that the negligence of Intergames was the proximate cause despite the intervening negligence of the jeepney driver.

Proximate cause is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred."[66] In *Vda. de Bataclan, et al. v. Medina*,[67] the Court, borrowing from American Jurisprudence, has more extensively defined *proximate cause* thusly:

> "* * * 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."[68]

To be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage.[69] According to an authority on civil law: [70] "*A prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause, even though*

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[65] Id. at 560.

[66] II Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), citing *Butcher v. R. Co.*, 37 W.Va. 180, 16 S.E. 457, 18 L.R.A. 519; *Lutz v. R. Co.*, 6 N.M. 496, 30 Pac. 912, 16 L.R.A. 819.

[67] 102 Phil. 181 (1957).

[68] Id. at 186.

[69] See *Pullman Palace Car Co. v. Laack*, 143 Ill. 242, 32 N.E. 285, 18 L.R.A. 215.

[70] VI Caguioa, E. P., *Comments and Cases on Civil Law*, 1970 First Edition, Central Book Supply, Inc., Quezon City, pp. 402-403.

such injury would not have happened but for such condition or occasion. If no damage exists in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such act or condition is the proximate cause."

Bouvier adds:

> In many cases important questions arise as to which, in the chain of acts tending to the production of a given state of things, is to be considered the responsible cause. It is not merely distance of place or of causation that renders a cause remote. The cause nearest in the order of causation, without any efficient concurring cause to produce the result, may be considered the direct cause. **In the course of decisions of cases in which it is necessary to determine which of several causes is so far responsible for the happening of the act or injury complained of, what is known as the doctrine of proximate cause is constantly resorted to in order to ascertain whether the act, omission, or negligence of the person whom it is sought to hold liable was in law and in fact responsible for the result which is the foundation of the action.**[71]
>
> x x x x
>
> **The question of proximate cause is said to be determined, not by the existence or non-existence of intervening events, but by their character and the natural connection between the original act or omission and the injurious consequences. When the intervening cause is set in operation by the original negligence, such negligence is still the proximate cause; x x x If the party guilty of the first act of negligence might have anticipated the intervening cause, the connection is not broken; x x x. Any number of causes and effects may intervene, and if they are such as might with reasonable diligence have been foreseen, the last result is to be considered as the proximate result. But whenever a new cause intervenes, which is not a consequence of the first wrongful cause, which is not under control of the wrongdoer, which could not have been foreseen by the exercise of reasonable diligence, and except for which the final injurious consequence could not have happened, then such injurious consequence must be deemed too remote; x x x.**[72] (bold underscoring supplied for emphasis)

An examination of the records in accordance with the foregoing concepts supports the conclusions that the negligence of Intergames was the proximate cause of the death of Rommel; and that the negligence of the jeepney driver was not an efficient intervening cause.

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[71] I Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), p. 432

[72] Id. at 433

First of all, Intergames' negligence in not conducting the race in a road blocked off from vehicular traffic, and in not properly coordinating the volunteer personnel manning the marathon route effectively set the stage for the injury complained of. The submission that Intergames had previously conducted numerous safe races did not persuasively demonstrate that it had exercised due diligence because, as the trial court pointedly observed, "[t]hey were only lucky that no accident occurred during the previous marathon races but still the danger was there."[73]

Secondly, injury to the participants arising from an unfortunate vehicular accident on the route was an event known to and foreseeable by Intergames, which could then have been avoided if only Intergames had acted with due diligence by undertaking the race on a blocked-off road, and if only Intergames had enforced and adopted more efficient supervision of the race through its volunteers.

And, thirdly, the negligence of the jeepney driver, albeit an intervening cause, was not efficient enough to break the chain of connection between the negligence of Intergames and the injurious consequence suffered by Rommel. An intervening cause, to be considered efficient, must be "*one not produced by a wrongful act or omission, but independent of it, and adequate to bring the injurious results. Any cause intervening between the first wrongful cause and the final injury which might reasonably have been foreseen or anticipated by the original wrongdoer is not such an efficient intervening cause as will relieve the original wrong of its character as the proximate cause of the final injury.*"[74]

In fine, it was the duty of Intergames to guard Rommel against the foreseen risk, but it failed to do so.

III
The doctrine of assumption of risk had no application to Rommel

Unlike the RTC, the CA ruled that the doctrine of assumption of risk applied herein; hence, it declared Intergames and Cosmos not liable. The CA rendered the following rationalization to buttress its ruling, to wit:

> In this case, appellant Romulo Abrogar himself admitted that his son, Rommel Abrogar, surveyed the route of the marathon and even attended a briefing before the race. Consequently, he was aware that the marathon would pass through a national road and that the said road would not be blocked off from traffic. And considering that he was already

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[73] *Rollo*, p. 176.

[74] 14 Words and Phrases, *Efficient Intervening Cause,* p. 172; citing *State v. Des Champs*, 120 S.E. 491, 493; 126 S.C. 416.

eighteen years of age, had voluntarily participated in the marathon, with his parents' consent, and was well aware of the traffic hazards along the route, he thereby assumed all the risks of the race. This is precisely why permission from the participant's parents, submission of a medical certificate and a waiver of all rights and causes of action arising from the participation in the marathon which the participant or his heirs may have against appellant Intergames were required as conditions in joining the marathon.

In the decision of the trial court, it stated that the risk mentioned in the waiver signed by Rommel Abrogar only involved risks such as stumbling, suffering heatstroke, heart attack and other similar risks. It did not consider vehicular accident as one of the risks included in the said waiver.

This Court does not agree. With respect to voluntary participation in a sport, the doctrine of assumption of risk applies to any facet of the activity inherent in it and to any open and obvious condition of the place where it is carried on. We believe that the waiver included vehicular accidents for the simple reason that it was a road race run on public roads used by vehicles. Thus, it cannot be denied that vehicular accidents are involved. It was not a track race which is held on an oval and insulated from vehicular traffic. In a road race, there is always the risk of runners being hit by motor vehicles while they train or compete. That risk is inherent in the sport and known to runners. It is a risk they assume every time they voluntarily engage in their sport.

Furthermore, where a person voluntarily participates in a lawful game or contest, he assumes the ordinary risks of such game or contest so as to preclude recovery from the promoter or operator of the game or contest for injury or death resulting therefrom. Proprietors of amusements or of places where sports and games are played are not insurers of safety of the public nor of their patrons.

In Mc Leod Store v. Vinson 213 Ky 667, 281 SW 799 (1926), it was held that a boy, seventeen years of age, of ordinary intelligence and physique, who entered a race conducted by a department store, the purpose of which was to secure guinea fowl which could be turned in for cash prizes, had assumed the ordinary risks incident thereto and was barred from recovering against the department store for injuries suffered when, within catching distance, he stopped to catch a guinea, and was tripped or stumbled and fell to the pavement, six or eight others falling upon him. The court further said: "In this (the race) he was a voluntary participant. x x x The anticipated danger was as obvious to him as it was to appellant (the department store). While not an adult, he was practically 17 years of age, of ordinary intelligence, and perfectly able to determine the risks ordinarily incident to such games. An ordinary boy of that age is practically as well advised as to the hazards of baseball, basketball, football, foot races and other games of skill and endurance as is an adult x x x."

In the case at bar, the "1st Pop Cola Junior Marathon" held on June 15, 1980 was a race the winner of which was to represent the country in the annual Spirit of Pheidippides Marathon Classic in Greece, if he equals or breaks the 29-minute mark for the 19-km. race. Thus, Rommel Abrogar

> having voluntarily participated in the race, with his parents' consent, assumed all the risks of the race.[75]

The doctrine of assumption of risk means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom.[76] It rests on the fact that the person injured has *consented* to relieve the defendant of an obligation of conduct toward him and to take his chance of injury from a known risk, and whether the former has exercised proper caution or not is immaterial.[77] In other words, it is based on voluntary consent, express or implied, to accept danger of a known and appreciated risk; it may sometimes include acceptance of risk arising from the defendant's negligence, but one does not ordinarily assume risk of any negligence which he does not know and appreciate.[78] As a defense in negligence cases, therefore, the doctrine requires the concurrence of three elements, namely: (1) the plaintiff must know that the risk is present; (2) he must further understand its nature; and (3) his choice to incur it must be free and voluntary.[79] According to Prosser:[80] "Knowledge of the risk is the watchword of assumption of risk."

Contrary to the notion of the CA, the concurrence of the three elements was not shown to exist. Rommel could not have assumed the risk of death when he participated in the race because death was neither a known nor normal risk incident to running a race. Although he had surveyed the route prior to the race and should be presumed to know that he would be running the race alongside moving vehicular traffic, such knowledge of the general danger was not enough, for some authorities have required that the knowledge must be of the specific risk that caused the harm to him.[81] In theory, the standard to be applied is a subjective one, and should be geared to the particular plaintiff and his situation, rather than that of the reasonable person of ordinary prudence who appears in contributory negligence.[82] He could not have appreciated the risk of being fatally struck by any moving vehicle while running the race. Instead, he had every reason to believe that the organizer had taken adequate measures to guard all participants against any danger from the fact that he was participating in an organized marathon. Stated differently, nobody in his right mind, including minors like him, would have joined the marathon if he had known of or appreciated the risk of harm or even death from vehicular accident while running in the organized running event. Without question, a marathon route safe and free

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75 Supra note 1, at 75-76.

76 *McGeary v. Reed*, 151 N.E. 2d 789, 794, 105 Ohio App. 111.

77 *Bull S.S. Line v. Fisher*, 77 A. 2d 142, 145, 196 Md. 519.

78 *Turpin v. Shoemaker, Mo.*, 427 S.W. 2d 485, 489.

79 Prosser and Keeton, *The Law of Torts*, Fifth Edition, Hornbook Series (Student Edition), West Group, p. 487.

80 Id., citing *Cincinnati, New Orleans & Texas Pacific Railway Co. v. Thompson*, 8th Cir., 1916, 236 F. 1, 9.

81 Id., citing *Garcia v. City of South Tucson*, App. 1981, 131 Ariz. 315, 640 P.2d 1117, 1121; *Maxey v. Freightliner*, 5th Cir., 1982, 665 F.2d 1367; *Heil Co. v. Grant*, Tex. Civ. App. 1976, 534 S.W.2d 916; *Klein v. R.D. Werner Co.*, 1982, 98 Wn.2d 316, 654 P.2d 94.

82 Id.

from foreseeable risks was the reasonable expectation of every runner participating in an organized running event.

Neither was the waiver by Rommel, then a minor, an effective form of express or implied consent in the context of the doctrine of assumption of risk. There is ample authority, cited in Prosser,[83] to the effect that a person does not comprehend the risk involved in a known situation because of his youth,[84] or lack of information or experience,[85] and thus will not be taken to consent to assume the risk.

Clearly, the doctrine of assumption of risk does not apply to bar recovery by the petitioners.

IV
Cosmos is not liable for the negligence of Intergames as the organizer

Nonetheless, the CA did not err in absolving Cosmos from liability.

The sponsorship of the marathon by Cosmos was limited to financing the race. Cosmos did nothing beyond that, and did not involve itself at all in the preparations for the actual conduct of the race. This verity was expressly confirmed by Intergames, through Castro, Jr., who declared as follows:

> COURT
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> q Do you discuss all your preparation with Cosmos Bottling Company?
>
> a **As far as the Cosmos Bottling Company (sic) was a sponsor as to the actual conduct of the race, it is my responsibility. The conduct of the race is my responsibility. The sponsor has nothing to do as well as its code of the race because they are not the ones running. I was the one running. The responsibility of Cosmos was just to provide the sponsor's money.**
>
> COURT

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[83] Id., citing *Rutter v. Northeastern Beaver Country School District*, 1981, 496 Pa. 590, 437 A.2d 1198; *Campbell v. Nordco Products*, 7th Cir. 1980, 629 F.2d 1258; *Zrust v. Spencer Foods, Inc.*, 8th Cir. 1982, 667 F.2d 760; *Scoggins v. Jude*, D.C. App. 1980, 419 A.2d 999; *Shahrokhfar v. State Farm Mutual Automobile Insurance Co.*, 1981, 634 P.2d 653; *Antcliff v. Datzman*, 1982, 436 N.E.2d 114.

[84] Id., citing *Aldes v. St. Paul Baseball Club*, 1958, 251 Minn. 440, 88 N.W.2d 94; *Freedman v. Hurwitz*, 1933, 116 Conn. 283, 164 A. 647; *Everton Silica Sand Co. v. Hicks*, 1939, 197 Ark. 980, 125 S.W.2d 793; *Rutter v. Northeastern Beaver Country School District*, 1981, 496 Pa. 590, 437 A.2d 1198 (involving a 16-year old high school football player).

[85] Id., citing *Dee v. Parish*, 1959, 160 Tex. 171, 327 S.W.2d 449, on remand, 1960, 332 S.W.2d 764; *Hanley v. California Bridge & Construction Co.*, 1899, 127 Cal. 232, 59 P. 577.

q **They have no right to who (sic) suggest the location, the number of runners, you decide these yourself without consulting them?**
a **Yes, your honor.**[86]

We uphold the finding by the CA that the role of Cosmos was to pursue its corporate commitment to sports development of the youth as well as to serve the need for advertising its business. In the absence of evidence showing that Cosmos had a hand in the organization of the race, and took part in the determination of the route for the race and the adoption of the action plan, including the safety and security measures for the benefit of the runners, we cannot but conclude that the requirement for the direct or immediate causal connection between the financial sponsorship of Cosmos and the death of Rommel simply did not exist. Indeed, Cosmos' mere sponsorship of the race was, legally speaking, too remote to be the efficient and proximate cause of the injurious consequences.

V
Damages

Article 2202 of the *Civil Code* lists the damages that the plaintiffs in a suit upon crimes and quasi-delicts can recover from the defendant, *viz.*:

> Art. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

Accordingly, Intergames was liable for all damages that were the natural and probable consequences of its negligence. In its judgment, the RTC explained the award of damages in favor of the petitioners, as follows:

> As borne by the evidence on record, the plaintiffs incurred medical, hospitalization and burial expenses for their son in this aggregate amount of ₱28,061.65 (Exhibits "D", "D-1" and "D-2"). In instituting this case, they have paid their lawyer ₱5,000 as initial deposit, their arrangement being that they would pay attorney's fees to the extent of 10% of whatever amount would be awarded to them in this case.
>
> For the loss of a son, it is unquestionable that plaintiffs suffered untold grief which should entitle them to recover moral damages, and this Court believes that if only to assuage somehow their untold grief but not necessarily to compensate them to the fullest, the nominal amount of ₱100,00.00 should be paid by the defendants.
>
> For failure to adopt elementary and basic precautionary measure to insure the safety of the participants so that sponsors and organizers of

[86] TSN, January 30, 1986, p. 20.

> sports events should exercise utmost diligence in preventing injury to the participants and the public as well, exemplary damages should also be paid by the defendants and this Court considers the amount of ₱50,000.00 as reasonable.[87]

Although we will not disturb the foregoing findings and determinations, we need to add to the justification for the grant of exemplary damages. Article 2231 of the *Civil Code* stipulates that exemplary damages are to be awarded in cases of quasi-delict if the defendant acted with gross negligence. The foregoing characterization by the RTC indicated that Intergames' negligence was gross. We agree with the characterization. Gross negligence, according to *Mendoza v. Spouses Gomez*,[88] is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property; it evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Indeed, the failure of Intergames to adopt the basic precautionary measures for the safety of the minor participants like Rommel was in reckless disregard of their safety. 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.[89]

The RTC did not recognize the right of the petitioners to recover the loss of earning capacity of Rommel. It should have, for doing so would have conformed to jurisprudence whereby the Court has unhesitatingly allowed such recovery in respect of children, students and other non-working or still unemployed victims. The legal basis for doing so is Article 2206 (1) of the *Civil Code*, which stipulates that the defendant "*shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death.*"

Indeed, damages for loss of earning capacity may be awarded to the heirs of a deceased non-working victim simply because earning capacity, not necessarily actual earning, may be lost.

In *Metro Manila Transit Corporation v. Court of Appeals*,[90] damages for loss of earning capacity were granted to the heirs of a third-year high school student of the University of the Philippines Integrated School who had been killed when she was hit and run over by the petitioner's passenger

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87 *Rollo*, pp. 177-178.
88 G.R. No. 160110, June 18, 2014, 726 SCRA 505, 526.
89 36A Works and Phrases, 322; citing *Schick v. Ferolito*, 767 A. 2d 962, 167 N.J.7.
90 G.R. No. 116617, November 16, 1998, 298 SCRA 495.

bus as she crossed Katipunan Avenue in Quezon City. The Court justified the grant in this wise:

> **Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession.** In *People v. Teehankee,* no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot. **But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof.**[91] (bold underscoring supplied for emphasis)

In *People v. Sanchez*,[92] damages for loss of earning capacity was also allowed to the heirs of the victims of rape with homicide despite the lack of sufficient evidence to establish what they would have earned had they not been killed. The Court rationalized its judgment with the following observations:

> Both Sarmenta and Gomez were senior agriculture students at UPLB, the country's leading educational institution in agriculture. As reasonably assumed by the trial court, both victims would have graduated in due course. **Undeniably, their untimely death deprived them of their future time and earning capacity. For these deprivation, their heirs are entitled to compensation**. xxxx. **However, considering that Sarmenta and Gomez would have graduated in due time from a reputable university, it would not be unreasonable to assume that in 1993 they would have earned more than the minimum wage. All factors considered, the Court believes that it is fair and reasonable to fix the monthly income that the two would have earned in 1993 at ₱8,000.000 per month (or ₱96,000.00/year) and their deductible living and other incidental expenses at P3,000.00 per month (or ₱36,000.00/year).**[93] (bold underscoring supplied for emphasis)

In *Pereña v. Zarate*,[94] the Court fixed damages for loss of earning capacity to be paid to the heirs of the 15-year-old high school student of Don Bosco Technical Institute killed when a moving train hit the school van ferrying him to school while it was traversing the railroad tracks. The RTC and the CA had awarded damages for loss of earning capacity computed on the basis of the minimum wage in effect at the time of his death. Upholding said findings, the Court opined:

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91 Id. at 510-511.
92 G.R. Nos. 121039-121045, October 18, 2001, 367 SCRA 520.
93 Id. at 531.
94 G.R. No. 157917, August 29, 2012, 679 SCRA 208, 234.

> x x x, the fact that Aaron was then without a history of earnings should not be taken against his parents and in favor of the defendants whose negligence not only cost Aaron his life and his right to work and earn money, but also deprived his parents of their right to his presence and his services as well. x x x. **Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money**.

The petitioners sufficiently showed that Rommel was, at the time of his untimely but much lamented death, able-bodied, in good physical and mental state, and a student in good standing.[95] It should be reasonable to assume that Rommel would have finished his schooling and would turn out to be a useful and productive person had he not died. Under the foregoing jurisprudence, the petitioners should be compensated for losing Rommel's power or ability to earn. The basis for the computation of earning capacity is not what he would have become or what he would have wanted to be if not for his untimely death, but the minimum wage in effect at the time of his death. The formula for this purpose is:

> Net Earning Capacity = Life Expectancy x [Gross Annual Income less Necessary Living Expenses][96]

Life expectancy is equivalent to 2/3 multiplied by the difference of 80 and the age of the deceased. Since Rommel was 18 years of age at the time of his death, his life expectancy was 41 years. His projected gross annual income, computed based on the minimum wage for workers in the non-agricultural sector in effect at the time of his death,[97] then fixed at ₱14.00/day, is ₱5,535.83. Allowing for necessary living expenses of 50% of his projected gross annual income, his total net earning capacity is ₱113,484.52.

Article 2211 of the *Civil Code* expressly provides that interest, as a part of damages, may be awarded in crimes and quasi-delicts at the discretion of the court. The rate of interest provided under Article 2209 of the *Civil Code* is 6% *per annum* in the absence of stipulation to the contrary. The legal interest rate of 6% *per annum* is to be imposed upon the total amounts herein awarded from the time of the judgment of the RTC on May 10, 1991 until finality of judgment.[98] Moreover, pursuant to Article 2212[99] of the *Civil Code*, the legal interest rate of 6% *per annum* is to be further

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[95] TSN, June 22, 1981, pp. 3-6.

[96] *Villa Rey Transit, Inc. v. Court of Appeals*, No. L-25499, February 18, 1970, 31 SCRA 511, 515-518.

[97] Presidential Decree No. 1713 dated August 18, 1980.

[98] *Rollo*, p. 179.

[99] Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

imposed on the interest earned up to the time this judgment of the Court becomes final and executory until its full satisfaction.[100]

Article 2208 of the *Civil Code* expressly allows the recovery of attorney's fees and expenses of litigation when exemplary damages have been awarded. Thus, we uphold the RTC's allocation of attorney's fees in favor of the petitioners equivalent to 10% of the total amount to be recovered, inclusive of the damages for loss of earning capacity and interests, which we consider to be reasonable under the circumstances.

WHEREFORE, the Court **PARTLY AFFIRMS** the decision promulgated on March 10, 2004 to the extent that it absolved **COSMOS BOTTLING COMPANY, INC.** from liability; **REVERSES** and **SETS ASIDE** the decision as to **INTERGAMES, INC.,** and **REINSTATES** as to it the judgment rendered on May 10, 1991 by the Regional Trial Court, Branch 83, in Quezon City subject to the **MODIFICATIONS** that **INTERGAMES, INC.** is **ORDERED TO PAY** to the petitioners, in addition to the awards thereby allowed: (a) the sum of ₱113,484.52 as damages for the loss of Rommel Abrogar's earning capacity; (b) interest of 6% *per annum* on the actual damages, moral damages, exemplary damages and loss of earning capacity reckoned from May 10, 1991 until full payment; (c) compounded interest of 6% *per annum* from the finality of this decision until full payment; and (d) costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[100] *Nacar v. Gallery Frames and/or Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, modifying the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals* (G.R. No. 97412, July 12, 1994, 234 SCRA 78) embodying BSP-MB Circular No. 799.

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL G. TIJAM
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
APR 10 2017