If the annual survey of Supreme Court decisions in Torts and Damages be referred to as a crop or harvest, then the survey of 1968 decisions compared with the survey of the preceding year could be considered as more bountiful. This is our considered though conservative opinion, taking into account that in this particular branch of the law among the decisions under review, there are four which deserve special attention. The rest of the decisions in this survey are merely reiterations of previous rulings of the Supreme Court.

In a nutshell these four mentioned decisions follow: (1) People v. Pantoja\(^1\) is precedent-setting as it increased to ₱12,000.00 minimum, the compensatory damages recoverable for death arising from crime or quasi-delict. (2) Caedo v. Yu Khe Thai\(^2\) although not a case of first impression as it determines when the owner who is present in the vehicle at the time of the mishap will be solidarily liable with the negligent employee, points out that car owners are not held to a uniform and inflexible standard of diligence as are professional drivers, so that employment of professional drivers by car owners who by their inadequacies have real need for services of drivers, would be effectively proscribed were the law to require a uniform standard of perceptiveness among car owners. (3) Singson v. Bank of the Philippine Islands\(^3\) although not a case of first impression, either, emphasizes that the existence of a contract between the parties is not a bar to the commission of a tort by one against the other, thus modifying the provision of the new Civil Code\(^4\) that liability for quasi-delict arises if no pre-existing contractual relation between the parties exists. (4) The Receiver of North Negros Sugar Co. Inc. v. Ybañez\(^5\) is novel, for although governed by the Spanish Civil Code of 1889, since the facts occurred and the action was filed before the effectivity of the New Civil Code, yet after recourse is made to the French Civil Code\(^6\) as a persuasive authority and after reference is made to a transitional provision of

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\(^1\) G.R. No. 18793, October 11, 1968.
\(^2\) G.R. No. 20392, December 18, 1968.
\(^3\) G.R. No. 24837, June 27, 1968.
\(^4\) Art. 2127 defining quasi-delict.
\(^5\) G.R. No. 22183, August 30, 1968.
\(^6\) Art. 1883 which is the counterpart provision of Art. 1902 of the Spanish Civil Code.
the New Civil Code, the case is finally decided under the new Civil Code as to whether a brother or sister could recover moral damages for the victim's death caused by *culpa aquiliana*.

*Quasi-delict used interchangeably with torts although latter has broader connotation*

When the Code Commission was confronted with the problem of nomenclature for an obligation not arising from law, contract, quasi-contract nor from delict, it finally adopted the term “quasi-delict.” This conforms with the Spanish and Roman law classification of obligations according to source or origin as *ex-lege, ex-contractu, quasi ex-contractu, ex-delicto, and quasi ex-delito*. Although this type of obligation has been designated also as *culpa aquiliana* or *culpa extra-contractual* yet these terms had been disregarded considering that the former makes reference to an ancient law the *Lex Aquilia*, while the latter is broad enough to cover quasi-contractual and penal obligations.

The legal category “tort” of Anglo-American has also been considered but it is much broader in scope than the Spanish-Philippine concept of non-contractual negligence since “tort” of American law includes not only negligent acts but also intentional criminal acts as deceit, false imprisonment, and battery and assault. In the pertinent decisions under review the Supreme Court in some instances used tort and quasi-delict interchangeably, or retained quasi-delict, or adopted tort followed immediately by *culpa aquiliana in parenthesis*. Decisions on torts and decisions on damages arising from quasi-delict and breach of contract of carriage are lengthily discussed, although cases on damages arising from other extra-contractual obligations are also included yet their detailed discussions will be found in the survey of the corresponding branch of the law to which they properly pertain.

**TORTS**

*When state may be held liable for torts*

In *Republic v. Palacio*, the Supreme Court held that as embodied in the New Civil Code the State is liable only for torts caused by its special agents specially commissioned to carry out the acts, in the

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7 Art. 2257.
8 Art. 2208.
11 Art. 2180.
performance of which the torts arise, and which acts are outside of such agents' regular duties, citing the cases of Merritt v. Insular Government\(^{12}\) and Rosete v. Auditor General.\(^{13}\) If there would be any liability this should arise from a tort and not from a breach of contract since the initial complaint against the Irrigation Service Unit was that it had induced the Handong Irrigation Association, Inc. to invade and occupy the land owned by plaintiff Ildefonso Ortiz. Inasmuch as there was no proof that the making of the tortious inducement was authorized, neither the State—the Irrigation Service Unit being an office of the Government of the Republic—nor its funds can be made liable for the said tortious acts.

In ruling upon a petition for review of the Court of Appeals' judgment, the Supreme Court declared null and void the order of garnishment issued by the Sheriff of Manila on the Pump and Irrigation Trust Fund in the account of the Irrigation Service Unit with the Philippine National Bank and the writ of preliminary injunction is made permanent. The Government of the Republic created the Irrigation Service Unit to promote a specific economic policy, and if ever this Office engages in the activity of selling irrigation pumps on installment basis to farmers, and charging interest on the unpaid portion of the purchase price, this is not intended to be profit-making and this does not convert the economic project into a corporate activity, so that the Republic therefore has not waived its immunity from suits.

Moreover, even though the State waived its immunity by consenting to be sued, it does not follow that it is liable, and it does not follow that its property and funds can be seized upon a levy of execution. Where there is a waiver, and the liability of the State has been judicially ascertained, the power of the Courts end upon the rendition of the judgment. The Supreme Court further explained that execution cannot issue on a judgment against the State, for the State is free to determine whether to pay the judgment or not, it being implied that the lawmaking body will recognize such judgment as final and executory, and will therefore make provision for the satisfaction thereof by legislation.

Existence of a contract between the parties is not a bar to the commission of tort by one against the other

In defining quasi-delict the New Civil Code\(^{14}\) provides: “Whoever by act or omission causes damage to another, there being fault or

\(^{12}\) 34 Phil. 331 (1916).
\(^{13}\) 81 Phil. 453 (1948).
\(^{14}\) Art. 2176.
negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter.” In determining when liability for quasi-delict may arise this article expressly excludes cases where there is pre-existing contractual relation between the parties.\footnote{18}

In effect this requirement has been modified by the ruling in the case of \textit{Singson v. Bank of the Philippine Islands}\footnote{16} which states that the existence of a contract between the parties does not bar the commission of tort by one as against the other. As a consequence of the illegal freezing of the account of the plaintiffs two checks issued by the plaintiffs had been dishonored for payment, hence the action for damages against the defendant bank and its president. It turned out that plaintiff Singson was not included in the writ of execution and notice of garnishment served upon the Bank, thus the freezing of account was illegal. The lower court held that plaintiffs’ claim for damages cannot be based upon a tort or quasi-delict since their pre-existing relationship with the defendants was contractual. However the Supreme Court ruled that the existence of a contract between the parties does not bar the commission of a tort by one against the other, thus there could be consequent recovery of damages.

This stand has been repeatedly adhered to by the Supreme Court. The Court cited with approval the comparatively recent decision of \textit{Air France v. Carrascoso},\footnote{17} where a plane passenger with a first class ticket was illegally ousted from his first class accommodation seat and transferred to the tourist or economy compartment seat. The passenger was entitled to recover damages from the air liner for such tortious act, for although the relationship between the parties may be contractual in nature and origin, yet the act of the carrier which produces the breach of contract may also constitute a tort.

\textit{Basis of liability of employer, under civil law, for the negligent act of employee is not respondeat superior but the relationship of paterfamilias; when employer present in vehicle is solidarily liable with negligent employee}

\textit{In Caedo v. Yu Khe Thai}\footnote{18} the Supreme Court, after citing the applicable provision of the New Civil Code\footnote{19} and the case of \textit{Chapman v. Underwood}\footnote{20} held: “If the causative factor was the driver’s negligence,
the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence." In this vehicular mishap the collision was directly traceable to the negligence of the employee Rafael Bernardo so that this driver of the car was held liable for the damages suffered by the plaintiffs. In its decision the Supreme Court further held that the owner who was present should not be held solidarily liable with the negligent driver; that actual compensatory damages to be allowed must be proved by the evidence adduced; and that the amounts of moral damages granted by the trial court are excessive.

Under the civil law, the basis of liability of the employer for the negligent act of his employee is the relationship of *paterfamilias* and not the doctrine of *respondeat superior*. In the final analysis the employer is negligent himself, which consists of *culpa en vigilando*, for the negligence of the servant if known to the master and is susceptible of timely correction by him, amounts to negligence of the master, if he fails to correct it to avert the harm or injury which could have been avoided.

Under article 2184 of the New Civil Code, the test of imputed negligence must necessarily be subjective. Unlike professional drivers, the car owners are not bound to a uniform and inflexible standard of diligence. Many car owners hire others to drive for them because they do not have the training or sufficient discernment to know the traffic rules or to appreciate the different dangers continuously arising from different situations encountered while driving. The same standard of diligence cannot be exacted from a car owner who is young and knows how to drive, compared with another who is old and sickly and knows not how to handle a motor vehicle.

A person is not required by law to have a certain degree of proficiency in driving or in the observance of traffic rules, before he can own a motor vehicle. Under article 2184 the test of his negligence is his omission to do that which the evidence of his own senses tells him he should do in order to prevent the mishap. The Court continued: "Were the law to require a uniform standard of perceptiveness, employment of professional drivers by car owners who by their very inadequacies, have real need of drivers' services, would be effectively proscribed." There is therefore no minimum level imposed by law with respect to perception.

Provisions of special laws in addition to pertinent codal provisions may give rise to tortious liability. As pointed out at the outset, the torts of American law cover not only non-contractual negligence but even
intentional acts, like deceit, which may constitute offenses in our jurisdiction. In infringement of trademark, as an example, there is not only deceit or fraud, but there is also involved invasion of property rights. Fraud is exercised upon the buying public being led to believe that the goods of the piratical manufacturer are those of the pioneer manufacturer; there is a violation of the property rights since the former takes a free ride on the goodwill and reputation already earned by the latter.

Trademark cannot be registered if it resembles a registered trademark, or a trademark previously used by another and not abandoned; to be entitled to registration, oppositor must show prior use

In Lim Koh v. Kaynee Co. it was shown that where the opposition to the registration of a trademark has been dismissed, it did not follow that the application for registration should be granted. An application for registration of a trademark, Kaynee, first used in 1957 for articles of attire, was opposed by a South Carolina Corporation, which claimed to have registered it in the U.S. Patents Office as early as 1913, and to have used same trademark in the Philippines for similar goods since 1951. Since there is no licensing agreement, nor dealership, nor distributorship agreement with Aguinaldo Department Store, the oppositor has no direct hand in the introduction of goods bearing this trademark in the Philippines, inasmuch as it was due only to Aguinaldo Department Store's importation and activities that the said trademark has been previously used in the Philippines. If the oppositor has established a prior use of its trademark in the Philippines then the buying public might be misled to ascribe a common origin of the oppositor's and applicant's goods. Since there is no such prior use, then the opposition must be dismissed.

With the dismissal of the opposition it does not automatically follow that the application for registration will be granted because under section 4(d) of the Trademarks Law a trademark is not registrable if it resembles a trademark registered in the Philippines or a trademark previously used in the Philippines by another, and not abandoned. In the case at bar, the previous use by Aguinaldo Department Store constitutes the use by another, so the application for registration is rejected or denied. Being supported by substantial evidence this finding of facts by the Director of Patents is conclusive on the Supreme Court, citing the cases of Chung Te v. Ng Kian Giab and Chua Chee v. Philippines Patent Office.

21 G.R. No. 24802, October 14, 1968.
DAMAGES

Action for moral damages and attorney’s fees governed by the Civil Code of 1889

In the case of *Receiver for North Negros Sugar Co., Inc., v. Ybañez* 25 although the New Civil Code is already effective. On August 31, 1937 a collision took place between Train No. 5 owned by the North Negros Sugar Co. and the car driven by Gil Dominguez and in which Cesar V. Ybañez was riding, and the latter was one of two persons who died as a consequence thereof. The immediate heirs of Cesar were his brother Pedro and sister Rosario, both surnamed V. Ybañez, and since Rosario died during the pendency of the action leaving as her heir the brother Pedro, then Pedro Ybañez should properly be the only respondent in this action. In reversing the judgment of the lower court, the Court of Appeals held North Negros Sugar Co. Inc. liable for the death of Cesar V. Ybañez ordering it to pay to plaintiff-appellant Pedro V. Ybañez damages consisting of several amounts or items, namely, compensatory damages for lost earnings or *lucro cesante*, for death indemnity, for funeral expenses; “moral damages for the mental anguish suffered by the heir”; and attorney’s fees in the protracted litigation. The Supreme Court reviewed the decision of the Court of Appeals as far as its awards of moral damages and attorney’s fees are concerned. Inasmuch as the acts and events which gave rise to this litigation took place in 1937, and this action was filed in 1940, the provisions of the Spanish Civil Code of 1889 were applicable.

Scope of liability for damages under article 1902 of old Civil Code

Under article 1902 of the Spanish Civil Code of 1889, any person who by act or omission, characterized by fault or negligence, causes damage to another, shall be liable for the damage done. A person will be liable for the injury suffered by another due to the culpable act of the former. The Court further declared that a culpable act is any act which is blame-worthy under accepted legal standards. This is “undoubtedly broad enough to include any rational conception of liability for the tortious acts likely to be developed in any society” citing the case of *Daywalt v. Corporacion de PP. Agustinos Recoletos.* 27

26 Counterpart provision of art. 2176 of the New Civil Code defining quasi-delicts.
27 39 Phil. 587 (1919).
Scope of damages under article 1902 and persons who may be awarded moral damages therein

"Damage" used as a general term in said article 1902 includes all damages or injuries that a human being may suffer in any and all manifestations of his life: the physical or material, the moral or psychological, the mental or spiritual, the financial or economic, the social, political, and religious aspects, ruled the Supreme Court, citing the case of Castro v. Acro Taxicab Co. Article 1902 stresses the passive subject who should be liable and does not limit or specify the active subject and neither does it mention the relationship that must exist between the victim of culpa aquiliana and the person who may recover damages. From the foregoing the inference therefore is that anybody who suffers damage from a quasi-delict whether a relative of the victim or not, may recover damages from the tortfeasor. Under the old Civil Code, moral damages had been granted not only to the victim himself as shown in Lilius v. Manila Railroad Co. but also to the legitimate children and heirs of the deceased as illustrated by Alcantara v. Surro. Parents, and even natural parents, have also recovered damages arising from the death of their children said the Court citing the cases of Manzanares v. Moreta and Astudillo v. Manila Electric Co.

Recourse to decisions of French Courts as persuasive authority

The court had not come across any decision in this jurisdiction where a brother or sister of the victim of culpa aquiliana had been awarded moral damages. Recourse was made to persuasive authority and the decisions of the courts of France had been resorted to since article 1383 of the French Civil Code provides substantially the same as article 1902 of the Spanish Civil Code. Under said provision French courts have awarded moral damages to parents, children, spouse, brothers and sisters of the victim, and also to his natural grandparents, and godchildren.

Application of New Civil Code provisions - article 2257, a transitional provision; and article 2206 under which a brother or sister of the victim of Culpa Aquiliana cannot recover moral damages

Thus if article 1902 of the Spanish Civil Code were to be applied as it had been applied in France, then the person guilty of culpa aquiliana under our old Civil Code would be liable for moral damages

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28 82 Phil. 359 (1948).
29 59 Phil. 768 (1934).
30 93 Phil. 473 (1953).
31 38 Phil. 821 (1918).
32 55 Phil. 427 (1930).
to the victim, or to his spouse, children, parents, brothers and sisters, and even his godchildren. This means that under our old Civil Code liability for moral damages due to *culpa aequiliana* was in favor of more persons than the new Civil Code covers in article 2206 for this latter article mentions only the spouse, legitimate and illegitimate descendants and ascendants of the deceased who are entitled to moral damages without including the brothers and sister and godchildren of the victim. Therefore the New Civil Code has a less severe sanction compared with the old Civil Code.

A transitional provision, article 2257 of the New Civil Code states that if an act or omission condemned or forbidden by the New Civil Code in form of a civil sanction or penalty or deprivation of rights, were also punished by the previous legislation—the old Civil Code—the less severe sanction shall be the one applied. Therefore article 2206 of the New Civil Code is applicable under which no moral damages could be awarded to petitioner for his brother’s death caused by a *culpa aequiliana*.

Recovery of attorney’s fees

The Supreme Court further held that although under paragraph 11 of article 2208 of the New Civil Code, award of attorney’s fees may be made whenever it may be “just and equitable,” said article is not applicable because the case at bar was instituted before the effectivity of the New Civil Code. Before the New Civil Code became effective, attorney’s fees other than those allowed as costs under the Rules of Court are not recoverable as damages against the losing litigant, otherwise this would place a penalty on the right to litigate, the Court ruled citing the case of *George Edward Koster, Inc. v. Zulueta.*

To the same effect as the Koster decision is the ruling in *Filipino Pipe and Foundry Corporation v. Central Bank of the Philippines.*

However attorney’s fees and expenses of litigation may be granted when defendant acted in gross and evident bad faith in refusing to satisfy plaintiff’s plainly valid just and demandable claim, as authorized by the New Civil Code.

In the absence of stipulation, attorney’s fees are not recoverable. However several exceptions to this rule are provided in article 2208 of the New Civil Code. This is the ruling in *Angel Jose Warehousing Co., Inc. v. Chelda Enterprises.* This principle is reiterated in *Yap Teck Suy v. Manila Port Service.* Award of reasonable attorney’s fees is

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33 99 Phil. 945 (1956).
34 G.R. No. 24429, June 22, 1968.
35 Art. 2208, par. 5.
36 G.R. No. 25704, April 24, 1968.
justified when it is provided in the stipulation and the appellant is persistent in maintaining a clearly unfounded or untenable action.

Award of nominal damages and attorney’s fees

In *Singson v. Bank of the Philippine Islands*\(^{38}\) the wrong done to the plaintiffs consisted in the illegal freezing of latter’s account resulting in dishonor for payment of two checks issued by the plaintiffs. Since the wrong was immediately remedied by the defendant President of the Bank, upon realizing the mistake committed by him and by the subordinate employee, the Supreme Court awarded nominal damages to the plaintiffs in the sum of ₱1,000 which need not be proven, citing the case of *Ventanilla v. Centeno*.\(^{39}\) For the vindication of the plaintiffs’ rights which had been unlawfully violated, requiring plaintiffs to retain services of counsel, the amount of ₱500 as attorney’s fee was also awarded.

Recovery of moral damages in cases of seduction, abduction, rape or other lascivious acts

In *People v. Fontanilla*\(^{40}\) where the accused was convicted of qualified seduction of a domestic, who is the niece of his wife, the award of moral damages was increased from ₱500 to ₱2,500 considering that the offended party was a virgin who was deflowered so that her matrimonial future is definitely impaired by her loss of virginity and by the attendant shame and scandal. Under article 2219 of the New Civil Code moral damages are recoverable by the offended party in cases of seduction, abduction, rape or other lascivious acts, and the parents of the female seduced, abducted, raped, or abused may also recover moral damages.

In the same criminal action the accused can be required to pay moral damages to the victim and her parents, the conviction of the accused being sufficient basis for such award without necessity of independent proof thereof. The law presumes that the victim as well as her parents suffered besmirched reputation, social humiliation, wounded feelings, and mental anguish, so that the ₱2,500 moral damages awarded should be paid to the victim and her parents.

Responsibility for breach of contract of carriage; basis of award of compensatory damages

In *Marchan v. Mendoza*\(^{41}\) the petitioner bus firm and the petitioner driver of the passenger bus responsible for injuries inflicted upon

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\(^{38}\) *Supra*, note 16.


\(^{40}\) G.R. No. 25354, June 28, 1968.

\(^{41}\) G.R. No. 24471, August 30, 1968.
passengers—respondents, were required to pay several amounts as compensatory damages, as exemplary damages, and as attorney’s fees. The compensatory damages and attorney’s fees were to earn interest from the date of the decision of the lower court, while the exemplary damages to earn interest from the date of decision of the Court of Appeals, the Court citing the case of *Soberano v. Manila Railroad Co.* concerning the date of earning of interest.

Under the New Civil Code common carriers cannot escape responsibility for injuries to life or limb of passengers through the negligence or willful acts of the carriers’ employees although said employees may have acted beyond the scope of their authority or in violation of orders or instructions. This is not merely a subsidiary or secondary liability but this is a direct and immediate liability of the carrier.

The age of the plaintiff-respondent, his expected life span, and his earning capacity within that life span had been considered in computing the award of compensatory damages. As the plaintiff was in his middle twenties, and by the negligence of the carrier he lost the use of limbs thus making him a paralytic the rest of his days, the amount of ₱40,000 awarded as compensatory damages was considered reasonable, and was well within the discretion of the Court which ordered the award.

*Award of exemplary damages discretionary with court; may be given though not expressly pleaded in complaint; when award may be reviewed*

In addition, among others, to compensatory damages, the Court at its discretion, may award exemplary damages, by way of correction, example, or deterrence, although not expressly prayed, nor pleaded in the complaint. The amount of exemplary damages need not be proved for its determination depends upon the amount of compensatory damages awarded to the claimant victim. If the amount of exemplary damages need not be proved, then it need not be pleaded and it need not be alleged in the complaint, because the same cannot be predetermined, citing with approval, the case of *Singson v. Aragon.*

The amount of exemplary damages will be determined by the Court if in the exercise of its discretion the same is warranted by the evidence adduced. On the other hand, when it could be shown that the Court acted with “vindictiveness or wantonness and not in the exercise of honest judgment”, then the award may be reviewed by

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43 Art. 1759.
44 92 Phil. 514 (1953).
the higher or appellate tribunal as held in the case of Corpus v. Cuaderno.\textsuperscript{45}

\textbf{When moral and exemplary damages may be awarded in breach of contract}

In \textit{Pan Pacific Co. (Phil.) v. Philippine Advertising Corporation}\textsuperscript{46} the Supreme Court affirmed the award of moral and exemplary damages and of attorney's fees to the plaintiff. Citing articles 2229 and 2232 of the New Civil Code, the Court concluded that the defendants in utter disregard of the rights of the plaintiff had refused deliberately and wantonly to pay to the plaintiff what is justly due the plaintiff. The defendant only paid the down payment on the 18 bowling alleys and without just cause he absolutely refused to pay the balance thereof, as well as the cost of the bowling and billiard accessories. Although the defendant had been continuously receiving a lucrative income from the opening of the bowling alleys and the operation of the billiard tables, and although he had promised to pay the balance of the price in installments, defendant continuously refused, without just cause to pay what is due and what should be paid to the plaintiff.

Plaintiff is entitled to moral and exemplary damages because the defendants acted wantonly, oppressively, if not fraudulently in the performance of their obligations, as the plaintiff has been awarded exemplary damages and since the defendant acted in gross and evident bad faith in deliberately refusing to satisfy the plaintiff's valid, just, and demandable claim, the Court concluded that it is just and equitable that attorney's fees and expenses of litigation should be allowed in favor of plaintiff.

\textit{When exemplary damages may be awarded in a breach of contract of carriage; party to a contract to be held liable for exemplary damages due to wrongful act of agent must in effect be a co-participant therein}

In \textit{Munsayac v. de Lara}\textsuperscript{47} the plaintiff-appellee suffered injuries while riding as a passenger on a jeepney owned and operated by the defendant-appellant. The driver who drove at an excessive speed although the road was under repair, was held to be recklessly negligent and was required to pay exemplary damages and attorney's fee in addition to actual compensatory damages, which items are upheld by the Court of Appeals and which are now reviewed by the Supreme Court on certiorari.

\textsuperscript{45} G.R. No. 23721, March 31, 1965.
\textsuperscript{46} G.R. No. 22050, June 13, 1968.
\textsuperscript{47} G.R. No. 21151, June 26, 1968.
Under the New Civil Code\textsuperscript{48} exemplary damages are imposed by way of example or correction for the public good so that this kind of damages may also be referred to as corrective, punitive, or vindictive. Under the New Civil Code\textsuperscript{49} in contracts, exemplary damages may be awarded by the courts if the defendant acted in wanton, fraudulent, reckless, oppressive or malevolent manner.

The Court concluded: "The defendant in a breach of contract could not be held to have acted in a wanton, reckless, fraudulent, oppressive or malevolent manner for something he did or he did not do after the breach which had no causal connection therewith. As a party to the contract, he is personally liable, so the breach is his, so that if he should be held liable for exemplary damages due to the wrongful act of his agent, he must in effect be a co-participant therein, from the fact that he had previously authorized or knowingly ratified it, amounting to owner's approval or demonstrative tolerance of the causative negligent act of his agent or employee actually in charge of the vehicle."

To the same effect regarding co-participation is the rule now obtaining, after the repeal of the rule of vicarious liability by the enactment of Republic Act 875, which present rule states that for a labor union or its officers and members to be liable, there must be clear proof of actual participation in, or authorization, or ratification of the illegal acts. This is the holding in Benguet Consolidated, Inc. v. Benguet Consolidated Inc. Employees and Workers Union—Paflu.\textsuperscript{50}

When moral damages may be allowed in breach of contract of carriage

In Bulante v. Chua Liante\textsuperscript{51} a passenger bus collided with a cargo truck, as a consequence of which, ten persons died and seven were injured. Actions for damages and attorney's fees had been filed against Bulante, operator and registered owner of the bus, by the injured passengers and the heirs of the deceased bus passengers based on a culpa contractual; and by Chua Liante, owner of the cargo truck based on tort (culpa aquiliana). The trial court gave credence to defendant-petitioner Bulante’s version while the Court of Appeals believed the version of plaintiffs-respondents Liante et al, ordering Bulante to pay them various sums ascending a total of P100,771.50 by way of actual, compensatory and moral damages and costs. Judgment of the Court of Appeals is affirmed with the following modifications: elimination

\textsuperscript{48} Art. 2229.
\textsuperscript{49} Art. 2232.
\textsuperscript{50} G.R. No. 24711, April 30, 1968.
\textsuperscript{51} G.R. Nos. 21583, 21591-92, May 20, 1968.
of the award of moral damages and reduction of the reparation of the
damage caused to the cargo truck for the basis of the computa-
tion should not be the cost of acquisition for there must be allowed a 25% depreciation or diminution in value up to the time of the mishap.

The three injured passengers are not entitled to moral damages for their cause of action is based on breach of contract and as such under article 2220 of the New Civil Code moral damages may only be allowed and recovered from a defendant who acted fraudulently, or in bad faith. Petitioner is sued personally as a party to the contract of carriage, and nowhere in the complaint has fraud or bad faith been alleged, nor may this be imputed to him merely by reason of his driver’s gross negligence in the manner he was driving the bus at the time of the mishap. As discussed in Fores v. Miranda,\textsuperscript{52} fraud and bad faith refer to wanton, reckless, oppressive, malevolent conduct, or at least to gross negligence amounting to or equivalent to malice.

**Scope of indemnity in case of death of passenger**

The Court further declared that article 2206 of the New Civil Code allows as damages—in addition to an indemnity of a least \( P3,000 \), now \( P12,000 \) as held in People v. Pantoja,\textsuperscript{53} by reason of death caused by a crime, a quasi-delict, and by virtue of article 1764, a breach of contract of carriage—recovery for loss of earning capacity on the part of the deceased passenger, the same to be paid to his heirs, unless the deceased had no earning capacity at the time of his death due to a permanent physical disability not caused by defendant. This item of damages may be allowed even though not specifically pleaded or claimed in the complaint for this should be considered included in the petition for actual compensatory damages and for other just and equitable reliefs as may be proper in the premises.

**Increase to \( P12,000 \) of indemnity in case of death caused by crime or quasi-delict**

In the precedent-setting decision rendered by the Supreme Court in People v. Pantoja\textsuperscript{54} the minimum amount of compensatory damages for death arising from crime or quasi-delict is raised from \( P6,000 \) to \( P12,000 \). In this murder case, the Court traced the history of the law on the subject. In 1947 when the project of the Civil Code was drafted by the Code Commission the amount of \( P3,000 \) was fixed as

\textsuperscript{52} \textit{Supra}, note 15.

\textsuperscript{53} \textit{Supra}, note 1.

\textsuperscript{54} \textit{Id.}
the minimum indemnity for death arising from crime or quasi-delict. This project became Republic Act 386, the New Civil Code, approved in 1949 and effective in 1950. In 1948, the Supreme Court promulgated its decision in People v. Amansec awarding P6,000, compensatory damages for death caused by a crime, considering the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity of P2,000 was enacted, referring to Commonwealth Act 284 effective in 1938. At the time of the promulgation of the Amansec decision in 1948 the purchasing power of the peso was one third of its purchasing power in pre-war days. Commonwealth Act 284 was repealed in 1950 upon the effectivity of the New Civil Code in which article 2203 fixed P3,000 as indemnity for death arising from crime or quasi-delict. For this indemnity the courts could have properly awarded P9,000 when the New Civil Code became effective, further explained the Supreme Court.

The purchasing power of the Philippine peso continued to decline so that in 1968, the rate of exchange in the free market was $1.00 U.S. to P4.00 Philippine peso. The Supreme Court concluded that since the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power, the amount of award of compensatory damages for death caused by a crime or quasi-delict should be P12,000. This ruling has been reiterated in the following 1968 decisions: People v. Mongaya, People v. Sangaran, People v. Gutierrez, People v. Ramos and People v. Buenbrazo. Viewed from its historical perspective this decisional rule has attended to a long felt need for a change in the law on the matter. Bearing in mind the passage that the law is not in the state of repose, it can be said that at least for the moment the ideal situation has been attained since the law as it is, now coincides with the law as it ought to be, by virtue of this precedent-setting decision.

55 80 Phil. 424 (1948).
56 G.R. No. 23708, October 31, 1968.
57 G.R. No. 21757, November 26, 1968.
60 G.R. No. 27852, November 29, 1968.