

**CONCURRING OPINION OF
JUDGE MONTIEL-ARGÜELLO**

1. While agreeing with all the decisions adopted by the Court in this Judgment (Caballero Delgado and Santana Case), I would like to make a few observations on its refusal of the request for reparations for the material damage allegedly caused by the death of María del Carmen Santana.

2. The debate between those who consider human life to possess economic or pecuniary value for its owner and those who hold the opposite view is a matter of general knowledge.

3. The former consider human life to be a possession the disappearance of which would bestow on the victim the right to apply for indemnification and that said right passes to his heirs, who would inherit the claim to compensation *jure hereditatis*. The latter, on the other hand, consider that there is no basis for a claim, but for the actual damage inflicted by the death and, in consequence, any claim would be *jure proprio*. The application for material damages suffered would in this case be equivalent to the economic resources produced by the deceased and which, owing to his or her death, are no longer produced, but only insofar as those resources were transferred to the claimants.

4. There are those who maintain that in the event of an interval between the unlawful act and the death itself, the victim becomes a person to whom an obligation is owed and that the opposite is true in the event of instantaneous death.

5. In my view, there is no justification for such a distinction, inasmuch as the right to claim would in all those cases come into being at the actual moment of death, at the very time that the person supposedly empowered to exercise the right to claim indemnification ceases to exist, and has therefore ceased to be a subject at law.

6. Should it be accepted that the victim's next-of-kin succeed *jure hereditatis*, once the unlawful act that produced his death is ascertained, action must be taken for the opening of his or her succession

and consideration given to the possible existence of a will and even of creditors of the victim, who would have a preferential right.

7. In view of the opinions expressed, I contend that the right to claim compensation for a person's death is not an inherited right, but it is a right belonging to those persons who have suffered injury on account of that death.

8. In default of injury, there would be no right to any claim. I would, however, like to qualify this in two respects.

9. The first qualification is that the damage does not need to be actual; it could be potential. For instance, the case of a minor child who is economically dependent on his father at the time of the latter's death, but who could later become his source of income. Naturally, since this is a hypothetical situation and not one that would necessarily occur, it is for the court trying the case to rule on the matter, taking due account of all the circumstances.

10. The second qualification is that I still consider acceptable a presumption that the spouse and minor or handicapped children were economically dependent on the victim and could therefore claim indemnification, without needing to prove the damage suffered. However, to extend that presumption to the parents seems somewhat far-fetched and contrary to what normally occurs in reality.

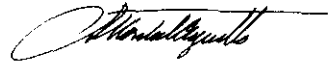
11. In the case of María del Carmen Santana, I am of the view that account should be taken of the fact that there is no record of any ties between the deceased and the person claiming to be her mother, that there is no evidence that they ever shared a home or that the victim ever contributed to that home, that she had any contact with the claimant, or that the latter was in any way her dependent, or a potential dependent for that matter.

12. In the light of the above, I feel that the circumstances indicated are those on which the Court based its decision to deny reparation for material damages caused by the death of María del Carmen Santana since, furthermore, there is no evidence that she had a spouse or children and since the only application is being submitted by the person claiming to be her mother.

13. The views expressed in the preceding paragraph apply exclusively to material damage, considering, as I do, that moral damage should be presumed and that such damage is caused by the very fact of death. I agree that indemnification for moral damage be granted in the instant case and that it be paid to the person who supplies proof of the closes kinship to María del Carmen Santana.



Manuel E. Ventura-Robles
Secretary



Alejandro Montiel-Argüello
Judge