Republic of the Philippines
SUPREME COURT
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 28 2015

THIRD DIVISION

NILO B. ROSIT,
Petitioner,

- versus -

DAVAO DOCTORS HOSPITAL and DR. ROLANDO G. GESTUVO,
Respondents.

G.R. No. 210445

Present:

VELASCO, JR., *J.*, Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

December 7, 2015

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DECISION

VELASCO, JR., *J.*:

The Case

This is a petition filed under Rule 45 of the Rules of Court assailing the Decision and Resolution dated January 22, 2013[1] and November 7, 2013,[2] respectively, of the Court of Appeals, Cagayan De Oro City (CA), in CA-G.R. CV No. 00911-MIN. The CA Decision reversed the Decision dated September 14, 2004[3] of the Regional Trial Court, Branch 33 in Davao City (RTC) in Civil Case No. 27,354-99, a suit for damages thereat which Nilo B. Rosit (Rosit) commenced against Dr. Rolando Gestuvo (Dr. Gestuvo).

Factual Antecedents

On January 15, 1999, Rosit figured in a motorcycle accident. The X-ray soon taken the next day at the Davao Doctors Hospital (DDH) showed that he fractured his jaw. Rosit was then referred to Dr. Gestuvo, a specialist in mandibular injuries,[4] who, on January 19, 1999, operated on Rosit.

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[1] *Rollo*, pp. 56-67. Penned by Associate Justice Henri Jean Paul B. Inting and concurred in by Associate Justices Edgardo T. Lloren and Jhosep Y. Lopez.
[2] Id. at 82-85.
[3] Id. at 40-54.
[4] Id. at 40-41.

During the operation, Dr. Gestuvo used a metal plate fastened to the jaw with metal screws to immobilize the mandible. As the operation required the smallest screws available, Dr. Gestuvo cut the screws on hand to make them smaller. Dr. Gestuvo knew that there were smaller titanium screws available in Manila, but did not so inform Rosit supposing that the latter would not be able to afford the same.[5]

Following the procedure, Rosit could not properly open and close his mouth and was in pain. X-rays done on Rosit two (2) days after the operation showed that the fracture in his jaw was aligned but the screws used on him touched his molar. Given the X-ray results, Dr. Gestuvo referred Rosit to a dentist. The dentist who checked Rosit, Dr. Pangan, opined that another operation is necessary and that it is to be performed in Cebu.[6]

Alleging that the dentist told him that the operation conducted on his mandible was improperly done, Rosit went back to Dr. Gestuvo to demand a loan to defray the cost of the additional operation as well as the expenses of the trip to Cebu. Dr. Gestuvo gave Rosit ₱4,500.

Rosit went to Cebu on February 19, 1999, still suffering from pain and could hardly open his mouth.

In Cebu, Dr. Pangan removed the plate and screws thus installed by Dr. Gestuvo and replaced them with smaller titanium plate and screws. Dr. Pangan also extracted Rosit's molar that was hit with a screw and some bone fragments. Three days after the operation, Rosit was able to eat and speak well and could open and close his mouth normally.[7]

On his return to Davao, Rosit demanded that Dr. Gestuvo reimburse him for the cost of the operation and the expenses he incurred in Cebu amounting to ₱140,000, as well as for the ₱50,000 that Rosit would have to spend for the removal of the plate and screws that Dr. Pangan installed. Dr. Gestuvo refused to pay.[8]

Thus, Rosit filed a civil case for damages and attorney's fees with the RTC against Dr. Gestuvo and DDH, the suit docketed as Civil Case No. 27,354-99.

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[5] Id. at 41-42.
[6] Id. at 42-43.
[7] Id. at 43-44.
[8] Id. at 44.

The Ruling of the Regional Trial Court

The RTC freed DDH from liability on the ground that it exercised the proper diligence in the selection and supervision of Dr. Gestuvo, but adjudged Dr. Gestuvo negligent and ruled, thus:

> FOR ALL THE FOREGOING, finding the plaintiff Nilo B. Rosit to have preponderantly established his cause of action in the complaint against defendant Dr. Rolando G. Gestuvo only, judgment is hereby rendered for the plaintiff and against said defendant, ordering the defendant DR. ROLANDO G. GESTUVO to pay unto plaintiff NILO B. ROSIT the following:
>
> a) the sum of ONE HUNDRED FORTY THOUSAND ONE HUNDRED NINETY NINE PESOS and 13/100 (P 140,199.13) representing reimbursement of actual expenses incurred by plaintiff in the operation and re-operation of his mandible;
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> b) the sum of TWENTY NINE THOUSAND AND SIXTY EIGHT PESOS (P 29,068.00) representing reimbursement of the filing fees and appearance fees;
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> c) the sum of ONE HUNDRED FIFTY THOUSAND PESOS (P 150,000.00) as and for attorney's fees;
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> d) the amount of FIFTY THOUSAND PESOS (P 50,000.00) as moral damages;
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> e) the amount of TEN THOUSAND PESOS (P 10,000.00) as exemplary damages; and
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> f) the costs of the suit.
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> For lack of merit, the complaint against defendant DAVAO DOCTORS HOSPITAL and the defendants' counterclaims are hereby ordered DISMISSED.
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> Cost against Dr. Rolando G. Gestuvo.
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> SO ORDERED.

In so ruling, the trial court applied the *res ipsa loquitur* principle holding that "the need for expert medical testimony may be dispensed with because the injury itself provides the proof of negligence."

Therefrom, both parties appealed to the CA.

The Ruling of the Court of Appeals

In its January 22, 2013 Decision, the CA modified the appealed judgment by deleting the awards made by the trial court, disposing as follows:

> WHEREFORE, the appeal filed by Gestuvo is GRANTED. The Decision dated September 14, 2004 of the Regional Trial Court, Branch

> 33, Davao City, rendered in Civil Case No. 27,354-99 is hereby MODIFIED. The monetary awards adjudged in favor of Nilo B. Rosit are hereby DELETED for lack of basis.
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> SO ORDERED.

Unlike the RTC, the CA ruled that the *res ipsa loquitur* principle is not applicable and that the testimony of an expert witness is necessary for a finding of negligence. The appellate court also gave credence to Dr. Pangan's letter stating the opinion that Dr. Gestuvo did not commit gross negligence in his emergency management of Rosit's fractured mandible.

Rosit's motion for reconsideration was denied in the CA's November 7, 2013 Resolution.

Hence, the instant appeal.

The Issue

The ultimate issue for our resolution is whether the appellate court correctly absolved Dr. Gestuvo from liability.

The Court's Ruling

The petition is impressed with merit.

In *Flores v. Pineda*,[9] the Court explained the concept of a medical negligence case and the elements required for its prosecution, viz:

> A medical negligence case is a type of claim to redress a wrong committed by a medical professional, that has caused bodily harm to or the death of a patient. **There are four elements involved in a medical negligence case, namely: duty, breach, injury, and proximate causation.**
>
> Duty refers to the standard of behavior which imposes restrictions on one's conduct. The standard in turn refers to the amount of competence associated with the proper discharge of the profession. A physician is expected to use at least the same level of care that any other reasonably competent doctor would use under the same circumstances. Breach of duty occurs when the physician fails to comply with these professional standards. If injury results to the patient as a result of this breach, the physician is answerable for negligence. (emphasis supplied)

[9] G.R. No. 158996, November 14, 2008, 571 SCRA 83, 91-92.

An expert witness is not necessary as the *res ipsa loquitur* doctrine is applicable

To establish medical negligence, this Court has held that an expert testimony is generally required to define the standard of behavior by which the court may determine whether the physician has properly performed the requisite duty toward the patient. This is so considering that the requisite degree of skill and care in the treatment of a patient is usually a matter of expert opinion.[10]

Solidum v. People of the Philippines[11] provides an exception. There, the Court explained that where the application of the principle of *res ipsa loquitur* is warranted, an expert testimony may be dispensed with in medical negligence cases:

> **Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of *res ipsa loquitur* is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence.** The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts. x x x
>
> Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others.

We have further held that resort to the doctrine of *res ipsa loquitur* as an exception to the requirement of an expert testimony in medical negligence cases may be availed of if the following essential requisites are satisfied: (1) the accident was of a kind that does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency that caused the injury was under the exclusive control of the person charged; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.[12]

In its assailed Decision, the CA refused to acknowledge the application of the *res ipsa loquitur* doctrine on the ground that the foregoing

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[10] Id.
[11] G.R. No. 192123, March 10, 2014.
[12] Id.

elements are absent. In particular, the appellate court is of the position that post-operative pain is not unusual after surgery and that there is no proof that the molar Dr. Pangan removed is the same molar that was hit by the screw installed by Dr. Gestuvo in Rosit's mandible. Further, a second operation was conducted within the 5-week usual healing period of the mandibular fracture so that the second element cannot be considered present. Lastly, the CA pointed out that the X-ray examination conducted on Rosit prior to his first surgery suggests that he had "chronic inflammatory lung disease compatible," implying that the injury may have been due to Rosit's peculiar condition, thus effectively negating the presence of the third element.[13]

After careful consideration, this Court cannot accede to the CA's findings as it is at once apparent from the records that the essential requisites for the application of the doctrine of *res ipsa loquitur* are present.

The first element was sufficiently established when Rosit proved that one of the screws installed by Dr. Gestuvo struck his molar. It was for this issue that Dr. Gestuvo himself referred Rosit to Dr. Pangan. In fact, the affidavit of Dr. Pangan presented by Dr. Gestuvo himself before the trial court narrated that the same molar struck with the screw installed by Dr. Gestuvo was examined and eventually operated on by Dr. Pangan. Dr. Gestuvo cannot now go back and say that Dr. Pangan treated a molar different from that which was affected by the first operation.

Clearly, had Dr. Gestuvo used the proper size and length of screws and placed the same in the proper locations, these would not have struck Rosit's teeth causing him pain and requiring him to undergo a corrective surgery.

Dr. Gestuvo knew that the screws he used on Rosit were too large as, in fact, he cut the same with a saw.[14] He also stated during trial that common sense dictated that the smallest screws available should be used. More importantly, he also knew that these screws were available locally at the time of the operation.[15] Yet, he did not avail of such items and went ahead with the larger screws and merely sawed them off. Even assuming that the screws were already at the proper length after Dr. Gestuvo cut the same, it is apparent that he negligently placed one of the screws in the wrong area thereby striking one of Rosit's teeth.

In any event, whether the screw hit Rosit's molar because it was too long or improperly placed, both facts are the product of Dr. Gestuvo's negligence. An average man of common intelligence would know that

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[13] *Rollo*, p. 64.
[14] Id. at 42.
[15] Id.

striking a tooth with any foreign object much less a screw would cause severe pain. Thus, the first essential requisite is present in this case.

Anent the second element for the *res ipsa loquitur* doctrine application, it is sufficient that the operation which resulted in the screw hitting Rosit's molar was, indeed, performed by Dr. Gestuvo. No other doctor caused such fact.

The CA finds that Rosit is guilty of contributory negligence in having Dr. Pangan operate on him during the healing period of his fractured mandible. What the CA overlooked is that it was Dr. Gestuvo himself who referred Rosit to Dr. Pangan. Nevertheless, Dr. Pangan's participation could not have contributed to the reality that the screw that Dr. Gestuvo installed hit Rosit's molar.

Lastly, the third element that the injury suffered must not have been due to any voluntary action or contribution of the person injured was satisfied in this case. It was not shown that Rosit's lung disease could have contributed to the pain. What is clear is that he suffered because one of the screws that Dr. Gestuvo installed hit Rosit's molar.

Clearly then, the ***res ipsa loquitur* doctrine finds application in the instant case and no expert testimony is required to establish the negligence of defendant Dr. Gestuvo.**

Petitioner was deprived of the opportunity to make an "informed consent"

What is more damning for Dr. Gestuvo is his failure to inform Rosit that such smaller screws were available in Manila, albeit at a higher price.[16] As testified to by Dr. Gestuvo himself:

Court	Alright. This titanium materials according to you were already available in the Philippines since the time of Rosit's accident?
Witness	Yes, your Honor.
	x x x x
Court	Did you inform Rosit about the existence of titanium screws and plates which according to you is the screws and plates of choice?
Witness	No, your Honor.
	x x x x

[16] TSN, July 4, 2002, pp. 40-42.

Witness	The reason I did not inform him anymore Judge because what I thought he was already hard up with the down payment. And if I will further introduce him this screws, the more he will not be able to afford the operation.
	x x x x
Court	This titanium screws and plates were available then it is up to Rosit to decide whether to use it or not because after all the material you are using is paid by the patient himself, is it not?
Witness	Yes, that is true.

Li v. Soliman[17] made the following disquisition on the relevant Doctrine of Informed Consent in relation to medical negligence cases, to wit:

> The **doctrine of informed consent** within the context of physician-patient relationships goes far back into English common law. x x x **From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.**
>
> x x x x
>
> **There are four essential elements a plaintiff must prove in a malpractice action based upon the doctrine of informed consent: "(1) the physician had a duty to disclose material risks; (2) he failed to disclose or inadequately disclosed those risks; (3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) plaintiff was injured by the proposed treatment."** The gravamen in an informed consent case requires the plaintiff to "point to significant undisclosed information relating to the treatment which would have altered her decision to undergo it." (emphasis supplied)

The four adverted essential elements above are present here.

First, Dr. Gestuvo clearly had the duty of disclosing to Rosit the risks of using the larger screws for the operation. This was his obligation as the physician undertaking the operation.

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[17] G.R. No. 165279, June 7, 2011, 651 SCRA 32, 56-59.

Second, Dr. Gestuvo failed to disclose these risks to Rosit, deciding by himself that Rosit could not afford to get the more expensive titanium screws.

Third, had Rosit been informed that there was a risk that the larger screws are not appropriate for the operation and that an additional operation replacing the screws might be required to replace the same, as what happened in this case, Rosit would not have agreed to the operation. It bears pointing out that Rosit was, in fact, able to afford the use of the smaller titanium screws that were later used by Dr. Pangan to replace the screws that were used by Dr. Gestuvo.

Fourth, as a result of using the larger screws, Rosit experienced pain and could not heal properly because one of the screws hit his molar. This was evident from the fact that just three (3) days after Dr. Pangan repeated the operation conducted by Dr. Gestuvo, Rosit was pain-free and could already speak. This is compared to the one (1) month that Rosit suffered pain and could not use his mouth after the operation conducted by Dr. Gestuvo until the operation of Dr. Pangan.

Without a doubt, Dr. Gestuvo is guilty of withholding material information which would have been vital in the decision of Rosit in going through with the operation with the materials at hand. Thus, Dr. Gestuvo is also guilty of negligence on this ground.

Dr. Pangan's Affidavit is not admissible

The appellate court's Decision absolving Dr. Gestuvo of negligence was also anchored on a letter signed by Dr. Pangan who stated the opinion that Dr. Gestuvo did not commit gross negligence in his emergency management of Mr. Rosit's fractured mandible.[18] Clearly, the appellate court overlooked the elementary principle against hearsay evidence.

In *Dantis v. Maghinang, Jr.*,[19] the Court reiterated the oft-repeated rule that "an affidavit is merely hearsay evidence where its affiant/maker did not take the witness stand." Here, Dr. Pangan never took the witness stand to affirm the contents of his affidavit. Thus, the affidavit is inadmissible and cannot be given any weight. The CA, therefore, erred when it considered the affidavit of Dr. Pangan, moreso for considering the same as expert testimony.

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[18] Id. at 63.

[19] G.R. No. 191696, April 10, 2013, 695 SCRA 599, 610 ; see also *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435; *People v. Quidato, Jr.*, G.R. No. 117401, October 1, 1998, 297 SCRA 1, 8. See also *People v. Manhuyod*, G.R. No. 124676, May 20, 1998, 290 SCRA 257, 270-271.

Moreover, even if such affidavit is considered as admissible and the testimony of an expert witness, the Court is not bound by such testimony. As ruled in *Ilao-Quianay v. Mapile*:[20]

> Indeed, courts are not bound by expert testimonies. They may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, and any other matters which serve to illuminate his statements. The opinion of an expert should be considered by the court in view of all the facts and circumstances of the case. The problem of the evaluation of expert testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.

Thus, the belief of Dr. Pangan whether Dr. Gestuvo is guilty of negligence or not will not bind the Court. The Court must weigh and examine such testimony and decide for itself the merits thereof.

As discussed above, Dr. Gestuvo's negligence is clearly demonstrable by the doctrines of *res ipsa loquitur* and informed consent.

Damages

For the foregoing, the trial court properly awarded Rosit actual damages after he was able to prove the actual expenses that he incurred due to the negligence of Dr. Gestuvo. In *Mendoza v. Spouses Gomez*,[21] the Court explained that a claimant is entitled to actual damages when the damage he sustained is the natural and probable consequences of the negligent act and he adequately proved the amount of such damage.

Rosit is also entitled to moral damages as provided under Article 2217 of the Civil Code,[22] given the unnecessary physical suffering he endured as a consequence of defendant's negligence.

To recall, from the time he was negligently operated upon by Dr. Gestuvo until three (3) days from the corrective surgery performed by Dr. Pangan, or for a period of one (1) month, Rosit suffered pain and could not properly use his jaw to speak or eat.

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[20] G.R. No. 154087, October 25, 2005, 474 SCRA 246, 255.

[21] G.R. No. 160110, June 18, 2014, 726 SCRA 505, 521-522.

[22] Article 2217. Moral damages include **physical suffering**, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, **moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission**. (emphasis supplied)

The trial court also properly awarded attorney's fees and costs of suit under Article 2208 of the Civil Code,[23] since Rosit was compelled to litigate due to Dr. Gestuvo's refusal to pay for Rosit's damages.

As to the award of exemplary damages, the same too has to be affirmed. In *Mendoza*,[24] the Court enumerated the requisites for the award of exemplary damages:

> Our jurisprudence sets certain conditions when exemplary damages may be awarded: First, they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. Second, the claimant must first establish his right to moral, temperate, liquidated or compensatory damages. Third, the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

The three (3) requisites are met. Dr. Gestuvo's actions are clearly negligent. Likewise, Dr. Gestuvo acted in bad faith or in a wanton, fraudulent, reckless, oppressive manner when he was in breach of the doctrine of informed consent. Dr. Gestuvo had the duty to fully explain to Rosit the risks of using large screws for the operation. More importantly, he concealed the correct medical procedure of using the smaller titanium screws mainly because of his erroneous belief that Rosit cannot afford to buy the expensive titanium screws. Such concealment is clearly a valid basis for an award of exemplary damages.

WHEREFORE, the instant petition is **GRANTED**. The CA Decision dated January 22, 2013 and Resolution dated November 7, 2013 in CA-G.R. CV No. 00911-MIN are hereby **REVERSED** and **SET ASIDE**. Further, the Decision dated September 14, 2004 of the Regional Trial Court, Branch 33 in Davao City in Civil Case No. 27,345-99 is hereby **REINSTATED** and **AFFIRMED**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

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[23] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

[24] Supra note 21, at 525.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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

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Third Division
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