Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

UCPB GENERAL INSURANCE, CO., INC.,	**G.R. No. 242328**
Petitioner,	**Present:**
	LEONEN, *J., Chairperson,*
	HERNANDO,
	INTING,
- *versus* -	DELOS SANTOS, and
	LOPEZ, J., *JJ.*
	Promulgated:
PASCUAL LINER, INC.,	
Respondent.	April 26, 2021

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D E C I S I O N

LOPEZ, J., *J.*:

The doctrine of *res ipsa loquitor* is an exception to the rule that hearsay evidence is devoid of probative value, whether objected to or not. This is because the doctrine of *res ipsa loquitor* establishes a rule on negligence that can stand on its own, independent of the hearsay character of the evidence presented.

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[1] of the Court of Appeals (*CA*) dated June 13, 2018 and its Resolution[2] dated September 28, 2018 in CA-G.R. SP No. 149281. The Decision of the CA granted the petition for review under Rule 42 filed by the herein respondent Pascual Liner, Inc. and set aside the Decision[3] dated September 22, 2016 rendered by the Regional Trial Court (*RTC*) Branch 66 of Makati City, which affirmed the Order[4] dated

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1 Penned by Associate Justice Stephen C. Cruz, with Presiding Justice Romeo F. Barza (ret.) and Carmelita Salandanan Manahan, concurring; *rollo,* pp. 27-42.

2 *Id.,* at 44-45.

3 Penned by Presiding Judge Joselito C. Villarosa, *id.* at 102-104.

4 Penned by Presiding Judge Alberto Azarcon III; *id.* at 65-69.

November 17, 2015 rendered by the Metropolitan Trial Court (*MeTC*) Branch 63 of Makati City. In the aforesaid Order, the MeTC found Pascual Liner, Inc. liable to pay the herein petitioner UCPB General Insurance Co. Inc. the amount of Three Hundred Fifty Thousand Pesos (₱350,000.00) plus interest, attorney's fees, and cost of suit.

FACTS AND ANTECEDENT PROCEEDINGS

On September 21, 2005, petitioner UCPB General Insurance Co., Inc. (*petitioner*) issued Comprehensive Car Insurance Policy No. DLS05MD-MNP111436 to its assured, Rommel B. Lojo (*Lojo*), over the latter's vehicle, a 1997 BMW A/T 2000 four-door sedan bearing plate number JMU-777 (*insured vehicle*).[5]

On December 09, 2005, at around 3:30 p.m., the insured vehicle was cruising northbound along the South Luzon Expressway in front of Concepcion Bldg. Sucat, Parañaque City when it was bumped at the rear portion by respondent Pascual Liner, Inc.'s (*respondent*) bus with plate number PWN-447 driven by Leopoldo L. Cadavido (*Cadavido*).[6] As a result of the impact, the insured vehicle was pushed forward, causing it to hit another vehicle, an aluminum van with plate number TNR-217 driven by Nilo L. Nuñez. The vehicular accident was investigated by the Traffic Management and Security Department of the Philippine National Construction Corporation (*PNCC*) Skyway Corporation, for which Solomon Tatlonghari (*Tatlonghari*) prepared a Traffic Accident Sketch. Thereafter, the matter was endorsed to the Philippine National Police, for which PO3 Joselito Quila (*PO3 Quila*) prepared a Traffic Accident Report.[7]

Under the Traffic Accident Report, PO3 Quila described the incident as follows:

> Prior to the incident, all involved vehicles were travelling along SLEX heading north direction. [vehicle] 1 (aluminum closed van) ahead of [vehicle] 2 (BMW) and [vehicle] 3 (Pascual bus) respectively. Upon reaching the place of occurrence, [vehicle] 2 was hit on the right rear end by the left front end of [vehicle] 3. Due to the impact [vehicle] 2 was pushed and its front rammed into the rear end of [vehicle] 1.
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> Driver of [vehicle] 3 claimed that allegedly [vehicle] 2, from the rightmost lane veered to the left and stopped momentarily, thus, a collision.[8]

With serious damage caused to the rear and front portions of the insured vehicle, Lojo filed a claim with petitioner under his insurance policy. Upon examination, the insured vehicle was determined to be beyond economical repair, and after proper evaluation, the claim was found to be compensable by petitioner. In turn, petitioner paid Lojo the amount of Five Hundred Twenty Thousand Pesos (₱520,000.00), while Lojo issued a Release of Claim in

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5 As culled from the MeTC Decision dated January 26, 2015; *id.* at 50-58.

6 *Id.*

7 *Id.* at 36; 158-159.

8 See *Rollo*, p. 158.

petitioner's favor, including a waiver of all his rights over the insured vehicle.[9]

On November 12, 2009, petitioner filed a Complaint[10] for sum of money before the RTC against respondent and Cadavido alleging that as a result of Lojo's receipt of the insurance indemnity it paid arising from the damage caused on the insured vehicle, it was subrogated to the rights of Lojo. It asked the court to order respondent and Cadavido to pay the amount of Three Hundred Fifty Thousand Pesos (₱350,000.00) equivalent to the amount it paid to Lojo minus the salvage value.[11] The complaint was initially dismissed for lack of jurisdiction as the amount claimed by petitioner falls within the exclusive jurisdiction of the MeTC.

On December 21, 2009, petitioner filed an *Ex-Parte* Motion to Direct Transmittal of Records[12] to the Executive Clerk of Court, which the RTC granted. The case was then raffled to the MeTC Branch 61 and docketed as Civil Case No. 100078. Thereafter, the parties were directed to coordinate with the court sheriff for the expeditious service of summons. However, petitioner failed to comply with the said Order and the complaint was dismissed without prejudice.

On July 26, 2010, petitioner filed an *Ex-Parte* Compliance[13] and the MeTC reconsidered and set aside its Order that dismissed the complaint of petitioner. Per the sheriff's Return dated February 2, 2011, a copy of the summons, together with a copy of the complaint and its annexes, was personally served upon respondent. However, the summons was returned unserved upon Cadavido.[14]

On February 9, 2011, respondent filed its Answer (*with Affirmative Defense*),[15] denying petitioner's allegations. It asserted that the Traffic Accident Report and the Traffic Accident Sketch were not categorical in proving its negligence or that of its employee; rather, these only proved that the driver of the insured vehicle was at fault.

With respect to its affirmative defenses, respondent alleged that the complaint of petitioner must be dismissed due to the following reasons: (1) the cause of action has prescribed, as the alleged accident took place on December 9, 2005, while the complaint was served only on February 2011, thus petitioner failed to prosecute its case for an unreasonable length of time; (2) there is utter lack of compliance with the appropriate Verification and Certification against Forum Shopping since there is no proof attached to the complaint that the person who signed the aforesaid documents was duly authorized by petitioner; and (3) there is no prior demand to pay petitioner,

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9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*

which is a condition *sine qua non* prior to filing a case for collection and/or sum of money.[16]

On February 17, 2011, petitioner filed its Reply[17] to respondent's Answer, stating that the date of service of summons is not included in counting the prescriptive period and that the complaint was filed on time since it was instituted on November 9, 2009, which falls within four (4) years from the date of occurrence of the accident on December 9, 2005. With respect to the alleged defect in the Verification and Certification Against Forum Shopping, petitioner attached the Secretary's Certificate containing the board resolution that authorized Atty. Francisco M. Nob to sign the said documents. As to the allegation regarding prior demand, petitioner alleged that respondent's conclusion that demand is a condition *sine qua non* to the filing of cases is bereft of merit since demand may be made judicially or extrajudicially, and whichever kind of demand is chosen, if the obligor fails to fulfill its obligation, it will be in *mora solvendi* and liable for damages.

On February 17, 2011, petitioner filed a Request for Admission addressed to respondent. On March 8, 2011, respondent filed a Response thereto admitting that it is the owner of passenger bus with plate no. PWN 447, but denying the following: (**1**) that Cadavido was its employee as of December 9, 2005; (**2**) that Cadavido was tasked to drive the said bus on the said date; and (**3**) that the Traffic Accident Sketch and the Traffic Accident Report were genuine and duly executed.[18]

The parties were later directed to attend the mediation and the judicial dispute resolution, which, however, failed to produce a settlement between the parties. The case was then raffled to the MeTC Branch 63 of Makati City.[19]

Due proceedings were conducted and the parties were given time to file the judicial affidavits of their witnesses. It was only petitioner that complied with the order. Respondent was considered in default in view of its inability to file the required judicial affidavits. Consequently, the case was deemed submitted for decision.[20]

MeTC DECISION

In its Decision[21] dated January 26, 2015, the MeTC found that the proximate cause of the vehicular accident was the negligence of Cadavido in driving respondent's bus. However, to be adjudged as liable to petitioner, respondent must be found to be in default of its obligation. Since demand was not made by petitioner to either respondent or Cadavido, neither of them can be considered to be in default, and thus it cannot be said that there existed a

16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*

delay for there to arise an obligation to pay. The MeTC added that it did not acquire jurisdiction over Cadavido since the summons upon him was returned unserved.[22]

On Motion for Reconsideration[23] filed by petitioner on April 27, 2015, the MeTC set aside its Decision and rendered an Order[24] dated November 17, 2015, this time finding respondent liable to pay petitioner the amount of ₱350,000.00, plus interest at the rate of 6% *per annum* and attorney's fees of 25% of the recoverable amount, plus cost of suit. In rendering judgment in favor of petitioner, the MeTC applied the doctrine of *res ipsa loquitor,* which creates a presumption of negligence on the part of Cadavido who was in control of the bus, without which, the insured vehicle would not have been bumped. Such negligence gave rise to the obligation to pay the insured. Since the assured owner decided to file an insurance claim with petitioner, which the latter paid, petitioner was subrogated to the rights of the assured in claiming for the damages incurred by the assured in accordance with Article 2207 of the New Civil Code. The dismissal of the case against Cadavido was reiterated since the court did not acquire jurisdiction over him as the summons upon him was returned unserved.[25]

RTC DECISION

Respondent appealed the MeTC Order before the RTC, which was raffled to Branch 66 and docketed as R-MKT-16-00862-CV. After due proceedings, the RTC rendered a Decision[26] dated September 22, 2016 affirming *in toto*, the assailed Order. The RTC found that respondent has not clearly demonstrated any reversible error committed by the MeTC. Liability by way of legal subrogation was clearly established by petitioner by preponderance of evidence. Negligence was likewise established taking into consideration the doctrine of *res ipsa loquitor*.

Respondent filed a Motion for Reconsideration,[27] which the RTC denied in an Order[28] dated January 5, 2017.

CA DECISION

Thereafter, respondent elevated the RTC Decision and Order before the CA, which rendered the assailed Decision that reversed the RTC Decision, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant petition is **GRANTED.** The Decision dated September 22, 2016 of the Regional Trial Court, Branch 66, Makati City, in Civil Case No. R-MKT-16-00862-CV, is **REVERSED and SET ASIDE.** Respondent UCPB General

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22 *Id.*
23 *Id.* at 59-64.
24 *Id.* at 65-69.
25 *Id.*
26 *Supra* note 3.
27 *Id.* at 105-107.
28 *Id.* at 118.

Insurance Company, Incorporated's Complaint is **DISMISSED.**

SO ORDERED.[29]

In its Decision, the CA held that the Traffic Accident Sketch and the Traffic Accident Report were inadmissible in evidence as they failed to comply with the requisites of Entries in Official Records as an exception to the Hearsay Rule. It found that since neither the police officer who prepared the report nor the traffic enforcer who prepared the sketch gave a testimony in support thereof, these documents were not exempted from the Hearsay Rule.[30] It opined that the vehicular incident was investigated by the Traffic Management and Security Department of Department of the PNCC Skyway Corporation, which prepared a Traffic Accident Sketch. The incident was only endorsed to the PNP, which in turn prepared a Traffic Accident Report. Thus, the matters indicated in the Traffic Accident Report were not personally known to the investigating officer. Rather, it was Solomon Tatlonghari, of the PNCC, who had personal knowledge of the facts stated in the Traffic Accident Report. Yet, no affidavit of his testimony was submitted before the MeTC.[31]

Aggrieved, petitioner brought the instant petition for review on *certiorari* under Rule 45. On June 13, 2019, respondent filed its Comment[32] to the petition echoing the CA Decision.

ISSUES

The issues brought forth by petitioner are the following:

Whether the Court of Appeals erred in ruling that Rule 130, Sec. 40 of the Revised Rules on Evidence is not applicable to the case at bar because the third requisite was not satisfied

Whether the Court of Appeals erred in not applying the doctrine of *res ipsa loquitor*

RULING

At the core of the instant petition is the applicability of the hearsay rule and entries made in official records as an exception thereto, as well as the applicability of the doctrine of *res ipsa loquitor*. While the MeTC and the RTC admitted and appreciated the Traffic Accident Report in favor of petitioner, the CA found otherwise, treating it as an inadmissible hearsay evidence, as it failed to satisfy all the requirements of entries made in official records, which could have made it an admissible hearsay evidence. With respect to the doctrine of *res ipsa loquitor,* the MeTC and the RTC applied the same in favor of petitioner while the CA no longer proceeded to discuss the doctrine since

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29 *Id.* at 40.
30 *Rollo,* pp. 35-36.
31 *Id.* at 37-38.
32 *Id.* at 163-170.

the Traffic Accident Report, which served as the anchor to prove negligence, was found to be inadmissible in evidence.

We shall discuss the applicability of these doctrines *in seriatim*.

Hearsay evidence rule

Under the amended Rules on Evidence,[33] hearsay evidence is defined as follows:

> **Section 37.** *Hearsay.* - Hearsay is a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein. A statement is (1) an oral or written assertion or (2) a non-verbal conduct of a person, if it is intended by him or her as an assertion. Hearsay evidence is inadmissible except as otherwise provided in these Rules.
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> A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; (b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (c) one of identification of a person made after perceiving him or her. (n)

Nonetheless, at the time when petitioner filed its complaint before the MeTC on December 21, 2009, the prevailing Rules on Evidence was the Rules adopted on March 14, 1989, under which Sec. 36, Rule 130, governed the appreciation of hearsay evidence, to wit:

> **Section 36.** *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

The applicability of procedural rules was explained by the Court in the case of *Tan Jr. vs. Court of Appeals*[34] as follows:

> There is no dispute that rules of procedure can be given retroactive effect. This general rule, however, has well-delineated exceptions. We quote author Agpalo:
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> x x x x
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> Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their

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33 A.M. No. 19-08-15-SC, effective May 1, 2020.

34 424 Phil 556, (2002).

> retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure. xxxx
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> x x x x
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> The rule that procedural laws are applicable to pending actions or proceedings admits certain exceptions. The rule does not apply where the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights. Under appropriate circumstances, courts may deny the retroactive application of procedural laws in the event that to do so would not be feasible or would work injustice. Nor may procedural laws be applied retroactively to pending actions if to do so would involve intricate problems of due process or impair the independence of the courts.[35]

In the instant case, the principle of retroactivity of procedural rules cannot be applied. The Traffic Accident Report serves as the anchor by which liability for negligence is claimed by petitioner. To adopt the amended Rules would affect the manner by which the Traffic Accident Report was appreciated, which could be used as basis for re-examination to determine its admissibility in evidence. This will result into a violation of due process, which will ultimately cause injustice on the part of the respondent who relied on the Rules then existing. As such, We shall continue to be guided by the superseded provisions of the Rules of Court.

Under the Rules applicable to the instant case, hearsay evidence was premised on the requirement that a witness can testify only to those facts which they know of their personal knowledge, that is, which are derived from their perception. A witness, therefore, may not testify as to what they merely learned from others either because they were told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what they have learned. The theory of the hearsay rule is that the many possible deficiencies, suppressions, sources of error, and untrustworthiness, which lie underneath the bare untested assertion of a witness, may be best brought to light and exposed by the test of cross-examination. The hearsay rule, therefore, excludes evidence that cannot be tested by cross-examination.[36]

While hearsay evidence is generally considered inadmissible in evidence, there are exceptions thereto. One of the exceptions is entries made

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35 *Id.*, at 569-570 (2002), citing Agpalo, Statutory Construction, 1986 ed., pp. 269-272.

36 See *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275 (2001).

in official records, governed by the following provision:

> **Section 44.** *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. (38)

Jurisprudence has laid down the requisites for this exception to apply as follows:

> (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so;
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> (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and
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> (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[37]

In the present case, the first and second requisites are undeniably present. The entries made in the Traffic Accident Report was made by a public officer, PO3 Quila, and done in the performance of his duties. The bone of contention, however, revolves around the presence of the third requisite.

While the MeTC and the RTC did not dwell on the third requisite, the CA, upon examination of the Traffic Accident Report, concluded that PO3 Quila had no personal knowledge of the vehicular accident that happened as he merely relied on the traffic sketch prepared by Tatlonghari. Relying on the case of *Standard Insurance Co., Inc. vs. Cuaresma, et al.,*[38] the CA held that it was Tatlonghari who had sufficient knowledge of the facts stated in the Traffic Accident Report prepared by PO3 Quila and who must, therefore, be presented as a witness. In the absence of his testimony, the Traffic Accident Report cannot be considered as an admissible hearsay.

Petitioner disagrees with the ruling of the CA and raises before Us the doctrine laid down in the case of *Malayan Insurance Co., Inc. vs. Alberto, et al.,*[39] which upheld the right of subrogation of the insurer despite the absence of testimony of the police officer who prepared the Traffic Accident Report. According to petitioner, PO3 Quila had sufficient knowledge of the facts stated in his Traffic Accident Report, which was acquired by him personally. He would not be able to fill in the details of his report had he not conducted a separate investigation. Petitioner alleges that PO3 Quila actually investigated the incident since he was able to talk to the driver of respondent. Thus, he had sufficient knowledge of the facts stated in his report.[40]

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37 *Sps. Africa v. Caltex (Phil.), Inc.*, G.R. No. L-12986, March 31, 1966.
38 742 Phil. 733, (2014).
39 680 Phil. 813, (2012).
40 *Rollo*, p. 17.

Moreover, while it was Tatlonghari of the Traffic Management and Security Department of the PNCC Skyway Corporation who prepared the Traffic Accident Sketch, the same sketch was signed by the driver of respondent. Tatlonghari's name appears on the Traffic Accident Report by way of reference as the one who prepared the sketch, but it was still PO3 Quila who conducted a separate investigation on the incident. Thus, it was PO3 Quila who prepared the traffic accident report and not Tatlonghari.[41] It further asseverated that respondent could have questioned at the earliest possible time the admission of the Traffic Accident Sketch and the Traffic Accident Report before the trial court rendered its decision, but respondent did not do so until the MeTC rendered its ruling that was unfavorable to it.[42]

Petitioner's argument that it was actually PO3 Quila who investigated the vehicular accident, and had personal knowledge of the contents he entered in the Traffic Accident Report is bereft of evidentiary support. As found by the CA, petitioner presented Christian S. Cruz whose testimony merely proved the existence of the insurance policy on Lojo's vehicle, while Mary Jane Villamor merely showed the legal fees incurred by petitioner in connection with the case.[43] Thus, none of the evidence presented by petitioner supports the argument that it is espousing before Us.

Nevertheless, with respect to the absence of a timely objection on the issue of admissibility of the Traffic Accident Report, the same requires further examination. We further take this occasion to harmonize this Court's ruling in *Standard Insurance Co. Inc. vs. Cuaresma*[44] as applied by the CA and the case of *Malayan Insurance Co., Inc. vs. Spouses Reyes*[45] espoused by petitioner.

While at first glance, these cases may conflict with each other, an examination of the factual milieu by which the rule on entries in official records was applied in the two cases would show their differences. In the case of *Standard Insurance*, while the MeTC granted the claims of the insurer therein, the RTC, on appeal, reversed the MeTC's findings as there were inconsistencies in the evidence presented by the insurer. There was also a failure on the part of the insurer to sufficiently prove that the proximate cause of the damage incurred by the assured's vehicle was respondents' fault or negligence. The respondents in the said case also claimed that in order for the Traffic Accident Report to have probative value, the police officer who prepared it must be identified in court. This Court, applying the rule on entries in official records, denied the admissibility of the Traffic Accident Report in this wise:

> Moreover, for the Traffic Accident Investigation Report to be admissible as *prima facie* evidence of the facts therein stated, the following

41 *Id.* at 18.
42 *Id.* at 20.
43 *Id.* at 37.
44 *Supra* note 38.
45 *Supra* note 39.

requisites must be present:

> x x x (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

Regrettably, in this case, petitioner failed to prove the third requisite cited above. As correctly noted by the courts below, while the Traffic Accident Investigation Report was exhibited as evidence, the investigating officer who prepared the same was not presented in court to testify that he had sufficient knowledge of the facts therein stated, and that he acquired them personally or through official information. Neither was there any explanation as to why such officer was not presented. We cannot simply assume, in the absence of proof, that the account of the incident stated in the report was based on the personal knowledge of the investigating officer who prepared it.

Thus, while petitioner presented its assured to testify on the events that transpired during the vehicular collision, his lone testimony, unsupported by other preponderant evidence, fails to sufficiently establish petitioner's claim that respondents' negligence was, indeed, the proximate cause of the damage sustained by Cham's vehicle.[46]

This was eventually reiterated in the case of *DST Movers Corporation vs. People's General Insurance Corporation*,[47] when this Court held as follows:

> Here, petitioner insists that the Traffic Accident Investigation Report prepared by PO2 Tomas should not have been admitted and accorded weight by the Metropolitan Trial Court as it was "improperly identified [and] uncorroborated." Petitioner, in effect, asserts that the non-presentation in court of PO2 Tomas, the officer who prepared the report, was fatal to respondent's cause.
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> Unlike in *Dela Llana* and *Standard Insurance*, the findings of the Metropolitan Trial Court, the Regional Trial Court, and the Court of Appeals in this case are all in accord. They consistently ruled that the proximate cause of the damage sustained by the sedan was the negligent driving of a vehicle owned by petitioner. As with *Standard Insurance*, however, this conclusion is founded on the misplaced probative value accorded to a traffic accident investigation report. In the first place, this Report should not have been admitted as evidence for violating the Hearsay Rule. Bereft of evidentiary basis, the conclusion of the lower courts cannot stand as it has been reduced to conjecture. Thus, we reverse this conclusion.
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> The statements made by this court in *Standard Insurance* are on point:
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> [F]or the Traffic Accident Investigation Report to be admissible

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46 *Supra* note 38 at 744-745.

47 778 Phil. 235 (2016) (citations omitted).

> as *prima facie* evidence of the facts therein stated, the following requisites must be present:
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> . . . (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.
>
> Regrettably, in this case, petitioner failed to prove the third requisite cited above. As correctly noted by the courts below, while the Traffic Accident Investigation Report was exhibited as evidence, the investigating officer who prepared the same was not presented in court to testify that he had sufficient knowledge of the facts therein stated, and that he acquired them personally or through official information. Neither was there any explanation as to why such officer was not presented. *We cannot simply assume, in the absence of proof, that the account of the incident stated in the report was based on the personal knowledge of the investigating officer who prepared it.*
>
> Thus, while petitioner presented its assured to testify on the events that transpired during the vehicular collision, his lone testimony, unsupported by other preponderant evidence, fails to sufficiently establish petitioner's claim that respondents' negligence was, indeed, the proximate cause of the damage sustained by Cham's vehicle. [Emphasis supplied]

Respondent presented proof of the occurrence of an accident that damaged Fidel Yuboco's Honda Civic sedan, that the sedan was insured by respondent, and that respondent paid Fidel Yuboco's insurance claims. As to the identity, however, of the vehicle or of the person responsible for the damage sustained by the sedan, all that respondent relies on is the Report prepared by PO2 Tomas.

It is plain to see that the matters indicated in the Report are not matters that were personally known to PO2 Tomas. The Report is candid in admitting that the matters it states were merely reported to PO2 Tomas by "G. Simbahon of PNCC/SLEX." It was this "G. Simbahon," not PO2 Tomas, who had personal knowledge of the facts stated in the Report. Thus, even as the Report embodies entries made by a public officer in the performance of his duties, it fails to satisfy the third requisite for admissibility for entries in official records as an exception to the Hearsay Rule.

To be admitted as evidence, it was thus imperative for the person who prepared the Report—PO2 Tomas—to have himself presented as a witness and then testify on his Report. However, even as the Report would have been admitted as evidence, PO2 Tomas' testimony would not have sufficed in establishing the identity of the motor vehicle and/or the person responsible for the damage sustained by the sedan. For this purpose, the testimony of G. Simbahon was necessary.[48]

It is the absence of a timely objection that differentiates *Standard*

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48 *Id* at 248-251 (Citations omitted).

Insurance and *DST Movers* on one hand and the case of *Malayan Insurance*, on the other hand. As this Court found in *Malayan Insurance,* the failure of the respondent therein to raise timely objection to the admissibility of the police report despite the absence of proof as to whether the police officer who prepared it had personal knowledge of the facts contained therein, resulted in the admissibility of the said report despite being hearsay evidence, thus:

> Notably, the presentation of the police report itself is admissible as an exception to the hearsay rule even if the police investigator who prepared it was not presented in court, as long as the above requisites could be adequately proved.
>
> Here, there is no dispute that SPO1 Dungga, the on-the-spot investigator, prepared the report, and he did so in the performance of his duty. However, what is not clear is whether SPO1 Dungga had sufficient personal knowledge of the facts contained in his report. Thus, the third requisite is lacking.
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> Respondents failed to make a timely objection to the police report's presentation in evidence; thus, they are deemed to have waived their right to do so. As a result, the police report is still admissible in evidence.[49]

Timely objection made by a party against the evidence presented by the other party is significant since the Rules mandates that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise, the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.[50] In the case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. When a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.[51]

Poring over the pleadings submitted in support of the arguments raised by the parties, We found that no timely objection was made by respondent on the admissibility of the Traffic Accident Report. An oversight committed by the CA in ruling the inadmissibility of the Traffic Accident Report lies in the

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49 *Supra* note 39 at 823.

50 See *Maunlad Savings & Loan Association, Inc. vs. Court of Appeals*, 399 Phil. 590, 600 (2000).

51 *Lorenzana vs. Lelina*, 793 Phil. 271, 282-283 (2016).

characterization of the complaint filed by petitioner as one falling under the Rules on Summary Procedure. This led to the conclusion that petitioner should have at least attached the affidavit of Tatlonghari on his personal knowledge of the vehicular accident.

Under A.M. No. 02-11-09-SC, which amended the Rules on Summary Procedure, and which was the Rule applicable at the time of filing the complaint, the threshold amount for the applicability of the said Rule is ₱200,000.00 for cases filed in Metro Manila.[52] Considering that the total amount of petitioner's claim is ₱350,000.00, it is the ordinary rules of procedure that governs the said action. Thus, the rules on objection applies. In the absence of a timely objection made by respondent at the time when petitioner offered in evidence the Traffic Accident Report, any irregularity on the rules on admissibility of evidence should be considered as waived.

As argued by petitioner and not refuted by respondent, there was no timely objection made by respondent during the proceedings at the MeTC with respect to the admissibility of the Traffic Accident Report. The issue of hearsay was not raised by respondent either in its Answer, its Pre-Trial Brief, during trial or after petitioner's offer of evidence. It was only on appeal with the RTC when respondent raised the issue of admissibility of the Traffic Accident Report, which the RTC did not take into consideration.

In the case of *Philippine Ports Authority vs. City of Iloilo,*[53] We clarified that:

> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the first level court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the first level court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[54]

In *Del Rosario vs. Bonga,*[55] We held thusly:

> Indeed, there are exceptions to the aforecited rule. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there

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52 Acting on the proposal of the Committee on Revision of the Rules of Court, the Court Resolved to AMEND Section 1.A(2) of the Revised Rule on Summary Procedure as follows:
"2 All other cases, except probate proceedings, where the total amount of the plaintiff's claim does not exceed one hundred thousand pesos (P100,000.00) or two hundred thousand pesos (P200,000.00) in Metropolitan Manila, exclusive of interest and costs."

53 453 Phil. 927 (2003).

54 *Id.* at 934.

55 402 Phil. 949, 960 (2001).

> are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.[56]

In the instant case, none of the exceptions apply. It must be added that had the claim of petitioner fallen within the coverage of the Rules on Summary Procedure at the time it was filed, it would only be on appeal when the issue of admissibility of evidence could be assailed by respondent. This is because the Rules on Summary Procedure does not provide rules on offer of evidence; rather, it requires the submission of position papers and affidavits of witnesses of the parties before a judgment is rendered.[57] However, as mentioned, the amount sought to be recovered by petitioner was ₱350,000.00, which is above the threshold set by the prevailing Rules on Summary Procedure at the time of the filing of petitioner's complaint. The ordinary rules on offer and objection should, therefore, be applied, and the issue of admissibility of the Traffic Accident Report as hearsay evidence should not have been entertained by the CA.

Hearsay evidence is devoid of probative value; exception

We are not unmindful of Our previous pronouncement that hearsay evidence, whether objected to or not, cannot be given credence except in very unusual circumstances.[58] One of the circumstances for which hearsay evidence must be given probative value is when it establishes proof that is independent of its character as hearsay. Under the superseded Rules,[59] the standard for which hearsay evidence was appreciated is the opportunity to subject the person who has the actual personal knowledge of the facts being testified by a witness, to cross-examination. It is because the witness had no personal knowledge of the facts being testified that no cross-examination could be effectively conducted. However, this no longer holds true when the evidence, despite its hearsay character, establishes a presumption or a fact which does not necessitate the conduct of cross-examination.

It must be noted that the purpose of cross-examination is not simply to afford the other party due process. Moreso, it is to ferret out the truth being contested by both parties. This is the purpose of the Rules on Evidence, for evidence is defined as the means, sanctioned by the Rules, to ascertain in a judicial proceeding, the truth respecting a matter.[60] In ascertaining the truth, the Rules of Court takes into consideration not only the nature of the evidence presented but also on the manner as to how it was obtained. Hearsay evidence primarily lacks sufficient standard to determine the truth thereof because the manner by which it was obtained becomes questionable. The supposed truth accompanying it cannot also be subjected to examination by the court. However, this cannot be applied to a situation where a piece of evidence, despite its hearsay character, establishes a principle established in law,

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56 *Id.* at 960.
57 See Sec. 9, Revised Rules on Summary Procedure
58 *Dra. Llano vs. Biong*, 722 Phil. 743, 758-759 (2013).
59 Now known as *lack of firsthand knowledge* under the Amended Rules
60 Rule 128, Sec. 1, Rules of Court.

independent of its character as a hearsay, such as those establishing negligence under the doctrine of *res ipsa loquitor.*

Res ipsa loquitor

The doctrine of *res ipsa loquitor* is an exception to the rule that hearsay evidence is devoid of probative value. This is because the doctrine of *res ipsa loquitor* establishes a rule on negligence, whether the evidence is subjected to cross-examination or not. It is a rule that can stand on its own independently of the character of the evidence presented as hearsay. The doctrine was eloquently explained in the case of *Solidum vs. People*[61] as follows:

> *Res ipsa loquitur* is literally translated as "*the thing or the transaction speaks for itself.*" The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." It is simply "a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself.[62]

As such, the applicability of the doctrine of *res ipsa loquitor* establishes a presumption of negligence based on the occurrence of the incident in itself. In cases involving vehicular accidents, it is sufficient that the accident itself be established, and once established through the admission of evidence, whether hearsay or not, the rule on *res ipsa loquitor* already starts to apply.

It is settled that there are two stages that a piece of evidence must hurdle before it becomes favorable to the party introducing it. The first one is admissibility and the second one is its weight or probative value. It has been held that the admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. As explained by the Court in the case of *Mancol Jr. vs. Development Bank of the Philippines*:[63]

> The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the

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61 728 Phil. 579 (2014).
62 *Id.* at 589.
63 821 Phil. 323 (2017).

> part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[64]

In the case of hearsay evidence seeking to prove negligence, which is not objected to, as in the instant case, the same becomes admissible in evidence because of the waiver by the other party as to its admissibility. With respect to its probative value, unlike other hearsay evidence, where the truth could not still be determined by the court despite its admissibility because of the issue of reliability of the source of the information and the absence of opportunity on the part of the court to examine the truth of such hearsay evidence, hearsay evidence that seek to prove negligence can stand on their own despite their character as hearsay. This is because the doctrine of *res ipsa loquitor* establishes a rule on negligence, which pinpoints the person guilty of negligence based on a given set of facts. It springs from common knowledge by which liability can already be determined from the occurrence of the mishap or accident. As such, it fills in the gap that usually accompanies the appreciation of the probative value of a hearsay evidence that is not objected to. Once negligence is established, there is no need for the court to make further examination simply because the presumption of negligence is already provided by the rule of *res ipsa loquitor,* as the event, which is a vehicular accident in this case, already speaks for itself. Thus, while as a general rule, hearsay evidence does not have probative value whether it be objected to or not, an exception to this is a hearsay evidence that seeks to prove negligence under the doctrine of *res ipsa loquitor,* which carries probative weight when not objected to.

The doctrine of res ipsa loquitor established the negligence of Cadavido

The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[65]

In the instant case, the Traffic Accident Report of PO3 Quila and the Traffic Accident Sketch prepared by Tatlonghari showed that all the three vehicles involved in the accident were traversing the same traffic direction. The aluminum van was in front of the insured vehicle of Lojo, while the Pascual Liner bus driven by Cadavido was at the rear of the insured vehicle. Being at the rear end of the vehicles, it was Cadavido who had a clear view of the traffic direction and the presence of the vehicles in front of him. It was him who had the responsibility to observe the proper distance between vehicles and had the last opportunity to take the needed maneuvers to avoid a

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64 *Id* at 335 (Citations omitted).

65 *Cortel vs. Gepaya-Lim,* 802 Phil. 779, 788 (2016); Article 2180, New Civil Code.

collision. Based on the Traffic Accident Sketch, the insured vehicle was hit at the right side of its rear because of the impact of collision from the right side of the front of the bus of respondent. This caused it to be pushed toward the left lane, and in turn hit an aluminum van that was in front. As he failed to take the necessary precautions, it was Cadavido who set into motion the vehicles that caused the vehicular accident, hitting the insured vehicle in the rear and the latter vehicle in turn hitting the rear of the aluminum van that was in front. There was also no evidence adduced to show contributory negligence on the part of the insured vehicle.

Moreover, as pointed out by petitioner, the Traffic Accident Sketch[66] bore the signature of Cadavido as the driver of the Pascual Liner bus. There was nothing from the pleadings made available before this Court, that would show that respondent made a denial of this fact. Cadavido's signature on the said sketch served as an admission of the location of the damage caused by the collision to the vehicles involved. It was also an affirmation that the Traffic Accident Sketch was able to accurately reflect the respective positions of the vehicles involved in the accident. As explained, the positions of these vehicles as they appeared on the sketch showed that respondent's driver was negligent.

The rule is when an employee causes damage due to their own negligence while performing their own duties, there arises a presumption that their employer is negligent. This presumption can be rebutted only by proof of observance by the employer of the diligence of a good father of a family in the selection and supervision of its employees.[67] In this case, respondent did not adduce proof to show that it observed the required diligence of a good father of a family. Thus, it is liable for the negligence committed by its employee.

Principle of subrogation

Petitioner, being an insurer who paid Lojo of his claims filed under his insurance policy, is subrogated to the rights of the insured. This is provided under Article 2207 of the Civil Code, which reads as follows:

> **Article 2207.** If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

As such, payment made by petitioner to Lojo entitles it to recover from the party liable for the damage caused to the insured vehicle. Payment by the insurer to the assured operates as an equitable assignment to the former of all

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66 *Rollo*, p. 159.

67 *Cortel vs. Gepaya-Lim, supra* note 65, at 789

remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.[68] As such, there is no need for petitioner to make a demand to respondent for the law itself provides the obligation to pay upon payment by the insured. Having established the negligence committed by Cadavido and for which respondent was likewise liable, the latter should be liable for the damages caused by its employee.

WHEREFORE, the instant petition is **GRANTED**. The Decision of the Court of Appeals dated June 13, 2018 and its Resolution dated September 28, 2018 are **SET ASIDE**. Pascual Liner Inc. is liable to pay UCPB General Insurance Co. Inc. the amount of ₱350,000.00, plus interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until its full payment.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

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68 *Pan Malayan Insurance Corporation vs. Court of Appeals*, 262 Phil. 919, 923 (1990).

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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

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.

ALEXANDER G. GESMUNDO
Chief Justice