

THIRD DIVISION

[G.R. No. 210445, December 07, 2015]

**NILO B. ROSIT, PETITIONER, VS. DAVAO DOCTORS HOSPITAL
AND DR. ROLANDO G. GESTUVO, RESPONDENTS.**

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.

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 P4,500.

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 P140,000, as well as for the P50,000 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.

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 (P140,199.13) representing reimbursement of actual expenses incurred by plaintiff in the operation and re-operation of his mandible;
- b) the sum of TWENTY NINE THOUSAND AND SIXTY EIGHT PESOS (P29,068.00) representing reimbursement of the filing fees and appearance fees;
- c) the sum of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as and for attorney's fees;
- d) the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages;
- e) the amount of TEN THOUSAND PESOS (P10,000.00) as exemplary damages; and
- f) the costs of the suit.

For lack of merit, the complaint against defendant DAVAO DOCTORS HOSPITAL and the defendants' counterclaims are hereby ordered DISMISSED.

Cost against Dr. Rolando G. Gestuvo.

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.

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)

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 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 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**