

## SECOND DIVISION

[ G.R. No. 180440, December 05, 2012 ]

**DR. GENEVIEVE L. HUANG, PETITIONER, VS. PHILIPPINE HOTELIERS, INC., DUSIT THANI PUBLIC CO., LTD. AND FIRST LEPANTO TAISHO INSURANCE CORPORATION, RESPONDENTS.**

### DECISION

**PEREZ, J.:**

For this Court's resolution is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 87065 dated 9 August 2007, affirming the Decision<sup>[2]</sup> of Branch 56 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 96-1367 dated 21 February 2006, dismissing for lack of merit herein petitioner Dr. Genevieve L. Huang's Complaint for Damages. Assailed as well is the Court of Appeals' Resolution<sup>[3]</sup> dated 5 November 2007 denying for lack of merit petitioner's Motion for Reconsideration.

This case stemmed from a Complaint for Damages filed on 28 August 1996 by petitioner Dr. Genevieve L. Huang<sup>[4]</sup> against herein respondents Philippine Hoteliers, Inc. (PHI)<sup>[5]</sup> and Dusit Thani Public Co., Ltd. (DTPCI),<sup>[6]</sup> as owners of Dusit Thani Hotel Manila (Dusit Hotel);<sup>[7]</sup> and co-respondent First Lepanto Taisho Insurance Corporation (First Lepanto),<sup>[8]</sup> as insurer of the aforesaid hotel. The said Complaint was premised on the alleged negligence of respondents PHI and DTPCI's staff, in the untimely putting off all the lights within the hotel's swimming pool area, as well as the locking of the main entrance door of the area, prompting petitioner to grope for a way out. While doing so, a folding wooden counter top fell on her head causing her serious brain injury. The negligence was allegedly compounded by respondents PHI and DTPCI's failure to render prompt and adequate medical assistance.

Petitioner's version of the antecedents of this case is as follows:

On 11 June 1995, Delia Goldberg (Delia), a registered guest of Dusit Hotel, invited her friend, petitioner Dr. Genevieve L. Huang, for a swim at the hotel's swimming pool facility. They started bathing at around 5:00 p.m. At around 7:00 p.m., the hotel's swimming pool attendant informed them that the swimming pool area was about to be closed. The two subsequently proceeded to the shower room adjacent to the swimming pool to take a shower and dress up. However, when they came out of the bathroom, the entire swimming pool area was already pitch black and there was no longer any person around but the two of them. They carefully walked towards the main door leading to the hotel but, to their surprise, the door was locked.<sup>[9]</sup>

Petitioner and Delia waited for 10 more minutes near the door hoping someone would come to their rescue but they waited in vain. Delia became anxious about

their situation so petitioner began to walk around to look for a house phone. Delia followed petitioner. After some time, petitioner saw a phone behind the lifeguard's counter. While slowly walking towards the phone, a hard and heavy object, which later turned out to be the folding wooden counter top, fell on petitioner's head that knocked her down almost unconscious.<sup>[10]</sup>

Delia immediately got hold of the house phone and notified the hotel telephone operator of the incident. Not long after, the hotel staff arrived at the main entrance door of the swimming pool area but it took them at least 20 to 30 minutes to get inside. When the door was finally opened, three hotel chambermaids assisted petitioner by placing an ice pack and applying some ointment on her head. After petitioner had slightly recovered, she requested to be assisted to the hotel's coffee shop to have some rest. Petitioner demanded the services of the hotel physician.<sup>[11]</sup>

Dr. Violeta Dalumpines (Dr. Dalumpines) arrived. She approached petitioner and introduced herself as the hotel physician. However, instead of immediately providing the needed medical assistance, Dr. Dalumpines presented a "Waiver" and demanded that it be signed by petitioner, otherwise, the hotel management will not render her any assistance. Petitioner refused to do so.<sup>[12]</sup>

After eating her dinner and having rested for a while, petitioner left the hotel's coffee shop and went home. Thereupon, petitioner started to feel extraordinary dizziness accompanied by an uncomfortable feeling in her stomach, which lasted until the following day. Petitioner was constrained to stay at home, thus, missing all her important appointments with her patients. She also began experiencing "on" and "off" severe headaches that caused her three (3) sleepless nights.<sup>[13]</sup>

Petitioner, thus, decided to consult a certain Dr. Perry Noble (Dr. Noble), a neurologist from Makati Medical Center, who required her to have an X-ray and a Magnetic Resonance Imaging (MRI) tests.<sup>[14]</sup> The MRI Report<sup>[15]</sup> dated 23 August 1995 revealed the following findings:

#### CONSULTATION REPORT:

MRI examination of the brain shows scattered areas of intraparenchymal contusions and involving mainly the left middle and posterior temporal and slightly the right anterior temporal lobe.

Other small areas of contusions with suggestive peritachiae are seen in the left fronto-parietal, left parieto-occipital and with deep frontal periventricular subcortical and cortical regions. There is no mass effect nor signs of localized hemorrhagic extravasation.

The ventricles are not enlarged, quite symmetrical without shifts or deformities; the peripheral sulci are within normal limits.

The C-P angles, petromastoids, sella, extrasellar and retro orbital areas appear normal.

The brainstem is unremarkable.

IMPRESSION: Scattered small intraparenchymal contusions mainly involving the left middle-posterior temporal lobe and also right medial anterior temporal, both deep frontal subcortical, left parieto-occipital subcortical and cortical regions.

Ischemic etiology not ruled out.

No localized intra - or extracerebral hemorrhage.<sup>[16]</sup>

Petitioner claimed that the aforesaid MRI result clearly showed that her head was bruised. Based also on the same MRI result, Dr. Noble told her that she has a very serious brain injury. In view thereof, Dr. Noble prescribed the necessary medicine for her condition.<sup>[17]</sup>

Petitioner likewise consulted a certain Dr. Ofelia Adapon, also a neurologist from Makati Medical Center, who required her to undergo an Electroencephalogram examination (EEG) to measure the electrostatic in her brain.<sup>[18]</sup> Based on its result,<sup>[19]</sup> Dr. Ofelia Adapon informed her that she has a serious condition—a permanent one. Dr. Ofelia Adapon similarly prescribed medicines for her brain injury.<sup>[20]</sup>

Petitioner's condition did not get better. Hence, sometime in September 1995, she consulted another neuro-surgeon by the name of Dr. Renato Sibayan (Dr. Sibayan), who required her to have an X-ray test.<sup>[21]</sup> According to petitioner, Dr. Sibayan's finding was the same as those of the previous doctors that she had consulted—she has a serious brain injury.<sup>[22]</sup>

By reason of the unfortunate 11 June 1995 incident inside the hotel's swimming pool area, petitioner also started to feel losing her memory, which greatly affected and disrupted the practice of her chosen profession.<sup>[23]</sup> Thus, on 25 October 1995, petitioner, through counsel, sent a demand letter<sup>[24]</sup> to respondents PHI and DTPCI seeking payment of an amount not less than P100,000,000.00 representing loss of earnings on her remaining life span. But, petitioner's demand was unheeded.

In November 1995, petitioner went to the United States of America (USA) for further medical treatment. She consulted a certain Dr. Gerald Steinberg and a certain Dr. Joel Dokson<sup>[25]</sup> from Mount Sinai Hospital who both found that she has "post traumatic-post concussion/contusion cephalgias-vascular and neuralgia."<sup>[26]</sup> She was then prescribed to take some medications for severe pain and to undergo physical therapy. Her condition did not improve so she returned to the Philippines.<sup>[27]</sup>

Petitioner, once again, consulted Dr. Sibayan, who simply told her to just relax and to continue taking her medicines. Petitioner also consulted other neurologists, who all advised her to just continue her medications and to undergo physical therapy for her neck pain.<sup>[28]</sup>

Sometime in 1996, petitioner consulted as well a certain Dr. Victor Lopez (Dr.

Lopez), an ophthalmologist from the Makati Medical Center, because of her poor vision, which she has experienced for several months.<sup>[29]</sup> Petitioner's Eye Report dated 5 March 1996<sup>[30]</sup> issued by Dr. Lopez stated: "IMPRESSION: Posterior vitreous detachment, right eye of floaters." Dr. Lopez told petitioner that her detached eye is permanent and very serious. Dr. Lopez then prescribed an eye drop to petitioner.<sup>[31]</sup>

For petitioner's frustration to dissipate and to regain her former strength and physical well-being, she consulted another neuro-surgeon from Makati Medical Center by the name of Dr. Leopoldo P. Pardo, Jr. (Dr. Pardo, Jr.).<sup>[32]</sup> She disclosed to Dr. Pardo, Jr. that at the age of 18 she suffered a stroke due to mitral valve disease and that she was given treatments, which also resulted in thrombocytopenia. In Dr. Pardo, Jr.'s medical evaluation of petitioner dated 15 May 1996,<sup>[33]</sup> he made the following diagnosis and opinion:

#### DIAGNOSIS AND OPINION:

This patient sustained a severe head injury in (sic) [11 June 1995] and as a result of which she developed the following injuries:

1. Cerebral Concussion and Contusion
2. Post-traumatic Epilepsy
3. Post-concussional Syndrome
4. Minimal Brain Dysfunction
5. Cervical Sprain, chronic recurrent

It is my opinion that the symptoms she complained of in the foregoing history are all related to and a result of the injury sustained on [11 June 1995].

It is further my opinion that the above diagnosis and complaints do materially affect her duties and functions as a practi[c]ing physician and dermatologist, and that she will require treatment for an undetermined period of time.

The percentage of disability is not calculated at this time and will require further evaluation and observation.<sup>[34]</sup>

Dr. Pardo, Jr. then advised petitioner to continue her medications.<sup>[35]</sup>

Petitioner likewise consulted a certain Dr. Tenchavez<sup>[36]</sup> for her follow-up EEG.<sup>[37]</sup> He similarly prescribed medicine for petitioner's deep brain injury. He also gave her pain killer for her headache and advised her to undergo physical therapy. Her symptoms, however, persisted all the more.<sup>[38]</sup>

In 1999, petitioner consulted another neurologist at the Makati Medical Center by the name of Dr. Martesio Perez (Dr. Perez) because of severe fleeting pains in her head, arms and legs; difficulty in concentration; and warm sensation of the legs,

which symptoms also occurred after the 11 June 1995 incident. Upon examination, Dr. Perez observed that petitioner has been experiencing severe pains and she has a slight difficulty in concentration. He likewise noted that there was a slight spasm of petitioner's neck muscle but, otherwise, there was no objective neurologic finding. The rest of petitioner's neurologic examination was essentially normal.<sup>[39]</sup>

Dr. Perez's neurologic evaluation<sup>[40]</sup> of petitioner reflected, among others: (1) petitioner's past medical history, which includes, among others, mitral valve stenosis; (2) an interpretation of petitioner's EEG results in October 1995 and in January 1999, i.e., the first EEG showed sharp waves seen bilaterally more on the left while the second one was normal; and (3) interpretation of petitioner's second MRI result, i.e., petitioner has a permanent damage in the brain, which can happen either after a head injury or after a stroke. Dr. Perez concluded that petitioner has post-traumatic or post concussion syndrome.<sup>[41]</sup>

Respondents, on the other hand, denied all the material allegations of petitioner and, in turn, countered the latter's statement of facts, thus:

According to respondents PHI and DTPCI, a sufficient notice had been posted on the glass door of the hotel leading to the swimming pool area to apprise the people, especially the hotel guests, that the swimming pool area is open only from 7:00 a.m. to 7:00 p.m.<sup>[42]</sup> Though the hotel's swimming pool area is open only between the aforesaid time, the lights thereon are kept on until 10:00 p.m. for, (1) security reasons; (2) housekeeping personnel to do the cleaning of the swimming pool surroundings; and (3) people doing their exercise routine at the Slimmer's World Gym adjacent to the swimming pool area, which was then open until 10:00 p.m., to have a good view of the hotel's swimming pool. Even granting that the lights in the hotel's swimming pool area were turned off, it would not render the area completely dark as the Slimmer's World Gym near it was well-illuminated.<sup>[43]</sup>

Further, on 11 June 1995, at round 7:00 p.m., the hotel's swimming pool attendant advised petitioner and Delia to take their showers as it was already closing time. Afterwards, at around 7:40 p.m., Pearlie Benedicto-Lipana (Ms. Pearlie), the hotel staff nurse, who was at the hotel clinic located at the mezzanine floor, received a call from the hotel telephone operator informing her that there was a guest requiring medical assistance at the hotel's swimming pool area located one floor above the clinic.<sup>[44]</sup>

Immediately, Ms. Pearlie got hold of her medical kit and hurriedly went to the hotel's swimming pool area. There she saw Delia and petitioner, who told her that she was hit on the head by a folding wooden counter top. Although petitioner looked normal as there was no indication of any blood or bruise on her head, Ms. Pearlie still asked her if she needed any medical attention to which petitioner replied that she is a doctor, she was fine and she did not need any medical attention. Petitioner, instead, requested for a hirudoid cream to which Ms. Pearlie acceded.<sup>[45]</sup>

At about 8:00 p.m., after attending to petitioner, Ms. Pearlie went back to the hotel clinic to inform Dr. Dalumpines of the incident at the hotel's swimming pool area. But before she could do that, Dr. Dalumpines had already chanced upon Delia and petitioner at the hotel's coffee shop and the latter reported to Dr. Dalumpines that