

ANTONIO GELUZ, PETITIONER, VS. THE HON. COURT OF APPEALS AND OSCAR LAZO, RESPONDENTS.

G.R. No. L-16439. July 20, 1961

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b6fdec4b77af/>

REYES, J.B.L., J.:

This petition for certiorari brings up for review the question whether the husband of a woman, who voluntarily procured her abortion, could recover damages from the physician who caused the same.

The litigation was commenced in the Court of First Instance of Manila by respondent Oscar Lazo, the husband of Nita Villanueva, against petitioner Antonio Geluz, a physician. Convinced of the merits of the complaint upon the evidence adduced, the trial court rendered judgment in favor of plaintiff Lazo and against defendant Geluz ordering the latter to pay P3,000 as damages, P700.00 as attorney's fees and the costs of the suit. On appeal, the Court of Appeals, in a special division of five, sustained the award by a majority vote of three justices as against two, who rendered a separate dissenting opinion.

The facts are set forth in the majority opinion as follows:

"Nita Villanueva came to know the defendant (Antonio Geluz) for the first time in 1948—through her aunt Paula Yambot. In 1950 she became pregnant by her present husband before they were legally married. Desiring to conceal her pregnancy from her parent, and acting on the advice of her aunt, she had herself aborted by the defendant. After her marriage with the plaintiff, she again became pregnant. As she was then employed in the Commission on Elections and her pregnancy proved to be inconvenient, she had herself aborted again by the defendant in October 1953. Less than two years later, she again became pregnant. On February 21, 1955, accompanied by her sister Purificacion and the latter's daughter Lucida, she again repaired to the defendant's clinic on Carriedo and P. Gomez streets in Manila, where the three met the defendant and his wife. Nita was again aborted, of a two-month old foetus, in consideration of the sum of fifty pesos, Philippine currency. The plaintiff was at this time in the province of Cagayan, campaigning for his election to the provincial board; he did not know of, nor gave his consent to, the abortion."

It is the third and last abortion that constitutes plaintiffs basis in filing this action and award of damages. Upon application of the defendant Geluz, we granted certiorari.

The Court of Appeals and the trial court predicated the award of damages in the sum of P3,000.00 upon the provisions of the initial paragraph of Article 2206 of the Civil Code of the Philippines. This we believe to be error, for the said article, in fixing a minimum award of P3,000 for the death of a person, does not cover the case of an unborn foetus that is not endowed with personality. Under the system of our Civil Code, "la criatura abortiva no alcanza la categoria de persona natural y en consecuencia es un ser no nacido a la vida del Derecho" (Casso-Cervera, "Diccionario de Derecho Privado" Vol. 1, p. 49), being incapable of having rights and obligations.

Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one

injured, it is easy to see that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality (or juridical capacity, as distinguished from capacity to act). It is no answer to invoke the provisional personality of a conceived child (*conceptus pro nato habetur*) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be subsequently born alive: "provided it be born later with the conditions specified in the following article". In the present case, there is no dispute that the child was dead when separated from its mother's womb.

The prevailing American jurisprudence is to the same effect; and is generally held that recovery can not be had for the death of an unborn child (*Stafford vs. Roadway Transit Co.*, 70 F. Supp. 555; *Dietrich vs. Northhampton*, 52 Am. Rep. 242; and numerous cases collated in the editorial note, 10 ALR [2d] 639).

This is not to say that the parents are not entitled to collect any damages at all. But such damages must be those inflicted directly upon them, as distinguished from the injury or violation of the rights of the deceased, his right to life and physical integrity. Because the parents can not expect either help, support or services from an unborn child, they would normally be limited to moral damages for the illegal arrest of the normal development of the *spes hominis* that was the foetus, i.e., on account of distress and anguish attendant to its loss, and the disappointment of their parental expectations (Civ. Code, Art. 2217), as well as to exemplary damages, if the circumstances should warrant them (Art. 2230). But in the case before us, both the trial court and the Court of Appeals have not found any basis for an award of moral damages, evidently because the appellee's indifference to the previous abortions of his wife, also caused by the appellant herein, clearly indicates that he was unconcerned with the frustration of his parental hopes and affections. The lower court expressly found, and the majority opinion of the Court of Appeals did not contradict it, that the appellee was aware of the second abortion; and the probabilities are that he was likewise aware of the first. Yet despite the suspicious repetition of the event, he appeared to have taken no steps to investigate or pinpoint the causes thereof, and secure the punishment of the responsible practitioner. Even after learning of the third abortion, the appellee does not seem to have taken interest in the administrative and criminal cases against the appellant. His only concern appears to have been directed at obtaining from the doctor a large money payment, since he sued for P50,000 damages and P3,000 attorneys fees, an "indemnity" claim that, under the circumstances of record, was clearly exaggerated.

The dissenting Justices of the Court of Appeals have aptly remarked that:

"It seems to us that the normal reaction of a husband who righteously feels outraged by the abortion which his wife has deliberately sought at the hands of a physician would be high-minded rather than mercenary; and that his primary concern would be to see to it that the medical profession was purged of an unworthy member rather than turn his wife's indiscretion to personal profit, and with that idea in mind to press either the administrative or the criminal cases he had filed, or both, instead of abandoning them in favor of a civil action for damages of which not only he, but also his wife, would be the beneficiaries."

It is unquestionable that the appellant's act in provoking the abortion of appellee's wife, without medical necessity to warrant it, was a criminal and morally reprehensible act, that can not be too severely condemned; and the consent of the woman or that of her husband does not excuse it. But the immorality or illegality of the act does not justify an award of damages that, under the circumstances on record, have no factual or legal basis.

The decision appealed from is reversed, and the complaint ordered dismissed. Without costs.

Let a copy of this decision be furnished the Department of Justice and the Board of Medical Examiners for their

information and such investigation and action against the appellee Antonio Geluz as the facts may warrant.

Bengzon, C.J., Padilla, Labrador, Barrera, Paredes, Dizon, and Natividad, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.