

D.M. CONSUNJI, INC., PETITIONER, VS. COURT OF APPEALS AND MARIA J. JUEGO, RESPONDENTS.

G.R. No. 137873. April 20, 2001

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-137873/>

KAPUNAN, J.:

At around 1:30 p.m., November 2, 1990, Jose Juego, a construction worker of D.M. Consunji, Inc., fell 14 floors from the Renaissance Tower, Pasig City to his death.

PO3 Rogelio Villanueva of the Eastern Police District investigated the tragedy and filed a report dated November 25, 1990, stating that:

x x x. [The] [v]ictim was rushed to [the] Rizal Medical Center in Pasig, Metro Manila where he was pronounced dead on arrival (DOA) by the attending physician, Dr. Errol de Yzo[,] at around 2:15 p.m. of the same date.

Investigation disclosed that at the given time, date and place, while victim Jose A. Juego together with Jessie Jaluag and Delso Destajo [were] performing their work as carpenter[s] at the elevator core of the 14[th] floor of the Tower D, Renaissance Tower Building on board a [p]latform made of channel beam (steel) measuring 4.8 meters by 2 meters wide with pinulid plywood flooring and cable wires attached to its four corners and hooked at the 5 ton chain block, when suddenly, the bolt or pin which was merely inserted to connect the chain block with the [p]latform, got loose xxx causing the whole [p]latform assembly and the victim to fall down to the basement of the elevator core, Tower D of the building under construction thereby crushing the victim to death, save his two (2) companions who luckily jumped out for safety.

It is thus manifest that Jose A. Juego was crushed to death when the [p]latform he was then on board and performing work, fell. And the falling of the [p]latform was due to the removal or getting loose of the pin which was merely inserted to the connecting points of the chain block and [p]latform but without a safety lock.[1]

On May 9, 1991, Jose Juego's widow, Maria, filed in the Regional Trial Court (RTC) of Pasig a complaint for damages against the deceased's employer, D.M. Consunji, Inc. The employer raised, among other defenses, the widow's prior availment of the benefits from the State Insurance Fund.

After trial, the RTC rendered a decision in favor of the widow Maria Juego. The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff, as follows:

1. P50,000.00 for the death of Jose A. Juego.
2. P10,000.00 as actual and compensatory damages.
3. P464,000.00 for the loss of Jose A. Juego's earning capacity.
4. P100,000.00 as moral damages.
5. P20,000.00 as attorney's fees, plus the costs of suit.

SO ORDERED.[2]

On appeal by D.M. Consunji, the Court of Appeals (CA) affirmed the decision of the RTC in toto.

D.M. Consunji now seeks the reversal of the CA decision on the following grounds:

- THE APPELLATE COURT ERRED IN HOLDING THAT THE POLICE REPORT WAS ADMISSIBLE EVIDENCE OF THE ALLEGED NEGLIGENCE OF PETITIONER.
- THE APPELLATE COURT ERRED IN HOLDING THAT THE DOCTRINE OF RES IPSA LOQUITUR [sic] IS APPLICABLE TO PROVE NEGLIGENCE ON THE PART OF PETITIONER.
- THE APPELLATE COURT ERRED IN HOLDING THAT PETITIONER IS PRESUMED NEGLIGENT UNDER ARTICLE 2180 OF THE CIVIL CODE, AND
- THE APPELLATE COURT ERRED IN HOLDING THAT RESPONDENT IS NOT PRECLUDED FROM RECOVERING DAMAGES UNDER THE CIVIL CODE.[3]

Petitioner maintains that the police report reproduced above is hearsay and, therefore, inadmissible. The CA ruled otherwise. It held that said report, being an entry in official records, is an exception to the hearsay rule.

The Rules of Court provide that a witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his perception.[4] A witness, therefore, may not testify as what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[5] This is known as the hearsay rule.

Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements.[6] 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.[7] The hearsay rule, therefore, excludes evidence that cannot be tested by cross-examination.[8] The Rules of Court allow several exceptions to the rule,[9] among which are entries in official records. Section 44, Rule 130 provides:

Entries in official records made in the performance of his duty 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.

In *Africa, et al. vs. Caltex (Phil.), Inc., et al.*, [10] this Court, citing the work of Chief Justice Moran, enumerated the requisites for admissibility under the above rule:

- (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.

The CA held that the police report meets all these requisites. Petitioner contends that the last requisite is not present.

The Court notes that PO3 Villanueva, who signed the report in question, also testified before the trial court. In *Rodriguez vs. Court of Appeals*, [11] which involved a Fire Investigation Report, the officer who signed the fire

report also testified before the trial court. This Court held that the report was inadmissible for the purpose of proving the truth of the statements contained in the report but admissible insofar as it constitutes part of the testimony of the officer who executed the report.

x x x. Since Major Enriquez himself took the witness stand and was available for cross-examination, the portions of the report which were of his personal knowledge or which consisted of his perceptions and conclusions were not hearsay. The rest of the report, such as the summary of the statements of the parties based on their sworn statements (which were annexed to the Report) as well as the latter, having been included in the first purpose of the offer [as part of the testimony of Major Enriquez], may then be considered as independently relevant statements which were gathered in the course of the investigation and may thus be admitted as such, but not necessarily to prove the truth thereof. It has been said that:

"Where regardless of the truth or falsity of a statement, the fact that it has been made is relevant, the hearsay rule does not apply, but the statement may be shown. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue, or be circumstantially relevant as to the existence of such a fact."

When Major Enriquez took the witness stand, testified for petitioners on his Report and made himself available for cross-examination by the adverse party, the Report, insofar as it proved that certain utterances were made (but not their truth), was effectively removed from the ambit of the aforementioned Section 44 of Rule 130. Properly understood, this section does away with the testimony in open court of the officer who made the official record, considers the matter as an exception to the hearsay rule and makes the entries in said official record admissible in evidence as prima facie evidence of the facts therein stated. The underlying reasons for this exceptional rule are necessity and trustworthiness, as explained in *Antillon v. Barcelon*.

The litigation is unlimited in which testimony by officials is daily needed; the occasions in which the officials would be summoned from his ordinary duties to declare as a witness are numberless. The public officers are few in whose daily work something is not done in which testimony is not needed from official sources. Were there no exception for official statements, hosts of officials would be found devoting the greater part of their time to attending as witnesses in court or delivering deposition before an officer. The work of administration of government and the interest of the public having business with officials would alike suffer in consequence. For these reasons, and for many others, a certain verity is accorded such documents, which is not extended to private documents. (3 Wigmore on Evidence, Sec. 1631).

The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do in discharge of their duty may be given in evidence and shall be taken to be true under such a degree of caution as to the nature and circumstances of each case may appear to require.

It would have been an entirely different matter if Major Enriquez was not presented to testify on his report. In that case the applicability of Section 44 of Rule 143 would have been ripe for determination, and this Court would have agreed with the Court of Appeals that said report was inadmissible since the aforementioned third requisite was not satisfied. The statements given by the sources of information of Major Enriquez failed to qualify as "official information," there being no showing that, at the very least, they were under a duty to give the statements for record.

Similarly, the police report in this case is inadmissible for the purpose of proving the truth of the statements contained therein but is admissible insofar as it constitutes part of the testimony of PO3 Villanueva.

In any case, the Court holds that portions of PO3 Villanueva's testimony which were of his personal knowledge suffice to prove that Jose Juego indeed died as a result of the elevator crash. PO3 Villanueva had seen Juego's remains at the morgue,[12] making the latter's death beyond dispute. PO3 Villanueva also conducted an ocular

inspection of the premises of the building the day after the incident[13] and saw the platform for himself.[14] He observed that the platform was crushed[15] and that it was totally damaged.[16] PO3 Villanueva also required Garcia and Fabro to bring the chain block to the police headquarters. Upon inspection, he noticed that the chain was detached from the lifting machine, without any pin or bolt.[17]

What petitioner takes particular exception to is PO3 Villanueva's testimony that the cause of the fall of the platform was the loosening of the bolt from the chain block. It is claimed that such portion of the testimony is mere opinion. Subject to certain exceptions,[18] the opinion of a witness is generally not admissible.[19]

Petitioner's contention, however, loses relevance in the face of the application of *res ipsa loquitur* by the CA. The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.[20] The concept of *res ipsa loquitur* has been explained in this wise:

While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.[21]

One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.[22]

The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.

It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The *res ipsa loquitur* doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some courts add to the three prerequisites for the application of the *res ipsa loquitur* doctrine the further requirement that for the *res ipsa loquitur* doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.[23]

The CA held that all the requisites of *res ipsa loquitur* are present in the case at bar:

There is no dispute that appellee's husband fell down from the 14th floor of a building to the basement while he was working with appellant's construction project, resulting to his death. The construction site is within the exclusive control and management of appellant. It has a safety engineer, a project superintendent, a carpenter leadman and others who are in complete control of the situation therein. The circumstances of any accident that would occur therein are peculiarly within the knowledge of the appellant or its employees. On the other hand, the appellee is not in a position to know what caused the accident. *Res ipsa loquitur* is a rule of necessity and it applies where evidence is absent or not readily available, provided the following requisites are present: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. x x x.

No worker is going to fall from the 14th floor of a building to the basement while performing work in a construction site unless someone is negligent[;] thus, the first requisite for the application of the rule of *res ipsa loquitur* is present. As explained earlier, the construction site with all its paraphernalia and human resources that likely caused the injury is under the exclusive control and management of appellant[;] thus[,] the second requisite is also present. No contributory negligence was attributed to the appellee's deceased husband[;] thus[,] the last requisite is also present. All the requisites for the application of the rule of *res ipsa loquitur* are present, thus a reasonable presumption or inference of appellant's negligence arises. x x x.[24]

Petitioner does not dispute the existence of the requisites for the application of *res ipsa loquitur*, but argues that the presumption or inference that it was negligent did not arise since it "proved that it exercised due care to avoid the accident which befell respondent's husband."

Petitioner apparently misapprehends the procedural effect of the doctrine. As stated earlier, the defendant's negligence is presumed or inferred[25] when the plaintiff establishes the requisites for the application of *res ipsa loquitur*. Once the plaintiff makes out a *prima facie* case of all the elements, the burden then shifts to defendant to explain.[26] The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances a disputable presumption, such as that of due care or innocence, may outweigh the inference.[27] It is not for the defendant to explain or prove its defense to prevent the presumption or inference from arising. Evidence by the defendant of say, due care, comes into play only after the circumstances for the application of the doctrine has been established.

In any case, petitioner cites the sworn statement of its leadman Ferdinand Fabro executed before the police investigator as evidence of its due care. According to Fabro's sworn statement, the company enacted rules and regulations for the safety and security of its workers. Moreover, the leadman and the bodegero inspect the chain block before allowing its use.

It is ironic that petitioner relies on Fabro's sworn statement as proof of its due care but, in arguing that private respondent failed to prove negligence on the part of petitioner's employees, also assails the same statement for being hearsay.

Petitioner is correct. Fabro's sworn statement is hearsay and inadmissible. Affidavits are inadmissible as evidence under the hearsay rule, unless the affiant is placed on the witness stand to testify thereon.[28] The inadmissibility of this sort of evidence is based not only on the lack of opportunity on the part of the adverse party to cross-examine the affiant, but also on the commonly known fact that, generally, an affidavit is not prepared by the affiant himself but by another who uses his own language in writing the affiant's statements which may either be omitted or misunderstood by the one writing them.[29] Petitioner, therefore, cannot use said statement as proof of its due care any more than private respondent can use it to prove the cause of her husband's death. Regrettably, petitioner does not cite any other evidence to rebut the inference or presumption of negligence arising from the

application of *res ipsa loquitur*, or to establish any defense relating to the incident.

Next, petitioner argues that private respondent had previously availed of the death benefits provided under the Labor Code and is, therefore, precluded from claiming from the deceased's employer damages under the Civil Code.

Article 173 of the Labor Code states:

ART. 173. Extent of liability. - Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall not bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven hundred sixty-one, as amended, Republic Act Numbered Six hundred ten, as amended, Republic Act Numbered Forty-eight hundred sixty-four as amended, and other laws whose benefits are administered by the System or by other agencies of the government.

The precursor of Article 173 of the Labor Code, Section 5 of the Workmen's Compensation Act, provided that:

SEC. 5. Exclusive right to compensation. - The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws because of said injury x x x.

Whether Section 5 of the Workmen's Compensation Act allowed recovery under said Act as well as under the Civil Code used to be the subject of conflicting decisions. The Court finally settled the matter in *Floresca vs. Philex Mining Corporation*,^[30] which involved a cave-in resulting in the death of the employees of the Philex Mining Corporation. Alleging that the mining corporation, in violation of government rules and regulations, failed to take the required precautions for the protection of the employees, the heirs of the deceased employees filed a complaint against Philex Mining in the Court of First Instance (CFI). Upon motion of Philex Mining, the CFI dismissed the complaint for lack of jurisdiction. The heirs sought relief from this Court.

Addressing the issue of whether the heirs had a choice of remedies, majority of the Court En Banc,^[31] following the rule in *Pacaña vs. Cebu Autobus Company*, held in the affirmative.

WE now come to the query as to whether or not the injured employee or his heirs in case of death have a right of selection or choice of action between availing themselves of the worker's right under the Workmen's Compensation Act and suing in the regular courts under the Civil Code for higher damages (actual, moral and exemplary) from the employers by virtue of the negligence or fault of the employers or whether they may avail themselves cumulatively of both actions, i.e., collect the limited compensation under the Workmen's Compensation Act and sue in addition for damages in the regular courts.

In disposing of a similar issue, this Court in *Pacaña vs. Cebu Autobus Company*, 32 SCRA 442, ruled that an injured worker has a choice of either to recover from the employer the fixed amounts set by the Workmen's Compensation Act or to prosecute an ordinary civil action against the tortfeasor for higher damages but he cannot pursue both courses of action simultaneously. [Underscoring supplied.]

Nevertheless, the Court allowed some of the petitioners in said case to proceed with their suit under the Civil Code despite having availed of the benefits provided under the Workmen's Compensation Act. The Court reasoned:

With regard to the other petitioners, it was alleged by Philex in its motion to dismiss dated May 14, 1968 before the court a quo, that the heirs of the deceased employees, namely Emerito Obra, Larry Villar, Jr., Aurelio Lanuza, Lorenzo Isla and Saturnino submitted notices and claims for compensation to the Regional

Office No.1 of the then Department of Labor and all of them have been paid in full as of August 25, 1967, except Saturnino Martinez whose heirs decided that they be paid in installments x x x. Such allegation was admitted by herein petitioners in their opposition to the motion to dismiss dated May 27, 1968 x x x in the lower court, but they set up the defense that the claims were filed under the Workmen's Compensation Act before they learned of the official report of the committee created to investigate the accident which established the criminal negligence and violation of law by Philex, and which report was forwarded by the Director of Mines to then Executive Secretary Rafael Salas in a letter dated October 19, 1967 only x x x.

WE hold that although the other petitioners had received the benefits under the Workmen's Compensation Act, such may not preclude them from bringing an action before the regular court because they became cognizant of the fact that Philex has been remiss in its contractual obligations with the deceased miners only after receiving compensation under the Act. Had petitioners been aware of said violation of government rules and regulations by Philex, and of its negligence, they would not have sought redress under the Workmen's Compensation Commission which awarded a lesser amount for compensation. The choice of the first remedy was based on ignorance or a mistake of fact, which nullifies the choice as it was not an intelligent choice. The case should therefore be remanded to the lower court for further proceedings. However, should the petitioners be successful in their bid before the lower court, the payments made under the Workmen's Compensation Act should be deducted from the damages that may be decreed in their favor. [Underscoring supplied.]

The ruling in *Floresca* providing the claimant a choice of remedies was reiterated in *Ysmael Maritime Corporation vs. Avelino*,^[32] *Vda. de Severo vs. Feliciano-Go*,^[33] and *Marcopper Mining Corp. vs. Abeleda*.^[34] In the last case, the Court again recognized that a claimant who had been paid under the Act could still sue under the Civil Code. The Court said:

In the *Robles* case, it was held that claims for damages sustained by workers in the course of their employment could be filed only under the Workmen's Compensation Law, to the exclusion of all further claims under other laws. In *Floresca*, this doctrine was abrogated in favor of the new rule that the claimants may invoke either the Workmen's Compensation Act or the provisions of the Civil Code, subject to the consequence that the choice of one remedy will exclude the other and that the acceptance of compensation under the remedy chosen will preclude a claim for additional benefits under the other remedy. The exception is where a claimant who has already been paid under the Workmen's Compensation Act may still sue for damages under the Civil Code on the basis of supervening facts or developments occurring after he opted for the first remedy. (Underscoring supplied.)

Here, the CA held that private respondent's case came under the exception because private respondent was unaware of petitioner's negligence when she filed her claim for death benefits from the State Insurance Fund. Private respondent filed the civil complaint for damages after she received a copy of the police investigation report and the Prosecutor's Memorandum dismissing the criminal complaint against petitioner's personnel. While stating that there was no negligence attributable to the respondents in the complaint, the prosecutor nevertheless noted in the Memorandum that, "if at all," the "case is civil in nature." The CA thus applied the exception in *Floresca*:

x x x We do not agree that appellee has knowledge of the alleged negligence of appellant as early as November 25, 1990, the date of the police investigator's report. The appellee merely executed her sworn statement before the police investigator concerning her personal circumstances, her relation to the victim, and her knowledge of the accident. She did not file the complaint for "Simple Negligence Resulting to Homicide" against appellant's employees. It was the investigator who recommended the filing of said case and his supervisor referred the same to the prosecutor's office. This is a standard operating procedure for police investigators which appellee may not have even known. This may explain why no complainant is mentioned in the preliminary statement of the public prosecutor in her memorandum dated February 6, 1991, to wit: "Respondent Ferdinand Fabro x x x are being charged by complaint of "Simple Negligence Resulting to Homicide." It is also possible that the

appellee did not have a chance to appear before the public prosecutor as can be inferred from the following statement in said memorandum: "Respondents who were notified pursuant to Law waived their rights to present controverting evidence," thus there was no reason for the public prosecutor to summon the appellee. Hence, notice of appellant's negligence cannot be imputed on appellee before she applied for death benefits under ECC or before she received the first payment therefrom. Her using the police investigation report to support her complaint filed on May 9, 1991 may just be an afterthought after receiving a copy of the February 6, 1991 Memorandum of the Prosecutor's Office dismissing the criminal complaint for insufficiency of evidence, stating therein that: "The death of the victim is not attributable to any negligence on the part of the respondents. If at all and as shown by the records this case is civil in nature." (Underscoring supplied.) Considering the foregoing, We are more inclined to believe appellee's allegation that she learned about appellant's negligence only after she applied for and received the benefits under ECC. This is a mistake of fact that will make this case fall under the exception held in the Floresca ruling.[35]

The CA further held that not only was private respondent ignorant of the facts, but of her rights as well:

x x x. Appellee [Maria Juego] testified that she has reached only elementary school for her educational attainment; that she did not know what damages could be recovered from the death of her husband; and that she did not know that she may also recover more from the Civil Code than from the ECC. x x x.[36]

Petitioner impugns the foregoing rulings. It contends that private respondent "failed to allege in her complaint that her application and receipt of benefits from the ECC were attended by ignorance or mistake of fact. Not being an issue submitted during the trial, the trial court had no authority to hear or adjudicate that issue."

Petitioner also claims that private respondent could not have been ignorant of the facts because as early as November 28, 1990, private respondent was the complainant in a criminal complaint for "Simple Negligence Resulting to Homicide" against petitioner's employees. On February 6, 1991, two months before the filing of the action in the lower court, Prosecutor Lorna Lee issued a resolution finding that, although there was insufficient evidence against petitioner's employees, the case was "civil in nature." These purportedly show that prior to her receipt of death benefits from the ECC on January 2, 1991 and every month thereafter, private respondent also knew of the two choices of remedies available to her and yet she chose to claim and receive the benefits from the ECC.

When a party having knowledge of the facts makes an election between inconsistent remedies, the election is final and bars any action, suit, or proceeding inconsistent with the elected remedy, in the absence of fraud by the other party. The first act of election acts as a bar.[37] Equitable in nature, the doctrine of election of remedies is designed to mitigate possible unfairness to both parties. It rests on the moral premise that it is fair to hold people responsible for their choices. The purpose of the doctrine is not to prevent any recourse to any remedy, but to prevent a double redress for a single wrong.[38]

The choice of a party between inconsistent remedies results in a waiver by election. Hence, the rule in Floresca that a claimant cannot simultaneously pursue recovery under the Labor Code and prosecute an ordinary course of action under the Civil Code. The claimant, by his choice of one remedy, is deemed to have waived the other.

Waiver is the intentional relinquishment of a known right.[39]

[It] is an act of understanding that presupposes that a party has knowledge of its rights, but chooses not to assert them. It must be generally shown by the party claiming a waiver that the person against whom the waiver is asserted had at the time knowledge, actual or constructive, of the existence of the party's rights or of all material facts upon which they depended. Where one lacks knowledge of a right, there is no basis upon which waiver of it can rest. Ignorance of a material fact negates waiver, and waiver cannot be established by a

consent given under a mistake or misapprehension of fact.

A person makes a knowing and intelligent waiver when that person knows that a right exists and has adequate knowledge upon which to make an intelligent decision. Waiver requires a knowledge of the facts basic to the exercise of the right waived, with an awareness of its consequences. That a waiver is made knowingly and intelligently must be illustrated on the record or by the evidence.[40]

That lack of knowledge of a fact that nullifies the election of a remedy is the basis for the exception in *Floresca*.

It is in light of the foregoing principles that we address petitioner's contentions.

Waiver is a defense, and it was not incumbent upon private respondent, as plaintiff, to allege in her complaint that she had availed of benefits from the ECC. It is, thus, erroneous for petitioner to burden private respondent with raising waiver as an issue. On the contrary, it is the defendant who ought to plead waiver, as petitioner did in pages 2-3 of its Answer;^[41] otherwise, the defense is waived. It is, therefore, perplexing for petitioner to now contend that the trial court had no jurisdiction over the issue when petitioner itself pleaded waiver in the proceedings before the trial court.

Does the evidence show that private respondent knew of the facts that led to her husband's death and the rights pertaining to a choice of remedies?

It bears stressing that what negates waiver is lack of knowledge or a mistake of fact. In this case, the "fact" that served as a basis for nullifying the waiver is the negligence of petitioner's employees, of which private respondent purportedly learned only after the prosecutor issued a resolution stating that there may be civil liability. In *Floresca*, it was the negligence of the mining corporation and its violation of government rules and regulations. Negligence, or violation of government rules and regulations, for that matter, however, is not a fact, but a conclusion of law, over which only the courts have the final say. Such a conclusion binds no one until the courts have decreed so. It appears, therefore, that the principle that ignorance or mistake of fact nullifies a waiver has been misapplied in *Floresca* and in the case at bar.

In any event, there is no proof that private respondent knew that her husband died in the elevator crash when on November 15, 1990 she accomplished her application for benefits from the ECC. The police investigation report is dated November 25, 1990, 10 days after the accomplishment of the form. Petitioner filed the application in her behalf on November 27, 1990.

There is also no showing that private respondent knew of the remedies available to her when the claim before the ECC was filed. On the contrary, private respondent testified that she was not aware of her rights.

Petitioner, though, argues that under Article 3 of the Civil Code, ignorance of the law excuses no one from compliance therewith. As judicial decisions applying or interpreting the laws or the Constitution form part of the Philippine legal system (Article 8, Civil Code), private respondent cannot claim ignorance of this Court's ruling in *Floresca* allowing a choice of remedies.

The argument has no merit. The application of Article 3 is limited to mandatory and prohibitory laws.^[42] This may be deduced from the language of the provision, which, notwithstanding a person's ignorance, does not excuse his or her compliance with the laws. The rule in *Floresca* allowing private respondent a choice of remedies is neither mandatory nor prohibitory. Accordingly, her ignorance thereof cannot be held against her.

Finally, the Court modifies the affirmance of the award of damages. The records do not indicate the total amount private respondent ought to receive from the ECC, although it appears from Exhibit "K"^[43] that she received P3,581.85 as initial payment representing the accrued pension from November 1990 to March 1991. Her initial

monthly pension, according to the same Exhibit "K," was P596.97 and present total monthly pension was P716.40. Whether the total amount she will eventually receive from the ECC is less than the sum of P644,000.00 in total damages awarded by the trial court is subject to speculation, and the case is remanded to the trial court for such determination. Should the trial court find that its award is greater than that of the ECC, payments already received by private respondent under the Labor Code shall be deducted from the trial court's award of damages. Consistent with our ruling in *Floresca*, this adjudication aims to prevent double compensation.

WHEREFORE, the case is REMANDED to the Regional Trial Court of Pasig City to determine whether the award decreed in its decision is more than that of the ECC. Should the award decreed by the trial court be greater than that awarded by the ECC, payments already made to private respondent pursuant to the Labor Code shall be deducted therefrom. In all other respects, the Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Pardo, J., on sick leave.

[1] Exhibit "A," Records, pp. 60-61.

[2] Rollo, pp. 79-80.

[3] *Id.*, at 19.

[4] Sec. 36, Rule 130.

[5] *People vs. Ramos*, 122 SCRA 312 (1983).

[6] 31A C.J.S. Evidence §194. See also *Philippine Home Assurance Corp. vs. Court of Appeals*, 257 SCRA 479 (1996).

[7] 5 J.H. WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW 3 (3RD ED.).

[8] *San Sebastian College vs. Court of Appeals*, 197 SCRA 138 (1991).

[9] See RULES OF COURT, RULE 130, SECTIONS 37-47.

[10] 16 SCRA 448 (1966). See also *People vs. San Gabriel*, 253 SCRA 84 (1996).

[11] 273 SCRA 607 (1997).

[12] TSN, December 20, 1991, p. 9.

[13] *Id.*, at 28; TSN, January 6, 1992, p. 29.

[14] *Id.*, at 29; *Ibid.*

[15] *Id.*, at 33.

[16] *Id.*, at 34.

[17] *Id.*, at 24 and 28.

[18] RULES OF COURT, RULE 130, SECTIONS 49-50.

[19] *Id.*, Sec. 48.

[20] *Layugan vs. Intermediate Appellate Court*, 167 SCRA 363 (1988). See also *Batiquin vs. Court of Appeals*, 258 SCRA 334 (1996); *Radio Communications of the Philippines, Inc. vs. Court of Appeals*, 143 SCRA 657 (1986).

[21] 57B Am Jur 2d, Negligence §1819.

[22] *Id.*, at 1824.

[23] *Id.*, at 1914.

[24] *Rollo*, pp. 87-88.

[25] Whether the doctrine raises a presumption or merely an inference is subject to debate. See 57B Am Jur 2d, Negligence §§ 1925-1928.

[26] *Id.*, at 1920.

[27] *Id.*, at 1947.

[28] *People vs. Villeza*, 127 SCRA 349 (1984); *People vs. Quidato*, 297 SCRA 1 (1998).

[29] *People vs. Ramos*, *supra*.

[30] 136 SCRA 141 (1985).

[31] Justices Aquino, Melencio-Herrera, and Gutierrez dissented.

[32] 151 SCRA 333 (1987).**[33] 157 SCRA 446 (1988).****[34] 164 SCRA 317 (1988).**

[35] *Rollo*, pp. 90-91. Underscoring by the Court of Appeals.

[36] *Id.*, at 90. Underscoring by the Court of Appeals.

[37] *Id.*, at § 5.

[38] *Id.*, at § 2.

[39] *Castro vs. Del Rosario, et al.*, 19 SCRA 196 (1967).

[40] 28 Am Jur 2d, Estoppel and Waiver §202.

[41] *Records*, pp. 17-18.

[42] I Tolentino, A.M. *Commentaries and Jurisprudence on the Civil Code of the Philippines* 19 (1995).

[43] *Records*, p. 100.

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.