

CONCEPCION ILAO-ORETA, PETITIONER, VS. SPOUSES EVA MARIE AND BENEDICTO NOEL RONQUILLO, RESPONDENTS.*G.R. No. 172406. October 11, 2007*

Ponente: CARPIO MORALES, J.

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Respondents, spouses Eva Marie Ronquillo (Eva Marie) and Noel Benedicto (Noel) Ronquillo (the Ronquillo spouses or the spouses), had not been blessed with a child despite several years of marriage. They thus consulted petitioner, Dr. Concepcion Ilao-Oreta (Dr. Ilao-Oreta), an obstetrician-gynecologist-consultant at the St. Luke's Medical Center where she was, at the time material to the case, the chief of the Reproductive Endocrinology and Infertility Section.

Upon Dr. Ilao-Oreta's advice, Eva Marie agreed to undergo a laparoscopic procedure whereby a laparoscope would be inserted through the patient's abdominal wall to get a direct view of her internal reproductive organ in order to determine the real cause of her infertility.

The procedure was scheduled on April 5, 1999 at 2:00 p.m., to be performed by Dr. Ilao-Oreta. At around 7:00 a.m. of said date, Eva Marie, accompanied by her husband Noel, checked in at the St. Luke's Medical Center and underwent pre-operative procedures including the administration of intravenous fluid and enema.

Dr. Ilao-Oreta did not arrive at the scheduled time for the procedure, however, and no prior notice of its cancellation was received. It turned out that the doctor was on a return flight from Hawaii to, and arrived at 10:00 p.m. of April 5, 1999 in, Manila.

On May 18, 1999, the Ronquillo spouses filed a complaint[1] against Dr. Ilao-Oreta and the St. Luke's Medical Center for breach of professional and service contract and for damages before the Regional Trial Court (RTC) of Batangas City. They prayed for the award of actual damages including alleged loss of income of Noel while accompanying his wife to the hospital, moral damages, exemplary damages, the costs of litigation, attorney's fees, and other available reliefs and remedies.[2]

In her Answer,[3] Dr. Ilao-Oreta gave her side of the case as follows: She went on a honeymoon to Hawaii and was scheduled to leave Hawaii at 3:00 p.m. of April 4, 1999 for Manila. Aware that her trip from Hawaii to Manila would take about 12 hours, inclusive of a stop-over at the Narita Airport in Japan, she estimated that she would arrive in Manila in the early morning of April 5, 1999. She thus believed in utmost good faith that she would be back in Manila in time for the scheduled conduct of the laparoscopic procedure. She failed to consider the time difference between Hawaii and the Philippines, however.

In its Answer,[4] the St. Luke's Medical Center contended that the spouses have no cause of action against it since it performed the pre-operative procedures without delay, and any cause of action they have would be against Dr. Ilao-Oreta.

By Decision[5] of March 9, 2001, Branch 84 of the Batangas RTC, finding that the failure of the doctor to arrive

on time was not intentional, awarded Eva Marie only actual damages in the total amount of P9,939 and costs of suit. It found no adequate proof that Noel had been deprived of any job contract while attending to his wife in the hospital.

On appeal by the spouses, the Court of Appeals, by Decision[6] of April 21, 2006, finding Dr. Ilao-Oreta grossly negligent,[7] modified the trial court's decision as follows:

WHEREFORE, the trial Court's decision dated March 9, 2001 is affirmed, subject to the modification that the amount of actual damages, for which both defendants-appellees are jointly and severally liable to plaintiffs-appellants, is increased to P16,069.40. Furthermore, defendant-appellee Dr. Ilao-Oreta is also held liable to pay plaintiff-appellants the following:

- (a) P50,000.00 as moral damages;
- (b) P25,000.00 as exemplary damages; and
- (c) P20,000.00 as attorney's fees.

SO ORDERED.[8] (Underscoring supplied)

Hence, the present Petition for Review[9] of Dr. Ilao-Oreta raising the following arguments:

THE COURT A QUO ERRED IN FINDING PETITIONER TO HAVE ACTED WITH GROSS NEGLIGENCE AND AWARDING MORAL DAMAGES TO RESPONDENTS.[10]

THE COURT A QUO ERRED IN AWARDING EXEMPLARY DAMAGES TO RESPONDENTS.[11]

THE COURT A QUO [ERRED] IN AWARDING ATTORNEY'S FEES TO RESPONDENTS.[12]

THE COURT A QUO ERRED IN INCREASING THE AWARD OF ACTUAL DAMAGES IN FAVOR OF RESPONDENTS.[13]

"Gross negligence" implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[14] It is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.[15]

The records show that before leaving for Hawaii, Dr. Ilao-Oreta left an admitting order with her secretary for one of the spouses to pick up, apprised Eva Marie of the necessary preparations for the procedure, and instructed the hospital staff to perform pre-operative treatments.[16] These acts of the doctor reflect an earnest intention to perform the procedure on the day and time scheduled.

The records also show that on realizing that she missed the scheduled procedure, Dr. Ilao-Oreta, upon arrival in Manila, immediately sought to rectify the same, thus:

[ATTY SINJAN] Q: So, can you tell us the reason why you missed that operation?

[DR. ILAO-ORETA] A: When I scheduled her for the surgery, I looked at my ticket and so I was to leave Hawaii on April 4 at around 4:00 o'clock in the afternoon, so I was computing 12 hours of travel including stop-over, then probably I would be in Manila early morning of April 5, then I have so much time and I can easily do the case at 2:00 o'clock, you know it skipped my mind the change in time.

Q:

So when you arrived at 10:00 [PM] in Manila, what did you do?

A:

I called immediately the hospital and I talked with the nurses, I asked about the patient, Mrs. Ronquillo, and they told me that she has already left at around 7:00.

Q:

And after calling the hospital, what happened?

A:

I wanted to call the plaintiffs, but I didn't have their number at that time, so in the morning I went to my office early at 8:00 and looked for her chart, because her telephone number was written in the chart. So, I called them right away.

Q:

Were you able to contact them?

A:

I was able to reach Mr. Ronquillo.

Q:

In the course of your conversation, what did you tell Mr. Ronquillo?

A:

I apologized to him, I said I was sorry about the time that I missed the surgery, and I told him that I can do the case right that same day without Mrs. Ronquillo having to undergo another [b]arium enema.

Q:

What else did you tell him, if any?

A:

I asked him whether I can talk with Mrs. Ronquillo because I wanted to apologize to her personally.

Q:

And what did he say?

A:

I could hear on the background that Mrs. Ronquillo was shouting angrily that she didn't want to talk to me, and that she didn't want re-scheduling of the surgery . . .

ATTY LONTOK: May we move, your Honor, for the striking out of the answer, this is purely hearsay.

COURT: Remain on the record.

WITNESS [DR. ILAO-ORETA]: . . . and then Mr. Ronquillo told me "I'm sorry, Dra., we cannot re-schedule the surgery." [17] (Underscoring supplied)

Noel admitted that indeed Dr. Ilao-Oreta called him up after she arrived in Manila as related by her. [18]

The evidence then shows that Dr. Ilao-Oreta, who had traveled more than twice to the United States where she obtained a fellowship in Reproductive Endocrinology and Infertility was indeed negligent when she scheduled to

perform professional service at 2:00 p.m. on April 5, 1999 without considering the time difference between the Philippines and Hawaii.

The doctor's act did not, however, reflect gross negligence as defined above. Her argument that

Although petitioner failed to take into consideration the time difference between the Philippines and Hawaii, the situation then did not present any clear and apparent harm or injury that even a careless person may perceive. Unlike in situations where the Supreme Court had found gross negligence to exist, petitioner could not have been conscious of any foreseeable danger that may occur since she actually believed that she would make it to the operation that was elective in nature, the only purpose of which was to determine the real cause of infertility and not to treat and cure a life threatening disease. Thus, in merely fixing the date of her appointment with respondent Eva Marie Ronquillo, petitioner was not in the pursuit or performance of conduct which any ordinary person may deem to probably and naturally result in injury,[19] (Underscoring in original)

thus persuades.

It bears noting that when she was scheduling the date of her performance of the procedure, Dr. Ilao-Oreta had just gotten married and was preparing for her honeymoon,[20] and it is of common human knowledge that excitement attends its preparations. Her negligence could then be partly attributed to human frailty which rules out its characterization as gross.

The doctor's negligence not being gross, the spouses are not entitled to recover moral damages.

Neither are the spouses entitled to recover exemplary damages in the absence of a showing that Dr. Ilao-Oreta acted in a wanton, fraudulent, reckless, oppressive or malevolent manner,[21] nor to award of attorney's fees as, contrary to the finding of the Court of Appeals that the spouses "were compelled to litigate and incur expenses to protect their interest,"[22] the records show that they did not exert enough efforts to settle the matter before going to court. Eva Marie herself testified:

ATTY. SINJIAN:

Q:

Isn't it true that before instituting this present case, you did not make any demand on Dr. Ilao-Oreta regarding the claims which you have allegedly incurred, because of the failed laparoscopic surgery operation?

A [EVA MARIE]: I will tell the truth. Dr. Augusto Reyes of St. Luke's . . .

Q:

But did you demand?

A:

No, I did not demand because...

ATTY. SINJIAN: That will be all, your Honor.

ATTY. LONTOK: The witness is still explaining.

WITNESS: I'm explaining first. Dr. Augusto Reyes told me that he will hold the meeting for me and Dr. Oreta to settle things and reimburse all the money that I spent from the hospital, and he even suggested Dr. Oreta to personally talk to me.

ATTY. SINJIAN:

Q:

So it was to Dr. Augusto Reyes that you talked?

A:

Yes.

Q:

But you did not demand anything or write to Dr. Oreta?

A:

No.

Q:

Before instituting this case?

A:

No.[23] (Underscoring supplied)

Finally, Dr. Ilao-Oreta's prayer for the reduction of actual damages is well-taken. Article 2201 of the Civil Code provides:

In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those which are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In fixing the amount of actual damages, the Court of Appeals and the trial court included expenses which the spouses incurred prior to April 5, 1999 when the breach of contract complained of occurred.[24] The Court of Appeals also included the alleged P300 spent on fuel consumption from the spouses' residence at San Pascual, Batangas to the St. Luke's Medical Center in Quezon City and the alleged P500 spent on food in the hospital canteen, both of which are unsubstantiated by independent or competent proof.[25] The only piece of documentary evidence supporting the food and fuel expenses is an unsigned listing.[26] As the fuel and food expenses are not adequately substantiated, they cannot be included in the computation of the amount of actual damages. So *Premiere Development Bank v. Court of Appeals*[27] instructs:

In the instant case, the actual damages were proven through the sole testimony of Themistocles Ruguero, the vice president for administration of Panacor. In his testimony, the witness affirmed that Panacor incurred losses, specifically, in terms of training and seminars, leasehold acquisition, procurement of vehicles and office equipment without, however, adducing receipts to substantiate the same. The documentary evidence marked as Exhibit "W," which was an ordinary private writing allegedly itemizing the capital expenditures and losses from the failed operation of Panacor, was not testified to by any witness to ascertain the veracity of its content. Although the lower court fixed the sum of P4,520,000.00 as the total expenditures incurred by Panacor, it failed to show how and in what manner the same were substantiated by the claimant with reasonable certainty. Hence, the claim for actual damages should be received with extreme caution since it is only based on bare assertion without support from independent evidence. Premiere's failure to prove actual expenditure consequently conduces to a failure of its claim. In determining actual damages, the court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent proof and on the best evidence obtainable regarding the actual amount of loss.[28] (Underscoring supplied)

The list of expenses cannot replace receipts when they should have been issued as a matter of course in business

transactions[29] as in the case of purchase of gasoline and of food.

The documented claim for hospital and medical expenses of the spouses is detailed in the Statement of Account issued by the hospital, the pertinent entries of which read:

X X X X

GROSS HOSPITAL CHARGES 2,416.50

4/5/1999 1699460 DEPOSIT-OFFICIAL

RECEIPT (5,000.00)

(5,000.00)

4/5/1999 SECOND 0284893 UNUSED MED 0439534 (65.55)

FLOOR HINOX 500 MG CAP

SECOND 0284894 UNUSED MED 0439893 (62.25)

FLOOR PHENERGAN 2 ML

50MG _____ (127.80)

BALANCE DUE (2,711.30)[30]

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As extrapolated from the above-quoted entries in the Statement of Account, P2,288.70 (the gross hospital charges of P2,416.50 less the unused medicine in the amount of P127.80) was debited from the P5,000 deposit[31] to thus leave a balance of the deposit in the amount of P2,711.30, which the trial court erroneously denominated as "confinement fee." The remaining balance of P2,711.30 was the amount refundable to the spouses.

Following *Eastern Shipping Lines, Inc. v. Court of Appeals*,[32] this Court awards interest on the actual damages to be paid by Dr. Ilao-Oreta at the rate of 6% per annum from the time of the filing of the complaint on May 18, 1999, and at 12% per annum from the finality of this judgment until its satisfaction.

WHEREFORE, the petition is GRANTED. The decision appealed from is MODIFIED in that

1) the award to respondents-spouses Noel and Eva Marie Ronquillo of actual damages is REDUCED to P2,288.70, to bear interest at a rate of 6% per annum from the time of the filing of the complaint on May 18, 1999 and, upon finality of this judgment, at the rate of 12% per annum until satisfaction; and

2. The award of moral and exemplary damages and attorney's fees is DELETED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1]Records, pp. 1-8.

[2]Id. at 6.

[3] Id. at 28-32.

[4] Id. at 58-62.

[5] Id. at 263-264.

[6]Penned by Court of Appeals Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Josefina Guevarra-Salonga and Sesinando E. Villon. CA rollo, pp. 202-212.

[7]Id. at 208-210.

[8] Id. at 211.

[9] Rollo, pp. 8-23.

[10] Id. at 11.

[11]Id. at 18.

[12]Ibid.

[13]Id. at 20.

[14]Phil. Aeolus Automotive United Corporation v. NLRC, 387 Phil. 250, 263 (2000).

[15] De la Victoria v. Mongaya, 404 Phil. 609, 619-620 (2001).

[16] TSN, April 10, 2000, p. 25; TSN, June 26, 2000, p. 20; Records, pp. 229, 232-253, 262.

[17] TSN, June 26, 2000, pp. 21-23.

[18] TSN, February 7, 2000, pp. 11-12; TSN, April 10, 2000, pp. 40-41.

[19] Rollo, pp. 13-14.

[20]TSN, February 7, 2000, pp. 2-5; TSN, April 10, 2000, pp. 17-21; TSN, June 26, 2000, pp. 16-20; TSN, July 12, 2000, pp. 4-6, 21.

[21] CIVIL CODE, Article 2232: "In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner."

[22] CA rollo, p. 211.

[23] TSN, May 16, 2000, pp. 9-10.

[24] Rollo, pp. 21-22; CA rollo, p. 210; Records, pp. 162-166, 171, 198, 205, 264; TSN, December 6, 1999, pp. 18-21; TSN, June 26, 2000, pp. 7-16.

[25] Records, p. 190. Vide Article 2199, Civil Code: "Except as provided by law or stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. x x x"

[26] Id. at 190.

[27] G.R. No. 159352, April 14, 2004, 427 SCRA 686.

[28] Id. at 698-699.

[29] *People v. Matore*, 436 Phil. 421, 433 (2002).

[30] Records, p. 175.

[31] Id. at 176.

[32] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

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