

DR. FILOTEO A. ALANO, PETITIONER, VS. ZENAIDA MAGUD-LOGMAO, RESPONDENT.

G.R. No. 175540. April 14, 2014

Ponente: PERALTA, J.

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PERALTA, J.:

This deals with the Petition for Review on Certiorari under Rule 45 of the Rules of Court praying that the Decision[1] of the Court of Appeals (CA), dated March 31, 2006, adjudging petitioner liable for damages, and the Resolution[2] dated November 22, 2006, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

The CA's narration of facts is accurate, to wit:

Plaintiff-appellee Zenaida Magud-Logmao is the mother of deceased Arnelito Logmao. Defendant-appellant Dr. Filoteo Alano is the Executive Director of the National Kidney Institute (NKI).

At around 9:50 in the evening of March 1, 1988, Arnelito Logmao, then eighteen (18) years old, was brought to the East Avenue Medical Center (EAMC) in Quezon City by two sidewalk vendors, who allegedly saw the former fall from the overpass near the Farmers' Market in Cubao, Quezon City. The patient's data sheet identified the patient as Angelito Lugmoso of Boni Avenue, Mandaluyong. However, the clinical abstract prepared by Dr. Paterno F. Cabrera, the surgical resident on-duty at the Emergency Room of EAMC, stated that the patient is Angelito [Logmao]. Dr. Cabrera reported that [Logmao] was drowsy with alcoholic breath, was conscious and coherent; that the skull x-ray showed no fracture; that at around 4:00 o'clock in the morning of March 2, 1988, [Logmao] developed generalized seizures and was managed by the neuro-surgery resident on-duty; that the condition of [Logmao] progressively deteriorated and he was intubated and ambu-bagging support was provided; that admission to the Intensive Care Unit (ICU) and mechanical ventilator support became necessary, but there was no vacancy at the ICU and all the ventilator units were being used by other patients; that a resident physician of NKI, who was rotating at EAMC, suggested that [Logmao] be transferred to NKI; and that after arrangements were made, [Logmao] was transferred to NKI at 10:10 in the morning.

At the NKI, the name Angelito [Logmao] was recorded as Angelito Lugmoso. Lugmoso was immediately attended to and given the necessary medical treatment. As Lugmoso had no relatives around, Jennifer B. Misa, Transplant Coordinator, was asked to locate his family by enlisting police and media assistance. Dr. Enrique T. Ona, Chairman of the Department of Surgery, observed that the severity of the brain injury of Lugmoso manifested symptoms of brain death. He requested the Laboratory Section to conduct a tissue typing and tissue cross-matching examination, so that should Lugmoso expire despite the necessary medical care and management and he would be found to be a suitable organ donor and his family would consent to organ donation, the organs thus donated could be detached and transplanted promptly to any compatible beneficiary.

Jennifer Misa verified on the same day, March 2, 1988, from EAMC the identity of Lugmoso and, upon her request, she was furnished by EAMC a copy of the patient's data sheet which bears the name Angelito Lugmoso, with address at Boni Avenue, Mandaluyong. She then contacted several radio and television stations

to request for air time for the purpose of locating the family of Angelito Lugmoso of Boni Avenue, Mandaluyong, who was confined at NKI for severe head injury after allegedly falling from the Cubao overpass, as well as Police Station No. 5, Eastern Police District, whose area of jurisdiction includes Boni Avenue, Mandaluyong, for assistance in locating the relatives of Angelito Lugmoso. Certifications were issued by Channel 4, ABS-CBN and GMA attesting that the request made by the NKI on March 2, 1988 to air its appeal to locate the family and relatives of Angelito Lugmoso of Boni Avenue, Mandaluyong was accommodated. A Certification was likewise issued by Police Station No. 5, Eastern Police District, Mandaluyong attesting to the fact that on March 2, 1988, at about 6:00 p.m., Jennifer Misa requested for assistance to immediately locate the family and relatives of Angelito Lugmoso and that she followed up her request until March 9, 1988.

On March 3, 1988, at about 7:00 o'clock in the morning, Dr. Ona was informed that Lugmoso had been pronounced brain dead by Dr. Abdias V. Aquino, a neurologist, and by Dr. Antonio Rafael, a neurosurgeon and attending physician of Lugmoso, and that a repeat electroencephalogram (EEG) was in progress to confirm the diagnosis of brain death. Two hours later, Dr. Ona was informed that the EEG recording exhibited a flat tracing, thereby confirming that Lugmoso was brain dead. Upon learning that Lugmoso was a suitable organ donor and that some NKI patients awaiting organ donation had blood and tissue types compatible with Lugmoso, Dr. Ona inquired from Jennifer Misa whether the relatives of Lugmoso had been located so that the necessary consent for organ donation could be obtained. As the extensive search for the relatives of Lugmoso yielded no positive result and time being of the essence in the success of organ transplantation, Dr. Ona requested Dr. Filoteo A. Alano, Executive Director of NKI, to authorize the removal of specific organs from the body of Lugmoso for transplantation purposes. Dr. Ona likewise instructed Dr. Rose Marie Rosete-Liquete to secure permission for the planned organ retrieval and transplantation from the Medico-Legal Office of the National Bureau of Investigation (NBI), on the assumption that the incident which lead to the brain injury and death of Lugmoso was a medico legal case.

On March 3, 1988, Dr. Alano issued to Dr. Ona a Memorandum, which reads as follows:

This is in connection with the use of the human organs or any portion or portions of the human body of the deceased patient, identified as a certain Mr. Angelito Lugmoso who was brought to the National Kidney Institute on March 2, 1988 from the East Avenue Medical Center.

As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. Please make certain that your Department has exerted all reasonable efforts to locate the relatives or next of kin of the said deceased patient such as appeal through the radios and television as well as through police and other government agencies and that the NBI [Medico-Legal] Section has been notified and is aware of the case.

If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.

A Certification dated March 10, 1988 was issued by Dr. Maximo Reyes, Medico-Legal Officer of the NBI, stating that he received a telephone call from Dr. Liquete on March 3, 1988 at 9:15 a.m. regarding the case of Lugmoso, who was declared brain dead; that despite efforts to locate the latter's relatives, no one responded; that Dr. Liquete sought from him a second opinion for organ retrieval for donation purposes even in the absence of consent from the family of the deceased; and that he verbally agreed to organ retrieval.

At 3:45 in the afternoon of March 3, 1988, a medical team, composed of Dr. Enrique Ona, as principal surgeon, Drs. Manuel Chua-Chiaco, Jr., Rose Marie Rosete-Liquete, Aurea Ambrosio, Ludivino de Guzman, Mary Litonjua, Jaime Velasquez, Ricardo Fernando, and Myrna Mendoza, removed the heart, kidneys, pancreas, liver

and spleen of Lugmoso. The medical team then transplanted a kidney and the pancreas of Lugmoso to Lee Tan Hoc and the other kidney of Lugmoso to Alexis Ambustan. The transplant operation was completed at around 11:00 o'clock in the evening of March 3, 1988.

On March 4, 1988, Dr. Antonio R. Paraiso, Head of the Cadaver Organ Retrieval Effort (CORE) program of NKI, made arrangements with La Funeraria Oro for the embalmment of the cadaver of Lugmoso good for a period of fifteen (15) days to afford NKI more time to continue searching for the relatives of the latter. On the same day, Roberto Ortega, Funeral Consultant of La Funeraria Oro, sent a request for autopsy to the NBI. The Autopsy Report and Certification of Post-Mortem Examination issued by the NBI stated that the cause of death of Lugmoso was intracranial hemorrhage secondary to skull fracture.

On March 11, 1988, the NKI issued a press release announcing its successful double organ transplantation. Aida Doromal, a cousin of plaintiff, heard the news aired on television that the donor was an eighteen (18) year old boy whose remains were at La Funeraria Oro in Quezon City. As the name of the donor sounded like Arnelito Logmao, Aida informed plaintiff of the news report.

It appears that on March 3, 1988, Arlen Logmao, a brother of Arnelito, who was then a resident of 17-C San Pedro Street, Mandaluyong, reported to Police Station No. 5, Eastern Police District, Mandaluyong that the latter did not return home after seeing a movie in Cubao, Quezon City, as evidenced by a Certification issued by said Station; and that the relatives of Arnelito were likewise informed that the latter was missing. Upon receiving the news from Aida, plaintiff and her other children went to La Funeraria Oro, where they saw Arnelito inside a cheap casket.

On April 29, 1988, plaintiff filed with the court a quo a complaint for damages against Dr. Emmanuel Lenon, Taurean Protectors Agency, represented by its Proprietor, Celso Santiago, National Kidney Institute, represented by its Director, Dr. Filoteo A. Alano, Jennifer Misa, Dr. Maximo Reyes, Dr. Enrique T. Ona, Dr. Manuel Chua-Chiaco, Jr., Dr. Rose Marie O. Rosete-Liquete, Dr. Aurea Z. Ambrosio, Dr. Ludivino de Guzman, Dr. Mary Litonjua, Dr. Jaime Velasquez, Dr. Ricardo Fernando, Dr. Myrna Mendoza, Lee Tan Koc, Alexis Ambustan, Dr. Antonio R. Paraiso, La Funeraria Oro, Inc., represented by its President, German E. Ortega, Roberto Ortega alias Bobby Ortega, Dr. Mariano B. Cueva, Jr., John Doe, Peter Doe, and Alex Doe in connection with the death of her son Arnelito. Plaintiff alleged that defendants conspired to remove the

organs of Arnelito while the latter was still alive and that they concealed his true identity.

On January 17, 2000, the court a quo rendered judgment finding only Dr. Filoteo Alano liable for damages to plaintiff and dismissing the complaint against the other defendants for lack of legal basis.[3]

After finding petitioner liable for a quasi-delict, the Regional Trial Court of Quezon City (RTC) ordered petitioner to pay respondent P188,740.90 as actual damages; P500,000.00 as moral damages; P500,000.00 as exemplary damages; P300,000.00 as attorney's fees; and costs of suit. Petitioner appealed to the CA.

On March 31, 2006, the CA issued its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision appealed from is AFFIRMED, with MODIFICATION by DELETING the award of P188,740.90 as actual damages and REDUCING the award of moral damages to P250,000.00, the award of exemplary damages to P200,000.00 and the award of attorney's fees to P100,000.00.

SO ORDERED.[4]

Petitioner then elevated the matter to this Court via a petition for review on certiorari, where the following issues are presented for resolution:

A. WHETHER THE COURT OF APPEALS DISREGARDED EXISTING JURISPRUDENCE PRONOUNCED BY THIS HONORABLE SUPREME COURT IN HOLDING PETITIONER DR. FILOTEO ALANO LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES DESPITE THE FACT THAT THE ACT OF THE PETITIONER IS NOT THE PROXIMATE CAUSE NOR IS THERE ANY FINDING THAT THE ACT OF THE PETITIONER WAS THE PROXIMATE CAUSE OF THE INJURY OR DAMAGE ALLEGEDLY SUSTAINED BY RESPONDENT ZENAIDA MAGUD-LOGMAO.

B. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN REFUSING AND/OR FAILING TO DECLARE THAT PETITIONER DR. ALANO ACTED IN GOOD FAITH AND PURSUANT TO LAW WHEN HE ISSUED THE AUTHORIZATION TO REMOVE AND RETRIEVE THE ORGANS OF ANGELITO LUGMOSO (LATER IDENTIFIED TO BE IN FACT ARNELITO LOGMAO) CONSIDERING THAT NO NEGLIGENCE CAN BE ATTRIBUTED OR IMPUTED ON HIM IN HIS PERFORMANCE OF AN ACT MANDATED BY LAW.

C. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AWARDING RESPONDENT ZENAIDA MAGUD-LOGMAO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES THAT ARE NOT IN ACCORDANCE WITH AND ARE CONTRARY TO ESTABLISHED JURISPRUDENCE.[5]

The first two issues boil down to the question of whether respondent's sufferings were brought about by petitioner's alleged negligence in granting authorization for the removal or retrieval of the internal organs of respondent's son who had been declared brain dead.

Petitioner maintains that when he gave authorization for the removal of some of the internal organs to be transplanted to other patients, he did so in accordance with the letter of the law, Republic Act (R.A.) No. 349, as amended by Presidential Decree (P.D.) 856, i.e., giving his subordinates instructions to exert all reasonable efforts to locate the relatives or next of kin of respondent's son. In fact, announcements were made through radio and television, the assistance of police authorities was sought, and the NBI Medico-Legal Section was notified. Thus, petitioner insists that he should not be held responsible for any damage allegedly suffered by respondent due to the death of her son and the removal of her son's internal organs for transplant purposes.

The appellate court affirmed the trial court's finding that there was negligence on petitioner's part when he failed to ensure that reasonable time had elapsed to locate the relatives of the deceased before giving the authorization to remove said deceased's internal organs for transplant purposes. However, a close examination of the records of this case would reveal that this case falls under one of the exceptions to the general rule that factual findings of the trial court, when affirmed by the appellate court, are binding on this Court. There are some important circumstances that the lower courts failed to consider in ascertaining whether it was the actions of petitioner that brought about the sufferings of respondent.[6]

The Memorandum dated March 3, 1988 issued by petitioner, stated thus:

As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. Please make certain that your Department has exerted all reasonable efforts to locate the relatives or next-of-kin of the said deceased patient, such as appeal through the radios and television, as well as through police and other government agencies and that the NBI [Medico-Legal] Section has been notified and is aware of the case.

If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.[7]

A careful reading of the above shows that petitioner instructed his subordinates to “make certain” that “all reasonable efforts” are exerted to locate the patient's next of kin, even enumerating ways in which to ensure that notices of the death of the patient would reach said relatives. It also clearly stated that permission or authorization to retrieve and remove the internal organs of the deceased was being given ONLY IF the provisions of the applicable law had been complied with. Such instructions reveal that petitioner acted prudently by directing his subordinates to exhaust all reasonable means of locating the relatives of the deceased. He could not have made his directives any clearer. He even specifically mentioned that permission is only being granted IF the Department of Surgery has complied with all the requirements of the law. Verily, petitioner could not have been faulted for having full confidence in the ability of the doctors in the Department of Surgery to comprehend the instructions, obeying all his directives, and acting only in accordance with the requirements of the law.

Furthermore, as found by the lower courts from the records of the case, the doctors and personnel of NKI disseminated notices of the death of respondent's son to the media and sought the assistance of the appropriate police authorities as early as March 2, 1988, even before petitioner issued the Memorandum. Prior to performing the procedure for retrieval of the deceased's internal organs, the doctors concerned also sought the opinion and approval of the Medico-Legal Officer of the NBI.

Thus, there can be no cavil that petitioner employed reasonable means to disseminate notifications intended to reach the relatives of the deceased. The only question that remains pertains to the sufficiency of time allowed for notices to reach the relatives of the deceased.

If respondent failed to immediately receive notice of her son's death because the notices did not properly state the name or identity of the deceased, fault cannot be laid at petitioner's door. The trial and appellate courts found that it was the EAMC, who had the opportunity to ascertain the name of the deceased, who recorded the wrong information regarding the deceased's identity to NKI. The NKI could not have obtained the information about his name from the patient, because as found by the lower courts, the deceased was already unconscious by the time he was brought to the NKI.

Ultimately, it is respondent's failure to adduce adequate evidence that doomed this case. As stated in *Otero v. Tan*,^[8] “[i]n civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent.”^[9] Here, there is no proof that, indeed, the period of around 24 hours from the time notices were disseminated, cannot be considered as reasonable under the circumstances. They failed to present any expert witness to prove that given the medical technology and knowledge at that time in the 1980's, the doctors could or should have waited longer before harvesting the internal organs for transplantation.

Verily, the Court cannot, in conscience, agree with the lower court. Finding petitioner liable for damages is improper. It should be emphasized that the internal organs of the deceased were removed only after he had been declared brain dead; thus, the emotional pain suffered by respondent due to the death of her son cannot in any way be attributed to petitioner. Neither can the Court find evidence on record to show that respondent's emotional suffering at the sight of the pitiful state in which she found her son's lifeless body be categorically attributed to petitioner's conduct.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals, dated March 31, 2006, is REVERSED and SET ASIDE. The complaint against petitioner is hereby DISMISSED.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, and Mendoza, JJ., concur.
Leonen, J., see concurring opinion.

April 23, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___April 7, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 23, 2014 at 1:44 a.m.

Very truly yours,

LUCITA ABJELINA SORIANO
Division Clerk of Court

By:
(SGD)
WILFREDO V. LAPITAN
Deputy Division Clerk of Court

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok, concurring; rollo, pp. 71-96 .

[2] Id. at 98-101.

[3] Id. at 73-79. (Citations omitted)

[4] Id. at 95. (Emphasis in the original)

[5] Id. at 408-409.

[6] E.Y. Industrial Sales, Inc. vs. Shen Dar Electricity and Machinery Co., Ltd., G.R. No. 184850, October 20, 2010, 634 SCRA 363.

[7] Exhibits “19” and “33,” records, p. 1019. (Emphasis supplied)

[8] G.R. No. 200134, August 15, 2012, 678 SCRA 583.

[9] Id. at 598.

CONCURRING OPINION

“What you leave behind is not
what is engraved in stone monuments,
but what is woven in the lives of others.”
Pericles

LEONEN, J.:

On February 28, 2014, the Philippines broke the Guinness World Record for the most number of people signing up to be organ donors within an hour on a single site. A total of 3,548 people trooped to the Polytechnic University of the Philippines to pledge their organs as part of the “I’m a Lifeline” campaign of the Philippine Network for Organ Sharing under the Department of Health.[1]

This court is now faced with the opportunity to confront the issues concerning organ donation and transplantation for the first time since the procedure was introduced in this country in 1983.

Before us is a petition for review under Rule 45 of the Rules of Court, assailing the decision[2] of the Court of Appeals dated March 31, 2006 and its resolution dated November 22, 2006 in CA-G.R. CV No. 67399 entitled *Zenaida Magud-Logmao v. Dr. Emmanuel Lenon, et al.* The appellate court affirmed the decision[3] dated January 17, 2000 of the Regional Trial Court of Quezon City, Branch 100, which found Dr. Filoteo A. Alano, then the Executive Director of the National Kidney Institute,[4] liable for damages to Zenaida Logmao.

The facts, as found by the lower courts, are as follows:

On March 1, 1988, at 9:50 p.m., Arnelito Logmao, 18 years old, was brought to the East Avenue Medical Center in Quezon City by two sidewalk vendors who allegedly saw him fall from the overpass near Farmer’s Market, Cubao.[5] The security guards of the hospital noted in their blotter that when he was admitted to the hospital, he was drunk.[6] He gave his name as Arnelito Logmao and his address as Boni Avenue, Mandaluyong.[7]

In the emergency room, Arnelito Logmao was conscious and was interviewed by Dr. Paterno Cabrera, the duty resident physician.[8] The patient’s data sheet, prepared by Dr. Cabrera, identified the patient as Angelito Lugmoso (and not Arnelito Logmao) of Boni Avenue, Mandaluyong.[9] He was subjected to an x-ray examination, but the examination did not show him suffering from any skull fractures or head injuries.[10]

At around 4:00 a.m. on March 2, 1988, the patient developed generalized seizures, and his condition progressively deteriorated.[11] Admission to the Intensive Care Unit (ICU) and mechanical ventilatory support became necessary, but there was no vacancy at the East Avenue Medical Center ICU.[12] A resident physician at National Kidney Institute, Dr. Emmanuel Lenon, who was then conducting rounds at East Avenue Medical Center, suggested that the patient be transferred to the National Kidney Institute.[13] After arrangements were made, the patient was transferred to the National Kidney Institute at 10:10 a.m. on the same day.[14]

When the patient arrived at the National Kidney Institute, his name was recorded as Angelito Lugmoso.[15] As the patient was admitted without any relatives by his side, Jennifer B. Misa, Transplant Coordinator, was asked to locate the patient’s family by enlisting police and media assistance.[16] Dr. Enrique T. Ona, Chairman of the Department of Surgery, observed that the patient’s brain injury was so severe that it manifested symptoms of brain death.[17] Upon his request, the Laboratory Section conducted a tissue typing and tissue cross-matching examination on the patient.[18] The request was done on the basis that if the deceased patient is found to be a suitable organ donor and has his family’s consent, the organs could be harvested and transplanted promptly to any of the compatible beneficiaries.[19]

Jennifer Misa verified the identity of the patient with the East Avenue Medical Center on the same day or March 2, 1988.[20] Upon her request, the hospital furnished her a copy of the patient’s data sheet which bore the name Angelito Lugmoso with Boni Avenue, Mandaluyong, as his address.[21] She then contacted several radio and television stations and requested for airtime in her search for the family of Angelito Lugmoso.[22] Her request was granted by Channel 4, ABS-CBN, and GMA.[23] Police Station No. 5, Eastern Police District, Mandaluyong, issued a certification attesting that on March 2, 1988, at about 6:00 p.m., Jennifer Misa requested for assistance to

immediately locate the family and relatives of Angelito Lugmoso and that she followed up her request until March 9, 1988.[24]

On March 3, 1988 at about 7:00 a.m., Dr. Ona was informed that the patient was pronounced brain dead by Dr. Abdias V. Aquino, a neurologist, and Dr. Antonio Rafael, the attending physician of the patient, and that another electroencephalogram (EEG) was in progress to confirm the diagnosis.[25] At about 9:00 a.m., Dr. Ona was informed that the EEG recording showed a flat tracing, confirming that the patient was brain dead.[26]

Upon learning that the patient was a suitable organ donor and that there were some National Kidney Institute patients who were compatible donees, Dr. Ona inquired from Jennifer Misa whether the patient's relatives have been located so that the necessary consent for organ donation could be obtained.[27]

Since no relatives of Angelito Lugmoso could be found despite the ongoing search, Dr. Ona requested Dr. Filoteo A. Alano, Executive Director of the National Kidney Institute, to authorize the removal of specific organs from the body for transplantation purposes.[28] Dr. Ona likewise requested Dr. Rose Marie Rosete-Liquete to secure permission from the National Bureau of Investigation's Medico-Legal Office for organ retrieval and transplantation, on the assumption that the incident which led to the death of the patient was a medico-legal case.[29]

On March 3, 1988, Dr. Alano issued to Dr. Ona a memorandum which states:

This is in connection with the use of the human organs or any portion or portions of the human body of the deceased patient, identified as a certain Mr. Angelito Lugmoso who was brought to the National Kidney Institute on March 2, 1988 from the East Avenue Medical Center.

As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. Please make certain that your Department has exerted all reasonable efforts to locate the relatives or next of kin of the said deceased patient such as appeal through the radios and television as well as through police and other government agencies and that the NBI Medicolegal Section has been notified and is aware of the case.

If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.[30] (Emphasis supplied)

Dr. Maximo Reyes, Medico-Legal Officer of the National Bureau of Investigation, issued a certification dated March 10, 1988, stating that he received a telephone call from Dr. Liquete on March 3, 1988 at 9:15 a.m. regarding the case.[31] He certified that despite efforts to locate Angelito Lugmoso's relatives, no one responded. Dr. Liquete also sought from Dr. Reyes a second opinion on organ donation even in the absence of consent from the family of the deceased patient, and Dr. Reyes verbally agreed to the organ retrieval.[32]

On March 3, 1988 at 3:45 p.m., a medical team led by Dr. Ona removed the heart, kidneys, pancreas, liver, and spleen of the deceased patient.[33] The medical team then transplanted a kidney and the pancreas to Lee Tan Koc and the other kidney to Alexis Ambustan.[34] The transplant operation was completed around 11:00 p.m. on the same day.[35]

On March 4, 1988, Dr. Antonio R. Paraiso, Head of the Cadaver Organ Retrieval Effort (CORE) program of the National Kidney Institute, made arrangements with La Funeraria Oro for the embalming of the cadaver for up to 15 days to give the National Kidney Institute more time to continue searching for the relatives of the deceased patient.[36]

On March 11, 1988, the National Kidney Institute issued a press release announcing its first successful double organ transplantation.[37] Aida Doromal, a relative of Arnelito's mother, Zenaida Logmao, saw the news on television that the donor was an 18-year-old boy whose remains were laid at La Funeraria Oro in Quezon City.[38] Since the name of the donor sounded like Arnelito Logmao, Aida informed Zenaida.[39] Upon receiving the news from Aida, Zenaida and her other children went to La Funeraria Oro where they were able to retrieve Arnelito's body.[40]

On April 29, 1988, Zenaida filed with the Regional Trial Court a complaint for damages against Dr. Lenon, Taurean Protectors Agency, National Kidney Institute, Jennifer Misa, Dr. Alano, Dr. Reyes, Dr. Ona, Dr. Lique, the entire medical team that conducted the transplant, Lee Tan Koc, Alexis Ambustan, Dr. Paraiso, La Funeraria Oro, Dr. Mariano B. Cueva, Jr., John Doe, Peter Doe, and Alex Doe in connection with the death of her son, Arnelito.[41] She alleged that all of them conspired to remove the organs of Arnelito when he was still alive and that they concealed his true identity.[42]

On January 17, 2000, the Regional Trial Court rendered judgment[43] dismissing the complaint against all defendants but finding Dr. Alano liable for damages. The trial court found Dr. Alano negligent under Article 2176 of the Civil Code for authorizing the retrieval of the deceased patient's organs without first exerting reasonable efforts to locate his relatives, in direct violation of the law. According to the trial court:

x x x. In the natural course of things, a search or inquiry of anything requires at least two days of probing and seeking to be actually considered as having made said earnest efforts. But a one-day campaign, especially with regard to a subject matter as important as a person's disposal into the afterlife certainly warrants a longer time for investigation. Indeed, what is "reasonable" is a relative term, dependent on the attendant circumstances of the case (Philippine Law Dictionary, citing *Katague vs. Lagana*, CV 70164, March 7, 1986). Here, what was involved was the detachment of the vital organs of plaintiff's 18-year-old son from his body without her knowledge and consent, and which act was upon the authority issued by defendant Dr. Alano as head of the hospital. The matter at hand was of a very sensitive nature that an inquiry of less than one day cannot be deemed as sufficient and reasonable to exculpate him from liability. x x x.[44] (Emphasis supplied)

Dr. Alano appealed[45] the ruling with the Court of Appeals.

On March 31, 2006, the Court of Appeals rendered its decision[46] affirming the ruling of the Regional Trial Court with modifications.

The appellate court deleted the award for actual damages representing the expenses for autopsy fees, and wake and funeral services, since Arnelito's family would have still incurred those expenses even if no organ retrieval was done on the body.[47] It also deleted the award of compensatory damages of P50,000.00 per organ retrieved since it was not shown that Dr. Alano was the recipient of the organ transplants or that he received any consideration from the transplant patients.[48] Finally, it affirmed the award of damages but reduced moral damages from P500,000.00 to P250,000.00, exemplary damages from P500,000.00 to P200,000.00, and attorney's fees from P300,000.00 to P100,000.00.[49]

Dr. Alano now comes before this court via a petition for review on certiorari. He argues[50] that there was no legal basis for the Court of Appeals to hold him liable for damages since there was no finding that he was the proximate cause of the injury or damage sustained by Zenaida. He also argues that he acted in good faith and pursuant to law when he issued the authorization for the organ retrieval.

Thus, the issue before this court is whether Dr. Alano should be held liable for his alleged negligence in authorizing the removal and retrieval of Arnelito's internal organs without Zenaida's consent.

I agree with the ponencia that Dr. Alano should not be found liable, but I take this opportunity to further expound

on the issues presented to this court.

As a general rule, only questions of law are to be considered in a petition for review under Rule 45. There are, however, recognized exceptions to the rule, one of which is when “the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion x x x.”[51]

Dr. Alano’s acts were not reckless, negligent or unreasonable. It was not his acts that caused the alleged injury to the deceased patient’s relatives. Considering the circumstances that he had to face, the search he ordered for the deceased patient’s relatives were all that ordinary prudence required. His retrieval of the deceased patient’s organs was done legally and after allowing a reasonable time to lapse. The conclusions of the trial court and the appellate court were, therefore, correctly reversed and set aside.

The elements of a quasi-delict

In cases involving quasi-delict and torts, the plaintiff complains that the acts of a defendant caused him or her injury. In order to be actionable, the act should have been committed with the intention of injuring the plaintiff or was committed recklessly or negligently or one which, even when done with the proper care, held such high risk for injury to others that it will be presumed by law to be actionable.

The lower courts are all in agreement that Dr. Alano’s participation in the organ retrieval constituted a quasi-delict under Article 2176 of the Civil Code for which he should be liable for damages.

This conclusion is erroneous.

Article 2176 may not be the proper legal basis for the cause of action. This article defines a quasi-delict as:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

The elements of a quasi-delict are: (1) an act or omission; (2) the presence of fault or negligence in the performance or non-performance of the act; (3) injury; (4) a causal connection between the negligent act and the injury; and (5) no pre-existing contractual relation. Jurisprudence, however, specifies four (4) essential elements: “(1) duty; (2) breach; (3) injury; and (4) proximate causation.”[52]

As a general rule, any act or omission coming under the purview of Article 2176 gives rise to a cause of action under quasi-delict. This, in turn, gives the basis for a claim of damages. Verily, Article 1157 of the Civil Code provides as follows:

Article 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts. (Emphasis supplied)

Article 2176 is not an all-encompassing enumeration of all actionable wrongs which can give rise to the liability for damages. Under the Civil Code, acts done in violation of Articles 19, 20, and 21 will also give rise to damages. The provisions state as follows:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

Baksh v. Court of Appeals[53] elaborates on the distinctions:

x x x. Quasi-delict, known in Spanish legal treatises as culpa aquiliana, is a civil law concept while torts is an Anglo-American or common law concept. Torts is much broader than culpa aquiliana because it includes not only negligence, but international criminal acts as well such as assault and battery, false imprisonment and deceit. In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are to be covered by Article 2176 of the Civil Code. In between these opposite spectrums are injurious acts which, in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts.[54] (Emphasis supplied)

Yuchengco v. Manila Chronicle Publishing Corporation[55] further elaborates on tort based on the concept of abuse of right:

The principle of abuse of rights as enshrined in Article 19 of the Civil Code provides:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

This provision of law sets standards which must be observed in the exercise of one's rights as well as in the performance of its duties, to wit: to act with justice; give everyone his due; and observe honesty and good faith.

In **Globe Mackay Cable and Radio Corporation v. Court of Appeals**, it was elucidated that while Article 19 "lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper." The Court said:

One of the more notable innovations of the New Civil Code is the codification of "some basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order." [REPORT ON THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, p. 39]. The framers of the Code, seeking to remedy the defect of the old Code which merely stated the effects of the law, but failed to draw out its spirit, incorporated certain fundamental precepts which were "designed to indicate certain norms that spring from the fountain of good conscience" and which were also meant to serve as "guides for human conduct [that] should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice." (Id.) Foremost among these principles is that pronounced in Article 19 which provides:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the

norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

Corollarily, Article 20 provides that “every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same.” It speaks of the general sanctions of all other provisions of law which do not especially provide for its own sanction. When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. Thus, if the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper.[56] (Emphasis supplied)

Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.

Article 20 concerns violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. Willful may refer to the intention to do the act and the desire to achieve the outcome which is considered by the plaintiff in tort action as injurious. Negligence may refer to a situation where the act was consciously done but without intending the result which the plaintiff considers as injurious.

Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.

Article 2176 covers situations where an injury happens through an act or omission of the defendant. When it involves a positive act, the intention to commit the outcome is irrelevant. The act itself must not be a breach of an existing law or a pre-existing contractual obligation. What will be considered is whether there is “fault or negligence” attending the commission of the act which necessarily leads to the outcome considered as injurious by the plaintiff. The required degree of diligence will then be assessed in relation to the circumstances of each and every case.

Article 2176 should not have been the basis for the cause of action in this case. Rather, it should have been Article 20, which is applicable when there is a violation of law.

The law that is applicable is the third paragraph of Section 2 of Republic Act No. 349,[57] as amended by Republic Act No. 1056,[58] which provides for a way to determine substituted informed consent for deceased patients for purposes of organ donation.

The doctrine of informed consent

The doctrine of informed consent was introduced in this jurisdiction only very recently in *Dr. Li v. Spouses Soliman*.^[59] This court ruled that liability may arise in cases where the physician fails to obtain the consent of the patient before performing any medical procedure, thus:

The doctrine of informed consent within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (i.e., an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital* which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages." From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.

Subsequently, in *Canterbury v. Spence*[,] the court observed that the duty to disclose should not be limited to medical usage as to arrogate the decision on revelation to the physician alone. Thus, respect for the patient's right of self-determination on particular therapy demands a standard set by law for physicians rather than one which physicians may or may not impose upon themselves. x x x.[60]

Those who consent to using their organs upon their death for the benefit of another can make their consent known prior to their death by following the requirements of the law. Should a patient die prior to making his or her informed consent known, the law provides a list of persons who may consent on his or her behalf, that is, "substituted" informed consent.

Since the incident in this case occurred in 1988, Republic Act No. 349, as amended by Republic Act No. 1056, is the law that applies. Section 2 of the law states that:

SEC. 2. The authorization referred to in section one of this Act must: be in writing; specify the person or institution granted the authorization; the organ, part or parts to be detached, the specific use or uses to which the organ, part or parts are to be employed; and, signed by the grantor and two disinterested witnesses.

If the grantor is a minor or an incompetent person, the authorization may be executed by his guardian with the approval of the court; in default thereof, by the legitimate father or mother, in the order, named. Married women may grant the authority referred to in section one of this Act, without the consent of the husband.

After the death of the person, authority to use human organs or any portion or portions of the human body for medical, surgical or scientific purposes may also be granted by his nearest relative or guardian at the time of his death or in the absence thereof, by the person or head of the hospital, or institution having custody of the body of the deceased: Provided, however, That the said person or head of the hospital or institution has exerted reasonable efforts to locate the aforesaid guardian or relative.

A copy of every such authorization must be furnished the Secretary of Health. (Emphasis supplied)

Under this law, consent to organ retrieval after the patient's death may be given first and foremost by the patient's nearest relative or guardian at the time of death. It is only in the event that these relatives cannot be contacted despite reasonable efforts that the head of the hospital or institution having custody of the body may give consent for organ retrieval on behalf of the patient. Failing this, liability for damages arises.

Considering that Republic Act No. 349, as amended, does not provide a remedy in case of violation, an application of the doctrine of informed consent vis-à-vis Article 20 of the Civil Code may give rise to an action for damages. In this case, Dr. Alano must first be shown to have acted willfully and negligently to the damage and

prejudice of Zenaida.

Petitioner did not willfully or negligently, in a manner contrary to law, authorize the retrieval of the organs

Dr. Alano did not violate the provisions of the law willfully or negligently. In accordance with the requirements of the third paragraph of Section 2 of Republic Act No. 349, as amended, he caused the discharge of “reasonable efforts” to locate the relatives, allowed for a reasonable time to pass, and harvested the organs with care and prudence.

Negligence has been defined by law as “[t]he failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury.”[61]

In *Picart v. Smith*,[62] the test for negligence is as follows:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[63] (Emphasis supplied)

As correctly found by the majority, Zenaida failed to prove that Dr. Alano did not exercise the reasonable care and caution of an ordinarily prudent person.

In compliance with the duty reposed on him by the law, Dr. Alano, as the Executive Director of the National Kidney Institute, directed Jennifer B. Misa, Transplant Coordinator, to locate Arnelito’s relatives. Radio announcements over Radyo ng Bayan and DZMM Radio, televised notices on Channels 2, 7, 9, and 13, and a police blotter in the Eastern Police District No. 5, Mandaluyong, were done on March 2, 1988, with a published advertisement also appearing on the People’s Journal on March 20, 1988.[64] Assistance was also sought from the National Bureau of Investigation. These findings were, in fact, adopted by the trial court. Dr. Enrique T. Ona also testified that the search for the deceased patient’s relatives continued even after the organ retrieval, thus:

Q: After the retrieval of the organs from the patient and the transplantation of the organs to Mr. Ambustan and Tan [K]oc Lee, did the hospital stop in its effort to locate the family of the patient, Mr. Witness?

A: Since this patient is a John Doe and even after we had retrieved the organs and transplanted it to the 2 recipients, I was also made aware that no relatives could still be located. Specific instruction were [sic] given to the transplant coordinator to continue looking for the relatives.[65] (Emphasis supplied)

The trial court and the appellate court, however, took exception to the period of time taken by Dr. Alano in conducting the search for the deceased patient's relatives before he authorized the organ retrieval.

What the lower courts failed to consider was that this was an unusual situation wherein time was of the essence. Organ retrieval must always take into account the viability of the organs.

As explained by Dr. Ona in his testimony before the trial court:

Q:

Does the time have any factor also with respect to the viability of these organs, Mr. Witness[?]

A:

Yes, sir.

Q:

Will you please explain this, Mr. Witness?

A

When we remove the organs say, the kidney from the cadaver we put that into [a] special solution for preservation and ideally we would like to transplant that kidney within 24 hours although oftentimes we extend it to 48 hours and even stretching it to 72 hours, sir.

Court :

I just want to clarify this issue.

Q:

Is there any particular reason why the retrieval of the organs have to be done even when the patient is not yet dead, as what we know heart beating [sic] stops but even at that stage when classified as brain dead, why the rush to open it up, is there any particular reason or could it refer perhaps to the successful operation maybe for the organs to fit well to the rec[i]ipient?

A:

Yes, Your Honor. The viability of the organ as I mentioned earlier the kidney is viable for several hours, as I mentioned 24 hours, 48 hours up to 72 hours but for the liver, Your [Honor], during that time in 1988 the liver can be preserved only for about 6 to 8 hours and for the heart it should be connected for 4 hours, Your Honor.

Q:

So, in this particular case, the kidney, how many hours more or less?

A:

At that time it was stretched into 24 hours, Your Honor and the pa[n]creas maybe 4 hours so that it is the leng[th] of time when the organs most likely to be viable after that most likely did not function anymore [sic].

Q:

But you do retrieval also to those dead on arrival, is that not?

A:

In this particular case, Your Honor, it is possible for example the dead on arrival is brought to the emergency room, the preparation of the operating room and the getting of [sic] the consent it will take time, Your Honor, so in this particular case, Your Honor there is no more heart beat that cannot be viable anymore[.][66] (Emphasis supplied)

This testimony is supported by several studies, which tend to show that the viability of organs in an organ donation may depend on the length of time between the declaration of brain death and organ retrieval.

One study shows that widespread physiological changes occur during brain death. “In addition to acute changes, which if untreated lead to rapid deterioration and cardiac arrest (even if ventilation is continued), there are ongoing generalized inflammatory and hormonal changes associated with brain death which adversely affect donor organ function and propensity to rejection.”[67] Another study[68] shows that the time period between declaration of brain death and organ retrieval was a “significant predictive factor”[69] in recipient mortality for cardiac transplants. There is also a study[70] that shows that “[t]here are clear data that both [brain death] and prolonged [brain death duration] result in [kidney] graft damage, and successful organ retrieval after [brain death] definitely relies on intensive donor management.”[71]

Upon a showing by the Transplant Coordinator that the deceased patient’s relatives could not be found despite all her efforts in locating them, Dr. Alano exercised his professional judgment and ordered the retrieval bearing in mind the short length of time the organs could be viable after the declaration of brain death. He exercised all the reasonable care and caution that an ordinarily prudent man would have exercised in the same situation.

Dr. Alano, therefore, should not have been found to be negligent. He did not violate Article 20 of the Civil Code because he complied with all his duties in Republic Act No. 349, as amended.

There is no causal connection
between the alleged negligent
act and the damage suffered by
respondent

The trial court, by using the codal definition of a quasi-delict, identified the act or omission as that of authorizing the retrieval of the deceased patient’s organs without seeking permission from his relatives; the presence of negligence as the failure to exert reasonable efforts in searching for the deceased patient’s relatives; and the damage pertaining to Zenaida’s discovery of her son’s lifeless body “mangled, robbed of its vital organs and x x x sewn up like x x x a rag doll.”[72] The court also found no pre-existing contractual relation.

The trial court is mistaken. Clearly, there is no causal connection between the alleged negligent act of Dr. Alano and the damage suffered by Zenaida.

First, Zenaida alleged before the trial court that the damage she suffered was the loss of her son’s life. The trial court, however, conceded that “the extent of Logmao’s injuries were such that the possibility of survival would have been highly improbable, if not impossible x x x.”[73] It then concluded that there was still damage suffered by Zenaida, in that her son’s lifeless body was “mangled, robbed of its vital organs and x x x sewn up like some rag doll, without her knowledge, much more her consent.”[74] The Court of Appeals agreed, stating that “the pain and anguish of a mother in seeing the lifeless body of her son like a slaughtered pig in the funeral parlor x x x is more than one can take.”[75]

The “pain and anguish”[76] of Zenaida indeed may have resulted from the loss of her son. However, Dr. Alano or any of his subordinates did not cause the loss of her son’s life. Even if Dr. Alano did not order the organ retrieval,

Zenaida would still find the body of her son lifeless.

It was, therefore, erroneous to impute the emotional suffering of Zenaida as being caused by Dr. Alano's failure to exert reasonable efforts to locate her before ordering the organ retrieval.

Second, the failure to locate Zenaida to secure her permission for the organ retrieval was not caused by Dr. Alano.

The records show that the difficulty in locating Zenaida stemmed from the erroneous information found on the deceased's patient data sheet, which indicated his name as Angelito Lugmoso, not Arnelito Logmao. It was the staff of East Avenue Medical Center, not Dr. Alano and the staff of the National Kidney Institute, which provided the erroneous information on the patient data sheet.

It can be conceded that there was a duty on the part of the National Kidney Institute to verify the information on the patient data sheet with the patient himself. However, when Arnelito was transferred from East Avenue Medical Center to the National Kidney Institute, he was already "intubated and ambu-bagging support was provided x x x." [77] This means that he would not have been coherent enough or even conscious enough to be able to answer any query by the medical staff. The staff of the National Kidney Institute would have had no choice but to rely on the information provided to them by East Avenue Medical Center considering the urgency of Arnelito's situation.

The erroneous information on the patient data sheet was eventually the cause of the failure of the Transplant Coordinator to locate Zenaida. The radio and television announcements, together with the newspaper advertisements, were rendered futile by the fact that they were simply looking for the wrong person. Even if the Transplant Coordinator spent more than 24 hours looking for the deceased patient's relatives, it was doubtful whether they could have been found, considering that they were looking for the relatives of Angelito Lugmoso, not Arnelito Logmao.

Respondent should not
be awarded damages

Moral damages were awarded by the lower courts on the basis that it was Dr. Alano's alleged negligence which caused the emotional suffering of Zenaida. This is erroneous.

The pertinent provisions of the Civil Code on moral damages are:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Article 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

It has already been established that Zenaida's emotional suffering was not caused by the acts of Dr. Alano. He also did not commit any act in violation of Articles 19, 20 or 21 of the Civil Code. This is also not a case wherein the alleged quasi-delict resulted in physical injuries. The lower courts are also in agreement that Dr. Alano did not cause the death of Zenaida's son. Neither is this case analogous to any of the situations mentioned in the provision. Contrary to the ruling of the trial court, this situation is also not covered by Article 309 of the Civil Code, which states:

Article 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

The organ retrieval performed by the National Kidney Institute cannot be termed as "disrespect to the dead." Organ donation is allowed by law. A sterile medical operation surely is not tantamount to grave robbery or mutilation.

Since Zenaida has not proven her claim to moral damages, she is also not entitled to exemplary damages.

Article 2234 of the Civil Code provides:

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x.

Since the award of exemplary damages is not justified, there is no reason to award attorney's fees, in accordance with Article 2208 of the Civil Code, which allows the award of attorney's fees only "when exemplary damages are awarded."

ACCORDINGLY, I CONCUR and vote to GRANT the petition.

[1] PH beat world record for most number of organ donors in one hour, February 28, 2014, Philippine Daily Inquirer, (visited April 3, 2014).

[2] Rollo, pp. 71-96, penned by Justice Marina L. Buzon and concurred in by Justice Aurora Santiago-Lagman and Justice Arcangelita Romilla-Lontok.

[3] Id. at 103-111, penned by Hon. Justice Mariano C. Del Castillo, then the Presiding Judge of the Branch 100 of the Regional Trial Court of Quezon City.

[4] This hospital is now known as the National Kidney and Transplant Institute or NKTi.

[5] Rollo, p. 73; CA decision, p. 3.

[6] Id. at 103; RTC decision, p. 1.

[7] Id.

[8] Id.

[9] Id. at 73; CA decision, p.3.

- [10] Id.
- [11] Id.
- [12] Id.
- [13] Id.
- [14] Id.
- [15] Id. at 74.
- [16] Id.
- [17] Id.
- [18] Id.
- [19] Id.
- [20] Id.
- [21] Id.
- [22] Id.
- [23] Id.
- [24] Id. at 75; CA decision, p. 5.
- [25] Id.
- [26] Id.
- [27] Id.
- [28] Id.
- [29] Id.
- [30] Id. at 76; CA decision, p. 6.
- [31] Id. at 76-77; CA decision, pp. 6-7.
- [32] Id. at 77; CA decision, p. 7.
- [33] Id.
- [34] Id.
- [35] Id.
- [36] Id.
- [37] Id. at 78; CA decision, p. 8.
- [38] Id.
- [39] Id.
- [40] Id.

[41] Id. at 78-79.

[42] Id. at 79; CA decision, p. 9.

[43] Id. at 103-111.

[44] Id. at 106; RTC decision, p. 4.

[45] Id. at 112-144.

[46] Id. at 71-96.

[47] Id. at 92; CA decision, p. 22.

[48] Id.

[49] Id. at 93-95; CA decision, pp. 23-25.

[50] Id. at 401-459, memorandum for the petitioner.

[51] *Spouses Alcazar v. Evelyn Arante*, G.R. No. 177042, December 10, 2012, 687 SCRA 507, 516 [Per J. Peralta, Third Division], citing *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 294 [Per J. Leonardo-De Castro, First Division].

[52] *Garcia, Jr. v. Salvador*, 547 Phil. 463, 470 (2007) [Per J. Ynares-Santiago, Third Division]; *Lucas v. Tuaño*, 604 Phil. 98, 121 (2009) [Per J. Chico-Nazario, Third Division].

[53] G.R. No. 97336, February 19, 1993, 219 SCRA 115 [Per J. Davide, Third Division].

[54] Id. at p. 127-128, citing Report of the Code Commission, 161-162, and A. M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 72 (vol. 1, 1985).

[55] G.R. No. 184315, November 28, 2011, 661 SCRA 392 [Per J. Peralta, Special Third Division].

[56] Id. at 402-403, citing *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 164 (2005) [Per J. Carpio Morales, Third Division]; *Globe Mackay Cable and Radio Corporation v. Court of Appeals*, 257 Phil. 783 (1989) [Per J. Cortes, Third Division]; *Manuel v. People*, 512 Phil. 818, 847 (2005) [Per J. Callejo, Sr., Second Division].

[57] Entitled "AN ACT TO LEGALIZE PERMISSIONS TO USE HUMAN ORGANS OR ANY PORTION OR PORTIONS OF THE HUMAN BODY FOR MEDICAL, SURGICAL, OR SCIENTIFIC PURPOSES, UNDER CERTAIN CONDITIONS," approved on May 17, 1949. This law has since been superseded by Republic Act No. 7170 or "The Organ Donation Act of 1991," approved on January 7, 1992. Section 9 of Republic Act No. 7170 now specifically provides that the search for the donor's relatives must be done within 48 hours.

[58] Entitled "AN ACT TO AMEND REPUBLIC ACT NUMBERED THREE HUNDRED AND FORTY-NINE, ENTITLED "AN ACT TO LEGALIZE PERMISSIONS TO USE HUMAN ORGANS OR ANY PORTION OR PORTIONS OF THE HUMAN BODY FOR MEDICAL, SURGICAL, OR SCIENTIFIC PURPOSES, UNDER CERTAIN CONDITIONS,"" approved on June 12, 1954.

[59] G.R. No. 165279, June 7, 2011, 651 SCRA 32 [Per J. Villarama, En Banc, CJ Corona, JJ. Perez and Abad, concurring; JJ. Brion, Nachura, Leonardo-De Castro, Bersamin, and Mendoza, concurring in the result; JJ. Carpio, Carpio Morales, Velasco, Peralta, and Sereno, dissenting].

[60] Id. at 56-57, citing *Schoendorff v. Society of New York Hospital*, 105 N.E. 92, 93 (N.Y. 1914); *Black's Law Dictionary*, Fifth Edition, p. 701, citing *Ze Barth v. Swedish Hospital Medical Center*, 81 Wash.2d 12, 499 P.2d 1,

8; *Canterbury v. Spence*, 464 F.2d 772 C.A.D.C., 1972.

[61] *United States v. Barias*, 23 Phil. 434, 437 (1912) [Per J. Carson, En Banc], citing Judge Cooley in his work on Torts, 3rd ed., 1324.

[62] 37 Phil. 809 (1918) [Per J. Street, En Banc].

[63] *Id.* at 813.

[64] *Rollo*, p. 106; RTC decision, p. 4.

[65] *Id.* at 323-324; TSN, October 2, 1995, pp. 35-36.

[66] *Id.* at 375-379; TSN, October 2, 1995, pp. 87-91.

[67] D. W. McKeown, R. S. Bonser, and J. A. Kellum, Management of the heartbeating brain-dead organ donor, *British Journal of Anaesthesia* 108 (S1): i96-i107 (2012).

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