

**MARITER MENDOZA, PETITIONER, VS. ADRIANO CASUMPANG,
JENNIFER ADRIANE AND JOHN ANDRE, ALL SURNAMED
CASUMPANG, RESPONDENTS.**

G.R. No. 197987. March 19, 2012

Ponente: ABAD, J.

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ABAD, J.:

Josephine Casumpang, substituted by her respondent husband Adriano and their children Jennifer Adriane and John Andre, filed an action for damages against petitioner Dr. Mariter Mendoza in 1993 before the Regional Trial Court (RTC) of Iloilo City.

On February 13, 1993 Josephine underwent hysterectomy and myomectomy that Dr. Mendoza performed on her at the Iloilo Doctors' Hospital. After her operation, Josephine experienced recurring fever, nausea, and vomiting. Three months after the operation, she noticed while taking a bath something protruding from her genital. She tried calling Dr. Mendoza to report it but the latter was unavailable. Josephine instead went to see another physician, Dr. Edna Jamandre-Gumban, who extracted a foul smelling, partially expelled rolled gauze from her cervix.

The discovery of the gauze and the illness she went through prompted Josephine to file a damage suit against Dr. Mendoza before the RTC of Iloilo City. Because Josephine died before trial could end, her husband and their children substituted her in the case. She was a housewife and 40 years old when she died.

On March 7, 2005 the RTC rendered judgment, finding Dr. Mendoza guilty of neglect that caused Josephine's illness and eventual death and ordering her to pay plaintiff's heirs actual damages of P50,000.00, moral damages of P200,000.00, and attorney's fees of P20,000.00 plus costs of suit.

On motion for reconsideration, however, the RTC reversed itself and dismissed the complaint in an order dated June 23, 2005.

On appeal, the Court of Appeals (CA) rendered a decision on March 18, 2011,[1] reinstating the RTC's original decision. The CA held that Dr. Mendoza committed a breach of her duty as a physician when a gauze remained in her patient's body after surgery. The CA denied her motion for reconsideration on July 18, 2011, prompting her to file the present petition.

Petitioner claims that no gauze or surgical material was left in Josephine's body after her surgery as evidenced by the surgical sponge count in the hospital record.

But she raises at this Court's level a question of fact when parties may raise only questions of law before it in petitions for review on certiorari from the CA. With few exceptions, the factual findings of the latter court are generally binding. None of those exceptions applies to this case.[2]

As the RTC pointed out, Josephine did not undergo any other surgical operation. And it would be much unlikely for her or for any woman to inject a roll of gauze into her cervix. As the Court held in *Professional Services, Inc.*

v. Agana:[3]

An operation requiring the placing of sponges in the incision is not complete until the sponges are properly removed, and it is settled that the leaving of sponges or other foreign substances in the wound after the incision has been closed is at least prima facie negligence by the operating surgeon. To put it simply, such act is considered so inconsistent with due care as to raise an inference of negligence. There are even legions of authorities to the effect that such act is negligence per se.

The Court notes, however, that neither the CA nor the RTC awarded exemplary damages against Dr. Mendoza when, under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good, in addition to moral damages. Exemplary damages may also be awarded in cases of gross negligence.[4]

A surgical operation is the responsibility of the surgeon performing it. He must personally ascertain that the counts of instruments and materials used before the surgery and prior to sewing the patient up have been correctly done. To provide an example to the medical profession and to stress the need for constant vigilance in attending to a patient's health, the award of exemplary damages in this case is in order.

Further, in view of Josephine's death resulting from petitioner's negligence, civil indemnity under Article 2206[5] of the Civil Code should be given to respondents as heirs. The amount of P50,000.00 is fixed by prevailing jurisprudence for this kind.[6]

The Court also deems it just and equitable under Article 2208 of the Civil Code to increase the award of attorney's fees from P20,000.00 to P50,000.00.

WHEREFORE, the Court entirely AFFIRMS the decision of the Court of Appeals dated March 18, 2011 with the MODIFICATION ordering petitioner Mariter Mendoza to pay respondents Adriano, Jennifer Adriane and John Andre, all surnamed Casumpang, an additional P50,000.00 as exemplary damages, additional P30,000.00 as attorney's fees and civil indemnity arising from death in the amount of P50,000.00.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Edwin D. Sorongon and Socorro B. Inting, rollo, pp. 30-43.

[2] The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[3] G.R. No. 126297, January 31, 2007, 513 SCRA 478, 490.

[4] Civil Code, Article 2231.

[5] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. x x x

[6] Philippine Hawk Corporation v. Lee, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 594.

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