Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JUDE CARLO M. ALLAREY IN HIS OWN BEHALF, MINORS HERO B. ALLAREY AND JUDE CARLO B. ALLAREY, JR., BY AND THRU FATHER AND NATURAL GUARDIAN JUDE CARLO M. ALLAREY, MINOR KAREN VALERIE B. SALAZAR AS GUARDIAN AD LITEM, AND SPS. RUFO C. BACO, JR. AND ROSALIE C. BACO, Petitioners, - versus - **DR. MA. DITAS F. DELA CRUZ AND MANILA EAST MEDICAL CENTER,** Respondents.	**G.R. No. 250919** Present: LEONEN, *J.*, *Chairperson*, CARANDANG, ZALAMEDA, ROSARIO, and DIMAAMPAO,* *JJ.* Promulgated: November 10, 2021 MisPDCBath

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DECISION

CARANDANG, *J.*:

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated May 30, 2019 and Resolution[3] dated November 13, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 110036.

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* Designated as additional Member per Special Order No. 2839 dated September 16, 2021.

1 *Rollo*, pp. 21-56.

2 Penned by Associate Justice Ronaldo Roberto B. Martin, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz; id. at 59-79.

3 Id. at 80-81.

Antecedents

Petitioners Jude Carlo M. Allarey (Jude), Hero B. Allarey (Hero), Jude Carlo B. Allarey, Jr. (Jude, Jr.), Karen Valerie B. Salazar (Karen), Rufo C. Baco, Jr. (Rufo) and Rosalie C. Baco (Rosalie) (collectively, petitioners) filed a complaint for damages based on quasi-delict against Dr. Ma. Ditas F. Dela Cruz (Dr. Dela Cruz) and Manila East Medical Center, Inc. (MEMCI). Jude is the common-law partner of the late Marissa Baco (Marissa), a housewife who died at 35 years old on August 29, 2006 after giving birth prematurely to Julia Carla Allarey (Julia Carla) who died on August 30, 2006. Rufo and Rosalie are the parents of Marissa while Jude, Jr. and Hero are Jude and Marissa's common children. Karen is Marissa's daughter from a previous relationship.[4]

Dr. Dela Cruz performed cesarean section on Marissa when she gave birth to Jude Jr. on August 18, 2005. On March 18, 2006, Marissa had a check-up with Dr. Dela Cruz who confirmed that she was pregnant and her estimated delivery was on November 4, 2006. Other pre-natal consultations with Dr. Dela Cruz on Marissa were held on April 22, June 10, July 18, and August 3, 2006.[5]

In the afternoon of August 28, 2006, Marissa experienced bleeding while resting at home. At that time, the age of gestation of Marissa's fourth pregnancy was 30-31 weeks. Upon advice of Dr. Dela Cruz, she was brought to her clinic at MIKKO MEDICS. Dr. Dela Cruz conducted an internal examination on Marissa. She then endorsed her to MEMCI and instructed that she be immediately brought to the Operating Room/ Delivery Room (OR/DR) and was admitted at 6:00 pm. She was given D-5LRS ampoules, which were sourced by Jude and his friends outside MEMCI as the hospital's pharmacy did not carry the drug. At about 8:00 p.m, Dr. Dela Cruz arrived at the hospital, examined Marissa at the OR/DR, and described Marissa's condition as "ok." She recommended that Marissa stay overnight for closer monitoring. Once the bleeding stopped, Marissa would be transferred to Room 511, as chosen by Jude.[6]

On August 29, 2006, at about 9:30 a.m., Marissa sent Jude a text message that she was transferred from the OR/DR to Room 511. At about 1:00 p.m., she sent him another text on her scheduled discharge from MEMCI either in the late afternoon on the same day or on the next day. At past 2:00 p.m., Marissa informed Jude that she experienced bleeding again and that she would be brought to the OR/DR. Later, Marissa called up Jude and told him that she was being denied readmission to the OR/DR unless a deposit of ₱10,000.00 was paid. Jude said that he would settle the matter once he arrived at the hospital. She again called him up to tell him that she had been readmitted to the OR/DR.[7]

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4 Id. at 60.
5 Id.
6 Id. at 60-61.
7 Id. at 61.

While Jude was on his way to MEMCI, his sister called up and told him that he had to sign a document as Marissa needed to undergo an operation. He asked his sister to sign for him though it was his signature that was required. At about 3:45 p.m., Jude arrived at MEMCI while his sister paid for the type AB blood units needed for Marissa's operation. A pediatrician came out from the OR/DR and asked him to go to the Nursery. There, he saw his premature baby Julia Carla in the incubator, struggling for her life. Jude was then told that certain procedures were being undertaken on Marissa. A nurse also came out of the OR/DR and asked him to sign a document which, without reading, he simply signed. Another nurse came out of the OR/DR and asked for blood units. Jude's sister went downstairs and learned that the blood units she paid for earlier would be available after two hours as the hospital still had to source the blood from Fabella Hospital. Since the blood was urgently needed, they tried to look for type AB blood units but were not successful. At about 5:00 p.m., Jude was asked to go to the OR/DR where he witnessed Marissa die.[8]

In the morning of August 30, 2006, Jude went to MEMCI due to the pediatrician's urgent request for a ventilator for Julia Carla. After paying, Jude learned from the nurse that the ventilator would be delivered at 11:00 a.m.. It was past 12:00 p.m. when the ventilator was used. At 2:30 p.m., Julia Carla died.[9]

In her Answer,[10] Dr. Dela Cruz denied that she was negligent. She narrated that at 6:00 p.m. on August 28, 2006, Marissa was confined at MEMCI as she was experiencing labor pains and vaginal bleeding. The admitting diagnosis was "Pregnancy Uterine, 30-31 weeks AOG, G4P3 in preterm labor, previous Cesarian Section." She was directly brought to the OR/DR with the following orders: *Tocolysis* (to prevent premature contraction of patient's uterus); D5LRS, 1 liter with 4 ampules of *Isoxilan*; *Diprospan,* 12.5; and Intramuscularly every 12 hours for 2 doses. Laboratory examinations consisting of Complete Blood Count and blood typing were requested. Since she was having premature labor pains, she was advised to have complete bed rest without bathroom privileges and that she must do all necessities in bed until advised otherwise. She was also instructed not to take anything by mouth temporarily. Her labor pains and vaginal bleeding were strictly and constantly monitored. At 8:30 p.m., Dr. Dela Cruz did an internal examination of Marissa's cervix and it was 1-2 centimeters dilated with positive minimal bleeding. She stayed in the OR/DR for the next 14 hours without any untoward incident and there was no bleeding or premature contraction during said period.[11] She was given the first dose of *Diprospan* and the next dose was to be given at 8:30 a.m. the following day. She was then allowed to have soft diet and was asked to have a room of her choice once she showed stable vital signs. The next day, at around 1:00 p.m., Dr. Dela Cruz examined Marissa and noted that there was no contraction and bleeding during

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8 Id. at 61-62.
9 Id. at 62.
10 Records, pp. 51-61.
11 *Rollo*, pp. 63-64.

her stay in the room. She informed Marissa of the plan to discharge her late in the afternoon or the following day after an ultrasound examination. It was at this time that Marissa suddenly experienced profuse bleeding again. Dr. Dela Cruz immediately explained to family members present in the room of her plan to perform an emergency cesarian section and bilateral tubal ligation. She gave the necessary instructions to the nurse on duty and arranged the surgical team and anesthesiologist.[12] Marissa was wheeled into the operating room at around 2:20 pm. Two units of fresh whole blood (FWB) type AB were requested before the start of the operation. Marissa's hemoglobin level was 12.8 and her hematocrit was 35.9. Marissa's vital signs and frequency of bleeding was monitored while waiting for the blood and the pediatrician was on stand by to receive the baby. At around 3:00 p.m., the patient was noted to have profuse bleeding again. Her vital signs were still stable. Dr. Dela Cruz began performing cesarian section at 3:10 p.m. and Julia Carla was delivered at 3:34 p.m.. At this point, the anesthesiologist was still talking to the patient and her vital signs were still stable. However, the bleeding was massive. Hence, plasma expanders were immediately hooked. Dr. Dela Cruz noticed that the placenta was deeply adherent to the uterine wall, hence her decision to do emergency hysterectomy (removing of the entire uterus or womb) at 3:40 p.m. The uterus was out at 4:20 p.m. and transfusion of FWB type AB started. A referral to a urologist was made because of noted adhesions in the patient's urinary bladder. At 4:45 p.m., a referral to an internist-cardiologist was also made. At 5:20 p.m., a second unit of blood was transfused. However, despite the emergency procedures, Marissa succumbed to her death at about 5:45 pm.[13] The final diagnosis of the cause of death of Marissa, as supplied by Dr. Dela Cruz in Marissa's death certificate, is "Cardio Respiratory Arrest secondary to Hypovolemic shock; Placenta Accreta; T/C Amniotic Fluid Embolism."[14] Dr. Dela Cruz stressed that "[a] negative outcome does not ipso facto imply negligence."[15]

For the hospital's part, MEMCI contended in its Answer with Counterclaim[16] that petitioners have no cause of action against it as there was no employer-employee relationship between Dr. Dela Cruz and the hospital.[17] MEMCI added that it exercised diligence of a good father of a family in the selection, accreditation, and retention of its consultant physicians.[18] The hospital also claimed that Marissa was a personal patient of Dr. Dela Cruz in her lying-in clinic and was only brought to MEMCI for emergency delivery due to preterm labor. The hospital emphasized that it gives wide latitude of autonomy to its consultants or visiting doctors in the diagnosis, care, and treatment of their patients such that when they are admitted, it is the consultants who prescribe the appropriate treatment for their patients.[19]

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12 Id. at 63.
13 Records, pp.55-56.
14 Id. at 25.
15 Id. at 58.
16 Id. at 106-114.
17 Id. at 109.
18 Id. at 110.
19 Id. at 111-112.

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Ruling of the Regional Trial Court

In a Decision[20] dated July 8, 2017, the RTC dismissed the complaint against Dr. Dela Cruz and MEMCI.[21] The RTC found that petitioners were not able to prove by preponderance of evidence that Dr. Dela Cruz failed to observe the industry standard to treat the medical condition of Marissa. Recognizing that this is a highly technical field, the RTC held that a competent expert witness should have testified. Instead, petitioners only presented the testimony of ordinary witnesses who had no medical background.[22] While petitioners presented Dr. Olga M. Bausa (Dr. Bausa), the medico-legal officer who performed an autopsy on Marissa, her testimony was stricken off the record after she failed to appear during the scheduled hearing dates for her cross-examination. Nevertheless, the RTC noted that petitioners' own witness and evidence, Dr. Bausa's Medico-Legal Report No. HO6-138 dated November 3, 2006, which was admitted into the records, confirmed that:

> x x x [T]he death is due to hypovolemic shock secondary to postpartum bleeding due to placenta previa-associated accreta. The manner of death is natural.[23]

The RTC heavily relied on the medical records and expert witness presented by Dr. Dela Cruz and MEMCI. The RTC found that the treatment and management performed by Dr. Dela Cruz, the cesarian delivery of Julia Carla, and the hysterectomy performed on Marissa to stop her bleeding were the standard or conventional way of treating such conditions. She acted as any other obstetrician would have acted under the same circumstances doing all things which were under her control. The RTC recognized that placenta *accreta* has a high mortality rate and found that the difficulty of sourcing the rare blood type AB was proven. In conclusion, the RTC stated that "[p]hysicians are not guarantors of successful results."[24]

In an Order dated October 10, 2017, the RTC denied the Motion for Reconsideration petitioners filed for lack of merit.

Ruling of the Court of Appeals

In a Decision[25] dated May 30, 2019, the CA denied the appeal of the petitioners.[26] The CA held that the medical explanations petitioners offered, through clippings from books and the internet, were never explained by any expert witness. These informal sources were taken from foreign jurisdiction and were dated after 2010, approximately four years after Marissa's surgery in 2006. The CA agreed with the argument of Dr. Dela Cruz that what may be the standard today may no longer be the standard tomorrow as the medical

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20 Penned by Presiding Judge Dennis Patrick Z. Pere; CA *rollo*, 23-47.
21 Id. at 47.
22 Id. at 28-29.
23 Id. at 29.
24 Id. at 47.
25 Supra note 2.
26 *Rollo*, p. 78.

field is constantly changing.[27]

The CA also found that Dr. German Tan Cardozo (Dr. Cardozo), the expert witness Dr. Dela Cruz presented, was able to thoroughly explain that Dr. Dela Cruz's diagnosis, treatment, and management of Marissa's case were in accordance with sound obstetrical practice and standards.[28] The CA was convinced that Marissa's condition, placenta *accreta,* was not something Dr. Dela Cruz could have controlled. It was explained that while an ultrasound could have been used to detect the condition, it may only provide some suspicion that the patient has placenta *accreta.* Furthermore, ultrasound may only delay management, aggravate the bleeding, and stimulate the uterus into further contraction.[29] The only other way placenta *accreta* could have been easily diagnosed is through surgery.[30] Since Marissa's initial ultrasound did not show any abnormality in the placenta, Dr. Cardozo testified that he himself would have no longer conducted another ultrasound.[31]

With regard to the contention of petitioners that MEMCI and Dr. Dela Cruz failed to secure the required blood units prior to Marissa's operation, the CA was satisfied with the explanation given by Dr. Cardozo that blood transfusion only replaces the blood lost. Dr. Cardozo opined that if the source of the bleeding is not removed, even if the doctors have sufficient supply of blood, the bleeding will not stop.[32]

The CA ruled that petitioners failed to prove the causal connection between the injuries sustained and the purported negligence of Dr. Dela Cruz and MEMCI. Causation must be proven within a reasonable medical probability based upon competent expert testimony. However, petitioners only presented non-medical witnesses, namely: Jude, Leila Esguerra (Leila), Nina Allarey Ramos (Nina), and Princess Allarey (Princess). For the CA, these witnesses have no competent knowledge on the standard of practice of medical and obstetrical care required for Marissa's condition. The testimony of the expert witness presented by petitioners, Dr. Bausa, was stricken off the record for failing to attend scheduled hearings for her cross-examination. Moreover, the CA gave credence to the medico-legal report Dr. Bausa prepared wherein she categorically stated that "the manner of death is natural" and did not indicate any act of negligence on the part of Dr. Dela Cruz.[33]

The CA also declared that the doctrine of *res ipsa loquitur* is not applicable to the present case because Dr. Dela Cruz was not, in any way, negligent in managing Marissa's case and that placenta *accreta* is beyond the control of anyone.[34]

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27 Id. at 68-69.
28 Id. at 69-72.
29 Id. at 73-76.
30 Id. at 72.
31 Id. at 76.
32 Id. at 73.
33 Id. at 77.
34 Id. at 78.

In a Resolution[35] dated November 13, 2019, the CA denied the Motion for Reconsideration of petitioners.[36]

In the present petition,[37] it is argued that the failure of Dr. Dela Cruz to diagnose placenta *accreta* at the earliest possible time caused Marissa to have vaginal bleeding, rendering the hysterectomy procedure too late.[38] Petitioners suggested that Magnetic Resonance Imaging (MRI) and ultrasound are accepted modes of detecting and diagnosing placenta *accreta*[39] which Dr. Dela Cruz did not perform on Marissa during the critical stage of her condition.[40] For petitioners, the lower courts should have applied the doctrine of *res ipsa loquitur*.[41]

Petitioners also maintained that Dr. Dela Cruz was negligent in not adequately preparing the blood requirement for a hysterectomy procedure despite the following factors: (1) Marissa was admitted on possible pre-term labor; (2) Dr. Dela Cruz is aware that this is Marissa's 4th birth and her last delivery was a cesarean delivery, hence the possibility of another surgery; (3) Marissa was already bleeding when brought to MEMCI; and (4) Dr. Dela Cruz was aware that Marissa's blood type AB is not readily available.[42]

In her Comment,[43] Dr. Dela Cruz stressed that petitioners presented only ordinary witnesses who can never lay down the standard of practice of medical and obstetrical care needed under the prevailing circumstances.[44] She denied misdiagnosing the patient's pregnancy and insisted that she skillfully and diligently performed what is expected of a prudent obstetrician under the circumstances at that time.[45] She also maintained that the doctrine of *res ipsa loquitur* is not applicable to the case.[46] She also argued that there is no basis to award damages in favor of petitioners since they did not present any evidence to support their allegation of negligence and the standard of medical and obstetrical care needed at that time.[47]

In a Letter[48] dated December 16, 2020, MEMCI manifested that it is adopting *in toto* the Comment Dr. Dela Cruz filed.[49]

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35 Supra note 3.
36 *Rollo*, p. 81.
37 Id. at 21-56.
38 Id. at 37.
39 Id. at 38-39.
40 Id. at 46.
41 Id. at 51.
42 Id. at 43.
43 Id. at 144-166.
44 Id. at 145.
45 Id. at 145-147.
46 Id. at 149.
47 Id. at 163-165.
48 Id. at 182.
49 Id.

Issues

The issues to be resolved in this case are:

1. Whether the doctrine of *res ipsa loquitur* is applicable to the present case; and
2. Whether Dr. Dela Cruz and MEMCI were negligent in the management and treatment of Marissa's medical condition that caused her and Julia Carla's death, entitling petitioners to damages.

Ruling of the Court

Despite the questions of fact raised in the petition for review on certiorari, the Court may give due course to these petitions.

As a rule, issues dealing with the sufficiency of evidence and the relative weight accorded to it by the lower court cannot be raised in a petition for review on *certiorari* under Rule 45 which is confined to questions of law. The Court does not review factual questions raised under Rule 45 as it is not its function to analyze nor weigh all over again evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In *Microsoft Corp. v. Farajallah*,[50] the Court declared that a review of the factual findings of the lower court is proper in the following instances:

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> (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
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> x x x x
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> (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
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> (7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion[.][51]
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> x x x x

In this case, a careful re-examination of the evidence on record is necessary to determine whether the lower courts failed to notice and properly appreciate certain relevant facts which, if properly considered, would justify a different conclusion. There is a need to review the records to confirm whether Dr. Dela Cruz and MEMCI have provided Marissa adequate medical and obstetric care at the time she was admitted in MEMCI.

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50 742 Phil. 775 (2014).
51 Id. at 785.

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The doctrine of res ipsa loquitur cannot be applied to the present case.

It is argued that the doctrine of *res ipsa loquitur* should be applied instead of requiring petitioners to present an expert witness to prove Dr. Dela Cruz and MEMCI's negligence. The doctrine of *res ipsa loquitur* is derived from:

> x x x [A] Latin phrase which literally means "the thing or the transaction speaks for itself." The phrase "*res ipsa loquitur*" is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. Where the thing which caused the injury complained of is shown to be under the management of the defendant or his servants and the accident is such as in ordinary course of things does not happen if those who have its management or control use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from or was caused by the defendant's want of care.
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> The doctrine of *res ipsa loquitur* is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge.
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> However, much has been said the *res ipsa loquitur* is not a ruled of substantive law and, as such, does not create or constitute an independent or separate ground of liability. Instead, it is considered as merely evidentiary or in the nature of a procedural rule. **It is regarded as a mode of proof, of a mere procedural convenience since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing specific proof of negligence. In other words, mere invocation and application of the doctrine does not dispense with the requirement of proof of negligence. It is simply a step in the process of such proof, permitting the plaintiff to present along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and to thereby place on the defendant the burden of going forward with the proof.** Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

> 1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
> 2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
> 3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.
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> In the above requisites, **the fundamental element is the "control of the instrumentality" which caused the damage. Such element of control must be shown to be within the dominion of the defendant.** In order to have the benefit of the rule, a plaintiff, in addition to proving injury or damage, must show a situation where it is applicable, and must establish that the essential elements of the doctrine were present in a particular incident.[52] (Emphases supplied; citations omitted)

A review of medical negligence cases brought to this Court reveals that the doctrine of *res ipsa loquitur* is applied only to exceptional circumstances where the failure to observe due care which caused injury to the patient is readily apparent to a layman and is within the exclusive control of the erring physician.

In *Cantre v. Spouses Go*,[53] the Court applied the doctrine of *res ipsa loquitur* to justify declaring the physician liable. The Court explained that the gaping wound on the patient's arm is not an ordinary occurrence in the act of delivering a baby and that such "injury could not have happened unless negligence had set in somewhere."[54]

In *Borromeo v. Family Care Hospital, Inc.*,[55] the Court explained that the application of the doctrine "require[s] expert opinion to establish the culpability of the defendant doctor."[56] It also does not apply to cases where the actual cause of the injury had been identified or established.[57]

The declared cause of death of Marissa is "Cardio Respiratory Arrest secondary to Hypovolemic shock; Placenta Accreta; T/C Amniotic Fluid Embolism."[58] *Placenta accreta* refers to:

> x x x [I]s a pregnancy condition in which the placenta attaches too deeply into the wall of the uterus. The risk for developing accreta increases with each C-section or uterine surgery. Other risk factors include placenta previa, advanced maternal age, multiparity, and curettage. Placenta accreta puts the mother at risk of severe blood loss and other complications. The rates of maternal death, transfusion, prolonged hospital stay and hysterectomy are all increased for women with accreta. Placenta accreta spectrum (PAS) is

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52 *Ramos v. Court of Appeals*, 378 Phil. 1198, 1219-1221 (1999).
53 550 Phil. 637 (2007).
54 Id. at 647.
55 779 Phil. 1 (2016).
56 Id. at 22.
57 Id.
58 Records, p. 25.

made up of three different levels of invasion: placenta accreta, placenta increta, and placenta percreta.[59]

Placenta *accreta* is not the contemplated scenario to justify the application of the doctrine of *res ipsa loquitur* as this kind of complication in childbirth is not immediately apparent and, often times, not immediately diagnosed.

Here, the medical condition of Marissa was not within the exclusive control of Dr. Dela Cruz. This is clear from the testimony of Dr. Cardozo, the relevant portion of which is reproduced below:

Q Now, what would cause placenta accreta or placenta increta?
A Multi-arity or maraming anak can cause it. But the more common cause/s would be any type of instrumentation or scarring of the uterus like a previous cesarian section, or previous myometric or anything that was surgically done in the uterus can be exposed to this condition.

Q So, is this condition of placenta increta or placenta accreta within the control of a doctor?
A **This condition arose from the pregnancy itself. It wasn't brought about by an external force or something.**[60] (Emphasis supplied)

Accordingly, the doctrine of *res ipsa loquitur* cannot be applied and expert testimony must be resorted to in order to accurately determine the standard of care necessary for Marissa's condition.

Dr. Dela Cruz and MEMCI were negligent in the management and treatment of Marissa's medical condition that resulted to her and Julia Carla's death.

Medical procedures are expectedly fraught with risks and uncertainties. These may be compounded by negligence or malpractice. In medical negligence cases, there are four elements that must be established: (1) duty; (2) breach; (3) injury; and (4) proximate causation.[61] In litigations involving medical negligence, the plaintiffs have the burden of establishing these elements through the testimonies of expert witnesses. However, this rule should not be strictly interpreted to mean that the failure to present any expert witness on the part of the plaintiffs shall bar them from recovering damages. An exception that should be recognized such as when the testimony of the expert witness presented by the purported erring defendant physician

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59 Accessed at <https://www.preventaccreta.org/accreta>.
60 TSN dated February 21, 2014, p. 26.
61 *Cayao-Lasam v. Spouses Ramolete*, 595 Phil. 56, 73 (2008).

establishes the standard of care necessary under the given circumstances and supports the claim of the plaintiffs, albeit indirectly.

Admittedly, petitioners, who are the plaintiffs in the complaint for quasi-delict, failed to completely present their lone expert witness to substantiate their claim against Dr. Dela Cruz and MEMCI. Dr. Bausa failed to attend several settings for her cross-examination. Nonetheless, this fact alone does not preclude the Court from making its own determination of the rights and liabilities based on the overall evidence presented during trial. This is particularly true when a careful analysis of the testimony of the expert witness presented for the purported erring physician and hospital reveals that it indirectly corroborates the claim of the heirs of Marissa.

In the present case, it appears that Marissa died due to preventable complications during childbirth. Having delivered Marissa's 3rd child through cesarean section, Dr. Dela Cruz had prior knowledge of her medical history. Considering that her history and condition made her high-risk during delivery, potential life-threatening complications must have been anticipated and contingency measures must have been prepared to address these complications. Premature contractions, though not an unusual occurrence among pregnant patients, are not normal, as explained by Dr. Cardozo in the following exchange:

> Q May I go back to the Chief Complaint: Labor pain with vaginal bleeding, Gestational Period: 30-31 weeks. Is it normal to have pre-term labor within the gestational period of 30-31 weeks?
> A Is it normal?
>
> Q Yes, is it normal doctor?
> A **It is not normal but it commonly occurs.**
>
> Q But the point is, it is not normal?
> A **Yes, it is not normal.**
>
> Q What about bleeding sir, pre-term bleeding, is it normal to occur with the gestational period of 30-31 weeks?
> A It can occur, bleeding from pre-term labor.
>
> Q But it is a departure from what is normal. Meaning it can but it's not normal?
> A **It's a common manifestation, common symptom, common complication of pre-term labor.**[62] (Emphases supplied)

From the foregoing, it is clear that the condition of Marissa at the time she was admitted to the hospital, though not normal, is a common complication of preterm labor which a physician exercising the degree of care, skill, and diligence in the same field of practice should have considered and

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62 TSN dated March 14, 2014, pp. 18-19.

anticipated. The physician should have immediately realized the seriousness of the patient's condition because it is not normal to have premature contractions and bleeding at this stage of the pregnancy. The presence of these symptoms, when taken together with Marissa's medical history, should have alerted Dr. Dela Cruz.

Petitioners primarily anchor their claim that Dr. Dela Cruz and MEMCI were negligent in the treating Marissa in the fact that Marissa was not subjected to ultrasound or MRI to properly diagnose her condition. Dr. Cardozo himself acknowledged that ultrasound and MRI are recognized preoperative techniques for diagnosing placenta *accreta*:

> Q Have you come across the journal saying that sonography or MRI may help determine?
> A **Yes sir, it may help determine.**
>
> Q How about **ultrasound**, can it help determine?
> A **It may help sir.**[63] (Emphases supplied)

However, instead of instructing that an ultrasound or MRI be performed, Dr. Dela Cruz only ordered *tocolysis* which refers to:

> x x x **[A]n obstetrical procedure carried out with the use of medications with the purpose of delaying the delivery of a fetus in women presenting preterm contractions. These medications are administered with the hope of decreasing fetal morbidity and mortality. Tocolysis is intended to prolong gestation for two to seven days and works by creating a quiescent environment in the uterus.** This is important to allow transportation to a higher care facility, to administer a fetal lung maturity scheme with antenatal corticosteroids, and the additional time is also used to determine the group B streptococcus (GBS) status of the pregnant woman, and provide prophylaxis if she is either positive or the GBS culture status is unknown.
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> **Tocolysis is not intended to increase gestation of the fetus to term but is focused on providing a window of time to support treatments that have been shown to improve outcomes for delivery.**[64] (Emphases supplied)

Though *tocolysis* or the postponement of preterm labor was the immediate medical treatment performed on Marissa to address the premature contractions, it is clear from the records that there were no efforts to determine the cause of the bleeding, as revealed in the following exchange:

> Q You said that tocolysis is meant to stop the contraction?
> A Yes sir.

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63 TSN dated March 14, 2014, p. 22.

64 Mayer C, Apodaca-Ramos I. Tocolysis. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2021. <https://www.ncbi.nlm.nih.gov/books/NBK562212/> visited August 9, 2021.

Q But it is not directed to stop the bleeding?
A It is a way to stop the bleeding, because when the uterus contracts, it pulls away from the implantation site that cause the bleeding.

Q Do you know the other causes of bleeding? For example placental abruption?
A It can cause.

Q Can it be caused by placental previa sir?
A Yes sir.

Q Can it be caused by cramps?
A It's a vague term sir.

Q I'm trying to be a doctor, sir, that is why please you have to guide me. May I read from Emily Blanky, MD, "when spotting or bleeding is accompanied by contractions or cramping, it can be an indication of cervical dilation." So it can be a cause of bleeding?
A Yes sir.

Q So we have made clear of it. How about a minor trauma on the surface of vagina, can it also cause bleeding?
A Yes sir.

Q Now, tell this Honorable Court were there efforts on the part of defendant Dela Cruz to determine the cause of the bleed at the time of the admission?

x x x x

Q At the time of the admission based on the Medical Abstract?
A **I don't know what action she did, what I saw was there was ultrasound.**

Q May I get the answer again?
A I don't know what actions the doctor did during that time of her encounter with the patient.

Q But you will agree with me sir that the Abstract should capture whatever things or acts the defendant doctor did at the time of admission?
A If it was recorded completely.

Q So you will agree with me sir with this Exhibit "4", the Clinical Abstract, there was nothing that talks about the efforts to determine the cause of bleeding, right sir?
A **Well if you want my opinion, there was an ultrasound report.**[65] (Emphasis supplied)

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65 TSN dated March 14, 2014, pp. 22-25.

It must be clarified that there was no ultrasound nor MRI conducted on Marissa during her confinement at MEMCI. In his testimony quoted above, Dr. Cardozo erroneously referred to the ultrasound conducted on Marissa on July 18, 2006, more than a month before she experienced premature contractions and bleeding. This error was made apparent in the following exchange:

> Q Ultrasound?
> A But it did not mention about placenta previa.
>
> Q You are referring sir to the latest ultrasound dated July 18, 2006, and I think you identified this evidence, too?
> A I don't remember the date sir.
>
> Q May I confront you with it? In fact in your direct examination, you mentioned that among the documents you examined or based upon your opinion was the ultrasound, right sir?
> A Come again?
>
> Q On page 15 of the transcript, you mentioned that you based your opinion on the ultrasound?
>
> ATTY REBOSA:
> 'Eto sir, previously marked as Exhibit "J" your Honor"
>
> ATTY. CAMARA:
> Thank you.
>
> Q Here sir. May I confront you with the ultrasound performed on the date in question, "Single Right (sic) Intrauterine Pregnancy of about 26 weeks and 2 days Age of Gestation, Anterior Placenta Grade I-II", is that the one?
> A Yes sir.
>
> **Q And the date of death of course of Marissa Baco Allarey, occurred on August 29, 2006?**
> **A Yes sir.**
>
> **Q Going backward, related to the latest ultrasound on July 18, 2006, there was no more ultrasound taken?**
> **A I have no copy of the ... that's the one that was provided.**
>
> **Q At least you did not refer to any other ultrasound except the latest?**
> **A Yes sir.**
>
> Q **July 18, 2006, Exhibit "J"?**
> A **Yes sir.**[66] (Emphases supplied)

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66 Id. at 25-26.

It is certain from the foregoing that Dr. Cardozo formed his opinion on an ultrasound report prepared on July 18, 2006 or more than a month before Marissa was confined. At that time, the signs and symptoms suggesting any irregularity in the placenta of the patient may not have been existing or apparent yet. Despite acknowledging that ultrasound and MRI are recognized methods for diagnosing placenta *accreta*, Dr. Cardozo failed to address why Dr. Dela Cruz did not timely instruct an ultrasound or MRI when Marissa was confined at the hospital.

Dr. Dela Cruz underestimated the extent of Marissa's condition which led to the deterioration of her condition. The factors that made Marissa's pregnancy high risk should have put her on guard. The necessity of timely diagnosis through ultrasound was made apparent in the testimony of Dr. Cardozo quoted below:

> Q Now, given the fact that this lady is of ***G4P3***, four pregnancies, three deliveries and one cesarian section, would you not say that the *high index of suspicion* should have prompted the doctor to look into the matter why there was a threatened delivery when she was admitted to the hospital on August 28, 2006 at 6:00 in the evening?
> A Maybe she would have thought of that, the ultrasound, if she were to base on the ultrasound there was no indication.
>
> Q And that was the time that we agreed that when you say "ultrasound", you were referring actually to?
> A The latest ultrasound.
>
> x x x x
>
> Q And that was supposed to be dated July 18, 2006, right?
> A Yes, sir.
>
> Q And this is supposed to be so many days before her death on August 29, 2006?
> A Yes, sir.[67] (Emphasis and italics in the original; underscoring supplied)

Again, the ultrasound that Dr. Cardozo conducted is more than a month before Marissa complained of bleeding and labor contractions. Between the date of Marissa's last ultrasound, July 18, 2006, and the date she was admitted to the hospital, August 28, 2006, there could have been significant changes in her health that would have warranted a more recent, accurate, and reliable ultrasound.

To the Court's mind, the fact that Dr. Dela Cruz failed to timely and properly diagnose the condition of Marissa which could have averted her death and Julia Carla's death was revealed in the testimony of Dr. Cardozo

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67 TSN dated August 8, 2014, pp. 18-19.

quoted below:

> Q Now, may I go to the hypothesis that the good doctor did not do any of these ultrasounds, transvaginal or transabdominal, what is your conclusion?
> A My conclusion? Well based on the records, **she was just considering just plain pre-term labor. Based on the previous ultrasound it did not show any previa or accrete, and that's the very first thing that an Obstetrician would think of, pre-term labor and she would give tocolysis and that's the management we observed in the process.**
>
> Q She did not entertain any abnormal implantation, is that what you mean?
> A Yes, because based on the previous ultrasound it was not recorded.[68]

Instead of addressing the bleeding, she downplayed its seriousness despite knowledge of her medical background and the presence of factors that made her pregnancy high-risk. This was her fourth pregnancy, had three previous deliveries, and her last childbirth delivery was through cesarean section, giving her a higher probability of having placenta *accreta* or *previa*. She relied on an ultrasound report prepared more than a month before the patient complained of premature contractions and bleeding.

Moreover, the conclusion of Dr. Cardozo that he would have acted the same way as Dr. Dela Cruz did under the same circumstances should not be construed to mean that she was not negligent in treating Marissa during the period leading up to the sudden deterioration of her condition at 1:00 p.m. on August 29, 2006. The context of his conclusion should be construed to mean that what he was referring to was the emergency cesarean operation and hysterectomy conducted on Marissa which are, concededly, the standard of care necessary when bleeding could no longer be controlled or her condition at 1:00 p.m. on August 29, 2006. With regard to the standard of care or treatment necessary prior to the period when bleeding could no longer be controlled, the necessity of timely diagnosis through ultrasound could be drawn from the respondent physician's own expert witness in the following exchange:

> Q Could not these words *anterior placenta*, using the *high index of suspicion*, prompted the good doctor to conduct another ultrasound to pacify herself because right there the patient was bleeding?
> A Maybe. Maybe she was just waiting for the patient to be in a stable condition before requesting for another ultrasound.
>
> x x x x

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68 TSN dated March 14, 2014, p. 33.

> Q Because there was no ultrasound since it was not done. Look at this, Doctor, you said you would have wanted the patient to be stable but there was so much time to do it from 9:00 am to 1:10 pm, isn't it, Doctor?
>
> x x x x
>
> A **There was no ultrasound performed.**[69] (Emphasis supplied)

Noticeably, Dr. Dela Cruz admitted that there were minimal bleeding and contraction between 8:30 pm of August 28, 2006 and 1:00 pm the next day. During this period, Dr. Dela Cruz could have ordered Marissa's ultrasound or MRI yet she did not give such instruction. Timely and proper diagnosis of Marissa's condition could have prevented or mitigated the severe complications she suffered that led to her and her baby's death. Had placenta *accreta* been diagnosed early, emergency cesarean section and hysterectomy procedure could have immediately been performed to address her bleeding instead of waiting for several hours. By the time Dr. Dela Cruz performed these emergency procedures, it was already too late because bleeding could no longer be controlled. Hence, when the testimonies of Dr. Cardozo and Dr. Dela Cruz are taken together with the evidence of petitioners, it could be seen that adequate measures were not taken to provide Marissa the appropriate care necessary for her high-risk pregnancy.

Furthermore, given the fact that there was at least a period of 16 hours from the time Dr. Dela Cruz physically examined Marissa and the time she experienced profuse bleeding again the next day, Dr. Dela Cruz and the hospital should have already started sourcing blood supply that may be needed by the patient in case of emergency, especially since her blood type is rare. Knowing that the pregnancy of Marissa is high-risk and that she was already bleeding when she was brought to the hospital, timely and adequate preparation for potential emergency surgery was critical and could have saved her and the baby.

MEMCI is vicariously liable for the negligence of Dr. Dela Cruz.

MEMCI is vicariously liable for Dr. Dela Cruz's negligence based on Article 2180 of the Civil Code, which states:

> Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

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69 TSN dated August 8, 2014, pp. 21-22.

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> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Admittedly, Dr. Dela Cruz is just a consultant or guest doctor of MEMCI. Nevertheless, even if there is no employer-employee relationship between her and the hospital, this cannot automatically excuse the hospital from any liability.

When the doctrine of apparent authority is adopted in medical negligence cases, "the hospital need not make express representations to the patient that the treating physician is an employee of the hospital; rather a representation may be general and implied."[70] In the present case, though all prenatal check-ups of Marissa were conducted at the lying-in clinic of Dr. Dela Cruz outside MEMCI, the hospital impliedly held her out as a member of its medical staff by allowing her to use its facilities to treat her patients. Dr. Dela Cruz gave instructions to the nurse on duty of MEMCI and personally gathered the medical team for the procedures to be performed on Marissa. She even referred Marissa's condition to a urologist and cardiologist-internist while undergoing emergency cesarean section and hysterectomy. All these acts, when taken together, give the impression that she is a member of the medical staff of MEMCI. Thus, MEMCI cannot repudiate now this authority.

The heirs of Marissa are entitled to damages.

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

> Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis supplied)

Thus, only the expenses proven by credible evidence may be awarded. In this case, the medical, funeral, and burial expenses amounting to ₱180,967.00 were duly supported with official receipts presented during trial.

Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00.[71] Thus, the heirs of Marissa are entitled to ₱50,000.00 for her death. An additional ₱50,000.00 is also awarded for the death of Julia Carla.

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70 *Nogales v. Capitol Medical Center*, 540 Phil. 225, 246 (2006).

71 *Torreon v. Aparra, Jr.*, 716 Phil. 267 (2013).

With regard to the award of moral damages, Article 2206 of the Civil Code expressly grants moral damages in addition to the award of civil indemnity. The Court finds an award of ₱100,000.00 as moral damages sufficient to answer for the mental anguish suffered by the heirs of Marissa because of the untimely passing of Marissa and Julia Carla.

In addition, the Court awards exemplary damages upon finding that Dr. Dela Cruz and MEMCI were grossly negligent in failing to provide Marissa the standard of care necessary to treat her condition. To ensure that similar conduct will not be repeated, Dr. Dela Cruz and MEMCI are directed to solidarily pay ₱50,000.00 as exemplary damage to the heirs of Marissa.

With respect to the award of litigation expenses and attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. Considering the protracted litigation of this dispute, an award of ₱50,000.00 as attorney fees is awarded to the heirs of Marissa.

Legal interest should also be awarded in accordance with the Court's ruling in *Nacar v. Gallery Frames*.[72] In said case, the Court provided guidelines for the imposition of interest rates on the basis of Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, which took effect on July 1, 2013, thus:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> x x x x
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably

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72 716 Phil. 267 (2013).

> ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be **6% *per annum*** from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.
>
> x x x x
>
> And in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[73] (Emphasis and italics in the original; Citations omitted)

Accordingly, when an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of six percent (6%) *per annum*.[74] The reckoning point for the interest, when imposed on unliquidated claims or damages such as actual, moral, and exemplary damages, is set on the date of the judgment of the court granting the award since it is only at such time when the amount claimed becomes "liquidated," that is, determined with reasonable certainty. Since damages are being awarded only at this stage of the proceedings, the award actual, moral, and exemplary damages shall earn six percent (6%) interest *per annum* computed from the date of this Decision, until full satisfaction of the award.

Thereafter, the total monetary award, including interests, shall begin to earn legal interest at six percent (6%) *per annum* from the finality of this Decision until full payment because during the interim period, the total monetary award is considered equivalent to a forbearance of credit.

WHEREFORE, the Decision of the Court of Appeals dated May 30, 2019 and the Resolution dated November 13, 2019 in CA-G.R. CV No. 110036 are **SET ASIDE.** Respondents Dr. Ma. Ditas F. Dela Cruz and Manila East Medical Center, Inc. are jointly and severally liable to pay the heirs of Marissa Baco the following:

a. ₱180,967.00 as actual damages;
b. ₱200,000.00 as civil indemnity for the death of Marissa Baco and Julia Carla Allarey;
c. ₱100,000.00 as moral damages;
d. ₱50,000.00 as exemplary damages;

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73 Id. at 279.
74 Id.

f. Interest on the total monetary award in (a), (b), (c), and (d) at the rate of six percent (6%) *per annum* reckoned from the date of this Decision until full satisfaction of the award;
g. ₱50,000.00 as attorney's fees; and
h. Costs of suit

The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment thereof in compliance with the Court's ruling in *Nacar v. Gallery Frames*.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice