Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DR. GENEVIEVE L. HUANG,
Petitioner,

- *versus* -

PHILIPPINE HOTELIERS, INC., DUSIT THANI PUBLIC CO., LTD. and FIRST LEPANTO TAISHO INSURANCE CORPORATION,
Respondents.

G.R. No. 180440

Present:

VELASCO, *J.*,*
BRION,
Acting Chairperson,
VILLARAMA,**
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

DEC 0 5 2012

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DECISION

PEREZ, *J.*:

For this Court's resolution is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 87065 dated 9 August 2007, affirming the Decision[2] of Branch 56 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 96-1367 dated 21 February 2006, dismissing for lack of merit

* Per raffle dated 8 March 2010.

** Per raffle dated 5 December 2012.

1 Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring. *Rollo*, pp. 200-215.

2 Penned by Pairing Judge Reinato G. Quilala. Id. at 76-109.

herein petitioner Dr. Genevieve L. Huang's Complaint for Damages. Assailed as well is the Court of Appeals' Resolution[3] dated 5 November 2007 denying for lack of merit petitioner's Motion for Reconsideration.

This case stemmed from a Complaint for Damages filed on 28 August 1996 by petitioner Dr. Genevieve L. Huang[4] against herein respondents Philippine Hoteliers, Inc. (PHI)[5] and Dusit Thani Public Co., Ltd. (DTPCI),[6] as owners of Dusit Thani Hotel Manila (Dusit Hotel);[7] and co-respondent First Lepanto Taisho Insurance Corporation (First Lepanto),[8] as insurer of the aforesaid hotel. The said Complaint was premised on the alleged negligence of respondents PHI and DTPCI's staff, in the untimely putting off all the lights within the hotel's swimming pool area, as well as the locking of the main entrance door of the area, prompting petitioner to grope for a way out. While doing so, a folding wooden counter top fell on her head causing her serious brain injury. The negligence was allegedly compounded by respondents PHI and DTPCI's failure to render prompt and adequate medical assistance.

Petitioner's version of the antecedents of this case is as follows:

On 11 June 1995, Delia Goldberg (Delia), a registered guest of Dusit Hotel, invited her friend, petitioner Dr. Genevieve L. Huang, for a swim at the hotel's swimming pool facility. They started bathing at around 5:00 p.m. At around 7:00 p.m., the hotel's swimming pool attendant informed them that the swimming pool area was about to be closed. The two subsequently

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3 Id. at 296-297.

4 A dermatologist by profession at the time the incident inside the swimming pool area of Dusit Thani Hotel, Manila happened where she allegedly sustained head injury (Testimony of Dr. Genevieve L. Huang. TSN, 27 November 1998, p. 4).

5 A corporation duly organized and existing under the laws of the Philippines.

6 A corporation duly organized and existing under the laws of Thailand.

7 Formerly known as "Hotel Nikko Manila Garden" and then "Dusit Hotel Nikko."

8 A corporation duly organized and existing under the laws of the Philippines. Formerly known as "Metro Taisho Insurance Corporation."

proceeded to the shower room adjacent to the swimming pool to take a shower and dress up. However, when they came out of the bathroom, the entire swimming pool area was already pitch black and there was no longer any person around but the two of them. They carefully walked towards the main door leading to the hotel but, to their surprise, the door was locked.[9]

Petitioner and Delia waited for 10 more minutes near the door hoping someone would come to their rescue but they waited in vain. Delia became anxious about their situation so petitioner began to walk around to look for a house phone. Delia followed petitioner. After some time, petitioner saw a phone behind the lifeguard's counter. While slowly walking towards the phone, a hard and heavy object, which later turned out to be the folding wooden counter top, fell on petitioner's head that knocked her down almost unconscious.[10]

Delia immediately got hold of the house phone and notified the hotel telephone operator of the incident. Not long after, the hotel staff arrived at the main entrance door of the swimming pool area but it took them at least 20 to 30 minutes to get inside. When the door was finally opened, three hotel chambermaids assisted petitioner by placing an ice pack and applying some ointment on her head. After petitioner had slightly recovered, she requested to be assisted to the hotel's coffee shop to have some rest. Petitioner demanded the services of the hotel physician.[11]

Dr. Violeta Dalumpines (Dr. Dalumpines) arrived. She approached petitioner and introduced herself as the hotel physician. However, instead of immediately providing the needed medical assistance, Dr. Dalumpines

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9 Testimony of Dr. Genevieve L. Huang. TSN, 27 November 1998, pp. 24-28; CA Decision dated 9 August 2007, *rollo*, p. 201.

10 Id. at 29-34; Id. at 202; Complaint dated 8 August 1996, *rollo*, p. 769.

11 Id. at 36-42; Testimony of Dr. Genevieve L. Huang. TSN, 10 April 2000, pp. 5-6; CA Decision dated 9 August 2007, *rollo*, p. 202; Complaint dated 8 August 1996, *rollo*, pp. 769-770.

presented a "Waiver" and demanded that it be signed by petitioner, otherwise, the hotel management will not render her any assistance. Petitioner refused to do so.[12]

After eating her dinner and having rested for a while, petitioner left the hotel's coffee shop and went home. Thereupon, petitioner started to feel extraordinary dizziness accompanied by an uncomfortable feeling in her stomach, which lasted until the following day. Petitioner was constrained to stay at home, thus, missing all her important appointments with her patients. She also began experiencing "on" and "off" severe headaches that caused her three (3) sleepless nights.[13]

Petitioner, thus, decided to consult a certain Dr. Perry Noble (Dr. Noble), a neurologist from Makati Medical Center, who required her to have an X-ray and a Magnetic Resonance Imaging (MRI) tests.[14] The MRI Report[15] dated 23 August 1995 revealed the following findings:

> CONSULTATION REPORT:
>
> > MRI examination of the brain shows scattered areas of intraparenchymal contusions and involving mainly the left middle and posterior temporal and slightly the right anterior temporal lobe.
> > Other small areas of contusions with suggestive pertechiae are seen in the left fronto-parietal, left parieto-occipital and with deep frontal periventricular subcortical and cortical regions. There is no mass effect nor signs of localized hemorrhagic extravasation.
> > The ventricles are not enlarged, quite symmetrical without shifts or deformities; the peripheral sulci are within normal limits.
> > The C-P angles, petromastoids, sella, extrasellar and retro orbital areas appear normal.
> > The brainstem is unremarkable.
>
> IMPRESSION: Scattered small intraparenchymal contusions mainly involving the left middle-posterior temporal lobe

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12 Id. at 42-45; Id. at 8-9; Id. at 202-203; Id. at 770.

13 Id. at 47; Testimony of Dr. Genevieve L. Huang. TSN, 8 September 1999, pp. 45-51; CA Decision dated 9 August 2007, *rollo*, p. 203; Complaint dated 8 August 1996, *rollo*, p. 771.

14 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 5-6.

15 Records, Volume I, p. 345.

> and also right medial anterior temporal, both deep frontal subcortical, left parieto-occipital subcortical and cortical regions.
> Ischemic etiology not ruled out.
> No localized intra - or extracerebral hemorrhage.[16]

Petitioner claimed that the aforesaid MRI result clearly showed that her head was bruised. Based also on the same MRI result, Dr. Noble told her that she has a very serious brain injury. In view thereof, Dr. Noble prescribed the necessary medicine for her condition.[17]

Petitioner likewise consulted a certain Dr. Ofelia Adapon, also a neurologist from Makati Medical Center, who required her to undergo an Electroencephalogram examination (EEG) to measure the electrostatic in her brain.[18] Based on its result,[19] Dr. Ofelia Adapon informed her that she has a serious condition—a permanent one. Dr. Ofelia Adapon similarly prescribed medicines for her brain injury.[20]

Petitioner's condition did not get better. Hence, sometime in September 1995, she consulted another neuro-surgeon by the name of Dr. Renato Sibayan (Dr. Sibayan), who required her to have an X-ray test.[21]

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16 Id.

17 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 6- 9.

18 Id. at 8-13.

19 TECHNICAL SUMMARY OF EEG TRACING

> Background activity is fairly well organized at 6-8 Hz. Medium to high voltage sharp activities are seen bilaterally bisynchronously. No focal slowing is seen.

EEG INTERPRETATION:

ABNORMAL EEG COMPATIBLE WITH A SEIZURE DISORDER (EEG Report dated 5 September 1995. Records, Volume I, p. 346).

20 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 9-13.

21 CERVICAL VERTEBRAE

> The visualized vertebrae appear intact. There is straightening of the cervical curvature most likely due to muscular spasm. Alignment and intervertebral disc spaces are well maintained. The neural foramenae are well formed.

IMPRESSION

According to petitioner, Dr. Sibayan's finding was the same as those of the previous doctors that she had consulted—she has a serious brain injury.[22]

By reason of the unfortunate 11 June 1995 incident inside the hotel's swimming pool area, petitioner also started to feel losing her memory, which greatly affected and disrupted the practice of her chosen profession.[23] Thus, on 25 October 1995, petitioner, through counsel, sent a demand letter[24] to respondents PHI and DTPCI seeking payment of an amount not less than ₱100,000,000.00 representing loss of earnings on her remaining life span. But, petitioner's demand was unheeded.

In November 1995, petitioner went to the United States of America (USA) for further medical treatment. She consulted a certain Dr. Gerald Steinberg and a certain Dr. Joel Dokson[25] from Mount Sinai Hospital who both found that she has "post traumatic-post concussion/contusion cephalgias-vascular and neuralgia."[26] She was then prescribed to take some medications for severe pain and to undergo physical therapy. Her condition did not improve so she returned to the Philippines.[27]

Petitioner, once again, consulted Dr. Sibayan, who simply told her to just relax and to continue taking her medicines. Petitioner also consulted other neurologists, who all advised her to just continue her medications and to undergo physical therapy for her neck pain.[28]

Straightened cervical curvature most likely due to muscular spasm otherwise normal cervical vertebrae (Diagnostic X-Ray Report dated 14 September 1995. Records, p. 347).

22 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 16.

23 Complaint. *Rollo*, p. 771.

24 Records, Volume I, pp. 16-18.

25 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 24-28.

26 Document dated 11 December 1995 under the letterhead of Dr. Gerald Steinberg and Dr. Joel Dokson. Records, Volume I, p. 350.

27 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 31-32.

28 Id. at 32-36.

Sometime in 1996, petitioner consulted as well a certain Dr. Victor Lopez (Dr. Lopez), an ophthalmologist from the Makati Medical Center, because of her poor vision, which she has experienced for several months.[29] Petitioner's Eye Report dated 5 March 1996[30] issued by Dr. Lopez stated: "IMPRESSION: Posterior vitreous detachment, right eye of floaters." Dr. Lopez told petitioner that her detached eye is permanent and very serious. Dr. Lopez then prescribed an eye drop to petitioner.[31]

For petitioner's frustration to dissipate and to regain her former strength and physical well-being, she consulted another neuro-surgeon from Makati Medical Center by the name of Dr. Leopoldo P. Pardo, Jr. (Dr. Pardo, Jr.).[32] She disclosed to Dr. Pardo, Jr. that at the age of 18 she suffered a stroke due to mitral valve disease and that she was given treatments, which also resulted in *thrombocytopenia*. In Dr. Pardo, Jr.'s medical evaluation of petitioner dated 15 May 1996,[33] he made the following diagnosis and opinion:

> DIAGNOSIS AND OPINION:
>
> This patient sustained a severe head injury in (sic) [11 June 1995] and as a result of which she developed the following injuries:
>
> 1. Cerebral Concussion and Contusion
> 2. Post-traumatic Epilepsy
> 3. Post-concussional Syndrome
> 4. Minimal Brain Dysfunction
> 5. Cervical Sprain, chronic recurrent
>
> It is my opinion that the symptoms she complained of in the foregoing history are all related to and a result of the injury sustained on [11 June 1995].
>
> It is further my opinion that the above diagnosis and complaints do materially affect her duties and functions as a practi[c]ing physician and

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29 Id. at 47-50.
30 Records, Volume I, p. 500.
31 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 56.
32 Id. at 57-60.
33 *Rollo*, pp. 1232-1234.

> dermatologist, and that she will require treatment for an undetermined period of time.
>
> The percentage of disability is not calculated at this time and will require further evaluation and observation.[34]

Dr. Pardo, Jr. then advised petitioner to continue her medications.[35]

Petitioner likewise consulted a certain Dr. Tenchavez[36] for her follow-up EEG.[37] He similarly prescribed medicine for petitioner's deep brain injury. He also gave her pain killer for her headache and advised her to undergo physical therapy. Her symptoms, however, persisted all the more.[38]

In 1999, petitioner consulted another neurologist at the Makati Medical Center by the name of Dr. Martesio Perez (Dr. Perez) because of severe fleeting pains in her head, arms and legs; difficulty in concentration; and warm sensation of the legs, which symptoms also occurred after the 11 June 1995 incident. Upon examination, Dr. Perez observed that petitioner has been experiencing severe pains and she has a slight difficulty in concentration. He likewise noted that there was a slight spasm of petitioner's neck muscle but, otherwise, there was no objective neurologic finding. The rest of petitioner's neurologic examination was essentially normal.[39]

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34 Id. at 1234.

35 Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 67.

36 Id. at 5.

37 **INTERPRETATION:**

> The EEG is abnormal showing:
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> 1. Mild intermittent generalized slowing consistent with a diffuse cerebral dysfunction.
> 2. Fairly frequent intermittent arrhythmic theta/delta slow waves occasionally rhythm theta slow waves seen anteriorly, but more on the left frontal region compatible with irritative or deep focal pathology.
> 3. Occasional focal epileptiform activity arising from both region, but maximally and frequently on the Left, with phase reversal at F3 (EEG Report dated 11 July 1996. Records, Volume I, p. 351).

38 Testimony of Dr. Genevieve L. Huang. TSN, 12 February 1999, pp. 15-16.

39 Testimony of Dr. Martesio Perez. TSN, 7 February 2001, pp. 9-10.

Dr. Perez's neurologic evaluation[40] of petitioner reflected, among others: (1) petitioner's past medical history, which includes, among others, mitral valve stenosis; (2) an interpretation of petitioner's EEG results in October 1995 and in January 1999, *i.e.*, the first EEG showed sharp waves seen bilaterally more on the left while the second one was normal; and (3) interpretation of petitioner's second MRI result, *i.e.*, petitioner has a permanent damage in the brain, which can happen either after a head injury or after a stroke. Dr. Perez concluded that petitioner has post-traumatic or post concussion syndrome.[41]

Respondents, on the other hand, denied all the material allegations of petitioner and, in turn, countered the latter's statement of facts, thus:

According to respondents PHI and DTPCI, a sufficient notice had been posted on the glass door of the hotel leading to the swimming pool area to apprise the people, especially the hotel guests, that the swimming pool area is open only from 7:00 a.m. to 7:00 p.m.[42] Though the hotel's swimming pool area is open only between the aforestated time, the lights thereon are kept on until 10:00 p.m. for, (1) security reasons; (2) housekeeping personnel to do the cleaning of the swimming pool surroundings; and (3) people doing their exercise routine at the Slimmer's World Gym adjacent to the swimming pool area, which was then open until 10:00 p.m., to have a good view of the hotel's swimming pool. Even granting that the lights in the hotel's swimming pool area were turned off, it

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40 Records, Volume I, pp. 618-619.

41 Testimony of Dr. Martesio Perez. TSN, 7 February 2001, pp. 9-15

42 Respondents' Answer with Compulsory Counterclaims and Cross-claims. Records, Volume I, p. 70.

would not render the area completely dark as the Slimmer's World Gym near it was well-illuminated.[43]

Further, on 11 June 1995, at round 7:00 p.m., the hotel's swimming pool attendant advised petitioner and Delia to take their showers as it was already closing time. Afterwards, at around 7:40 p.m., Pearlie Benedicto-Lipana (Ms. Pearlie), the hotel staff nurse, who was at the hotel clinic located at the mezzanine floor, received a call from the hotel telephone operator informing her that there was a guest requiring medical assistance at the hotel's swimming pool area located one floor above the clinic.[44]

Immediately, Ms. Pearlie got hold of her medical kit and hurriedly went to the hotel's swimming pool area. There she saw Delia and petitioner, who told her that she was hit on the head by a folding wooden counter top. Although petitioner looked normal as there was no indication of any blood or bruise on her head, Ms. Pearlie still asked her if she needed any medical attention to which petitioner replied that she is a doctor, she was fine and she did not need any medical attention. Petitioner, instead, requested for a hirudoid cream to which Ms. Pearlie acceded.[45]

At about 8:00 p.m., after attending to petitioner, Ms. Pearlie went back to the hotel clinic to inform Dr. Dalumpines of the incident at the hotel's swimming pool area. But before she could do that, Dr. Dalumpines had already chanced upon Delia and petitioner at the hotel's coffee shop and the latter reported to Dr. Dalumpines that her head was hit by a folding wooden counter top while she was inside the hotel's swimming pool area.

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43 Testimony of Engineer Dante L. Cotaz. TSN, 23 July 2003, pp. 27, 44-49 and 62; Respondents PHI and DTPCI's Answer with Compulsory Counterclaims and Cross-claims. Records, Volume I, p. 71.

44 Testimony of Pearlie Benedicto-Lipana. TSN, 14 April 2003, pp. 13-15; CA Decision dated 9 August 2007, *rollo*, pp. 203-204.

45 Id. at 16-20; Id. at 204.

When asked by Dr. Dalumpines how she was, petitioner responded she is a doctor, she was fine and she was already attended to by the hotel nurse, who went at the hotel's swimming pool area right after the accident. Dr. Dalumpines then called Ms. Pearlie to verify the same, which the latter confirmed.[46]

Afterwards, Dr. Dalumpines went back to petitioner and checked the latter's condition. Petitioner insisted that she was fine and that the hirudoid cream was enough. Having been assured that everything was fine, Dr. Dalumpines requested petitioner to execute a handwritten certification[47] regarding the incident that occurred that night. Dr. Dalumpines then suggested to petitioner to have an X-ray test. Petitioner replied that it was not necessary. Petitioner also refused further medical attention.[48]

On 13 June 1995, petitioner called up Dr. Dalumpines. The call, however, had nothing to do with the 11 June 1995 incident. Instead, petitioner merely engaged in small talk with Dr. Dalumpines while having her daily massage. The two talked about petitioner's personal matters, *i.e.*, past medical history, differences with siblings and family over inheritance and difficulty in practice. Petitioner even disclosed to Dr. Dalumpines that she once fell from a horse; that she had a stroke; had hysterectomy and is incapable of having children for her uterus had already been removed; that she had blood disorder, particularly lack of platelets, that can cause bleeding; and she had an "on" and "off" headaches. Petitioner oftentimes called Dr. Dalumpines at the hotel clinic to discuss topics similar to those discussed during their 13 June 1995 conversation.[49]

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46 Id. at 20-22; Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, pp. 12-16; CA Decision dated 9 August 2007, *rollo*, p. 204.

47 Records, Volume I, pp. 83-84.

48 Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, pp. 17-22.

49 Id. at 22-28.

Also, during one of their telephone conversations, petitioner requested for a certification regarding the 11 June 1995 incident inside the hotel's swimming pool area. Dr. Dalumpines accordingly issued Certification dated 7 September 1995, which states that:[50]

C E R T I F I C A T I O N

> This is to certify that as per Clinic records, duty nurse [Pearlie] was called to attend to an accident at the poolside at 7:45PM on [11 June 1995].
>
> Same records show that there, **she saw [petitioner] who claimed the folding countertop fell on her head <u>when she lifted it</u> to enter the lifeguard's counter to use the phone**. She asked for Hirudoid.
>
> The same evening [petitioner] met [Dr. Dalumpines] at the Coffee Shop. After narrating the poolside incident and **<u>declining [Dr. Dalumpines'] offer of assistance</u>, she reiterated that the Hirudoid cream was enough and <u>that [petitioner] being a doctor herself, knew her condition and she was all right</u>**.
>
> This certification is given upon the request of [petitioner] for whatever purpose it may serve, [7 September 1995] at Makati City.[51] (Emphasis supplied).

Petitioner personally picked up the afore-quoted Certification at the hotel clinic without any objection as to its contents.[52]

From 11 June 1995 until 7 September 1995, the hotel clinic never received any complaint from petitioner regarding the latter's condition. The hotel itself neither received any written complaint from petitioner.[53]

After trial, the court *a quo* in its Decision dated 21 February 2006 dismissed petitioner's Complaint for lack of merit.

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50 Id. at 31-34.
51 Records, Volume I, p. 22.
52 Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, p. 33.
53 Testimony of Dr. Violeta Dalumpines. TSN, 27 November 2002, p. 12.

The trial court found petitioner's testimony self-serving, thus, devoid of credibility. Petitioner failed to present any evidence to substantiate her allegation that the lights in the hotel's swimming pool area were shut off at the time of the incident. She did not even present her friend, Delia, to corroborate her testimony. More so, petitioner's testimony was contradicted by one of the witnesses presented by the respondents who positively declared that it has been a normal practice of the hotel management not to put off the lights until 10:00 p.m. to allow the housekeepers to do the cleaning of the swimming pool surroundings, including the toilets and counters. Also, the lights were kept on for security reasons and for the people in the nearby gym to have a good view of the swimming pool while doing their exercise routine. Besides, there was a remote possibility that the hotel's swimming pool area was in complete darkness as the aforesaid gym was then open until 10:00 p.m., and the lights radiate to the hotel's swimming pool area. **As such, petitioner would not have met the accident had she only acted with care and caution**.[54]

The trial court further struck down petitioner's contention that the hotel management did not extend medical assistance to her in the aftermath of the accident. Records showed that the hotel management immediately responded after being notified of the accident. The hotel nurse and the two chambermaids placed an ice pack on petitioner's head. They were willing to extend further emergency assistance but petitioner refused and merely asked for a hirudoid cream. Petitioner even told them she is a doctor and she was fine. Even the medical services offered by the hotel physician were turned down by petitioner. Emphatically, petitioner cannot fault the hotel for the injury she sustained as she herself did not heed the warning that the swimming pool area is open only from 7:00 a.m. to 7:00 p.m. **As such,**

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54 RTC Decision dated 21 February 2006, *rollo*, pp. 102-103.

since petitioner's own negligence was the immediate and proximate cause of her injury, she cannot recover damages.[55]

The trial court similarly observed that the records revealed no indication that the head injury complained of by petitioner was the result of the alleged 11 June 1995 accident. *Firstly*, petitioner had a past medical history which might have been the cause of her recurring brain injury. *Secondly*, the findings of Dr. Perez did not prove a causal relation between the 11 June 1995 accident and the brain damage suffered by petitioner. Even Dr. Perez himself testified that the symptoms being experienced by petitioner might have been due to factors other than the head trauma she allegedly suffered. It bears stressing that petitioner had been suffering from different kinds of brain problems since she was 18 years old, which may have been the cause of the recurring symptoms of head injury she is experiencing at present. Absent, therefore, of any proof establishing the causal relation between the injury she allegedly suffered on 11 June 1995 and the head pains she now suffers, her claim must fail. *Thirdly*, Dr. Teresita Sanchez's (Dr. Sanchez) testimony cannot be relied upon since she testified on the findings and conclusions of persons who were never presented in court. Ergo, her testimony thereon was hearsay. *Fourthly*, the medical reports/evaluations/certifications issued by myriads of doctors whom petitioner sought for examination or treatment were neither identified nor testified to by those who issued them. Being deemed as hearsay, they cannot be given probative value. **Even assuming that petitioner suffered head injury as a consequence of the 11 June 1995 accident, she cannot blame anyone but herself for staying at the hotel's swimming pool area beyond its closing hours and for lifting the folding wooden counter top that eventually hit her head**.[56]

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55 Id. at 103.

56 Id. at 103-107.

For petitioner's failure to prove that her serious and permanent injury was the result of the 11 June 1995 accident, thus, her claim for actual or compensatory damages, loss of income, moral damages, exemplary damages and attorney's fees, must all fail.[57]

With regard to respondent First Lepanto's liability, the trial court ruled that under the contract of insurance, suffice it to state that absent any cause for any liability against respondents PHI and DTPCI, respondent First Lepanto cannot be made liable thereon.

Dissatisfied, petitioner elevated the matter to the Court of Appeals with the following assignment of errors: *(1) the trial court erred in finding that the testimony of [petitioner] is self-serving and thus void of credibility; (2) the trial court erred in applying the doctrine of proximate cause in cases of breach of contract [and even] assuming arguendo that the doctrine is applicable, [petitioner] was able to prove by sufficient evidence the causal connection between her injuries and [respondents PHI and DTPCI's] negligent act; and (3) the trial court erred in holding that [petitioner]is not entitled to damages*.[58]

On 9 August 2007, the Court of Appeals rendered a Decision affirming the findings and conclusions of the trial court.

The Court of Appeals ratiocinated in this wise:

> At the outset, it is necessary for our purpose to determine whether to decide this case on the theory that [herein respondents PHI and DTPCI] are liable for breach of contract or on the theory of *quasi-delict*.

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57 Id. at 106-108.

58 CA Decision dated 9 August 2007, id. at 205; Appellant's Brief dated 6 November 2006, id. at 118.

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It cannot be gainsaid that [herein petitioner's] use of the hotel's pool was only upon the invitation of [Delia], the hotel's registered guest. As such, she cannot claim contractual relationship between her and the hotel. **Since the circumstances of the present case do not evince a contractual relation between [petitioner] and [respondents], the rules on *quasi-delict,* thus, govern**.

The pertinent provision of Art. 2176 of the Civil Code which states: "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 *quasi-delict*."

A perusal of Article 2176 shows that obligations arising from *quasi-delict* or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound by contract, whether express or implied. Thus, to sustain a claim liability under *quasi-delict*, the following requisites must concur: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.

Viewed from the foregoing, the question now is whether [respondents PHI and DTPCI] and its employees were negligent? We do not think so. Several factors militate against [petitioner's] contention.

One. [Petitioner] recognized the fact that the pool area's closing time is [7:00 p.m.]. She, herself, admitted during her testimony that she was well aware of the sign when she and [Delia] entered the pool area. Hence, upon knowing, at the outset, of the pool's closing time, she took the risk of overstaying when she decided to take shower and leave the area beyond the closing hour. In fact, it was only upon the advise of the pool attendants that she thereafter took her shower.

Two. She admitted, through her certification that she lifted the wooden bar countertop, which then fell onto her head. The admission in her certificate proves the circumstances surrounding the occurrence that transpired on the night of [11 June 1995]. This is contrary to her assertion in the complaint and testimony that, while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object. In view of the fact that she admitted having lifted the counter top, it was her own doing, therefore, that made the counter top fell on to her head.

Three. We cannot likewise subscribe to [petitioner's] assertion that the pool area was totally dark in that she herself admitted that she saw a telephone at the counter after searching for one. It must be noted that [petitioner] and [Delia] had walked around the pool area with ease since they were able to proceed to the glass entrance door from shower room, and back to the counter area where the telephone was located without encountering any untoward incident. Otherwise, she could have easily

> stumbled over, or slid, or bumped into something while searching for the telephone. This negates her assertion that the pool area was completely dark, thereby, totally impairing her vision.
>
> x x x x
>
> The aforementioned circumstances lead us to no other conclusion than that the **proximate and immediate cause of the injury of [petitioner] was due to her own negligence**.
>
> Moreover, [petitioner] failed to sufficiently substantiate that the medical symptoms she is currently experiencing are the direct result of the head injury she sustained on [11 June 1995] as was aptly discussed in the lower court's findings.
>
> x x x x
>
> It bears stressing that in civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it. Hence, for [petitioner] to be entitled to damages, she must show that she had suffered an actionable injury. Regrettably, [petitioner] failed in this regard.[59] (Emphasis supplied).

Petitioner's Motion for Reconsideration was denied for lack of merit in a Resolution dated 5 November 2007.

Hence, this Petition raising the following issues:

> (1) Whether or not the findings of fact of the trial court and of the Court of Appeals are conclusive in this case.
>
> (2) Whether or not [herein respondents PHI and DTPCI are] responsible by implied contract to exercise due care for the safety and welfare of the petitioner.
>
> (3) Whether or not the cause of action of the petitioner can be based on both breach of contract and tort.
>
> (4) Whether or not it is [respondents PHI and DTPCI] and its employees who are liable to the petitioner for negligence, applying the well-established doctrines of *res ipsa loquitur* and *respondeat superior*.
>
> (5) Whether the petitioner's debilitating and permanent injuries were a result of the accident she suffered at the hotel on [11 June 1995].

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59 Id. at 209-213.

> (6) Whether or not the petitioner is entitled to the payment of damages, attorney's fees, interest, and the costs of suit.
>
> (7) Whether or not the respondent insurance company is liable, even directly, to the petitioner.
>
> (8) Whether or not petitioner's motion for reconsideration of the decision of the Court of Appeals is *pro forma*.[60]

Petitioner argues that the rule that "findings of fact of the lower courts are conclusive and must be respected on appeal" finds no application herein because this case falls under the jurisprudentially established exceptions. Moreover, since the rationale behind the afore-mentioned rule is that "the trial judge is in a vantage point to appreciate the conduct and behavior of the witnesses and has the unexcelled opportunity to evaluate their testimony," one logical exception to the rule that can be deduced therefrom is when the judge who decided the case is not the same judge who heard and tried the case.

Petitioner further faults the Court of Appeals in ruling that no contractual relationship existed between her and respondents PHI and DTPCI since her use of the hotel's swimming pool facility was only upon the invitation of the hotel's registered guest. On the contrary, petitioner maintains that an implied contract existed between them in view of the fact that the hotel guest status extends to all those who avail of its services—its patrons and invitees. It follows then that all those who patronize the hotel and its facilities, including those who are invited to partake of those facilities, like petitioner, are generally regarded as guests of the hotel. As such, respondents PHI and DTPCI are responsible by implied contract for the safety and welfare of petitioner while the latter was inside their premises by exercising due care, which they failed to do.

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[60] Id. at 26.

Petitioner even asserts that the existence of a contract between the parties does not bar any liability for tort since the act that breaks a contract may also be a tort. Hence, the concept of change of theory of cause of action pointed to by respondents is irrelevant.

Petitioner similarly avows that the doctrines of *res ipsa loquitur* and *respondeat superior* are applicable in this case. She argues that a person who goes in a hotel without a "*bukol*" or hematoma and comes out of it with a "*bukol*" or hematoma is a clear case of *res ipsa loquitur.* It was an accident caused by the fact that the hotel staff was not present to lift the heavy counter top for petitioner as is normally expected of them because they negligently locked the main entrance door of the hotel's swimming pool area. Following the doctrine of *res ipsa loquitur*, respondents PHI and DTPCI's negligence is presumed and it is incumbent upon them to prove otherwise but they failed to do so. Further, respondents PHI and DTPCI failed to observe all the diligence of a good father of a family in the selection and supervision of their employees, hence, following the doctrine of *respondeat superior*, they were liable for the negligent acts of their staff in not verifying if there were still people inside the swimming pool area before turning off the lights and locking the door. Had respondents PHI and DTPCI's employees done so, petitioner would not have been injured. Since respondents PHI and DTPCI's negligence need not be proved, the lower courts erred in shifting the burden to petitioner and, thereafter, holding the hotel and its employees not negligent for petitioner's failure to prove their negligence. Moreover, petitioner alleges that there was no contributory negligence on her part for she did not do anything that could have contributed to her injury. And, even if there was, the same does not bar recovery.

Petitioner equally declares that the evidence on record, including the objective medical findings, had firmly established that her permanent debilitating injuries were the direct result of the 11 June 1995 accident inside the hotel's swimming pool area. This fact has not been totally disputed by the respondents. Further, the medical experts who had been consulted by petitioner were in unison in their diagnoses of her condition. Petitioner was also able to prove that the falling of the folding wooden counter top on her head while she was at the hotel's swimming pool area was the cause of her head, eye and neck injuries.

Petitioner reiterates her claim for an award of damages, to wit: actual, including loss of income; moral, exemplary; as well as attorney's fees, interest and costs of suit. She states that respondents PHI and DTPCI are liable for *quasi-delict* under Articles 19, 2176 and 2180 of the New Civil Code. At the same time, they are liable under an implied contract for they have a public duty to give due courtesy, to exercise reasonable care and to provide safety to hotel guests, patrons and invitees. Respondent First Lepanto, on the other hand, is directly liable under the express contract of insurance.

Lastly, petitioner contends that her Motion for Reconsideration before the Court of Appeals was not *pro forma* for it specifically pointed out the alleged errors in the Court of Appeals Decision.

The instant Petition is devoid of merit.

Primarily, only errors of law and not of facts are reviewable by this Court in a Petition for Review on *Certiorari* under Rule 45 of the Rules of

Court.[61] This Court is not a trier of facts and it is beyond its function to re-examine and weigh anew the respective evidence of the parties.[62] Besides, this Court adheres to the long standing doctrine that the factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties and this Court.[63] Nonetheless, this Court has, at times, allowed exceptions thereto, to wit:

> (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
> (b) When the inference made is manifestly mistaken, absurd, or impossible;
> (c) When there is grave abuse of discretion;
> (d) When the judgment is based on a misapprehension of facts;
> (e) When the findings of facts are conflicting;
> (f) When in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
> (g) When the [Court of Appeals'] findings are contrary to those by the trial court;
> (h) When the findings are conclusions without citation of specific evidence on which they are based;
> (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
> (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
> (k) When the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[64]

Upon meticulous perusal of the records, however, this Court finds that none of these exceptions is obtaining in this case. No such justifiable or compelling reasons exist for this Court to depart from the general rule. This Court will not disturb the factual findings of the trial court as affirmed by the Court of Appeals and adequately supported by the evidence on record.

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61 *Blanco v. Quasha*, 376 Phil. 480, 491 (1999).
62 *Manila Electric Company v. South Pacific Plastic Manufacturing Corporation*, 526 Phil. 105, 111 (2006).
63 *Tuazon v. Heirs of Bartolome Ramos*, 501 Phil. 695, 701 (2005).
64 *Abalos v. Heirs of Vicente Torio*, G. R. No. 175444, 14 December 2011, 662 SCRA 450, 456-457.

Also, this Court will not review the factual findings of the trial court simply because the judge who heard and tried the case was not the same judge who penned the decision. This fact alone does not diminish the veracity and correctness of the factual findings of the trial court.[65] Indeed, "the efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him."[66] In this case, there was none.

It bears stressing that in this jurisdiction there is a disputable presumption that the trial court's decision is rendered by the judge in the regular performance of his official duties. While the said presumption is only disputable, it is satisfactory unless contradicted or overcame by other evidence. Encompassed in this presumption of regularity is the presumption that the trial court judge, in resolving the case and drafting the decision, reviewed, evaluated, and weighed all the evidence on record. That the said trial court judge is not the same judge who heard the case and received the evidence is of little consequence when the records and transcripts of stenographic notes (TSNs) are complete and available for consideration by the former,[67] just like in the present case.

Irrefragably, the fact that the judge who penned the trial court's decision was not the same judge who heard the case and received the evidence therein does not render the findings in the said decision erroneous and unreliable. While the conduct and demeanor of witnesses may sway a trial court judge in deciding a case, it is not, and should not be, his only consideration. Even more vital for the trial court judge's decision are the contents and substance of the witnesses' testimonies, as borne out by the

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65 *Ditche v. Court of Appeals*, 384 Phil. 35, 45 (2000).
66 *People v. Sansaet*, 426 Phil. 826, 833 (2002).
67 *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 413-414 (2006).

TSNs, as well as the object and documentary evidence submitted and made part of the records of the case.[68]

This Court examined the records, including the TSNs, and found no reason to disturb the factual findings of both lower courts. This Court, thus, upholds their conclusiveness.

In resolving the second and third issues, a determination of the cause of action on which petitioner's Complaint for Damages was anchored upon is called for.

Initially, petitioner was suing respondents PHI and DTPCI mainly on account of their negligence but not on any breach of contract. Surprisingly, when the case was elevated on appeal to the Court of Appeals, petitioner had a change of heart and later claimed that an implied contract existed between her and respondents PHI and DTPCI and that the latter were liable for breach of their obligation to keep her safe and out of harm. This allegation was never an issue before the trial court. It was not the cause of action relied upon by the petitioner not until the case was before the Court of Appeals. Presently, petitioner claims that her cause of action can be based both on *quasi-delict* and breach of contract.

A perusal of petitioner's Complaint evidently shows that her cause of action was based solely on *quasi-delict*. Telling are the following allegations in petitioner's Complaint:

> 6. THAT, **in the evening of [11 June 1995]**, between the hours from 7:00 to 8:00 o'clock, after [herein petitioner] and her friend from New York, [Delia], the latter being then a Hotel guest, were taking their shower after having a dip in the hotel's swimming pool, **without any notice or**

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68 Id. at 415.

warning, the Hotel's staff put off all the lights within the pool area including the lights on the hallway and also locked the main entrance door of the pool area, x x x;

7. THAT, Hotel guest [Delia] started to panic while [petitioner] pacified her by telling her not to worry as they would both find their way out. [Petitioner] knowing that within the area there is a house phone, started to look around while [Delia] was following her, eventually [petitioner] saw a phone behind the counter x x x, that while slowly moving on towards the phone on **a stooping manner due to the darkness** CAUSED BY UNTIMELY AND NEGLIGENTLY PUTTING OFF WITH THE LIGHTS BY THE [HEREIN RESPONDENTS PHI AND DTPCI'S] EMPLOYEE while passing through the open counter door with its Folding Counter Top also opened, x x x, a hard and heavy object fell onto the head of the [petitioner] that knocked her down almost unconscious which hard and heavy object turned out to be the Folding Counter Top;

8. THAT, [Delia] immediately got hold of the house phone and **notified the Hotel Telephone Operator about the incident, immediately the hotel staffs (sic) arrived but they were stranded behind the main door of the pool entrance and it too (sic) them more than twenty (20) minutes to locate the hotel maintenance employee who holds the key of the said main entrance door**;

9. THAT, when the door was opened, two Hotel Chamber Maids assisted the [petitioner] to get out of the counter door. [Petitioner] being a Physician tried to control her feelings although groggy and requested for a HURIDOID, a medicine for HEMATOMA, as a **huge lump developed on her head while the two Chamber Maids assisted [petitioner] by holding the bag of ice on her head and applying the medicine on the huge lump**;

10. THAT, [petitioner] after having recovered slightly from her nightmare, though still feeling weak, asked to be assisted to the Hotel Coffee Shop to take a rest but requested for the hotel's Physician. **Despite her insistent requests, the [Dusit Hotel] refused to lift a finger to assists [petitioner] who was then in distress until a lady approached and introduced herself as the Hotel's house Doctor. Instead however of assisting [petitioner]** by asking her what kind of assistance the Hotel could render, in a DISCOURTEOUS MANNER **presented instead a paper and demanding [petitioner] to affix her signature telling her that the Hotel Management would only assists and answer for all expenses incurred if [petitioner] signs the paper presented, but she refused and [petitioner] instead wrote a marginal note on the said paper stating her reason therefore, said paper later on turned out to be a WAIVER OF RIGHT or QUIT CLAIM**;

x x x x

14. THAT, due to the unfortunate incident **caused by [respondents PHI and DTPCI's] gross negligence** despite medical assistance, [petitioner]

> started to **feel losing her memory that greatly affected and disrupted the practice of her chosen profession** x x x.
>
> x x x x
>
> 19. THAT, due to [respondents PHI and DTPCI's] gross negligence as being narrated which caused [petitioner] to suffer sleepless nights, depression, mental anguish, serious anxiety, wounded feelings, and embarrassment with her Diplomate friends in the profession and industry, her social standing in the community was greatly affected and hence, [respondents PHI and DTPCI] must be imposed the hereunder damages, prayed for x x x and **Artile (sic) 2176 and 2199 of the New Civil Code of the Philippines** x x x.
>
> x x x x
>
> 22. THAT, as to Moral, Exemplary and Actual Damages, as well as [petitioner's] Loss of Income, the amounts are stated in its prayer hereunder.[69]

It is clear from petitioner's allegations that her Complaint for Damages was predicated on the alleged negligence of respondents PHI and DTPCI's staff in the untimely putting off of all the lights within the hotel's swimming pool area, as well as the locking of its main door, prompting her to look for a way out leading to the fall of the folding wooden counter top on her head causing her serious brain injury. The said negligence was allegedly compounded by respondents PHI and DTPCI's failure to render prompt and adequate medical assistance. These allegations in petitioner's Complaint constitute a cause of action for *quasi-delict*, which under the New Civil Code is defined as an act, or omission which causes damage to another, there being fault or negligence.[70]

It is evident from petitioner's Complaint and from her open court testimony that the reliance was on the alleged tortious acts committed

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69 *Rollo*, pp. 769-775.

70 Article 2176 of the New Civil Code provides:

> Art. 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. (*Navida v. Dizon, Jr.*, G. R. Nos. 125078, 125598, 126654, 127856 &128398, 30 May 2011, 649 SCRA 33, 79).

against her by respondents PHI and DTPCI, through their management and staff. It is now too late in the day to raise the said argument for the first time before this Court.[71]

Petitioner's belated reliance on breach of contract as her cause of action cannot be sanctioned by this Court. Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal. **Matters, theories or arguments not submitted before the trial court cannot be considered for the first time on appeal or *certiorari*.**[72] When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[73] Hence, a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[74]

In that regard, this Court finds it significant to take note of the following differences between *quasi-delict* (*culpa aquilina*) and breach of contract (*culpa contractual*). In *quasi-delict*, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation.[75] In *quasi-delict*, the defense of "good father of a family" is a complete and proper defense insofar as parents,

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71 *Tokuda v. Gonzales*, 523 Phil. 213, 220 (2006).
72 Id.
73 *Drilon v. Court of Appeals*, G. R. No. 107019, 20 March 1997, 270 SCRA 211, 219.
74 *Sta. Ana, Jr. v. Court of Appeals*, G. R. No. 115284, 13 November 1997, 281 SCRA 624, 629.
75 Pineda, *Tort and Damages Annotated*, 2004 Edition, p. 17 citing *Rakes v. Atlantic, Gulf and Pacific Co.*, 7 Phil. 359, 369-374 (1907).

guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees.[76] **In *quasi-delict,* there is no presumption of negligence** and it is incumbent upon the injured party to prove the negligence of the defendant, otherwise, the former's complaint will be dismissed, **while in breach of contract, negligence is presumed so long as it can be proved that there was breach of the contract** and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.[77]

Viewed from the foregoing, petitioner's change of theory or cause of action from *quasi-delict* to breach of contract only on appeal would necessarily cause injustice to respondents PHI and DTPCI. *First*, the latter will have no more opportunity to present evidence to contradict petitioner's new argument. *Second*, the burden of proof will be shifted from petitioner to respondents PHI and DTPCI. Petitioner's change of theory from *quasi-delict* to breach of contract must be repudiated.

As petitioner's cause of action is based on *quasi-delict*, it is incumbent upon her to prove the presence of the following requisites before respondents PHI and DTPCI can be held liable, to wit: (a) damages suffered by the plaintiff; (b) **fault or negligence of the defendant, or some other person for whose acts he must respond**; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[78] **Further, since petitioner's case is for *quasi-delict,* the negligence or fault should be clearly established as it is the**

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[76] Id. citing Article 2180 of the Civil Code (last paragraph) and *Cangco v. Manila Railroad Company*, 38 Phil. 768, 774 (1918); De Leon, *Comments and Cases on Torts and Damages*, Third Edition (2012), p. 188.

[77] Id. citing *Cangco v. Manila Railroad Company*, id.; De Leon, *Comments and Cases on Torts and Damages*, Third Edition (2012), id.

[78] *Philippine National Construction Corporation v. Honorable Court of Appeals*, 505 Phil. 87, 97-98 (2005).

basis of her action.[79] The burden of proof is upon petitioner. Section 1, Rule 131 of the Rules of Court provides that "burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." It is then up for the plaintiff to establish his cause of action or the defendant to establish his defense. **Therefore, if the plaintiff alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence**. It is even presumed that a person takes ordinary care of his concerns. The quantum of proof required is preponderance of evidence.[80]

In this case, as found by the trial court and affirmed by the Court of Appeals, petitioner utterly failed to prove the alleged negligence of respondents PHI and DTPCI. Other than petitioner's self-serving testimony that all the lights in the hotel's swimming pool area were shut off and the door was locked, which allegedly prompted her to find a way out and in doing so a folding wooden counter top fell on her head causing her injury, no other evidence was presented to substantiate the same. Even her own companion during the night of the accident inside the hotel's swimming pool area was never presented to corroborate her allegations. Moreover, petitioner's aforesaid allegations were successfully rebutted by respondents PHI and DTPCI. Here, we quote with conformity the observation of the trial court, thus:

> x x x Besides not being backed up by other supporting evidence, said statement is being contradicted by the testimony of Engineer Dante L. Costas,[81] who positively declared that it has been a normal practice of the

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79 Pineda, *Torts and Damages, Annotated*, 2004 Edition, p. 9 citing *Calalas v. Court of Appeals*, 388 Phil. 146, 151 (2000).

80 Aquino, *Torts and Damages*, First Edition (2001), p. 154 citing *Taylor v. Manila Electric Railroad and Light Company*, 16 Phil. 8, 10 (1910) which further cited *Scaevola, Jurisprudencia del Codigo Civil*, Vol. 6, pp. 551-552.

81 In the Transcript of Stenographic Notes dated 23 July 2003, Engineer Dante's surname is "Cotaz" and not "Costas."

> Hotel management not to put off the lights until 10:00P.M. in order to allow the housekeepers to do the cleaning of the pool's surrounding, the toilets and the counters. It was also confirmed that the lights were kept on for security reasons and so that the people exercising in the nearby gym may be able to have a good view of the swimming pool. This Court also takes note that the nearby gymnasium was normally open until 10:00 P.M. so that there was a remote possibility the pool area was in complete darkness as was alleged by [herein petitioner], considering that the illumination which reflected from the gym. Ergo, considering that the area were sufficient (sic) illuminated when the alleged incident occurred, there could have been no reason for the [petitioner] to have met said accident, much less to have been injured as a consequence thereof, if she only acted with care and caution, which every ordinary person is expected to do.[82]

More telling is the ratiocination of the Court of Appeals, to wit:

> Viewed from the foregoing, the question now is whether [respondents PHI and DTPCI] and its employees were negligent? We do not think so. Several factors militate against [petitioner's] contention.
>
> One. [Petitioner] recognized the fact that the pool area's closing time is [7:00 p.m.]. She, herself, admitted during her testimony that she was well aware of the sign when she and [Delia] entered the pool area. Hence, upon knowing, at the outset, of the pool's closing time, she took the risk of overstaying when she decided to take shower and leave the area beyond the closing hour. In fact, it was only upon the advise of the pool attendants that she thereafter took her shower.
>
> Two. She admitted, through her certification, that she lifted the wooden bar countertop, which then fell on to her head. The admission in her certificate proves the circumstances surrounding the occurrence that transpired on the night of [11 June 1995]. This is contrary to her assertion in the complaint and testimony that, while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object. In view of the fact that she admitted having lifted the countertop, it was her own doing, therefore, that made the counter top fell on to her head.
>
> Three. We cannot likewise subscribe to [petitioner's] assertion that the pool area was totally dark in that she herself admitted that she saw a telephone at the counter after searching for one. It must be noted that [petitioner] and [Delia] had walked around the pool area with ease since they were able to proceed to the glass entrance door from the shower room, and back to the counter area where the telephone was located without encountering any untoward incident. Otherwise, she could have easily stumbled over, or slid, or bumped into something while searching for the telephone. This negates her assertion that the pool area was completely dark, thereby, totally impairing her vision.

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[82] RTC Decision dated 21 February 2006. *Rollo*, pp. 102-103.

x x x x

> The aforementioned circumstances lead us to no other conclusion than that the **proximate and immediate cause of the injury of [petitioner] was due to her own negligence**.[83] (Emphasis supplied).

Even petitioner's assertion of negligence on the part of respondents PHI and DTPCI in not rendering medical assistance to her is preposterous. Her own Complaint affirmed that respondents PHI and DTPCI afforded medical assistance to her after she met the unfortunate accident inside the hotel's swimming pool facility. Below is the portion of petitioner's Complaint that would contradict her very own statement, thus:

> 14. THAT, due to the unfortunate incident caused by [respondents PHI and DTPCI's] gross negligence **despite medical assistance**, [petitioner] started to feel losing her memory that greatly affected and disrupted the practice of her chosen profession. x x x.[84] (Emphasis supplied).

Also, as observed by the trial court, respondents PHI and DTPCI, indeed, extended medical assistance to petitioner but it was petitioner who refused the same. The trial court stated, thus:

> Further, [herein petitioner's] asseverations that the Hotel Management did not extend medical assistance to her in the aftermath of the alleged accident is not true. Again, this statement was not supported by any evidence other that the sole and self-serving testimony of [petitioner]. Thus, this Court cannot take [petitioner's] statement as a gospel truth. It bears stressing that the Hotel Management immediately responded after it received notice of the incident. As a matter of fact, [Ms. Pearlie], the Hotel nurse, with two chambermaids holding an ice bag placed on [petitioner's] head came to the [petitioner] to extend emergency assistance when she was notified of the incident, but [petitioner] merely asked for Hirudoid, saying she was fine, and that she was a doctor and know how to take care of herself. Also, the Hotel, through its in-house physician, [Dr. Dalumpines] offered its medical services to [petitioner] when they met at the Hotel's coffee shop, but again [petitioner] declined the offer. Moreover, the Hotel as a show of concern for the [petitioner's] welfare, shouldered the expenses for the MRI services performed on [petitioner] at the Makati Medical Center. Emphatically, [petitioner]

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83 Id. at 209-212.

84 CA Decision dated 9 August 2007. Id. at 771.

> herself cannot fault the Hotel for the injury she allegedly suffered because she herself did not heed the warning at the pool to the effect that it was only open from 7:00 to 7:00 P.M. Thus, when the [petitioner's] own negligence was the immediate and proximate cause of his injury, [she] cannot recover damages x x x.[85]

With the foregoing, the following were clearly established, to wit: (1) petitioner stayed in the hotel's swimming pool facility beyond its closing hours; (2) she lifted the folding wooden counter top that eventually hit her head; and (3) respondents PHI and DTPCI extended medical assistance to her. As such, no negligence can be attributed either to respondents PHI and DTPCI or to their staff and/or management. Since the question of negligence is one of fact, this Court is bound by the said factual findings made by the lower courts. It has been repeatedly held that the trial court's factual findings, when affirmed by the Court of Appeals, are conclusive and binding upon this Court, if they are not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. Petitioner has not presented sufficient ground to warrant a deviation from this rule.[86]

With regard to petitioner's contention that the principles of *res ipsa loquitur* and *respondeat superior* are applicable in this case, this Court holds otherwise.

Res ipsa loquitur is a Latin phrase which literally means "the thing or the transaction speaks for itself." It relates to the fact of an injury that sets out an inference to the cause thereof or establishes the plaintiff's *prima facie* case. The doctrine rests on inference and not on presumption. The facts of the occurrence warrant the supposition of negligence and they furnish circumstantial evidence of negligence when direct evidence is lacking.[87]

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85 RTC Decision dated 21 February 2006. Id. at 103.

86 *Pantranco North Express, Inc. v. Standard Insurance Company, Inc.*, 493 Phil. 616, 624 (2005).

87 *Perla Compaña de Seguros, Inc. v. Sps. Sarangaya III*, 510 Phil. 676, 686 (2005).

Simply stated, this doctrine finds no application if there is direct proof of absence or presence of negligence. **If there is sufficient proof showing the conditions and circumstances under which the injury occurred, then the creative reason for the said doctrine disappears**.[88]

Further, the doctrine of *res ipsa loquitur* applies where, (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[89]

In the case at bench, even granting that respondents PHI and DTPCI's staff negligently turned off the lights and locked the door, the folding wooden counter top would still not fall on petitioner's head had she not lifted the same. Although the folding wooden counter top is within the exclusive management or control of respondents PHI and DTPCI, the falling of the same and hitting the head of petitioner was not due to the negligence of the former. As found by both lower courts, the folding wooden counter top did not fall on petitioner's head without any human intervention. Records showed that **petitioner lifted the said folding wooden counter top that eventually fell and hit her head**. The same was evidenced by the, (1) 11 June 1995 handwritten certification of petitioner herself; (2) her Letter dated 30 August 1995 addressed to Mr. Yoshikazu Masuda (Mr. Masuda), General Manager of Dusit Hotel; and, (3) Certification dated 7 September 1995 issued to her by Dr. Dalumpines upon her request, which contents she never questioned.

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88 Aquino, *Torts and Damages*, First Edition (2001), p. 164 citing *S. D. Martinez v. William Van Buskirk*, 18 Phil. 79, 85 (1910).

89 *Capili v. Spouses Cardaña*, 537 Phil. 60, 67 (2006).

Here, we, respectively, quote the 11 June 1995 handwritten certification of petitioner; her letter to Mr. Masuda dated 30 August 1995; and Dr. Dalumpines' Certification dated 7 September 1995, to wit:

Petitioner's 11 June 1995 Handwritten Certification:

> I was requested by [Dr.] Dalumpines to write that I was assured of assistance should it be necessary with regard an accident at the pool. x x x The phone was in an enclosed area on a chair – **I lifted the wooden bar counter top which then fell on my head producing a large hematoma** x x x.[90]

Petitioner's Letter addressed to Mr. Masuda dated 30 August 1995:

> Dear Mr. Masuda,
>
> x x x x
>
> x x x We searched and saw a phone on a chair behind a towel counter. However[,] **in order to get behind the counter I had to lift a hinged massive wooden section of the counter which subsequently fell and knocked me on my head** x x x.[91]

Dr. Dalumpines' Certification dated 7 September 1995:

> C E R T I F I C A T I O N
>
> This is to certify that as per Clinic records, duty nurse [Pearlie] was called to attend to an accident at the poolside at 7:45PM on [11 June 1995].
>
> Same records show that there, **she saw [petitioner] who claimed the folding countertop fell on her head when she lifted it to enter the lifeguard's counter to use the phone**. She asked for Hirudoid.
>
> The same evening [petitioner] met [Dr. Dalumpnes] at the Coffee Shop. After narrating the poolside incident and **declining [Dr.**

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90 Records, Volume I, pp. 83-84.

91 *Rollo*, p. 761.

> **Dalumpines'] offer of assistance, she reiterated that the Hirudoid cream was enough and that [petitioner] being a doctor herself, knew her condition and she was all right**.
>
> This certification is given upon the request of [petitioner] for whatever purpose it may serve, [7 September 1995] at Makati City.[92] (Emphasis supplied).

This Court is not unaware that in petitioner's Complaint and in her open court testimony, her assertion was, "while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object, which turned out to be the folding wooden counter top." However, in her open court testimony, particularly during cross-examination, petitioner confirmed that she made such statement that "she lifted the hinge massive wooden section of the counter near the swimming pool."[93] In view thereof, this Court cannot acquiesce petitioner's theory that her case is one of *res ipsa loquitur* as it was sufficiently established how petitioner obtained that "*bukol*" or "hematoma."

The doctrine of *respondeat superior* finds no application in the absence of any showing that the employees of respondents PHI and DTPCI were negligent. Since in this case, the trial court and the appellate court found no negligence on the part of the employees of respondents PHI and DTPCI, thus, the latter cannot also be held liable for negligence and be made to pay the millions of pesos damages prayed for by petitioner.

The issue on whether petitioner's debilitating and permanent injuries were the result of the accident she suffered at the hotel's swimming pool area on 11 June 1995 is another question of fact, which is beyond the function of this Court to resolve. More so, this issue has already been properly passed upon by the trial court and the Court of Appeals. To repeat,

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92 Id. at 757.

93 Testimony of Dr. Genevieve Huang. TSN, 8 September 1999, p. 23.

this Court is bound by the factual findings of the lower courts and there is no cogent reason to depart from the said rule.

The following observations of the trial court are controlling on this matter:

Firstly, petitioner had a past medical history which might have been the cause of her recurring brain injury.

Secondly, the findings of Dr. Perez did not prove a causal relation between the 11 June 1995 accident and the brain damage suffered by petitioner. **Dr. Perez himself testified that the symptoms being experienced by petitioner might have been due to factors other than the head trauma she allegedly suffered**. Emphasis must be given to the fact that petitioner had been suffering from different kinds of brain problems since she was 18 years old, which may have been the cause of the recurring symptoms of head injury she is experiencing at present.

Thirdly, Dr. Sanchez's testimony cannot be relied upon since she testified on the findings and conclusions of persons who were never presented in court. Ergo, her testimony thereon was hearsay. A witness can testify only with regard to facts of which they have personal knowledge. Testimonial or documentary evidence is hearsay if it is based, not on the personal knowledge of the witness, but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence -- whether objected to or not -- has no probative value.[94]

Fourthly, the medical reports/evaluations/certifications issued by myriads of doctors whom petitioner sought for examination or treatment

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[94] *Mallari v. People*, 487 Phil. 299, 320-321 (2004).

were neither identified nor testified to by those who issued them. Being deemed as hearsay, they cannot be given probative value.

The aforesaid medical reports/evaluations/certifications of different doctors in favor of petitioner cannot be given probative value and their contents cannot be deemed to constitute proof of the facts stated therein. It must be stressed that a document or writing which is admitted not as independent evidence but merely as part of the testimony of a witness does not constitute proof of the facts related therein.[95] In the same vein, the medical certificate which was identified and interpreted in court by another doctor was not accorded probative value because the doctor who prepared it was not presented for its identification. Similarly, in this case, since the doctors who examined petitioner were not presented to testify on their findings, the medical certificates issued on their behalf and identified by another doctor cannot be admitted as evidence. Since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications.[96] Thus, an unverified and unidentified private document cannot be accorded probative value. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect and of no probative value.[97]

All told, in the absence of negligence on the part of respondents PHI and DTPCI, as well as their management and staff, they cannot be made

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95 *Delfin v. Billones*, 519 Phil. 720, 736-737 (2006).
96 *People v. Ugang*, 431 Phil. 552, 565 (2002) citing *People v. Aliviano*, 390 Phil. 692, 705 (2000).
97 *Mallari v. People*, supra note 94 at 322.

liable to pay for the millions of damages prayed for by the petitioner. Since respondents PHI and DTPCI are not liable, it necessarily follows that respondent First Lepanto cannot also be made liable under the contract of insurance.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 87065 dated 9 August 2007 and 5 November 2007, respectively, are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice
Acting Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

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.

ANTONIO T. CARPIO
Acting Chief Justice