SECOND DIVISION

DR. PEDRO DENNIS CERENO, and DR. SANTOS ZAFE, Petitioners,	**G.R. No. 167366**
	Present:
- versus -	CARPIO, Chairperson, LEONARDO-DE CASTRO,* BRION, PEREZ, and PERLAS-BERNABE, *JJ.*
COURT OF APPEALS, SPOUSES DIOGENES S. OLAVERE and FE R. SERRANO, Respondents.	Promulgated: SEP 26 2012

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking the annulment and setting aside of the 21 February 2005 decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65800. In the assailed decision, the CA affirmed in *toto* the decision of the Regional Trial Court (RTC), Branch 22, Naga City finding herein petitioners

* Per Special Order No. 1308 dated 21 September 2012.

1 *Rollo*, pp. 9-25.

2 Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine concurring. Id. at 26-36.

Dr. Pedro Dennis Cereno (Dr. Cereno) and Dr. Santos Zafe (Dr. Zafe) liable for damages.

Culled from the records are the following antecedent facts:

At about 9:15 in the evening of 16 September 1995, Raymond S. Olavere (Raymond), a victim of a stabbing incident, was rushed to the emergency room of the Bicol Regional Medical Center (BRMC). There, Raymond was attended to by Nurse Arlene Balares (Nurse Balares) and Dr. Ruel Levy Realuyo (Dr. Realuyo)—the emergency room resident physician.

Subsequently, the parents of Raymond—the spouses Deogenes Olavere (Deogenes) and Fe R. Serrano—arrived at the BRMC. They were accompanied by one Andrew Olavere, the uncle of Raymond.

After extending initial medical treatment to Raymond, Dr. Realuyo recommended that the patient undergo "*emergency exploratory laparotomy*." Dr. Realuyo then requested the parents of Raymond to procure 500 cc of type "O" blood needed for the operation. Complying with the request, Deogenes and Andrew Olavere went to the Philippine National Red Cross to secure the required blood.

At 10:30 P.M., Raymond was wheeled inside the operating room. During that time, the hospital surgeons, Drs. Zafe and Cereno, were busy operating on gunshot victim Charles Maluluy-on. Assisting them in the said operation was Dr. Rosalina Tatad (Dr. Tatad), who was the only senior anesthesiologist on duty at BRMC that night. Dr. Tatad also happened to be the head of Anesthesiology Department of the BRMC.

Just before the operation on Maluluy-on was finished, another emergency case involving Lilia Aguila, a woman who was giving birth to triplets, was brought to the operating room.

At 10:59 P.M., the operation on Charles Maluluy-on was finished. By that time, however, Dr. Tatad was already working with the obstetricians who will perform surgery on Lilia Aguila. There being no other available anesthesiologist to assist them, Drs. Zafe and Cereno decided to defer the operation on Raymond.

Drs. Zafe and Cereno, in the meantime, proceeded to examine Raymond and they found that the latter's blood pressure was normal and "nothing in him was significant."[3] Dr. Cereno reported that based on the x-ray result he interpreted, the fluid inside the thoracic cavity of Raymond was minimal at around 200-300 cc.

At 11:15 P.M., Deogenes and Andrew Olavere returned to the BRMC with a bag containing the requested 500 cc type "O" blood. They handed over the bag of blood to Dr. Realuyo.

After Dr. Tatad finished her work with the Lilia Aguila operation, petitioners immediately started their operation on Raymond at around 12:15 A.M. of 17 September 1995. Upon opening of Raymond's thoracic cavity, they found that 3,200 cc of blood was stocked therein. The blood was evacuated and petitioners found a puncture at the inferior pole of the left lung.

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[3] Cereno's affidavit, Exhibit "4." Records, p. 118.

In his testimony, Dr. Cereno stated that considering the loss of blood suffered by Raymond, he did not immediately transfuse blood because he had to control the bleeders first.[4]

Blood was finally transfused on Raymond at 1:40 A.M. At 1:45 A.M., while the operation was on-going, Raymond suffered a cardiac arrest. The operation ended at 1:50 A.M. and Raymond was pronounced dead at 2:30 A.M.

Raymond's death certificate[5] indicated that the immediate cause of death was "*hypovolemic shock*" or the cessation of the functions of the organs of the body due to loss of blood.[6]

Claiming that there was negligence on the part of those who attended to their son, the parents of Raymond, on 25 October 1995, filed before the RTC, Branch 22, Naga City a complaint for damages[7] against Nurse Balares, Dr. Realuyo and attending surgeons Dr. Cereno and Dr. Zafe.

During trial, the parents of Raymond testified on their own behalf. They also presented the testimonies of Andrew Olavere and one Loira Oira, the aunt of Raymond. On the other hand, Dr. Cereno, Dr. Realuyo, Nurse Balares and Security Guard Diego Reposo testified for the defense. On rebuttal, the parents of Raymond presented Dr. Tatad, among others.

On 15 October 1999, the trial court rendered a decision[8] the dispositive portion of which reads:

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4 TSN, 19 May 1997, p. 31.
5 Exhibit "B." Records, p. 59.
6 Cereno's testimony. TSN, 19 May 1997, pp. 32-33.
7 Records, pp. 1-6.
8 Id. at 271-285.

> WHEREFORE, premises considered, this Court hereby renders judgment:
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> 1. Dismissing the case against Dr. Ruel Levy Realuyo and Arlene Balares for lack of merit;
> 2. Ordering defendants Dr. Santos Zafe and Dr. Dennis Cereno to pay the heirs of Raymond Olavere, jointly and severally the following amounts:
>   1. ₱50,000.00 for the death of the victim;
>   2. ₱150,000.00 as moral damages;
>   3. ₱100,000.00 as exemplary damages;
>   4. ₱30,000.00 for attorney's fees; and
>   5. Cost of suit.[9]
>
> x x x x.

The trial court found petitioners negligent in not immediately conducting surgery on Raymond. It noted that petitioners have already finished operating on Charles Maluluy-on as early as 10:30 in the evening, and yet they only started the operation on Raymond at around 12:15 early morning of the following day. The trial court held that had the surgery been performed promptly, Raymond would not have lost so much blood and, therefore, could have been saved.[10]

The trial court also held that the non-availability of Dr. Tatad after the operation on Maluluy-on was not a sufficient excuse for the petitioners to not immediately operate on Raymond. It called attention to the testimony of Dr. Tatad herself, which disclosed the possibility of calling a standby anesthesiologist in that situation. The trial court opined that the petitioners could have just requested for the standby anesthesiologist from Dr. Tatad, but they did not.

Lastly, the trial court faulted petitioners for the delay in the transfusion of blood on Raymond.

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9 Id. at 285.

10 RTC Decision. Id. at 279.

On appeal, the CA in a decision dated 21 February 2005 affirmed in *toto* the judgment rendered by the RTC finding herein petitioners guilty of gross negligence in the performance of their duties and awarding damages to private respondents.

Hence, this petition for review on certiorari under Rule 45 of the Rules of Court assailing the CA decision on the following grounds:

1. THAT THE CA ERRED IN RULING THAT PETITIONERS WERE GROSSLY NEGLIGENT IN THE PERFORMANCE OF THEIR DUTIES;
2. THAT THE CA ERRED IN NOT CONSIDERING THE BICOL REGIONAL MEDICAL CENTER AS AN INDISPENSABLE PARTY AND SUBSIDIARILY LIABLE SHOULD PETITIONERS BE FOUND LIABLE FOR DAMAGES; and
3. THAT THE CA ERRED IN NOT FINDING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES EXORBITANT OR EXCESSIVE.

We grant the petition.

It is well-settled that under Rule 45 of the Rules of Court, only questions of law may be raised. The reason behind this is that this Court is not a trier of facts and will not re-examine and re-evaluate the evidence on record.[11] Factual findings of the CA, affirming that of the trial court, are therefore generally final and conclusive on this Court. This rule is subject to the following exceptions: (1) the conclusion is grounded on speculations,

[11] *Manila Electric Company v. Benamira*, 501 Phil. 621, 636 (2005).

surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[12] In this case, We find exceptions (1) and (4) to be applicable.

The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove **that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done**; and that the **failure or action caused injury to the patient**.[13] Stated otherwise, the complainant must prove: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of.

The best way to prove these is through the opinions of expert witnesses belonging in the same neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the

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12 *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, 28 June 2008, 556 SCRA 194, 199.

13 *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 331 (1997). (Emphasis supplied)

expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence, the indispensability of expert testimonies.[14]

Guided by the foregoing standards, We dissect the issues at hand.

Petitioners Not Negligent

The trial court first imputed negligence on the part of the petitioners by their failure to perform the operation on Raymond immediately after finishing the Maluluy-on operation. It rejected as an excuse the non-availability of Dr. Tatad. The trial court relied on the testimony of Dr. Tatad about a "*BRMC protocol*" that introduces the possibility that a standby anesthesiologist could have been called upon. The pertinent portions of the testimony of Dr. Tatad provides:

> Q: Aside from you and Dr. Rebancos, who was the standby anesthesiologist?
> A: We have a protocol at the Bicol Medical Center to have a consultant who is on call.
> Q: How many of them?
> A: One.
> Q: Who is she?
> A: Dra. Flores.
> Q: What is the first name?
> A: Rosalina Flores.
> Q: Is she residing in Naga City?
> A: In Camaligan.
> Q: She is on call anytime when there is an emergency case to be attended to in the Bicol Medical Center?
> A: Yes sir.[15]

Dr. Tatad further testified:

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[14] Id. at 332.
[15] TSN, 31 October 1997, pp. 15-16.

Q: Alright (sic), considering that you said you could not attend to Raymond Olavere because another patient was coming in the person of Lilia Aguila, did you not suggest to Dr. Cereno to call the standby anesthesiologist?
A: They are not ones to do that. They have no right to call for the standby anesthesiologist.
Q: Then, who should call for the standby anesthesiologist?
A: It is me if the surgeon requested.
Q: But in this case, the surgeon did not request you?
A: No. It is their prerogative.
Q: I just want to know that in this case the surgeon did not request you to call for the standby anesthesiologist?
A: No sir.[16]

From there, the trial court concluded that it was the duty of the petitioners to request Dr. Tatad to call on Dr. Rosalina Flores, the standby anesthesiologist. Since petitioners failed to do so, their inability to promptly perform the operation on Raymond becomes negligence on their part.

This Court does not agree with the aforesaid conclusion.

First. There is nothing in the testimony of Dr. Tatad, or in any evidence on the record for that matter, which shows that the petitioners were aware of the "*BRMC protocol*" that the hospital keeps a standby anesthesiologist available on call. Indeed, other than the testimony of Dr. Tatad, there is no evidence that proves that any such "*BRMC protocol*" is being practiced by the hospital's surgeons at all.

Evidence to the effect that petitioners knew of the "*BRMC protocol*" is essential, especially in view of the contrary assertion of the petitioners that the matter of assigning anesthesiologists rests within the full discretion of the BRMC Anesthesiology Department. Without any prior knowledge of the "*BRMC protocol*," We find that it is quite reasonable for the petitioners to assume that matters regarding the administration of anesthesia and the

[16] Id at 21.

assignment of anesthesiologists are concerns of the Anesthesiology Department, while matters pertaining to the surgery itself fall under the concern of the surgeons. Certainly, We cannot hold petitioners accountable for not complying with something that they, in the first place, do not know.

Second. Even assuming *ex gratia argumenti* that there is such "*BRMC protocol*" and that petitioners knew about it, We find that their failure to request for the assistance of the standby anesthesiologist to be reasonable when taken in the proper context. There is simply no competent evidence to the contrary.

From the testimony of Dr. Tatad herself, it is clear that the matter of requesting for a standby anaesthesiologist is not within the full discretion of petitioners. The "*BRMC protocol*" described in the testimony requires the petitioners to course such request to Dr. Tatad who, as head of the Department of Anesthesiology, has the final say of calling the standby anesthesiologist.

As revealed by the facts, however, after the Maluluy-on operation, Dr. Tatad was *already* assisting in the Lilia Aguila operation. Drs. Zafe and Cereno then proceeded to examine Raymond and they found that the latter's blood pressure was normal and "nothing in him was significant."[17] Dr. Cereno even concluded that based on the x-ray result he interpreted, the fluid inside the thoracic cavity of Raymond was minimal at around 200-300 cc. Such findings of Drs. Cereno and Zafe were never challenged and were unrebutted.

Given that Dr. Tatad was already engaged in another urgent operation and that Raymond was not showing any symptom of suffering from major

[17] Cereno's affidavit, Exhibit "4." Records, p. 118.

blood loss requiring an immediate operation, We find it reasonable that petitioners decided to wait for Dr. Tatad to finish her surgery and not to call the standby anesthesiologist anymore. There is, after all, no evidence that shows that a prudent surgeon faced with similar circumstances would decide otherwise.

Here, there were no expert witnesses presented to testify that the course of action taken by petitioners were not in accord with those adopted by other reasonable surgeons in similar situations. Neither was there any testimony given, except that of Dr. Tatad's, on which it may be inferred that petitioners failed to exercise the standard of care, diligence, learning and skill expected from practitioners of their profession. Dr. Tatad, however, is an expert neither in the field of surgery nor of surgical practices and diagnoses. Her expertise is in the administration of anesthesia and not in the determination of whether surgery ought or not ought to be performed.

Another ground relied upon by the trial court in holding petitioners negligent was their failure to immediately transfuse blood on Raymond. Such failure allegedly led to the eventual death of Raymond through "*hypovolemic shock.*" The trial court relied on the following testimony of Dr. Tatad:

> Q: In this case of Raymond Olavere was blood transfused to him while he was inside the operating room?
> A: The blood arrived at 1:40 a.m. and that was the time when this blood was hooked to the patient.
>
> x x x x
>
> Q: Prior to the arrival of the blood, you did not request for blood?
> A: I requested for blood.
> Q: From whom?
> A: From the attending physician, Dr. Realuyo.
> Q: What time was that?

x x x x

A: 9:30.

x x x x

Q: Had this blood been given to you before the operation you could have transfused the blood to the patient?
A: Of course, yes.
Q: And the blood was transfused only after the operation?
A: Because that was the time when the blood was given to us.

x x x x

Q: Have you monitored the condition of Raymond Olavere?
A: I monitored the condition during the time when I would administer anesthesia.
Q: What time was that?
A: 11:45 already.
Q: What was the condition of the blood pressure at that time?
A: 60/40 initial.
Q: With that kind of blood pressure the patient must have been in critical condition?
A: At the time when the blood pressure was 60/40 I again told Dr. Cereno that blood was already needed.
Q: With that condition, Doctor, that the patient had 60/40 blood pressure you did not decide on transfusing blood to him?
A: I was asking for blood but there was no blood available.
Q: From whom did you ask?
A: From the surgeon. According to Dr. Zafe there was only 500 cc but still for cross-matching.[18]

From the aforesaid testimony, the trial court ruled that there was negligence on the part of petitioners for their failure to have the blood ready for transfusion. It was alleged that at 11:15 P.M., the 500 cc of blood was given to Dr. Realuyo by Raymond's parents. At 11:45 P.M., when Dr. Tatad was asking for the blood, 30 minutes had passed. Yet, the blood was not ready for transfusion as it was still being cross-matched.[19] It took another two hours before blood was finally transfused to Raymond at 1:40 A.M. of 17 September 1995.

Again, such is a mistaken conclusion.

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[18] TSN, 31 October 1997, pp. 16-20.
[19] RTC Decision. Records, p. 282.

First, the alleged delay in the cross-matching of the blood, if there was any, cannot be attributed as the fault of the petitioners. The petitioners were never shown to be responsible for such delay. It is highly unreasonable and the height of injustice if petitioners were to be sanctioned for lapses in procedure that does not fall within their duties and beyond their control.

Second, Dr. Cereno, in his unchallenged testimony, aptly explained the apparent delay in the transfusion of blood on Raymond before and during the operation.

Before the operation, Dr. Cereno explained that the reason why no blood transfusion was made on Raymond was because they did not then see the need to administer such transfusion, *viz*:

> Q: Now, you stated in your affidavit that prior to the operation you were informed that there was 500 cc of blood available and was still to be cross-matched. What time was that when you were informed that 500 cc of blood was due for crossmatching?
> A: I am not sure of the time.
>
> Q: But certainly, you learned of that fact that there was 500 cc of blood, which was due for crossmatching immediately prior to the operation?
> A: Yes, sir.
>
> Q: And the operation was done at 12:15 of September 17?
> A: Yes, sir.
>
> Q: And that was the reason why you could not use the blood because it was being crossmatched?
> A: No, sir. That was done only for a few minutes. We did not transfuse at that time because there was no need. **There is a necessity to transfuse blood when we saw there is gross bleeding inside the body**. [20] (Emphasis supplied)

During the operation, on the other hand, Dr. Cereno was already able to discover that 3,200 cc of blood was stocked in the thoracic cavity of

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[20] TSN, 19 May 1997, p. 32.

Raymond due to the puncture in the latter's left lung. Even then, however, immediate blood transfusion was not feasible because:

> Q: Now considering the loss of blood suffered by Raymund Olavere, why did you not immediately transfuse blood to the patient and you waited for 45 minutes to elapse before transfusing the blood?
> A: **I did not transfuse blood because I had to control the bleeders. If you will transfuse blood just the same the blood that you transfuse will be lost. After evacuation of blood and there is no more bleeding**…
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> Q: It took you 45 minutes to evacuate the blood?
> A: The evacuation did not take 45 minutes.
>
> Q: So what was the cause of the delay why you only transfuse blood after 45 minutes?
> A: **We have to look for some other lesions. It does not mean that when you slice the chest you will see the lesions already**.[21] (Emphasis supplied)

Again, the foregoing testimonies of Dr. Cereno went unchallenged or unrebutted. The parents of Raymond were not able to present any expert witness to dispute the course of action taken by the petitioners.

Causation Not Proven

In medical negligence cases, it is settled that the complainant has the burden of establishing breach of duty on the part of the doctors or surgeons. It must be proven that such breach of duty has a causal connection to the resulting death of the patient.[22] A verdict in malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony.

The parents of Raymond failed in this respect. Aside from their failure to prove negligence on the part of the petitioners, they also failed to prove

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[21] Id. at 31-32.

[22] *Dr. Cruz v. Court of Appeals*, 346 Phil. 827, 885-886 (1997), citing *Abaya v. Favis*, 3 CA Reports 450, 454–455 (1963).

that it was petitioners' fault that caused the injury. Their cause stands on the mere assumption that Raymond's life would have been saved had petitioner surgeons immediately operated on him; had the blood been cross-matched immediately and had the blood been transfused immediately. There was, however, no proof presented that Raymond's life would have been saved had those things been done. Those are mere assumptions and cannot guarantee their desired result. Such cannot be made basis of a decision in this case, especially considering that the name, reputation and career of petitioners are at stake.

The Court understands the parents' grief over their son's death. That notwithstanding, it cannot hold petitioners liable. It was noted that Raymond, who was a victim of a stabbing incident, had multiple wounds when brought to the hospital. Upon opening of his thoracic cavity, it was discovered that there was gross bleeding inside the body. Thus, the need for petitioners to control first what was causing the bleeding. Despite the situation that evening i.e. numerous patients being brought to the hospital for emergency treatment considering that it was the height of the Peñafrancia Fiesta, it was evident that petitioners exerted earnest efforts to save the life of Raymond. It was just unfortunate that the loss of his life was not prevented.

In the case of *Dr. Cruz v. CA*, it was held that "[d]octors are protected by a special law. They are not guarantors of care. They do not even warrant a good result. They are not insurers against mishaps or unusual consequences. Furthermore, they are not liable for honest mistake of judgment…"[23]

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[23] Id. at 875-879 citing "THE PHYSICIAN'S LIABILITY AND THE LAW OF NEGLIGENCE" by Constantino Nuñez, p. 1, citing Louis Nizer, My Life in Court, New York: Double Day &n Co., 1961 in Tolentino, Jr., MEDICINE and LAW, Proceedings of the Symposium on Current Issues Common to Medicine and Law, U.P. Law Center, 1980.

This Court affirms the ruling of the CA that the BRMC is not an indispensible party. The core issue as agreed upon by the parties and stated in the pre-trial order is whether petitioners were negligent in the performance of their duties. It pertains to acts/omissions of petitioners for which they could be held liable. The cause of action against petitioners may be prosecuted fully and the determination of their liability may be arrived at without impleading the hospital where they are employed. As such, the BRMC cannot be considered an indispensible party without whom no final determination can be had of an action.[24]

IN THE LIGHT OF THE FOREGOING, the instant Petition for Review on Certiorari is hereby **GRANTED.** The Court of Appeals decision dated 21February 2005 in CA-G.R. CV No. 65800 is hereby **REVERSED** and **SET ASIDE**. No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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[24] Section 7, Rule III, Rules of Court.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

MARIA LOURDES P. A. SERENO
Chief Justice