Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

KARLOS NOEL R. ALETA, Petitioner,	**G.R. No. 228150**
	Present:
-versus-	LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
SOFITEL PHILIPPINE PLAZA MANILA, Respondent.	**Promulgated:** JAN 11 2023

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DECISION

LEONEN, *J.*:

The plaintiff bears the burden of proving an injury by reason of quasi-delict by presenting sufficient evidence in order to prove: (1) fault or negligence on the defendant's part; (2) the concomitant injury sustained by the complainant; and (3) the nexus showing the cause and effect of the fault or negligence and the resulting injury on the plaintiff's part.

This Court resolves a Petition for Review[1] assailing the Court of Appeals Decision[2] and Resolution.[3] The Court of Appeals affirmed the

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1 *Rollo*, pp. 9–27.

2 Id. at 30–41. The May 11, 2016 Decision in CA G.R. SP No. 132851 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios of the Twelfth Division, Court of Appeals, Manila.

3 Id. at 42–43. The November 2, 2016 Resolution in CA G.R. SP No. 132851 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios of the Twelfth Division, Court of Appeals, Manila.

findings of both the Metropolitan Trial Court and Regional Trial Court that Karlos Noel R. Aleta (Karlos) failed to prove that the injuries sustained by his children were caused by Sofitel Philippine Plaza Manila's (Sofitel) negligence.

On February 13, 2009,[4] Attorney Bonifacio A. Alentajan (Atty. Bonifacio) and Doctor Marilyn C. Alentajan (Dr. Marilyn), Karlos's parents-in-law, went to Sofitel to check in. Karlos's parents-in-law were accompanied by his children namely, Carlos Marco Aleta (Carlos) and Mario Montego Aleta (Mario), who were then five and three years old respectively.[5]

Later that day, Dr. Marilyn brought Carlos and Mario to the hotel's kiddie pool. As Mario was stepping into the pool near the lifeguard station, he suddenly slipped which resulted to his head hitting the rugged edge of the pool.[6] He sustained injuries which caused his head to bleed.[7]

Meanwhile, Carlos mounted the kiddie pool slide and thereafter bumped his head. He sustained a contusion, which likewise caused his head to bleed.[8]

To prevent the injuries' progression, Karlos and Dr. Marilyn administered first aid treatment to the children. Carlos and Mario were then brought to the hotel clinic where they were treated by the hotel's physician.[9]

On February 25, 2009, Karlos sent a Letter[10] to Mr. Bernd Schneider, Sofitel's Manager, demanding compensation for his children's injuries.[11]

On April 15, 2009, Sofitel, through its counsel, denied Karlos's request for compensation.[12]

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4 Id. at 44, 46, and 79.
5 Id. at 140.
6 Id. at 11.
7 Id. at 140.
8 Id. at 31.
9 Id. at 140–141.
10 Id. at 65.
11 Id. at 140.
12 Id. at 68–70.

Four months later, in June 2009, Carlos started having seizures and was admitted at Medical City. He was subjected to laboratory diagnostics, MRI,[13] and EEG,[14] procedures which caused his father to incur expenses.[15]

Aggrieved, Karlos filed a Complaint for Damages[16] against Sofitel before the Metropolitan Trial Court. He identified the following observations:

> 5. The level of the steps in the kiddie pool, at the left of the lifeguard station, is not visible. Hence, swimmers can easily miss the steps and go off balance.
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> The edge of the kiddie pool is jagged that it can easily cut soft tissues by mere contact. The notice, regarding the age limit for those desiring to use the slide, is not visible as plants cover it.
>
> The steps leading to the 2 slides are easily accessible for children swimming at the kiddie pool, without physical barrier. Both slides slope down and end at the kiddie pool thus giving the impression that these are integral to the kiddie pool.
>
> 6. The lifeguard on duty did not mind/nor prevent the many children going up the steps to go up the slide.[17]

He maintained that the injuries sustained by his children were the result of Sofitel's negligence and therefore prayed that it be ordered to pay him the following: (1) ₱50,000.00 as actual damages; (2) ₱100,000.00 as moral damages; (3) ₱50,000.00 as exemplary damages; and (4) ₱50,000.00 as attorney's fees.[18]

On August 26, 2009, Sofitel filed its Answer where it alleged the following affirmative allegations and defenses: (1) the complaint states no cause of action; (2) Karlos failed to identify his right violated by Sofitel entitling him to damages; (3) Karlos has no cause of action against Sofitel; and (4) the incident was an accident.[19]

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13 Magnetic resonance imaging (MRI) uses the body's natural magnetic properties to produce detailed images from any part of the body. *See* Abi Berger, *Magnetic resonance imaging*, National Library of Medicine, January 5, 2022, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1121941/> (last accessed July 5, 2022).

14 The EEG is an electrophysiological technique for the recording of electrical activity arising from the human brain. Given its exquisite temporal sensitivity, the main utility of EEG is in the evaluation of dynamic cerebral functioning. EEG is particularly useful for evaluating patients with suspected seizures, epilepsy, and unusual spells. *See* Jeffrey W. Britton, MD, et al., *Electroencephalography (EEG): An Introductory Text and Atlas of Normal and Abnormal Findings in Adults, Children, and Infants*, American Epilepsy Society (2016), available at <https://www.ncbi.nlm.nih.gov/books/NBK390354/> (last accessed July 5, 2022).

15 *Rollo*, p. 32.

16 Id. at 79–82.

17 Id.

18 Id.

19 Id.

After trial, the Metropolitan Trial Court dismissed Karlos's complaint on the ground that he was unable to substantiate his allegations.[20] It found that Karlos failed to prove that the injury sustained by his children was the proximate cause of his children's admission at Medical City. In addition, it noted that Karlos's children and parents-in-law were not on Sofitel's list of checked-in guest on the day of the incident, and that they only checked-in on February 14, 2019. Hence, it ruled that the children were not authorized to use the hotel's facilities on February 13, 2019.[21]

Karlos moved for reconsideration[22] but the Metropolitan Trial Court denied it on August 1, 2011.[23]

On appeal,[24] the Regional Trial Court affirmed in *toto* the Metropolitan Trial Court's decision.[25]

Karlos's motion for reconsideration[26] was likewise denied by the Regional Trial Court in its October 11, 2013 Order.[27]

Undaunted, Karlos filed a Petition for Review[28] before the Court of Appeals.

In its May 11, 2016 Decision,[29] the Court of Appeals denied the petition and affirmed the Regional Trial Court's decision. It ruled that Karlos failed to establish the connection between Sofitel's alleged negligence and the injuries sustained by his children.[30]

On November 2, 2016, the Court of Appeals denied[31] Karlos's motion for reconsideration.[32]

Hence, Karlos filed a Petition for Review before this Court seeking the reversal of the Court of Appeals Decision and Resolution.

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20 Id. at 139–143. The May 2, 2011 Decision was penned by Presiding Judge Manuel B. Sta. Cruz, Jr. of Branch 43, Metropolitan Trial Court, Quezon City.
21 Id. at 142.
22 Id. at 144–151.
23 Id. at 152. The August 1, 2011 Order was penned by Judge Manuel B. Sta. Cruz, Jr. of Branch 43, Metropolitan Trial Court, Quezon City.
24 Id. at 153.
25 Id. at 187–190. The May 31, 2013 Decision was penned by Judge Bernelito R. Fernandez of Branch 97, Regional Trial Court, Quezon City.
26 Id. at 191–197.
27 Id. at 217–218. The October 11, 2013 Order was penned by Judge Bernelito R. Fernandez of Branch 97, Regional Trial Court, Quezon City.
28 Id. at 219–236.
29 Id. at 30–41.
30 Id. at 41.
31 Id. at 42–43.
32 Id. at 256–262.

Petitioner cites Articles 2176 and 2180 of the Civil Code and argues that respondent should be held liable for the injuries sustained by his children.[33] He maintains that the presence of a slide within the pool's premises made it an attractive nuisance, which should have prompted respondent to place more safeguards. He stresses that while warning signs were posted regarding the use of the pool, the same were placed in an inconspicuous place which could not have ensured the safety of its guests.[34]

He likewise insists that there were no lifeguards present at the time of the incident. Moreover, assuming that there were, they were negligent in the performance of their duties.[35]

In addition, petitioner contends that the doctrine of *res ipsa loquitur* should apply since, based on Dr. Marilyn's observations, the edges of the stones by the pool are jagged and, thus, dangerous to children.[36]

Petitioner likewise questions the competency of the doctor who attended to his children, alleging that she had no training in occupational safety and health—in violation of Article 160 of the Labor Code.[37]

Finally, petitioner insists that the exact date of the incident is immaterial considering that respondent admitted its occurrence.[38] He claims that assuming his children were not part of the checked-in guests on the day of the incident, hotel management should have required them to register before using the pool, which is therefore respondent's responsibility.[39]

For its part, respondent argues that petitioner failed to prove the causal connection between his children's injuries and its supposed negligence. It likewise claims that there were lifeguards on duty at the time of the incident.[40] In addition, respondent contends that the medical training received by the doctors at its clinic is more than sufficient considering that the hotel is not a hazardous establishment.[41]

For this Court's resolution is the issue whether or not respondent Sofitel Philippine Plaza Manila should be held liable for the injuries sustained by petitioner Karlos Noel R. Aleta's children.

The Petition is impressed with merit.

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33 Id. at 17–18.
34 Id. at 19–21.
35 Id. at 21.
36 Id. at 23.
37 Id.
38 Id. at 24.
39 Id. at 18–19.
40 Id. at 271–272.
41 Id. at 272.

I

The determination of whether a person is negligent is a question of fact, which is beyond this Court's power of review under Rule 45 of the Rules of Court.[42] In a Petition for Review on Certiorari, this Court's jurisdiction "is limited to reviewing errors of law that may have been committed by the lower court."[43] Hence, it is not this Court's function to review the factual findings and reevaluate the pieces of evidence presented by the parties, especially when the conclusion of both the trial and appellate courts with regard to respondent's negligence are the same.[44]

However, jurisprudence have recognized several exceptions to this rule. In *Medina v. Asistio, Jr.*[45]:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[46] (Citations omitted)

Here, petitioner invokes the third exception, in that the Court of Appeals allegedly committed grave abuse of discretion in issuing the assailed decision.

Grave abuse of discretion, as an exception to the general rule, was discussed in *Pascual v. Burgos*[47] in this wise:

> The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. Grave abuse of discretion is defined, thus:
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> By grave abuse of discretion is meant such capricious

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42 *Yambao v. Zuñiga*, 463 Phil. 650, 657-658 (2003) [Per J. Quisumbing, Second Division].
43 *Bernardo v. Court of Appeals*, 290 Phil. 649, 658 (1992) [Per J. Campos, Jr., Second Division].
44 *R Transport Corp. v. Yu*, 754 Phil. 110, 116 (2015) [Per J. Peralta, Third Division].
45 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
46 Id. at 232.
47 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

> and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.
>
> Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.
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> . . . .
>
> Grave abuse of discretion, to be an exception to the rule, must have attended the evaluation of the facts and evidence presented by the parties.[48] (Citations omitted)

Here, a review of the records reveals that there has been a gross misapprehension of facts, which permits this Court to resolve the factual controversies involved.

II

Article 2176 of the Civil Code provides that "[w]hoever 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[.]" It governs instances of "wrongful or negligent act or omission which creates a *vinculum juris* and gives rise to an obligation between two persons not formally bound by any other obligation[.]"[49]

To sustain a case for quasi-delict, petitioner must establish the following requisites: "(a) damage suffered by the plaintiff; (b) fault or negligence of the defendant; and, (c) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff."[50]

In *Mendoza v. Spouses Gomez*,[51] this Court defined "negligence" as "the failure to observe for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury."[52] In determining the

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48 Id. at 185–186.

49 *Spouses Batal v. Spouses Tominaga*, 534 Phil. 798, 804 (2006) [Per J. Austria-Martinez, First Division].

50 *FGU Insurance Corp. v. Court of Appeals*, 351 Phil. 219, 224 (1998) [Per J. Bellosillo, First Division].

51 736 Phil. 460 (2014) [Per J. Perez, Second Division].

52 Id. at 474.

existence of negligence, *Picart v. Smith*[53] is instructive:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
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> The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but his much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[54]

On the other hand, in *Dy Teban Trading, Inc. v. Ching*[55] the connection of cause and effect between the injury and the purported negligence, otherwise known as the proximate cause, has been explained as follows:

> Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. More comprehensively, proximate cause is that cause acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.

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53 37 Phil. 809 (1918) [Per J. Street, En Banc].
54 Id. at 813.
55 567 Phil. 531 (2008) [Per J. R.T. Reyes, Third Division].

> There is no exact mathematical formula to determine proximate cause. It is based upon mixed considerations of logic, common sense, policy and precedent. Plaintiff must, however, establish a sufficient link between the act or omission and the damage or injury. That link must not be remote or far-fetched; otherwise, no liability will attach. The damage or injury must be a natural and probable result of the act or omission.[56] (Citations omitted)

Here, there is no dispute on the existence of the first requisite. The trial courts and the Court of Appeals are all in agreement that petitioner's children sustained injuries while they were at respondent's premises. However, they dismissed petitioner's plea for damages on the ground that he allegedly failed to prove respondent's negligence and the proximate cause between the injuries his children sustained and the alleged negligence that respondent committed.

To reiterate, the Metropolitan Trial Court found in its decision that petitioner failed to present sufficient evidence to establish respondent's liability for his children's injuries. It noted that petitioner did not submit any medical finding showing that the injury sustained was the proximate cause of the children's admission at the hospital, thus:

> In the case under consideration, plaintiffs' allegation that the defendant's facilities are hazardous to the children and that the defendant is negligent in attending to needs of its guests and clients, however no pieces of evidence were presented to sufficiently establish the same. Plaintiff failed to establish its cause of action by the degree of evidence required by the Rules. They failed to prove that the defendant is liable to the injuries sustained by the children.
>
> It is worthy to note that there has been no iota of evidence introduced by the plaintiff to show that the injuries sustained by the two children are the proximate cause of the latter's admission to Medical City. There is no showing of any medical findings that the children were admitted in the hospital because of the injuries obtained during the alleged incident, considering the length of period before the children were admitted in the said hospital. What the record indicates is that the alleged incident happened on February 13, 2009, whereas the children were admitted in Medical City on June 10, 2009 and were discharged on June 11, 2009, as shown in the Statement of Accounts marked as Exhibit "I", "I-1" to "I-5".
>
> From the evidence presented by the plaintiff, his money claim was not validly and sufficiently established thus failed to give the legal basis to grant the relief prayed for in the complaint. What they merely established was the fact that the two children of the plaintiff was [sic] injured and treated at the hotel clinic, however, failed to prove that the said injuries were due to the allegedly hazardous facilities of the hotel.[57]

In affirming this, the Court of Appeals held that:

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[56] Id. at 548.
[57] *Rollo*, p. 141.

> In the case under consideration, petitioner failed to clearly show that as a result of the fault or negligence of Sofitel, Mario and Carlos sustained the injuries at Sofitel's swimming pool. It should be pointed out that Mario and Carlos sustained contusions and concussions as a result of having slipped in the swimming pool and hitting their heads. We thus cannot see the connection between the purportedly negligent acts of Sofitel and the injuries sustained by Mario and Carlo. The fact that there was no lifeguard or if there were any but were merely not doing their functions, could not have prevented the incident from happening. Further, the fact that the stones used for the pool are jagged could not have likewise contributed to the slip since it was not alleged that the pool surface was slippery. True, Mario sustained laceration but this was not proven to have been caused by the jagged stones on the pool's floor. While it could have boosted Sofitel's capability as a "world class hotel with the best amenities" that its resident doctor has government training accreditation in occupational health and safety, the lack of such accreditation was also not contributory to the fall suffered by both Mario and Carlos. Moreover, the signs purportedly merely stated the appropriate age of pool guests. Hence, these could not have helped in averting the incident.[58]

Despite the lower courts' findings, petitioner demands liability on respondent's part, citing as his basis the doctrines of attractive nuisance and *res ipsa loquitur*.

II (A)

First discussed in *Taylor v. Manila Electric Railroad and Light Co.*,[59] the doctrine of attractive nuisance, which is of American origin, states:

> Drawn by curiosity and impelled by the restless spirit of youth, boys here as well as there will usually be found wherever the public permitted to congregate. The movement of machinery, and indeed anything which arouses the attention of the young and inquiring mind, will draw them to the neighborhood as inevitably as does the magnet draw the iron which comes within the range of its magnetic influence. The owners of premises, therefore, whereon things attractive to children are exposed, or upon which the public are expressively or impliedly permitted to enter to or upon which the owner knows or ought to know children are likely to roam about for pastime and in play, "must calculate upon this, and take precautions accordingly." In such cases the owner of the premises can not be heard to say that because the child has entered upon his premises without his express permission he is a trespasser to whom the owner owes no duty or obligation whatever. *The owner's failure to take reasonable precautions to prevent the child form entering premises at a place where he knows or ought to know that children are accustomed to roam about or to which their childish instincts and impulses are likely to attract them is at least equivalent to an implied license to enter, and where the child does not enter under such conditions the owner's failure to make reasonable precaution to guard the*

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[58] Id. at 38.

[59] 16 Phil. 8 (1910) [Per J. Carson, First Division].

> *child against the injury from unknown or unseen dangers, placed upon such premises by the owner, is clearly a breach of duty, a negligent omission, for which he may and should be held responsible, if the child is actually injured, without other fault on its part than that it had entered on the premises of a stranger without his express invitation or permission.* To hold otherwise would be expose to all the children in the community to unknown perils and unnecessary danger at the whim of the owners or occupants of land upon which they might naturally and reasonably be expected to enter.[60] (Emphasis supplied)

Simply stated, the doctrine provides that:

> One who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises.[61] (Citation omitted)

Later, in *Hidalgo Enterprises, Inc. v. Balandan*,[62] this Court made a clarification on the doctrine's application to bodies of water, explaining:

> Now, is a swimming pool or water tank an instrumentality or appliance likely to attract little children in play? In other words is the body of water an attractive nuisance? The great majority of American decisions say no.
>
> > "*The attractive nuisance doctrine generally is not applicable to bodies of water, artificial as well as natural, in the absence of some unusual condition or artificial feature other than the mere water and its location.*"
> >
> > "There are numerous cases in which the attractive nuisance doctrine has been held not to be applicable to ponds or reservoirs, pools of water, streams, canals, dams, ditches, culverts, drains, cesspools or sewer pools, ..."
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> . . . .
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> The reason why a swimming pool or pond or reservoir of water is not considered an attractive nuisance was lucidly explained by the Indiana Appellate Court as follows:
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> > "Nature has created streams, lakes and pools which attract children. Lurking in their waters is always the danger of drowning. Against this danger children are early instructed so that they are sufficiently presumed to know the danger; and if the owner of private property creates an artificial pool on his own property, merely duplicating the work of nature without adding any new danger, . . . (he) is

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60 Id. at 21–22.

61 *Hidalgo Enterprises, Inc. v. Balandan*, 91 Phil. 488, 490 (1952) [Per J. Bengzon, En Banc].

62 Id.

> not liable because of having created an 'attractive nuisance.'[63] (Emphasis supplied; citations omitted)

Here, the records show that there were two slides installed with slopes ending at the kiddie pool. Taking *Hidalgo* into consideration, although the swimming pool alone may not be considered as an attractive nuisance, the kiddie pool's close proximity to the slides formed an unusual condition or artificial feature intended to attract children. In other words, the installation of the slides with slopes ending over the swimming pool's waters makes it an attractive nuisance.

By this reason, respondent was duty bound to undertake protective measures to ensure the children's safety. It was respondent's responsibility to guarantee that appropriate safeguards were in place within the attractive nuisance in order to protect children against the injury from unknown or unseen dangers.

On the other hand, *res ipsa loquitur* is a Latin phrase which translates to "the thing or the transaction speaks for itself."[64] It is a rule of evidence which recognizes that while negligence is not generally presumed and should be proved by direct evidence, the mere occurrence of an injury, taken with the surrounding circumstances, warrants an inference that the injury was caused by, in this case, respondent's want of care.[65] As explained in *D.M. Consunji, Inc. v. Court of Appeals*:[66]

> As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.
>
> The concept of *res ipsa loquitur* has been explained in this wise:
>
> > While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of res ipsa loquitur, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
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> > . . . where it is shown that the thing or instrumentality

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63 Id. at 490–491.

64 *Huang v. Philippine Hoteliers, Inc.*, 700 Phil. 327, 362 (2012) [Per J. Perez, Second Division].

65 *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275 (2001) [Per J. Kapunan, First Division]. See also *Tan v. JAM Transit*, 620 Phil. 668 (2009) [Per J. Nachura, Third Division].

66 Id. at 289

> which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.

One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.

> The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.
>
> It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The res ipsa loquitur doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some courts add to the three prerequisites for the application of the res ipsa loquitur doctrine the further requirement that for the res ipsa loquitur doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.[67]
> (Emphasis in the original; citations omitted)

The doctrine is applied in conformity with ordinary human experience or common knowledge, in that:

> The doctrine of *res ipsa loquitur* is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with

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[67] Id. at 290–291.

> negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge.[68] (Emphasis in original; citations omitted)

In any case, it must be emphasized that the doctrine is not a rule of substantive law and is not a separate basis for liability. It is regarded as a mere procedural convenience, relieving the plaintiff of the burden of producing a specific proof of negligence.[69] It "rests on inference and not on presumption"[70]:

> However, much has been said the *res ipsa loquitur* is not a rule of substantive law and, as such, does not create or constitute an independent or separate ground of liability. Instead, it is considered as merely evidentiary or in the nature of a procedural rule. It is regarded as a mode of proof, of a mere procedural convenience since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing specific proof of negligence. In other words, mere invocation and application of the doctrine does not dispense with the requirement of proof of negligence. *It is simply a step in the process of such proof, permitting the plaintiff to present along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and to thereby place on the defendant the burden of going forward with the proof.*[71] (Emphasis supplied)

For the doctrine to apply, the following requisites must be established:

> (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence;
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> (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
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> (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[72]

This Court finds that all requisites are present in this case.

To begin with, it is undisputed that petitioner's children sustained their injuries while playing within the pool's premises—an instrumentality within respondent's exclusive management and control.

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68 *Ramos v. Court of Appeals*, 378 Phil. 1198, 1219 (1999) [Per J. Kapunan, First Division].
69 Id. at 1220.
70 *Huang v. Philippine Hoteliers, Inc.*, 700 Phil. 327, 362 (2012) [Per J. Perez, Second Division].
71 *Ramos v. Court of Appeals*, 378 Phil. 1198, 1220 (1999) [Per J. Kapunan, First Division].
72 *Cortel y Carna v. Gepaya-Lim*, 802 Phil. 779, 788 (2016) [Per J. Carpio, Second Division].

Further, by reason of the swimming pool's nature as an attractive nuisance, respondent is duty bound to guarantee that it had installed sufficient precautionary measures to ensure the safety of its guests, particularly the children. The establishment of these safeguards should have prevented the incident. Accordingly, it could be inferred that petitioner's children would not have sustained their injuries were it not for respondent's negligence.

No contributory negligence can likewise be imputed against the children. Children, by nature, are enthusiastically inquisitive towards different places and objects, such as pools with slides. By reason of their "childish instincts and impulses" it is expected that they will be drawn to such places to play, unaware of the dangers present within their immediate vicinity.

Having established the applicability of the doctrine of *res ipsa loquitur*, there exists a presumption that respondent acted negligently. Hence, the burden is shifted to respondent to prove that it had taken sufficient precautionary measures. The presumption may be rebutted upon proof that it exercised due care and prudence.[73]

Respondent refutes their liability by insisting that it posted safety rules in conspicuous places around and within the pool area. However, as the Court of Appeals correctly noted, "the signs purportedly merely stated the appropriate legal age of pool guests[,]" which could not have prevented the occurrence of the incident.[74]

Likewise, the presence of lifeguards during the incident cannot relieve respondent from its liability. While it was established that there were lifeguards at the time of the incident, the lifeguards admitted that they failed to stop the children from using the pool:

> "Q: You did not see the child or these two (2) boys used the pool before that?
> "A: As I recall, sir, I saw that one, the two (2) boys.
>
> "Q: Swimming there?
> "A: Yes, sir!
>
> "Q: Before they got injured?
> "A: Yes, sir.
>
> "Q: Did you stop them?
> "A: He did not stop because they are...(interrupted)
>
> "Q: Did you stop them?
> "A: No, sir.

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[73] *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 292 (2001) [Per J. Kapunan, First Division]. See also *Macalinao v. Ong*, 514 Phil. 127 (2005) [Per J. Tinga, Second Division].

[74] *Rollo*, p. 38.

"Q: Children below 12 years old you said in your Affidavit are not allowed to use the pool?
"A: Yes, sir!

"Q: and you saw these two (2) boys there who are below 12 years old, did you stop them from using the pool?
"A: No, sir!"[75]

Based on the foregoing, respondent's failure to prevent the children from using the swimming pool was the proximate cause of the injuries they sustained. To reiterate, by maintaining an attractive nuisance in its premises, it is respondent's responsibility to ensure that necessary precautions are in place to prevent children from being harmed. Respondent's failure to install the needed safeguards constitutes negligence for which it should be held liable for damages.

III

We now determine the amount of damages for which petitioner is entitled.

Article 2199 of the Civil Code states that "[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages." Actual damages refer to the compensation given to an injured person as an indemnification for the pecuniary loss they suffered. Its purpose is to "put the injured party in the position in which he had been before he was injured."[76] To justify its award, it is necessary that the loss sustained are supported by competent proof, such as receipts and invoices.[77]

Here, petitioner asks this Court that he be awarded actual damages in the amount of ₱50,000.00 for the alleged expenses he incurred. As proof, he submitted a Statement of Account and a receipt[78] from Medical City which, however, only proves that Carlos was subjected to certain medical procedures. The Statement of Account and receipt are insufficient to prove that the procedures were done by reason of the injuries Carlos sustained as a result of Sofitel's negligence.

In the absence of competent proof, this Court denies petitioner's claim of actual damages.

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[75] *Rollo*, pp. 22–23.
[76] *B.F. Metal Corp. v. Spouses Lomotan*, 574 Phil. 740, 749 (2008) [Per J. Tinga, Second Division].
[77] Id.
[78] *Rollo*, pp. 71-78.

However, temperate damages may be awarded even in the absence of proof of actual damages, provided that it has been proven that the injured party suffered some pecuniary loss. Article 2224 of the Civil Code provides:

> Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

Spouses Hernandez v. Spouses Dolor[79] discussed the nature of temperate damages:

> Temperate or moderate damages are damages which are more than nominal but less than compensatory which may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. Temperate damages are awarded for those cases where, from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. A judge should be empowered to calculate moderate damages in such cases, rather than the plaintiff should suffer, without redress, from the defendant's wrongful act. The assessment of temperate damages is left to the sound discretion of the court provided that such an award is reasonable under the circumstances.[80] (Citations omitted)

Here, a perusal of the records reveals that petitioner and his children suffered some pecuniary loss by reason of the incident. As alleged in the pleadings, the injuries that petitioner's children sustained took two weeks to physically heal. As compensation for the pecuniary loss which petitioner and his children suffered, this Court awards temperate damages in the amount of ₱50,000.00.

III (A)

Petitioner's prayer for moral damages is granted.

Moral damages refer to the compensation awarded to an injured party, not for the purpose of penalizing the wrong doer, but as a means to "alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person."[81]

The characteristics and purpose of moral damages were discussed in

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79 479 Phil. 593 (2004) [Per J. Ynares-Santiago, First Division].

80 Id. at 604.

81 *Equitable Leasing Corp. v. Suyom*, 437 Phil. 244, 257–258 (2002) [Per J. Panganiban, Third Division].

Guy v. Tulfo[82]:

> Moral damages are "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." They are awarded to the injured party to enable him to obtain means that will ease the suffering he sustained from respondent's reprehensible act.
>
> "Moral damages are not punitive in nature," but are instead a type of "award designed to compensate the claimant for actual injury suffered[.]"As explained in *Mangaliag v. Catubig-Pastoral*:
>
> > It must be remembered that moral damages, though incapable of pecuniary estimation, are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person. Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering he/she has undergone, by reason of the defendant's culpable action. Its award is aimed at restoration, as much as possible, of the spiritual status quo ante; thus, it must be proportionate to the suffering inflicted. Since each case must be governed by its own peculiar circumstances, there is no hard and fast rule in determining the proper amount.
>
> . . . .
>
> Unlike actual and temperate damages, moral damages may be awarded even if the injured party failed to prove that he has suffered pecuniary loss. As long as it was established that complainant's injury was the result of the offending party's action, the complainant may recover moral damages.[83] (Emphasis in the original; citations omitted)

Article 2219 of the Civil Code categorically states that moral damages may be awarded in cases involving "[q]uasi-delicts causing physical injuries[.]" In awarding moral damages, courts are given the discretion to determine the amount to be granted, taking into consideration the circumstances of a particular case. While there is no fixed standard, "the amount should not be palpably and scandalously excessive."[84] Further, in fixing the amount, regard must be made to the injury suffered and the wrong committed.[85]

Taking into account the injuries sustained by petitioner's children and respondent's concomitant failure to place sufficient safeguards to ensure the children's safety, this Court finds the award of moral damages in the amount

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[82] G.R. No. 213023, April 10, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65234> [Per J. Leonen, Third Division].

[83] Id.

[84] *Sulpicio Lines, Inc. v. Sesante*, 791 Phil. 409, 427–428 (2016) [Per J. Bersamin, First Division].

[85] Id.

of ₱100,000.00 adequate to recompense for the physical suffering and similar injuries sustained by petitioner and his children.

III (B)

In cases involving quasi-delicts, "exemplary damages may be granted if the defendant acted with gross negligence."[86] Recovery of exemplary damages is not a matter of right and is subject to the court's discretion.[87]

The prerequisites for the award of exemplary damages was discussed in *Kierulf v. Court of Appeals*[88]:

> Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender. However, it cannot be recovered as a matter of right. It is based entirely on the discretion of the court. Jurisprudence sets certain requirements before exemplary damages may be awarded, to wit:
>
> > "(1) (T)hey may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant;
> >
> > (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and
> >
> > (3) the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner"[89] (Citations omitted)

Here, the circumstances surrounding the case warrant the imposition of exemplary damages.

As a luxury hotel which caters to an extensive range of clientele, respondent ought to ensure that adequate measures are in place to guarantee the safety of its guests. By reason of the insufficiency of the safety rules posted and the lifeguards' failure to avert the injuries sustained by petitioner's children, this Court awards petitioner ₱50,000.00 as exemplary damages.

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86 CIVIL CODE, art. 2231 provides:
Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

87 CIVIL CODE, art. 2233 provides:
Art. 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

88 336 Phil. 414 (1997) [Per J. Panganiban, Third Division].

89 Id. at 428–429.

Finally, on account of this dispute's protracted litigation, ₱50,000.00 as attorney's fees is awarded.

ACCORDINGLY, the Petition is **GRANTED**. The May 11, 2016 Decision and November 2, 2016 Resolution of the Court of Appeals in CA G.R. SP No. 132851 are **REVERSED.** Respondent Sofitel Philippine Plaza Manila is **ORDERED** to pay petitioner Karlos Noel R. Aleta: (1) ₱50,000.00 as temperate damages; (2) ₱100,000.00 as moral damages; (3) ₱50,000.00 as exemplary damages; and (4) ₱50,000.00 as attorney's fees.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum[90] from the finality of this Decision until its full satisfaction.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

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[90] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

ATTESTATION

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

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice