Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DRA. LEILA A. DELA LLANA, Petitioner,	**G.R. No. 182356**
	Present:
- versus -	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
REBECCA BIONG, doing business under the name and style of Pongkay Trading, Respondent.	Promulgated: DEC 04 2013

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DECISION

BRION, *J.*:

Every case essentially turns on two basic questions: questions of fact and questions of law. Questions of fact are for the parties and their counsels to respond to, based on what supporting facts the legal questions require; the court can only draw conclusion from the facts or evidence adduced. When the facts are lacking because of the deficiency of presented evidence, then the court can only draw one conclusion: that the case must fail for lack of evidentiary support.

The present case is one such case as Dra. Leila A. dela Llana's *(petitioner)* petition for review on *certiorari*[1] challenging the February 11, 2008 decision[2] and the March 31, 2008 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 89163.

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1 Dated May 20, 2008 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 8-30.

2 Id. at 39-55; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas.

3 Id. at 56-59.

The Factual Antecedents

On March 30, 2000, at around 11:00 p.m., Juan dela Llana was driving a 1997 Toyota Corolla car along North Avenue, Quezon City.[4] His sister, Dra. dela Llana, was seated at the front passenger seat while a certain Calimlim was at the backseat.[5] Juan stopped the car across the Veterans Memorial Hospital when the signal light turned red. A few seconds after the car halted, a dump truck containing gravel and sand suddenly rammed the car's rear end, violently pushing the car forward. Due to the impact, the car's rear end collapsed and its rear windshield was shattered. Glass splinters flew, puncturing Dra. dela Llana. Apart from these minor wounds, Dra. dela Llana did not appear to have suffered from any other visible physical injuries.[6]

The traffic investigation report dated March 30, 2000 identified the truck driver as Joel Primero. It stated that Joel was recklessly imprudent in driving the truck.[7] Joel later revealed that his employer was respondent Rebecca Biong, doing business under the name and style of "Pongkay Trading" and was engaged in a gravel and sand business.[8]

In the first week of May 2000, Dra. dela Llana began to feel mild to moderate pain on the left side of her neck and shoulder. The pain became more intense as days passed by. Her injury became more severe. Her health deteriorated to the extent that she could no longer move her left arm. On June 9, 2000, she consulted with Dr. Rosalinda Milla, a rehabilitation medicine specialist, to examine her condition. Dr. Milla told her that she suffered from a whiplash injury, an injury caused by the compression of the nerve running to her left arm and hand. Dr. Milla required her to undergo physical therapy to alleviate her condition.

Dra. dela Llana's condition did not improve despite three months of extensive physical therapy.[9] She then consulted other doctors, namely, Drs. Willie Lopez, Leonor Cabral-Lim and Eric Flores, in search for a cure. Dr. Flores, a neuro-surgeon, finally suggested that she undergo a cervical spine surgery to release the compression of her nerve. On October 19, 2000, Dr. Flores operated on her spine and neck, between the C5 and the C6 vertebrae.[10] The operation released the impingement of the nerve, but

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4 Id. at 40.
5 Id. at 42-43.
6 Id. at 43.
7 RTC *rollo*, p. 117.
8 *Rollo*, p. 43.
9 Id. at 44-45.
10 RTC *rollo*, pp. 121-122.

incapacitated Dra. dela Llana from the practice of her profession since June 2000 despite the surgery.[11]

Dra. dela Llana, on October 16, 2000, demanded from Rebecca compensation for her injuries, but Rebecca refused to pay.[12] Thus, on May 8, 2001, Dra. dela Llana sued Rebecca for damages before the Regional Trial Court of Quezon City *(RTC)*. She alleged that she lost the mobility of her arm as a result of the vehicular accident and claimed ₱150,000.00 for her medical expenses (as of the filing of the complaint) and an average monthly income of ₱30,000.00 since June 2000. She further prayed for actual, moral, and exemplary damages as well as attorney's fees.[13]

In defense, Rebecca maintained that Dra. dela Llana had no cause of action against her as no reasonable relation existed between the vehicular accident and Dra. dela Llana's injury. She pointed out that Dra. dela Llana's illness became manifest one month and one week from the date of the vehicular accident. As a counterclaim, she demanded the payment of attorney's fees and costs of the suit.[14]

At the trial, Dra. dela Llana presented herself as an **ordinary witness**[15] and Joel as a hostile witness.[16] Dra. dela Llana reiterated that she lost the mobility of her arm because of the vehicular accident. To prove her claim, she identified and authenticated a **medical certificate dated November 20, 2000** issued by Dr. Milla. The medical certificate stated that Dra. dela Llana suffered from a whiplash injury. It also chronicled her clinical history and physical examinations.[17] Meanwhile, Joel testified that his truck hit the car because the truck's brakes got stuck.[18]

In defense, Rebecca testified that Dra. dela Llana was physically fit and strong when they met several days after the vehicular accident. She also asserted that she observed the diligence of a good father of a family in the selection and supervision of Joel. She pointed out that she required Joel to submit a certification of good moral character as well as barangay, police, and NBI clearances prior to his employment. She also stressed that she only hired Primero after he successfully passed the driving skills test conducted by Alberto Marcelo, a licensed driver-mechanic.[19]

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11 *Rollo,* p. 45.
12 RTC *rollo,* p. 139.
13 Id. at 2-4.
14 Id. at 10-14.
15 Id. at 254.
16 Id. at 640.
17 Id. at 121-123.
18 *Rollo,* p. 47.
19 Id. at 47-49.

Alberto also took the witness stand. He testified that he checked the truck in the morning of March 30, 2000. He affirmed that the truck was in good condition prior to the vehicular accident. He opined that the cause of the vehicular accident was a damaged compressor. According to him, the absence of air inside the tank damaged the compressor. [20]

RTC Ruling

The RTC ruled in favor of Dra. dela Llana and held that the proximate cause of Dra. dela Llana's whiplash injury to be Joel's reckless driving.[21] It found that a whiplash injury is an injury caused by the sudden jerking of the spine in the neck area. It pointed out that the massive damage the car suffered only meant that the truck was over-speeding. It maintained that Joel should have driven at a slower pace because road visibility diminishes at night. He should have blown his horn and warned the car that his brake was stuck and could have prevented the collision by swerving the truck off the road. It also concluded that Joel was probably sleeping when the collision occurred as Joel had been driving for fifteen hours on that fateful day.

The RTC further declared that Joel's negligence gave rise to the presumption that Rebecca did not exercise the diligence of a good father of a family in Joel's selection and supervision of Joel. Rebecca was vicariously liable because she was the employer and she personally chose him to drive the truck. On the day of the collision, she ordered him to deliver gravel and sand to Muñoz Market, Quezon City. The Court concluded that the three elements necessary to establish Rebecca's liability were present: (1) that the employee was chosen by the employer, personally or through another; (2) that the services were to be rendered in accordance with orders which the employer had the authority to give at all times; and (3) that the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.

The RTC thus awarded Dra. dela Llana the amounts of ₱570,000.00 as actual damages, ₱250,000.00 as moral damages, and the cost of the suit.[22]

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20 Id. at 49-50.
21 Dated April 19, 2007; id. at 36.
22 Id. at 31-37.

CA Ruling

In a decision dated February 11, 2008, the CA reversed the RTC ruling. It held that Dra. dela Llana failed to establish a reasonable connection between the vehicular accident and her whiplash injury by preponderance of evidence. Citing *Nutrimix Feeds Corp. v. Court of Appeals*,[23] it declared that courts will not hesitate to rule in favor of the other party if there is no evidence or the evidence is too slight to warrant an inference establishing the fact in issue. It noted that the interval between the date of the collision and the date when Dra. dela Llana began to suffer the symptoms of her illness was lengthy. It concluded that this interval raised doubts on whether Joel's reckless driving and the resulting collision in fact caused Dra. dela Llana's injury.

It also declared that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. It observed that Dra. dela Llana did not immediately visit a hospital to check if she sustained internal injuries after the accident. Moreover, her failure to present expert witnesses was fatal to her claim. It also gave no weight to the medical certificate. The medical certificate did not explain how and why the vehicular accident caused the injury.[24]

The Petition

Dra. dela Llana points out in her petition before this Court that *Nutrimix* is inapplicable in the present case. She stresses that *Nutrimix* involved the application of Article 1561 and 1566 of the Civil Code, provisions governing hidden defects. Furthermore, there was absolutely no evidence in *Nutrimix* that showed that poisonous animal feeds were sold to the respondents in that case.

As opposed to the respondents in *Nutrimix*, Dra. dela Llana asserts that she has established by preponderance of evidence that Joel's negligent act was the proximate cause of her whiplash injury. ***First***, pictures of her damaged car show that the collision was strong. She posits that it can be reasonably inferred from these pictures that the massive impact resulted in her whiplash injury. ***Second***, Dr. Milla categorically stated in the medical certificate that Dra. dela Llana suffered from whiplash injury. ***Third***, her testimony that the vehicular accident caused the injury is credible because she was a surgeon.

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23 484 Phil. 330-349 (2004).

24 *Supra* note 2.

Dra. dela Llana further asserts that the medical certificate has probative value. Citing several cases, she posits that an uncorroborated medical certificate is credible if uncontroverted.[25] She points out that expert opinion is unnecessary if the opinion merely relates to matters of common knowledge. She maintains that a judge is qualified as an expert to determine the causation between Joel's reckless driving and her whiplash injury. Trial judges are aware of the fact that whiplash injuries are common in vehicular collisions.

The Respondent's Position

In her *Comment*,[26] Rebecca points out that Dra. dela Llana raises a factual issue which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. She maintains that the CA's findings of fact are final and conclusive. Moreover, she stresses that Dra. dela Llana's arguments are not substantial to merit this Court's consideration.

The Issue

The sole issue for our consideration in this case is whether Joel's reckless driving is the proximate cause of Dra. dela Llana's whiplash injury.

Our Ruling

We find the petition unmeritorious.

The Supreme Court may review questions of fact in a petition for review on certiorari when the findings of fact by the lower courts are conflicting

The issue before us involves a question of fact and this Court is not a trier of facts. As a general rule, the CA's findings of fact are final and conclusive and this Court will not review them on appeal. It is not the function of this Court to examine, review or evaluate the evidence in a petition for review on *certiorari* under Rule 45 of the Rules of Court. We can only review the presented evidence, by way of exception, when the

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[25] Citing *GSIS v. Ibarra*, 562 Phil. 924-938 (2009); *Ijares v. Court of Appeals*, 372 Phil. 9-21 (1999); and *Loot v. GSIS*, G.R. No. 86994, June 30, 1993, 224 SCRA 54-61.

[26] *Rollo*, pp. 102-109.

conflict exists in findings of the RTC and the CA.[27] We see this exceptional situation here and thus accordingly examine the relevant evidence presented before the trial court.

Dra. dela Llana failed to establish her case by preponderance of evidence

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 a quasi-delict." Under this provision, the elements necessary to establish a quasi-delict case are: (1) damages to the plaintiff; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond, was guilty; and **(3) the connection of cause and effect between such negligence and the damages.**[28] These elements show that the source of obligation in a quasi-delict case is the breach or omission of mutual duties that civilized society imposes upon its members, or which arise from non-contractual relations of certain members of society to others.[29]

Based on these requisites, Dra. dela Llana must first establish by preponderance of evidence the three elements of quasi-delict before we determine Rebecca's liability as Joel's employer. She should show the chain of causation between Joel's reckless driving and her whiplash injury. *Only after she has laid this foundation can the presumption - that Rebecca did not exercise the diligence of a good father of a family in the selection and supervision of Joel - arise.*[30] Once negligence, the damages and the proximate causation are established, this Court can then proceed with the application and the interpretation of the fifth paragraph of Article 2180 of the Civil Code.[31] Under Article 2176 of the Civil Code, in relation with the fifth paragraph of Article 2180, "an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee."[32] The rationale for these graduated levels of analyses is that it is essentially the wrongful or

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27 *Carvajal v. Luzon Development Bank and/or Ramirez*, G.R. No. 186169, August 1, 2012, 678 SCRA 132, 140-141.

28 *Vergara v. CA*, 238 Phil. 566, 568 (1987).

29 *Cangco v. Manila Railroad Co.*, 38 Phil. 775 (1918).

30 *Syki v. Begasa*, 460 Phil. 386 (2003).

31 The fifth paragraph of Article 2180 of the Civil Code provides:

> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

32 *Filcar Transport Services v. Espinas*, G.R. No. 174156, June 20, 2012, 674 SCRA 118, 128.

negligent act or omission itself which creates the *vinculum juris* in extra-contractual obligations.[33]

In civil cases, a party who alleges a fact has the burden of proving it. **He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.**[34] *The reason for this rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof.* In short, mere allegations are not evidence.[35]

In the present case, the burden of proving the proximate causation between Joel's negligence and Dra. dela Llana's whiplash injury rests on Dra. dela Llana. She must establish by preponderance of evidence that Joel's negligence, in its natural and continuous sequence, unbroken by any efficient intervening cause, produced her whiplash injury, and without which her whiplash injury would not have occurred. [36]

Notably, Dra. dela Llana anchors her claim mainly on three pieces of evidence: **(1)** the pictures of her damaged car, **(2)** the medical certificate dated November 20, 2000, and **(3)** her testimonial evidence. However, none of these pieces of evidence show the causal relation between the vehicular accident and the whiplash injury. In other words, **Dra. dela Llana, during trial, did not adduce the *factum probans* or the evidentiary facts by which the *factum probandum* or the ultimate fact can be established**, as fully discussed below.[37]

A. The pictures of the damaged car only demonstrate the impact of the collision

Dra. dela Llana contends that the pictures of the damaged car show that the massive impact of the collision caused her whiplash injury. We are not persuaded by this bare claim. Her insistence that these pictures show the causation grossly belies common logic. These pictures indeed demonstrate the impact of the collision. However, it is a far-fetched assumption that the whiplash injury can also be inferred from these pictures.

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33 *Supra* note 29.

34 *Eulogio v. Spouses Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 562, 571-572, citing *Go v. Court of Appeals,* 403 Phil. 883, 890-891 (2001).

35 *Real v. Belo,* 542 Phil. 111, 122 (2007), citing *Domingo v. Robles,* G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; and *Ongpauco v. CA,* G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.

36 *Vda. de Bataclan v. Medina,* 102 Phil. 186 (1957).

37 *Gomez v. Gomez-Samson,* 543 Phil. 468 (2007).

B. The medical certificate cannot be considered because it was not admitted in evidence

Furthermore, the medical certificate, marked as Exhibit "H" during trial, should not be considered in resolving this case for the reason that it was not admitted in evidence by the RTC in an order dated September 23, 2004.[38] Thus, the CA erred in even considering this documentary evidence in its resolution of the case. It is a basic rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments.

However, even if we consider the medical certificate in the disposition of this case, the medical certificate has no probative value for being hearsay. It is a basic rule that evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand.[39] Hearsay evidence, whether objected to or not, cannot be given credence[40] except in very unusual circumstance that is not found in the present case. Furthermore, admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the Rules of Court.[41]

During trial, Dra. dela Llana testified:

"Q:	Did your physician tell you, more or less, what was the reason why you were feeling that pain in your left arm?
A:	**Well, I got a certificate from her and in that certificate, she stated that my condition was due to a compression of the nerve, which supplied my left arm and my left hand.**
Court:	By the way, what is the name of this physician, Dra.?

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38 RTC *rollo*, p. 145.

39 RULES OF COURT, Rule 130, Section 36.

40 *Benguet Exploration, Inc. v. CA*, 404 Phil. 287 (2001), citing *PNOC Shipping and Transport Corp. v. CA*, 358 Phil. 41, 60 (1998).

41 *Tating v. Marcela*, 548 Phil. 19, 28 (2007).

Witness:	Her name is Dra. Rosalinda Milla. She is a Rehabilitation Medicine Specialist.
Atty. Yusingco:	**You mentioned that this Dra. Rosalinda Milla made or issued a medical certificate. What relation does this medical certificate, marked as Exhibit H have to do with that certificate, you said was made by Dra. Milla?**
Witness:	**This is the medical certificate that Dra. Milla made out for me.**
Atty. Yusingco:	**Your Honor, this has been marked as Exhibit H.**
Atty. Yusingco:	What other medical services were done on you, Dra. dela Llana, as a result of that feeling, that pain that you felt in your left arm?
Witness:	Well, aside from the medications and physical therapy, a re-evaluation of my condition after three months indicated that I needed surgery.
Atty. Yusingco:	Did you undergo this surgery?
Witness:	So, on October 19, I underwent surgery on my neck, on my spine.
Atty. Yusingco:	And, what was the result of that surgical operation?
Witness:	Well, the operation was to relieve the compression on my nerve, which did not resolve by the extensive and prolonged physical therapy that I underwent for more than three months."[42] (emphasis ours)

Evidently, it was Dr. Milla who had personal knowledge of the contents of the medical certificate. However, she was not presented to testify in court and was not even able to identify and affirm the contents of the medical certificate. Furthermore, Rebecca was deprived of the opportunity to cross-examine Dr. Milla on the accuracy and veracity of her findings.

We also point out in this respect that the medical certificate nonetheless did not explain the chain of causation in fact between Joel's reckless driving and Dra. dela Llana's whiplash injury. It did not categorically state that the whiplash injury was a result of the vehicular accident. A perusal of the medical certificate shows that it only attested to her medical condition, *i.e.*, that she was suffering from whiplash injury. However, the medical certificate failed to substantially relate the vehicular accident to Dra. dela Llana's whiplash injury. Rather, the medical certificate only **chronicled** her medical history and physical examinations.

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42 RTC *rollo*, pp. 277 -281.

C. Dra. dela Llana's opinion that Joel's negligence caused her whiplash injury has no probative value

Interestingly, the present case is peculiar in the sense that Dra. dela Llana, as the plaintiff in this quasi-delict case, was the **lone** physician-witness during trial. Significantly, she merely testified as an **ordinary witness** before the trial court. Dra. dela Llana essentially claimed in her testimony that Joel's reckless driving caused her whiplash injury.

Despite the fact that Dra. dela Llana is a physician and even assuming that she is an expert in neurology, we cannot give weight to her opinion that Joel's reckless driving caused her whiplash injury without violating the rules on evidence.

Under the Rules of Court, there is a substantial difference between an ordinary witness and an expert witness. The opinion of an ordinary witness may be received in evidence regarding: **(a)** the identity of a person about whom he has adequate knowledge; **(b)** a handwriting with which he has sufficient familiarity; and **(c)** the mental sanity of a person with whom he is sufficiently acquainted. Furthermore, the witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.[43] On the other hand, the opinion of an expert witness may be received in evidence on a matter requiring special knowledge, skill, experience or training which he shown to possess.[44]

However, courts do not immediately accord probative value to an admitted expert testimony, much less to an unobjected ordinary testimony respecting special knowledge. The reason is that the probative value of an expert testimony does not lie in a simple exposition of the expert's opinion. Rather, its weight lies in the assistance that the expert witness may afford the courts *by demonstrating the facts which serve as a basis for his opinion and the reasons on which the logic of his conclusions is founded.*[45]

In the present case, Dra. dela Llana's medical opinion cannot be given probative value for the reason that she was not presented as an expert witness. As an ordinary witness, she was not competent to testify on the nature, and the cause and effects of whiplash injury. Furthermore, we

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43 RULES OF COURT, Rule 130, Section 50.

44 RULES OF COURT, Rule 130, Section 49.

45 *People of the Philippines v. Florendo*, 68 Phil. 619, 624 (1939), citing *United States v. Kosel*, 24 Phil 594 (1913).

emphasize that Dra. dela Llana, during trial, nonetheless did not provide a medical explanation on the nature as well as the cause and effects of whiplash injury in her testimony.

The Supreme Court cannot take judicial notice that vehicular accidents cause whiplash injuries

Indeed, a perusal of the pieces of evidence presented by the parties before the trial court shows that **Dra. dela Llana did not present any testimonial or documentary evidence that directly shows the causal relation between the vehicular accident and Dra. dela Llana's injury.** Her claim that Joel's negligence caused her whiplash injury was not established because of the deficiency of the presented evidence during trial. We point out in this respect that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. This proposition is not public knowledge, or is capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[46] We have no expertise in the field of medicine. Justices and judges are only tasked to apply and interpret the law on the basis of the parties' pieces of evidence and their corresponding legal arguments.

In sum, Dra. dela Llana miserably failed to establish her case by preponderance of evidence. While we commiserate with her, our solemn duty to independently and impartially assess the merits of the case binds us to rule against Dra. dela Llana's favor. Her claim, unsupported by preponderance of evidence, is merely a bare assertion and has no leg to stand on.

WHEREFORE, premises considered, the assailed Decision dated February 11, 2008 and Resolution dated March 31, 2008 of the Court of Appeals are hereby **AFFIRMED** and the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ARTURO D. BRION
Associate Justice

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46 RULES OF COURT, Rule 129, Section 2.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
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, 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.

MARIA LOURDES P. A. SERENO
Chief Justice