

THIRD DIVISION

[G.R. No. 197987, March 19, 2012]

**MARITER MENDOZA, PETITIONER, VS. ADRIANO CASUMPANG,
JENNIFER ADRIANE AND JOHN ANDRE, ALL SURNAMED
CASUMPANG, RESPONDENTS.**

D E C I S I O N

ABAD, J.:

Josephine Casumpang, substituted by her respondent husband Adriano and their children Jennifer Adriane and John Andre, filed an action for damages against petitioner Dr. Mariter Mendoza in 1993 before the Regional Trial Court (RTC) of Iloilo City.

On February 13, 1993 Josephine underwent hysterectomy and myomectomy that Dr. Mendoza performed on her at the Iloilo Doctors' Hospital. After her operation, Josephine experienced recurring fever, nausea, and vomiting. Three months after the operation, she noticed while taking a bath something protruding from her genital. She tried calling Dr. Mendoza to report it but the latter was unavailable. Josephine instead went to see another physician, Dr. Edna Jamandre-Gumban, who extracted a foul smelling, partially expelled rolled gauze from her cervix.

The discovery of the gauze and the illness she went through prompted Josephine to file a damage suit against Dr. Mendoza before the RTC of Iloilo City. Because Josephine died before trial could end, her husband and their children substituted her in the case. She was a housewife and 40 years old when she died.

On March 7, 2005 the RTC rendered judgment, finding Dr. Mendoza guilty of neglect that caused Josephine's illness and eventual death and ordering her to pay plaintiff's heirs actual damages of P50,000.00, moral damages of P200,000.00, and attorney's fees of P20,000.00 plus costs of suit.

On motion for reconsideration, however, the RTC reversed itself and dismissed the complaint in an order dated June 23, 2005.

On appeal, the Court of Appeals (CA) rendered a decision on March 18, 2011,^[1] reinstating the RTC's original decision. The CA held that Dr. Mendoza committed a breach of her duty as a physician when a gauze remained in her patient's body after surgery. The CA denied her motion for reconsideration on July 18, 2011, prompting her to file the present petition.

Petitioner claims that no gauze or surgical material was left in Josephine's body after her surgery as evidenced by the surgical sponge count in the hospital record.

But she raises at this Court's level a question of fact when parties may raise only