



**Fourth Court of Appeals**  
**San Antonio, Texas**

**CONCURRING AND DISSENTING OPINION**

No. 04-18-00118-CV

Jesus **VIRLAR**, M.D. and GMG Health Systems Associates, P.A.,  
a/k/a and d/b/a Gonzaba Medical Group,  
Appellants

v.

Jo Ann **PUENTE**,  
Appellee

From the 131st Judicial District Court, Bexar County, Texas  
Trial Court No. 2014-CI-04936  
Honorable Norma Gonzales, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice  
Concurring and Dissenting Opinion by: Sandee Bryan Marion, Chief Justice  
Concurring and Dissenting Opinion by: Patricia O. Alvarez, Justice

Sitting:<sup>1</sup> Sandee Bryan Marion, Chief Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice  
Irene Rios, Justice  
Beth Watkins, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: October 14, 2020

I agree with the majority's opinion and judgment except for the settlement credit issue. On that issue, I join Chief Justice Marion's dissent. I write separately because I am concerned with the effect that section 33.012 has on parties when separate settlements involve derivative claims. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 33.012.

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<sup>1</sup> Justice Rebeca C. Martinez has recused herself from this appeal.

In this case, the statute's plain language requires the trial court to reduce Puente's damages for her physical injury by the amount C.P. received for her separate loss of consortium. The statute penalizes Puente dollar-for-dollar for C.P.'s settlement for her separate damage. The facts of this case reveal a punitive aspect to the statute. For this reason, I invite the Texas Legislature to revisit the statute's construction to avoid punitive consequences in tragic circumstances like the one this case raises.

Patricia O. Alvarez, Justice