34 Phil. 311

[G.R. No. 11154. March 21, 1916]

E. MERRITT, PLAINTIFF AND APPELLANT, VS. GOVERNMENT OF THE PHILIPPINE ISLANDS DEFENDANT AND APPELLANT.

D E C I S I O N

TRENT, J.:

This is an appeal by both parties from a judgment of the Court of First Instance of the city of Manila in favor of the plaintiff for the sum of ₱14,741, together with the costs of the cause.

Counsel for the plaintiff insist that the trial court erred (1) "in limiting the general damages which the plaintiff suffered to ₱5,000, instead of ₱25,000 as claimed in the complaint" and (2) "in limiting the time when plaintiff was entirely disabled to two months and twenty-one days and fixing the damage accordingly in the sum of ₱2,666, instead of ₱6,000 as claimed by plaintiff in his complaint."

The Attorney-General on behalf of the defendant urges that the trial court erred: (*a*) in finding that the collision between the plaintiff's motorcycle and the ambulance of the General Hospital was due to the negligence of the chauffeur; (*b*) in holding that the Government of the Philippine Islands is liable for the damages sustained by the plaintiff as a result of the collision, even if it be true that the collision was due to the negligence of the chauffeur; and (*c*) in rendering judgment against the defendant for the sum of ₱14,741.

The trial court's findings of fact, which are fully supported by the record, are as follows:

> "It is a fact not disputed by counsel for the defendant that when the plaintiff, riding on a motorcycle, was going toward the western part of Calle Padre Faura, passing along the west side thereof at a speed of ten to twelve miles an hour, upon crossing Taft Avenue and when he was ten feet from the southwestern intersection of said streets', the General Hospital ambulance, upon reaching said

avenue, instead of turning toward the south, after passing the center thereof, so that it would be on the left side of said avenue, as is prescribed by the ordinance and the Motor Vehicle Act, turned suddenly and unexpectedly and long before reaching the center of the street, into the right side of Taft Avenue, without having sounded any whistle or horn, by which movement it struck the plaintiff, who was already six feet from the southwestern point or from the post placed there.

"By reason of the resulting collision, the plaintiff was so severely injured that, according to Dr. Saleeby, who examined him on the very same day that he was taken to the General Hospital, he was suffering from a depression in the left parietal region, a wound in the same place and in the back part of his head, while blood issued from his nose and he was entirely unconscious.

"The marks revealed" that he had one or more fractures of the skull and that the grey matter and brain mass had suffered material injury. At ten o'clock of the night in question, which was the time set for performing the operation, his pulse was so weak and so irregular that, in his opinion, there was little hope that he would live. His right leg was broken in such a way that the fracture extended to the outer skin in such manner that it might be regarded as double and the wound would be exposed to infection, for which reason it was of the most serious nature.

"At another examination six days before the day of the trial, Dr. Saleeby noticed that the plaintiff's leg showed a contraction of an inch and a half and a curvature that made his leg very weak and painful at the point of the fracture. Examination of his head revealed a notable readjustment of the functions of the brain and nerves. The patient apparently was slightly deaf, had a slight weakness in his eyes and in his mental condition. This latter weakness was always noticed when the plaintiff had to do any difficult mental labor, especially when he attempted to use his memory for mathematical calculations.

"According to the various merchants who testified as witnesses, the plaintiff's mental and physical condition prior to the accident was excellent, and that after having received the injuries that have been discussed, his physical condition had undergone a noticeable depreciation, for he had lost the agility, energy, and ability that he had constantly displayed before the accident as one of the best constructors of wooden buildings and he could not now earn even a half of the

> income that he had secured for his work because he had lost 50 per cent of his efficiency. As a contractor, he could no longer, as he had before done, climb up ladders and scaffoldings to reach the highest parts of the building.
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> "As a consequence of the loss the plaintiff suffered in the efficiency of his work as a contractor, he had to dissolve the partnership he had formed with the engineer, Wilson, because he was incapacitated from making mathematical calculations on account of the condition of his leg and of his mental faculties, and he had to give up a contract he had for the construction of the Uy Chaco building."

We may say at the outset that we are in full accord with the trial court to the effect that the collision between the plaintiff's motorcycle and the ambulance of the General Hospital was due solely to the negligence of the chauffeur.

The two items which constitute a part of the ₱14,741 and which are drawn in question by the plaintiff are (*a*) ₱5,000, the amount awarded for permanent injuries, and (*b*) the ₱2,666, the amount allowed for the loss of wages during the time the plaintiff was incapacitated from pursuing his occupation. We find nothing in the record which would justify us in increasing the amount of the first. As to the second, the record shows, and the trial court so found, that the plaintiff's services as a contractor were worth ₱l,000 per month. The court, however, limited the time to two months and twenty-one days, which the plaintiff was actually confined in the hospital. In this we think there was error, because it was clearly established that the plaintiff was wholly incapacitated for a period of six months. The mere fact that he remained in the hospital only two months and twenty-one days while the remainder of the six months was spent in his home, would not prevent recovery for the whole time. We, therefore, find that the amount of damages sustained by the plaintiff, without any fault on his part, is ₱18,075.

As the negligence which caused the collision is a tort committed by an agent or employee of the Government, the inquiry at once arises whether the Government is legally liable for the damages resulting therefrom.

Act No. 2457, effective February 3,1915, reads:

> "An Act authorizing E. Merritt to bring suit against the Government of the Philippine Islands and authorizing the Attorney-General of said Islands to appear

in said suit.

"Whereas a claim has been filed against the Government of the Philippine Islands by Mr. E. Merritt, of Manila, for damages resulting from a collision between his motorcycle and the ambulance of the General Hospital on March twenty-fifth, nineteen hundred and thirteen;

"Whereas it is not known who is responsible for the accident nor is it possible to determine the amount of damages, if any, to which the claimant is entitled; and

"Whereas the Director of Public Works and the Attorney-General recommend that an Act be passed by the Legislature authorizing Mr. E. Merritt to bring suit in the courts against the Government, in order that said questions may be decided: Now, therefore,

"By authority of the United States, be it enacted by the Philippine Legislature, that:

> "SECTION 1. E. Merritt is hereby authorized to bring suit in the Court of First Instance of the city of Manila against the Government of the Philippine Islands in order to fix the responsibility for the collision between his motorcycle and the ambulance of the General Hospital, and to determine the amount of the damages, if any, to which Mr. E. Merritt is entitled on account of said collision, and the Attorney-General of the Philippine Islands is hereby authorized and directed to appear at the trial on the behalf of the Government of said Islands, to defend said Government at the same.
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> "SEC. 2. This Act shall take effect on its passage.
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> "Enacted, February 3, 1915."

Did the defendant, in enacting the above quoted Act, simply waive its immunity from suit or did it also concede its liability to the plaintiff? If only the former, then it cannot be held that the Act created any new cause of action in favor of the plaintiff or extended the defendant's liability to any case not previously recognized.

All admit that the Insular Government (the defendant) cannot be sued by an individual without its consent. It is also admitted that the instant case is one against the Government. As the consent of the Government to be sued by the plaintiff was entirely voluntary on its part, it is our duty to look carefully into the terms of the consent, and render judgment accordingly.

The plaintiff was authorized to bring this action against the Government "in order to fix the responsibility for the collision between his motorcycle and the ambulance of the General Hospital and to determine the amount of the damages, if any, to which Mr. E. Merritt is entitled on account of said collision, * * *." These were the two questions submitted to the court for determination. The Act was passed "in order that said questions may be decided." We have "decided" that the accident was due solely to the negligence of the chauffeur, who was at the time an employee of the defendant, and we have also fixed the amount of damages sustained by the plaintiff as a result of the collision. Does the Act authorize us to hold that the Government is legally liable for that amount? If not, we must look elsewhere for such authority, if it exists.

The Government of the Philippine Islands having been "modeled after the Federal and State Governments in the United States," we may look to the decisions of the high courts of that country for aid in determining the purpose and scope of Act No. 2457.

In the United States the rule that the state is not liable for the torts committed by its officers or agents whom it employs, except when expressly made so by legislative enactment, is well settled. "The Government," says Justice Story, "does not undertake to guarantee to any person the fidelity of the officers or agents whom it employs, since that would involve it in all its operations in endless embarrassments, difficulties and losses, which would be subversive of the public interest." (Claussen *vs.* City of Luverne, 103 Minn., 491, citing U. S. vs, Kirkpatrick, 9 Wheat, 720; 6 L. Ed., 199; and Beers *vs.* State, 20 How., 527; 15 L. Ed., 991.)

In the case of Melvin *vs.* State (121 Cal., 16), the plaintiff sought to recover damages from the state for personal injuries received on account of the negligence of the state officers at the state fair, a state institution created by the legislature for the purpose of improving agricultural and kindred industries; to disseminate information calculated to educate and benefit the industrial classes; and to advance by such means the material interests of the state, being objects similar to those sought by the public school system. In passing upon the question of the state's liability for the negligent acts of its officers or agents, the court said:

> "No claim arises against any government in favor of an individual, by reason of the misfeasance, laches, or unauthorized exercise of powers by its officers or agents." (Citing Gibbons *vs.* U. S., 8 Wall., 269; Clodfelter *vs.* State, 86 N. C, 51, 53; 41 Am. Rep., 440; Chapman *vs.* State, 104 Cal., 690; 43 Am. St. Rep., 158; Green *vs.* State, 73 Cal., 29; Bourn *vs.* Hart, 93 Cal., 321; 27 Am. St. Rep., 203; Story on Agency, sec. 319.)

As to the scope of legislative enactments permitting individuals to sue the state where the cause of action arises out of either tort or contract, the rule is stated in 36 Cyc, 915, thus:

> "By consenting to be sued a state simply waives its immunity from suit. It does not thereby concede its liability to plaintiff, or create any cause of action in his favor, or extend its liability to any cause not previously recognized. It merely gives a remedy to enforce a preexisting liability and submits itself to the jurisdiction of the court, subject to its right to interpose any lawful defense."

In Apfelbacher *vs.* State (152 N. W., 144, advanced sheets), decided April 16, 1915, the Act of 1913, which authorized the bringing of this suit, read:

> "SECTION 1. Authority is hereby given to George Apfelbacher, of the town of Summit, Waukesha County, Wisconsin, to bring suit in such court or courts and in such form or forms as he may be advised for the purpose of settling and determining all controversies which he may now have with the State of Wisconsin, or its duly authorized officers and agents, relative to the mill property of said George Apfelbacher, the fish hatchery of the State of Wisconsin on the Bark River, and the mill property of Evan Humphrey at the lower end of Nagawicka Lake, and relative to the use of the waters of said Bark River and Nagawicka Lake, all in the county of Waukesha, Wisconsin."

In determining the scope of this act, the court said:

> "Plaintiff claims that by the enactment of this law the legislature admitted liability on the part of the state for the acts of its officers, and that the suit now stands just as it would stand between private parties. It is difficult to see how the

> act does, or was intended to do, more than remove the state's immunity from suit. It simply gives authority to commence suit for the purpose of settling plaintiff's controversies with the state. Nowhere in the act is there a whisper or suggestion that the court or courts in the disposition of the suit shall depart from well established principles of law, or that the amount of damages is the only question to be settled. The act opened the door of the court to the plaintiff. It did not pass upon the question of liability, but left the suit just where it would be in the absence of the state's immunity from suit. If the Legislature had intended to change the rule that obtained in this state so long and to declare liability on the part of the state, it would not have left so important a matter to mere inference, but would have done so in express terms. (Murdock Grate Co. *vs.* Commonwealth, 152 Mass., 28; 24 N. E., 854; 8 L. R. A., 399.)"

In Denning *vs.* State (123 Cal., 316), the provisions of the Act of 1893, relied upon and considered, are as follows:

> "All persons who have, or shall hereafter have, claims on contract or for negligence against the state not allowed by the state board of examiners, are hereby authorized, on the terms and conditions herein contained, to bring suit thereon against the state in any of the courts of this state of competent jurisdiction, and prosecute the same to final judgment. The rules of practice in civil cases shall apply to such suits, except as herein otherwise provided."

And the court said:

> "This statute has been considered by this court in at least two cases, arising under different facts, and in both it was held that said statute did not create any liability or cause of action against the state where none existed before, but merely gave an additional remedy to enforce such liability as would have existed if the statute had not been enacted. (Chapman *vs.* State, 104 Cal., 690; 43 Am. St. Rep., 158; Melvin *vs.* State, 121 Cal., 16.)"

A statute of Massachusetts enacted in 1887 gave to the superior court "jurisdiction of all claims against the commonwealth, whether at law or in equity," with an exception not

necessary to be here mentioned. In construing this statute the court, in Murdock Grate Co. *vs.* Commonwealth (152 Mass., 28), said:

> "The statute we are discussing discloses no intention to create against the state a new and heretofore unrecognized class of liabilities, but only an intention to provide a judicial tribunal where well recognized existing liabilities can be adjudicated."

In Sipple *vs.* State (99 N. Y., 284), where the board of the canal claims had, by the terms of the statute of New York, jurisdiction of claims for damages for injuries in the management of the canals such as the plaintiff had sustained, Chief Justice Ruger remarks: "It must be conceded that the state can be made liable for injuries arising from the negligence of its agents or servants, only by force of some positive statute assuming such liability."

It being quite clear that Act No. 2457 does not operate to extend the Government's liability to any cause not previously recognized, we will now examine the substantive law touching the defendant's liability for the negligent acts of its officers, agents, and employees. Paragraph 5 of article 1903 of the Civil Code reads:

> "The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable."

The supreme court of Spain in defining the scope of this paragraph said:

> "That the obligation to indemnify for damages which a third person causes to another by his fault or negligence is based, as is evidenced by the same Law 3, Title 15, Partida 7, on that the person obligated, by his own fault or negligence, takes part in the act or omission of the third party who caused the damage. It follows therefrom that the state, by virtue of such provisions of law, is not responsible for the damages suffered by private individuals in consequence of acts performed by its employees in the discharge of the functions pertaining to their office, because neither fault nor even negligence can be presumed on the

part of the state in the organization of branches of the public service and in the appointment of its agents; on the contrary, we must presuppose all foresight humanly possible on its part in order that each branch of service serves the general weal and that of private persons interested in its operation. Between these latter and the state, therefore, no relations of a private nature governed by the civil law can arise except in a case where the state acts as a judicial person capable of acquiring rights and contracting obligations." (Supreme Court of Spain, January 7, 1898; 83 Jur. Civ., 24.)

"That the Civil Code in chapter 2, title 16, book 4, regulates the obligations which arise out of fault or negligence; and whereas in the first article thereof, No. 1902, where the general principle is laid down that where a person who by an act or omission causes damage to another through fault or negligence, shall be obliged to repair the damage so done, reference is made to acts or omissions of the persons who directly or indirectly cause the damage, the following article refers to third persons and imposes an identical obligation upon those who maintain fixed relations of authority and superiority over the authors of the damage, because the law presumes that in consequence of such relations the evil caused by their own fault or negligence is imputable to them. This legal presumption gives way to proof, however, because, as held in the last paragraph of article 1903, responsibility for acts of third persons ceases when the persons mentioned in said article prove that they employed all the diligence of a good father of a family to avoid the damage, and among these persons, called upon to answer in a direct and not a subsidiary manner, are found, in addition to the mother or the father in a proper case, guardians and owners or directors of an establishment or enterprise, the state, but not always, except when it acts through the agency of a special agent, doubtless because and only in this case, the fault or negligence, which is the original basis of this kind of objections, must be presumed to lie with the state.

"That although in some cases the state might by virtue of the general principle set forth in article 1902 respond for all the damage that is occasioned to private parties by orders or resolutions which by fault or negligence are made by branches of the central administration acting in the name and representation of the state itself and as an external expression of its sovereignty in the exercise of its executive powers, yet said article is not applicable in the case of damages said to have been occasioned to the petitioners *by an executive official*, acting in the

exercise of his powers, in proceedings to enforce the collections of certain property taxes owing by the owner of the property which they hold in sublease.

"That the responsibility of the state is limited by article 1903 to the case wherein it acts *through a special agent* (and a special agent, in the sense in which these words are employed, is one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office if he is a special official) so that in representation of the state and being bound to act as an agent thereof, he executes the trust confided to him. This concept does not apply to any executive agent who is an employee of the active administration and who on his own responsibility performs the functions which are inherent in and naturally pertain to his office and which are regulated by law and the regulations." (Supreme Court of Spain, May 18, 1904; 98 Jur. Civ., 389, 390.)

"That according to paragraph 5 of article 1903 of the Civil Code and the principle laid down in a decision, among others, of the 18th of May, 1904, in a damage case, the responsibility of the state is limited to that which it contracts through a special agent, duly empowered by a *definite order or commission to perform some act or charged with some definite purpose which gives rise to the claim,* and not where the claim is based on acts or omissions imputable to a public official charged with some administrative or technical office who can be held to the proper responsibility in the manner laid down by the law of civil responsibility. Consequently, the trial court in not so deciding and in sentencing the said entity to the payment of damages, caused by an official of the second class referred to, has by erroneous interpretation infringed the provisions of articles 1902 and 1903 of the Civil Code." (Supreme Court of Spain, July 30, 1911; 122 Jur. Civ., 146.)

It is, therefore, evident that the State (the Government of the Philippine Islands) is only liable, according to the above quoted decisions of the Supreme Court of Spain, for the acts of its agents, officers and employees when they act as special agents within the meaning of paragraph 5 of article 1903, *supra*, and that the chauffeur of the ambulance of the General Hospital was not such an agent.

For the foregoing reasons, the judgment appealed from must be reversed, without costs in this instance. Whether the Government intends to make itself legally liable for the amount

of damages above set forth, which the plaintiff has sustained by reason of the negligent acts of one of its employees, by legislative enactment and by appropriating sufficient funds therefor, we are not called upon to determine. This matter rests solely with the Legislature and not with the courts.

Arellano, C. J., Torres, Johnson, and *Moreland, JJ.,* concur.

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