

44 Phil. 165

[ G. R. No. 18345. December 05, 1922 ]

**HUGO BORROMELO, PLAINTIFF AND APPELLANT, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT CO., DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**AVANCEÑA, J.:**

On the evening of April 10, 1920, electric car No. 203 of the defendant company was running along M. H. del Pilar Street of the city of Manila, and on arriving at the intersection of that street and Isaac Peral it stopped to receive passengers. At that moment the plaintiff approached the car with his two children, 12 and 16 years old, respectively, and putting his two children on board the car first, he proceeded to follow, but in attempting to board he fell off and was dragged some distance by the car, one of the rear wheels passing over his left foot. As a result of this accident, plaintiff's left foot was amputated, making it necessary for him to use an artificial foot in order to be able to walk.

The plaintiff brought this action to recover from the defendant damages for the injury sustained by him by reason of the accident. The trial court sentenced the defendant to pay the sum of P5,400, with legal interest thereon from the date of the judgment. From this judgment both parties have appealed. Pending the cause in this court, the appeal taken by the defendant was dismissed.

The defendant's appeal having been dismissed, and the only error assigned by the plaintiff having reference to the amount of the damages to which he is entitled, we accept the finding of the trial court that the defendant is liable, and that plaintiff's fall was due entirely to the car having been suddenly set in motion at the moment that the plaintiff was about to board it, but without having gained a sure footing on the running board, and that the subsequent loss of his left foot was due to the carelessness and negligence of the defendant's employees in charge of car No. 203. We are convinced, moreover, that this finding is supported by the evidence.

The sum of P5,400 awarded by the trial court to plaintiff as damages is made up of the expense incurred for hospital, medicine, and physician's fees on account of this accident. Although the plaintiff asks for more on this account, we believe, after an examination of the evidence, that this amount is really all that he is entitled to on this account.

However, the trial court has not allowed the plaintiff anything for the loss of his left foot, which has incapacitated him from following his profession and we believe that this is an error. The obligation to indemnify for injury caused by negligence under article 1902 of the Civil Code, includes the two kinds of damages specified in article 1106 of the same Code; to wit, damages for the loss actually sustained and for the profit which the injured party may have failed to realize.

It appears that at the time of the accident, the plaintiff was chief engineer of the merchant steamer *San Nicolas* with a monthly salary of P375, and that having lost his left foot, thereby necessitating the use of an artificial foot in order to be able to walk, he can no longer be employed as a marine engineer on any vessel, and, as a matter of fact, the Collector of Customs has refused to grant him a license to follow his profession as marine engineer. It also appears that the plaintiff, who is 45 years old, has been engaged in this profession for sixteen years (since 1904), and that he knows no other profession whereby he can earn his living. It is evident that this damage must also be indemnified. The plaintiff's incapacity to continue in the practice of his profession as marine engineer has put an end to one of his activities and has certainly destroyed a source—the principal source—of his professional earnings in the future. Taking into account the age of the plaintiff and the salary he derived from this profession from the exercise of which he has been deprived, we fix this future damage at P2,000.

The judgment appealed from is modified as regards the plaintiff's appeal, and he is allowed, besides the amount awarded him in the judgment, the sum of P2,000, without special pronouncement as to costs. So ordered.

*Araullo, C J., Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.*

