

MARGARITA AFIALDA, PLAINTIFF AND APPELLANT, VS. BASILIO HISOLE AND FRANCISCO HISOLE, DEFENDANTS AND APPELLEES.

G.R. No. L-2075. November 29, 1949

Ponente: REYES, J.

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REYES, J.:

This is an action for damages arising from injury caused by an animal. The complaint alleges that the now deceased, Loreto Afialda, was employed by the defendant spouses as caretaker of their carabaos at a fixed compensation; that while tending the animals he was, on March 21, 1947, gored by one of them and later died as a consequence of his injuries; that the mishap was due neither to his own fault nor to force majeure; and that plaintiff is his elder sister and heir depending upon him for support.

Before filing their answer, defendants moved for the dismissal of the complaint for lack of a cause of action, and the motion having been granted by the lower court, plaintiff has taken this appeal.

Plaintiff seeks to hold defendants liable under article 1905 of the Civil Code, which reads:

"The possessor of an animal, or the one who uses the same, is liable for any damages it may cause, even if such animal should escape from him or stray away.

"This liability shall cease only in case the damage should arise from force majeure or from the fault of the person who may have suffered it."

The question presented is whether the owner of the animal is liable when the damage is caused to its caretaker.

The lower court took the view that under the above-quoted provision of the Civil Code, the owner of an animal is answerable only for damages caused to a stranger, and that for damage caused to the caretaker of the animal the owner would be liable only if he had been negligent or at fault under article 1902 of the same code. Claiming that the lower court was in error, counsel for plaintiff contends that article 1905 does not distinguish between damage caused to a stranger and damage caused to the caretaker and makes the owner liable whether or not he has been negligent or at fault. For authority counsel cites the following opinion which Manresa quotes from a decision of the Spanish Supreme Court:

"El artículo 1905 del Código Civil no consiente otra interpretación que la que, clara y evidentemente, se deriva de sus términos literales, bastando, según el mismo, que un animal cause perjuicio para que nazca la responsabilidad del dueño, aun no imputándose a este ninguna clase de culpa o negligencia, habida, sin duda, cuenta por el legislador de que tal concepto de dueño es suficiente para que arrastre las consecuencias favorables o adversas de esta clase de propiedad, salvo la excepción en el mismo contenida." (12 Manresa, Commentaries on the Spanish Civil Code, 573.)

This opinion, however, appears to have been rendered in a case where an animal caused injury to a stranger or third person. It is therefore no authority for a case like the present where the person injured was the caretaker of the animal. The distinction is important. For the statute names the possessor or user of the animal as the person

liable for "any damages it may cause," and this for the obvious reason that the possessor or user has the custody and control of the animal and is therefore the one in a position to prevent it from causing damage.

In the present case, the animal was in the custody and under the control of the caretaker, who was paid for his work as such. Obviously, it was the caretaker's business to try to prevent the animal from causing injury or damage to anyone, including himself. And being injured by the animal under those circumstances, was one of the risks of the occupation which he had voluntarily assumed and for which he must take the consequences.

In a decision of the Spanish Supreme Court, cited by Manresa in his Commentaries (Vol. 12, p.578), the death of an employee who was bitten by a feline which his Master had asked him to take to his establishment was by said tribunal declared to be "a veritable accident of labor" which should come under the labor laws rather than under article 1905 of the Civil Code. The present action, however, is not brought under the workmen's Compensation let, there being no allegation that, among other things, defendants' business, whatever that might be, had a gross income of P20,000. As already stated, defendants' liability is made to rest on article 1905 of the Civil Code. But action under that article is not tenable for the reasons already stated. On the other hand, if action is to be based on article 1902 of the Civil Code, it is essential that there be fault or negligence on the part of the defendants as owners of the animal that caused the damage. But the complaint contains no allegation on those points.

There being no reversible error in the order appealed from, the same is hereby affirmed, but without costs in view of the financial situation of the appellant.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

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