

CITY OF MANILA, PETITIONER, VS. GENERO M. TEOTICO AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-23052. January 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari from a decision of the Court of Appeals.

On January 27, 1958, at about 8:00 p.m., Genaro N. Teotico was at the corner of the Old Luneta and P. Burgos Avenue, Manila, within a "loading and unloading" zone, waiting for a jeepney to take him down town. After waiting for about five minutes, he managed to hail a jeepney that came along to a stop. As he stepped down from the curb to board the jeepney, and took a few steps, he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. Due to the fall, his head hit the rim of the manhole breaking his eyeglasses and causing broken pieces thereof to pierce his left eyelid. As blood flowed therefrom, impairing his vision, several persons came to his assistance and pulled him out of the manhole. One of them brought Teotico to the Philippine General Hospital, where his injuries were treated, after which he was taken home. In addition to the lacerated wound in his left upper eyelid, Teotico suffered contusions on the left thigh, the left upper arm, the right leg and the upper lip, apart from an abrasion on the right infra-patella region. These injuries and the allergic eruptions caused by anti-tetanus injections administered to him in the hospital, required further medical treatment by a private practitioner who charged therefor P1 ,400.00.

As a consequence of the foregoing occurrence, Teotico filed, with the Court of First Instance of Manila, a complaint - which was, subsequently, amended - for damages against the City of Manila, its mayor, city engineer, city health officer, city treasurer and chief of police. As stated in the decision of the trial court, and quoted with approval by the Court of Appeals,

"At the time of the incident, plaintiff was a practicing public accountant, a businessman and a professor at the University of the East. He held responsible positions in various business firms like the Philippine Merchandising Co., the A. U. Valencia and Co., the Silver Swan Manufacturing Company and the Sincere Packing Corporation. He was also associated with several civic organizations such as the Wack Wack Golf Club, the Chamber of Commerce of the Philippines, Vs Men Club of Manila and the Knight's of Rizal. As a result of the incident, plaintiff was prevented from engaging in his customary occupation for twenty days. Plaintiff has lost a daily income of about ₱50.00 during his incapacity to work. Because of the incident, he was subjected to humiliation and ridicule by his business associates and friends. During the period of his treatment, plaintiff was under constant fear and anxiety for the welfare of his minor children since he was their only support. Due to the filing of this case, plaintiff has obligated himself to pay his counsel the sum of P2,000.00.

"On the other hand, the defense presented evidence, oral and documentary, to prove that the Storm Drain Section, Office of the City Engineer of Manila, received a report of the uncovered condition of a catchbasin at the corner of P. Burgos and Old Luneta Streets, Manila, on January 24, 1958, but the same was covered on the same day (Exhibit 4); that again the iron cover of the same catchbasin was reported missing on January 30, 1958, but the said cover was replaced the next day (Exhibit 5); that the Office of the City Engineer never

received any report to the effect that the catchbasin in question was not covered between January 25 and 29, 1958; that it has always been a policy of the said office, which is charged with the duty of installation, repair and care of storm drains in the City of Manila, that whenever a report is received from whatever source of the loss of a catchbasin cover, the matter is immediately attended to, either by immediately replacing the missing cover or covering the catchbasin with steel matting; that because of the lucrative scrap iron business then prevailing, stealing of iron catchbasin covers was rampant; that the Office of the City Engineer has filed complaints in court resulting from theft of said iron covers; that in order to prevent such thefts, the city government has changed the position and layout of catchbasins in the City by constructing them under the sidewalk with concrete cement covers and openings on the sides of the gutter; and that these changes had been undertaken by the city from time to time whenever funds were available."

After appropriate proceedings the Court of First Instance of Manila rendered the aforementioned decision sustaining the theory of the defendants and dismissing the amended complaint, without costs.

On appeal taken by plaintiff, this decision was affirmed by the Court of Appeals, except insofar as the City of Manila is concerned, which was sentenced to pay damages in the aggregate sum of P6,750.00[1] Hence, this appeal by the City of Manila.

The first issue raised by the latter is whether the present case is governed by Section 4 of Republic Act No. 409 (Charter of the City of Manila) reading:

"The city shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provisions of this chapter, or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions."

or by Article 2189 of the Civil Code of the Philippines, which provides:

"Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision."

Manila maintains that the former provision should prevail over the latter, because Republic Act 409 is a special law, intended exclusively for the City of Manila, whereas the Civil Code is a general law, applicable to the entire Philippines.

The Court of Appeals, however, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned, Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject-matter of the provisions above quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of said Act "or any other law or ordinance, or from negligence" of the city "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions." Upon the other hand, Article 2189 of the Civil Code constitutes a particular prescription making "provinces, cities and municipalities . . . liable for damages for the death of, or injury suffered by, any person by reason" - specifically - "of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. " In other words, said section 4 refers to liability arising from negligence, in general, regardless of the object thereof, whereas Article 2189 governs liability due to "defective streets, "in particular. Since the present action is based upon the alleged defective condition of a road, said Article 2189 is decisive thereon.

It is urged that the City of Manila cannot be held liable to Teotico for damages: 1) because the accident involving

him took place in a national highway; and 2) because the City of Manila has not been negligent in connection therewith.

As regards the first issue, we note that it is based upon an allegation of fact not made in the answer of the City. Moreover, Teotico alleged in his complaint, as well as in his amended complaint, that his injuries were due to the defective condition of a street which is "under the supervision and control" of the City. In its answer to the amended complaint, the City, in turn, alleged that "the streets aforementioned were and have been constantly kept in good condition and regularly inspected and the storm drains and manholes thereof covered, by the defendant City and its officers concerned" who "have been ever vigilant and zealous in the performance of their respective functions and duties as imposed upon them by law." Thus, the City had, in effect, admitted that P. Burgos Avenue was and is under its control and supervision.

Moreover, the assertion to the effect that said avenue is a national highway was made, for the first time, in its motion for reconsideration of the decision of the Court of Appeals. Such assertion raised, therefore, a question of fact, which had not been put in issue in the trial court, and can not be set up, for the first time, on appeal, much less after the rendition of the decision of the appellate court, in a motion for the reconsideration thereof.

At any rate, under Article 2189 of the Civil Code, it is not necessary for the liability therein established to attach that the defective roads or streets belong to the province, city or municipality from which responsibility is exacted. What said article requires is that the province, city or municipality have either "control or supervision" over said street or road. Even if P. Burgos avenue were, therefore, a national highway, this circumstance would not necessarily detract from its "control or supervision" by the City of Manila, under Republic Act 409. In fact Section 18(x) thereof provides:

"SEC. 18. Legislative powers.- The Municipal Board shall have the following legislative powers:

"(x) Subject to the provisions of existing law to provide for the laying out, construction and improvement, and to regulate the use of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places; to provide for lighting, cleaning, and sprinkling of streets and public places; ... to provide for the inspection of, fix the license fees for and regulate the openings in the same for the laying of gas, water, sewer and other pipes, the building and repair of tunnels, sewers, and drains, and all structures in and under the same and the erecting of poles and the stringing of wires therein; to provide for and regulate cross-walks, curbs, and gutters therein; ... to regulate traffic and sales upon the streets and other public places; to provide for the abatement of nuisances in the same and punish the authors or owners thereof; to provide for the construction and maintenance, and regulate the use, of bridges, viaducts, and culverts; to prohibit and regulate ball playing, kiteflying, hoop rolling, and other amusements which may annoy persons using the streets and public places, or frighten horses or other animals; to regulate the speed of horses and other animals, motor and other vehicles, cars, and locomotives within the limits of the city; to regulate the lights used on all such vehicles, cars, and locomotives; ... to provide for and change the location, grade, and crossing of railroads, and compel any such railroad to raise or lower its tracks to conform to such provisions or changes; and to require railroad companies to fence their property, or any part thereof, to provide suitable protection against injury to persons or property, and to construct and repair ditches, drains, sewers, and culverts along and under their tracts, so that the natural drainage of the streets and adjacent property shall not be obstructed."

This authority has been neither withdrawn nor restricted by Republic Act No. 917 and Executive Order No. 113, dated May 2, 1955, upon which the City relies. Said Act governs the disposition or appropriation of the highway funds and the giving of aid to provinces, chartered cities and municipalities in the construction of roads and streets within their respective boundaries, and Executive Order No. 113 merely implements the provisions of said Republic Act No. 917, concerning the disposition and appropriation of the highway funds. Moreover, it provides that "the construction, maintenance and improvement of national primary, national secondary and national aid

provincial and city roads shall be accomplished by the Highway District Engineers and Highway City Engineers under the supervision of the Commissioner of Public Highways and shall be financed from such appropriations as may be authorized by the Republic of the Philippines in annual or special appropriation Acts."

Then, again, the determination of whether or not P. Burgos Avenue is under the control or supervision of the City of Manila and whether the latter is guilty of negligence, in connection with the maintenance of said road, which were decided by the Court of Appeals in the affirmative, is one of fact, and the findings of said Court, thereon are not subject to our review.

Wherefore, the decision appealed from should be as it is hereby affirmed, with costs against the City of Manila.

It is so ordered.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] Medical fees - P1 ,400.00; Lost income - "P350.00; Moral damages -P3.000.00; and Attorney fees - P2,000.00.

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