

MARIA AGDORO, PLAINTIFF AND APPELLANT, VS. PHILIPPINE MINING INDUSTRIAL CO., DEFENDANT AND APPELLEE.*G.R. No. L-21751. March 25, 1924*

Ponente: OSTRAND, J.

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MARIA AGDORO, PLAINTIFF AND APPELLANT, VS. PHILIPPINE MINING INDUSTRIAL CO., DEFENDANT AND APPELLEE. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }The above entitled actions are brought against the same defendant, involve the same questions, and were tried together. The trial court absolved the defendant from all three complaints and all of the plaintiffs appeal.

In case R. G. No. 21751 the plaintiff Maria Agdoro alleges that her grandson Faustino Ubina lost his life through the negligence of the defendant and as next of kin asks damages therefor in the sum of P18,720; case No. 21752 is a similar action brought by Vicenta Risari for damages in the sum of P14,641.50 for the death of her son Felix Evia in the same accident; and case No. 21753 is brought by the widow and children of Cornelio B. Agua for damages in the sum of P34,800 for his death on the same occasion and in the same circumstances.

Only a part of the evidence adduced at the trial is before us. We are therefore not in position to review the findings of fact made by the trial court and must accept them as final.

It appears from the decision of the trial court that the three deceased were workmen employed in operating the defendant's iron mine on the Island of Calambayongan, near the town of Mambulao, Camarines Norte, another employee of the defendant's, a mining engineer by the name of Sei Tanaka, being in charge of the work. As the housing facilities on the island were inadequate, most of the laborers and other employees went to the town of Mambulao after each day's work, returning to the island in the morning of the following day.

On the morning of June 20, 1919, the defendant's launch, carrying a large number of employees, among them Tanaka, and towing four bancas, left Mambulao for the mine. Each of the four bancas also had mine-workers aboard, the largest of them, which belonged to Cornelio Agua, carrying 25 or more, including the three deceased. Outside of Mambulao Bay the launch and the four bancas encountered heavy sea. All three of the smaller bancas were soon cut adrift or broke loose from the towlines and by passing along the lee side of the island, where the sea was comparatively quiet, arrived safely at their destination. In the meantime, the launch continued on its course with the larger banca in tow, but as the launch turned towards the landing place on the island, the banca was caught by a heavy sea and capsized.

Most of the passengers of the banca were able to board the launch or else reached the island safely by clinging to the over-turned craft or to the towing line and only the deceased and two others were washed away. After discharging its passengers at the landing place the launch immediately returned to the place of the accident and

rescued one of the five men left there, the other four, in the mean- time, having disappeared.

The trial court further found as facts that before leaving Mambulao in the morning, Tanaka asked Cornelio Agua, who had lived in the town for over thirty years, whether it was safe to go out to the island on that morning and that Agua advised him to proceed; that Tanaka, before the launch with its tow passed the northeastern point of the island, told Agua to cut the towing line and land on the lee side of the island, but that Agua failed to take his advice; that it appears to have been impracticable for the launch to turn around in the heavy sea and return to Mambulao, and that if the launch had remained in the place where the accident occurred until all efforts to save all of the laborers had been exhausted, it probably would have resulted in the sinking of the launch and the loss of more lives.

There is no evidence showing that the transportation of the workingmen to and from the place of work was a part of the contract of employment between them and the defendant company; and the trial court also found as a fact that the plaintiffs had failed to give the notice required by law for a recovery under the Employers' Liability Act (No. 1874). In these circumstances, it is clear that a recovery of damages can only be had under articles 1902 and 1903 of the Civil Code, if at all, and for a recovery under these articles it is necessary to show that the injury complained of was due to negligence on the part of the defendant or its agents or employees within the scope of their employment. The lower court found expressly that neither the defendant in this case, nor its employees, had been guilty of negligence and, as already stated, due to the fact that only a part of the evidence is before us, we cannot go behind the finding of the court below upon this point.

The judgement appealed from is therefore affirmed. No costs will be allowed. So ordered.

Araullo, C.J., Street, Malcolm, Avaceña, Johns, and Romualdez, JJ., concur.

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