

JOSEPH E. FOX, PLAINTIFF AND APPELLEE, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 10663, March 24, 1916

Ponente: TRENT, J.

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TRENT, J.:

This appeal brings up for review a judgment in favor of the plaintiff for the sum of P670, with interest and costs, being the amount of damages found to have been sustained by the plaintiff on account of a collision between his automobile and one of the defendant's street cars.

Calle Palacio, in the Walled City of Manila, runs approximately north and south and is crossed at right angles by Calle Victoria. On Calle Palacio is a single track of the defendant company, near the west side, on which the cars run toward the north. On the southeast corner, at the intersection of Palacio and Victoria, is a solid building, the Delmonico Hotel, extending to the street line and so obstructing the view that the motorman of a car going north on Calle Palacio cannot see a vehicle approaching from the east on Calle Victoria until the arrival of one or the other at the corner, while the driver of the vehicle is similarly handicapped. On January 25, 1914, the plaintiff drove his automobile along Calle Victoria toward the west and stopped on the defendant's street-car track on Calle Palacio, where it was struck by one of the northbound cars, and was damaged. The theories of the parties as to the facts and circumstances surrounding the collision are diametrically opposed to each other and are set forth in the testimony of the plaintiff and Emilio Pacheco, one of the witnesses for the defendant, as follows:

"PLAINTIFF. When I turned the corner of Calles Victoria and Palacio, I saw a street car was approaching, * * * and, as there were many victorias and calesas on both sides of the street, it was impossible for either the automobile or the street car to pass. I then stopped my automobile, and I thought that the street car was also going to stop. The street car was going very slowly and I stopped, because I did not want it to run into me; so I wanted to back up, but the street car, instead of stopping, collided with my automobile, not exactly at a right angle, but obliquely, at an angle of about 45 degrees.

"Q. Did this motorman see you before this collision with your automobile?—A. Yes, sir; because I raised up my right hand as a signal for him to stop.

"Q. At what distance was he then?—A. He was at least 50 feet away.

"EMILIO PACHECO. The street car was coming from Bagumbayan toward the Walled City. On arriving almost in front of the Delmonico Hotel—that is, near the inter-section of Calles Victoria and Palacio—I saw an automobile which was coming from Calle Victoria at the same moment the street car was approaching; the automobile apparently was coming at great speed, because it came out of the street in this way and stopped in the middle of the track at the moment the street car arrived. The motorman then made efforts to stop the street car, in these efforts the street car, after the collision, went backwards.

"Q. How far did the street car push the automobile?— A. About half a meter or a vara, I should say. Something

like that.

"Q. At what distance was the street car from the automobile at the very moment the automobile reached the center of the track?—A. About a brazza, more or less; a little more than a brazza.

"Q. What time elapsed from the moment the automobile appeared on the track until the collision?—A. Oh! It happened instantly, because I saw the automobile come out this way and afterwards collide with it."

From the above-quoted testimony it will be seen that the plaintiff himself admitted that the defendant's car was being run very slowly. The plaintiff does not claim that the motorman failed to give the signal of the approach of the car to the street crossing. Therefore, the only question of fact presented is whether, as claimed by plaintiff, the street car was at least 50 feet away from the automobile when the latter reached the track and the motorman had due notice of its presence and ample time to stop the car before the collision, or, as affirmed by the defense, the street car was then so near the crossing that it became utterly impossible to prevent the collision with the automobile.

We will now proceed to examine the remainder of the testimony. The plaintiff further testified that the collision pushed or knocked (*empujo*) his automobile "at least about 40 feet" and smashed (*rompiendo*) the four tires. As to the first, the plaintiff is corroborated by Miss Holstein, who was a passenger in the automobile at the time and who stated that the automobile was knocked some 12 steps. But this witness said nothing regarding the distance between the car and the automobile at the time the latter reached the track and the plaintiff gave the signal to stop, but she did state that she did not know whether the motorman saw the automobile or not. The plaintiff presented one other witness, Clemente Manguera, who claimed to have seen the collision. This witness testified that the motorman saw the automobile before the collision, because, from a distance of 20 feet the automobile passenger, Miss Holstein, made a sign to the motorman to stop and said, "Espera, boy." This part of Manguera's testimony is flatly denied by Miss Holstein in her testimony, wherein she stated that she did not say a single word to the motorman. Manguera further testified that the street car was running slowly because it had just started from a dead stop. He was then asked how far it was from the place where the street car had stopped to the place of the collision. He answered: "I understand that the street car had gone about 1 vara when the automobile arrived."

After the accident the automobile was taken to the plaintiff's garage, which was nearby. On the defendant's receiving notice of the collision, Mr. Van Hoven, an employee of the company, went to the garage and examined the machine. The plaintiff attempted to show, over the objection of the defendant, that Van Hoven offered to settle the matter for P200, and the plaintiff testified that Van Hoven then said that the motorman was guilty of negligence. Van Hoven testified that after the plaintiff told him how the accident occurred, he replied that if the plaintiff's story were true, the motorman was guilty and that he informed the plaintiff that he would investigate the cause of the collision and if the motorman was the guilty party, he, the plaintiff, would be paid without delay. Photographs were taken of the automobile before anything had been done to it and these show that at least three of the tires, the only ones visible in the photographs, were in good condition.

The court, in speaking of the acts of the motorman, said:

"If he had reasonably and prudently driven his car with less speed, as he ought to do when he has to cross streets intersecting the track, he could quite surely have avoided the collision with an automobile that was standing in the middle of the street when the accident occurred."

According to the foregoing conclusions of the trial court, the accident could have been avoided if the motorman had driven his car with less speed, or, in other words, negligence is attributable to the motorman principally on account of fast driving; but all the witnesses, including the plaintiff, testified that the street car was running slowly—very slowly. No one states that the motorman was running fast. The only indication of fast running is the

statement of the plaintiff that his automobile was knocked "at least about 40 feet" and that the four tires were smashed, and also that of Miss Holstein to the effect that the automobile was knocked some 12 steps. The plaintiff's testimony is irreconcilable and inconsistent. If the street car were running very slowly, it certainly would not have knocked the automobile 40 feet, nor, as stated by Miss Holstein, 12 steps. The finding that the collision was due to fast driving on the part of the motorman being contrary to the testimony of every witness and being supported by no evidence at all, except the incredible statement that the automobile was knocked 40 feet, must be reversed because it is manifestly against the weight of the evidence. In fact, the evidence overwhelmingly supports the theory of the defense to the effect that the collision was due solely to the carelessness of the plaintiff, who recklessly drove his automobile at a high speed upon the defendant's street car track just in front of a moving car, making it impossible for the motorman to stop the car in time to prevent the accident.

For the foregoing reasons, the judgment appealed from is reversed and judgment will be entered dismissing the complaint, without costs in this instance. So ordered.

Torres, Johnson, Moreland, and Araullo, JJ., concur.

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