

TOMAS BERNAL AND FORTUNATA ENVERSO, PLAINTIFFS AND APPELLANTS, VS. J. V. HOUSE AND TACLOBAN ELECTRIC & ICE PLANT, LTD., DEFENDANTS AND APPELLEES.*G. R No. 30741. January 30, 1930*

Ponente: MALCOLM, J.

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The parents of the five-year old child, Purificacion Bernal, appeal from a judgment of the Court of First Instance of Leyte, which denied them P15,000 damages from J. V. House and the Tacloban Electric & Ice Plant, Ltd. for the death of the child as a consequence of burns alleged to have been caused by the fault and negligence of the defendants.

The salient facts as found by the trial judge are the following:

On the evening of April 10, 1925, the procession of Holy Friday was held in Tacloban, Leyte. Fortunata Enverso with her daughter Purificacion Bernal came from another municipality to attend the religious celebration. After the procession was over, the woman and her daughter, accompanied by two other persons by the names of Fausto and Elias, passed along a public street named Gran Capitan. The little girl was allowed to get a short distance in advance of her mother and her friends. When in front of the offices of the Tacloban Electric & Ice Plant, Ltd., an automobile appeared from the opposite direction which so frightened the child that she turned to run, with the result that she fell into the street gutter. At that time there was hot water in this gutter or ditch coming from the Electric & Ice Plant of J. V. House. When the mother and her companions reached the child, they found her face downward in the hot water. Her clothes were immediately removed and, then covered with a garment, the girl was taken to the provincial hospital. There she was attended by the resident physician, Dr. Victoriano A. Benitez. Despite his efforts, the child died that same night at 11.40o'clock.

Dr. Benitez, who, of course, was in a better position than any one to know the cause of the death, and who had no reason to depart from the true facts, certified that the cause of death was "Burns, 3rd Degree, Whole Body," and that the contributory causes were "Congestion of the Brain and viscera of the chest & abdomen." The same physician in his general record in the Leyte Hospital for this patient, under diagnosis in full, stated: "Burned, 3rd Degree, of whole body." The treatment record of the attending nurse was much to the same effect.

The defense was that the hot water was permitted to flow down the side of the street Gran Capitan with the knowledge and consent of the authorities ; that the cause of death was other than the hot water; and that in the death the plaintiffs contributed by their own fault and negligence. The trial judge, however, after examination of the evidence presented by the defendants, failed to sustain their theory of the case, except as to the last mentioned special defense. We are shown no good reason for departing from the conclusion of the trial judge to the effect that the sudden death of the child Purificacion Bernal was due principally to the nervous shock and organic calefaction produced by the extensive burns from the hot water. "The danger from burns is proportional rather to the extent of surface involved than to the depth of the burn." (Wharton & Stille's Medical Jurisprudence, vol. 3, p.

263.) The same authority continues. "Burns of the first degree, covering two-thirds of the body surface, are rarely recovered from. * * * Children seem especially susceptible to the effect of burns" (Pp; 263, 264.)

Although the trial judge made the findings of fact herein before outlined, he nevertheless was led to order the dismissal of the action because of the contributory negligence of the plaintiffs. It is from this point that a majority of the court depart from the stand taken by the trial judge. The mother and her child had a perfect right to be on the principal street of Tacloban, Leyte, on the evening when the religious procession was held. There was nothing abnormal in allowing the child to run along a few paces in advance of the mother. No one could foresee the coincidence of an automobile appearing and of a frightened child running and falling into a ditch filled with hot water. The doctrines announced in the much debated case of *Bakes vs. Atlantic, Gulf and Pacific Co.* ([1907], 7 Phil, 859), still rule. Article 1902 of the Civil Code must again be enforced. The contributory negligence of the child and her mother, if any, does not operate as a bar to recovery, but in its strictest sense could only result in reduction of the damages.

Having reached the conclusion that liability exists, we next turn to discover who can recover damages for the obligation, and against whom the action will lie. The plaintiffs are Tomas Bernal and Fortunata Enverso. The latter was the mother of Purification Bernal and the former was the natural father, who had never legally recognized his child. The daughter lived with the mother, and presumably was supported by her. Under these facts, recovery should be permitted the mother but not the father. As to the defendants, they are J. V. House and the Tacloban Electric & Ice Plant, Ltd. J. V. House was granted a franchise by Act No. 2700 of the Philippine Legislature approved on March 9, 1917. He only transferred this franchise formally to the Tacloban Electric & Ice Plant, Ltd. on March 30, 1926, that is, nearly a year after the death of the child Purificacion Bernal. Under these facts, J. V. House is solely responsible.

Counsel for appellees point out that there is no satisfactory proof to establish the pecuniary loss. That is true. But in cases of this character the law presumes a loss because of the impossibility of exact computation. There is not enough money in the entire world to compensate a mother for the death of her child. In criminal cases, the rule has been to allow as a matter of course P1,000 as indemnity to the heirs of the deceased. In the case of *Manzanares vs. Moreta* ([1918], 38 Phil., 821), which in many respects is on all fours with the case at bar, the same amount of P1,000 was allowed the mother of the dead boy eight or nine years of age. The same criterion will have to be followed in this instance.

The result will, therefore, be to accept the findings of fact made by the trial judge; to set aside the legal deductions flowing from those facts; to hold that the death of the child Purificacion Bernal was the result of fault and negligence in permitting hot water to flow through the public streets, there to endanger the lives of passers-by who were unfortunate enough to fall into it; to rule that the proper plaintiff is the mother Fortunata Enverso and not the natural father Tomas Bernal; to likewise rule that the person responsible to the plaintiff is J. V. House and not the entity the Tacloban Electric & Ice Plant, Ltd.; and finally to adjudge that the amount of recovery, without the tendering of special proof, should be fixed, as in other cases, at P1,000.

Concordant with the pronouncements just made, the judgment appealed from shall in part be reversed and in the court of origin another judgment shall issue in favor of Fortunata Enverso and against J. V. House for the amount of P1,000, and for the costs of both instances.

Street, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

Johnson, J., dissents.

DISSENTING

Romualdez, J.:

Even taking the finding that the defendant by its negligence helped to bring about the accident which resulted in the death of the child Purificacion Bernal, as not subject to question now, not being a matter discussed in this instance, I nevertheless deem the trial court's other finding sufficiently proved in the record, to the effect that the plaintiff, by negligence, contributed to that most regrettable result.

With due respect to the majority opinion, I believe the judgment appealed from should be affirmed.

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