

ASTUDILLO, PLAINTIFF AND APPELLEE, VS. MANILA ELECTRIC COMPANY, DEFENDANT AND APPELLANT.*G.R. No. 33380. December 17, 1930*

Ponente: MALCOLM, J.

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In August, 1928, a young man by the name of Juan Diaz Astudillo met his death through electrocution, when he placed his right hand on a wire connected with an electric light pole situated near Santa Lucia Gate, Intramuros, in the City of Manila. Shortly thereafter, the mother of the deceased instituted an action in the Court of First Instance of Manila to secure from the Manila Electric Company damages in the amount of P30,000. The answer of the company set up as special defenses that the death of Juan Diaz Astudillo was due solely to his negligence and lack of care, and that the company had employed the diligence of a good "father of a family to prevent the injury. After trial, which included an ocular inspection of the place where the fatality occurred, judgment was rendered in favor of the plaintiff and against the defendant for the sum of P15,000, and costs.

As is well known, a wall surrounds the District of Intramuros, in the City of Manila. At intervals, gates for the ingress and egress of pedestrians and vehicles penetrate the wall. One of these openings toward Manila Bay is known as the Santa Lucia Gate. Above this gate and between the wall and a street of Intramuros is a considerable space sodded with grass with the portion directly over the gate paved with stone. Adjoining this place in Intramuros are the buildings of the Ateneo de Manila, the Agustinian Convent, the Bureau of Public Works, and the Santa Lucia Barracks. The proximity to these structures and to the congested district in the Walled City has made this a public place where persons come to stroll, to rest, and to enjoy themselves. An employee of the City of Manila, a number of years ago, put up some wire to keep persons from dirtying the premises, but this wire has fallen down and is no obstacle to those desiring to make use of the place. No prohibitory signs have been posted.

Near this place in the street of Intramuros is an electric light pole with the corresponding wires. The pole presumably was located by the municipal authorities and conforms in height to the requirements of the franchise of the Manila Electric Company. The feeder wires are of the insulated type, known as triple braid weather proof, required by the franchise. The pole, with its wires, was erected in 1920. It was last inspected by the City Electrician in 1923 or 1924. The pole was located close enough to the public place here described, so that a person, by reaching his arm out the full length, would be able to take hold of one of the wires. It would appear, according to the City Electrician, that even a wire of the triple braid weather proof type, if touched by a person, would endanger the life of that person by electrocution.

About 6 o'clock in the evening of August 14, 1928, a group of boys or young men came to this public place". Two of them named Juan Diaz Astudillo and Alejo Ponsoy sauntered over to where the electric post was situated. They were there looking out towards Intramuros. For exactly what reason, no one will ever know, but Juan Diaz Astudillo, placing one foot on a projection, reached out and grasped a charged electric wire. Death resulted almost instantly.

The matter principally discussed is the question of the defendant company's liability under the circumstances stated. It is well established that the liability of electric light companies for damages for personal injuries is governed by the rules of negligence. Such companies are, however, not insurers of the safety of the public. But considering that electricity is an agency, subtle and deadly, the measure of care required of electric companies must be commensurate with or proportionate to the danger. The duty of exercising this high degree of diligence and care extends to every place where persons have a right to be. The poles must be so erected and the wires and appliances must be so located that persons rightfully near the place will not be injured. Particularly must there be proper insulation of the wires and appliances in places where there is probable likelihood of human contact therewith. (20 C. J., pp. 320 et seq.; *San Juan Light & Transit Co. vs. Requena* [1912], 224 U. S., 89.)

We cannot agree with the defense of the Manila Electric Company in the lower court to the effect that the death of Juan Diaz Astudillo was due exclusively to his negligence. He only did the natural thing to be expected of one not familiar with the danger arising from touching an electric wire, and was wholly unconscious of his peril. Had not the wire caused the death of this young man, it would undoubtedly have been only (a question of time when someone else, like a playful boy, would have been induced to take hold of the wire, with fatal results. The cause of the injury was one which could have been foreseen and guarded against. "The negligence came from the act of the Manila Electric Company in so placing its pole and wires as to be within proximity to a place frequented by many people, with the possibility ever present of one of them losing his life by coming in contact with a highly charged and defectively insulated wire.

As we understand the position of the Manila Electric Company on appeal, its principal defense now is that it has fully complied with the provisions of its franchise and of the ordinances of the City of Manila. It is undeniable that the violation of a franchise, an ordinance, or a statute might constitute negligence. But the converse is not necessarily true, and compliance with a franchise, an ordinance, or a statute is not conclusive proof that there was no negligence. The franchise, ordinance, or statute merely states the minimum conditions. The fulfillment of these conditions does not render unnecessary other precautions required by ordinary care. (*Moore vs. Hart* [1916], 171 Ky., 725; *Oliver vs. Weaver* [1923], 72 Colo., 540; *Caldwell vs. New Jersey Steamboat Co.* [1872], 47 N. Y., 282; *Consolidated Electric Light & Power Co. vs. Healy* [1902], 65 Kan., 798.)

The company further defends in this court on the ground that it has not been proven that the deceased is an acknowledged natural child of the plaintiff mother. Technically this is correct. (Civil Code, art. 944.) At the same time, it should first of all be mentioned that, so far as we know, this point was not raised in the lower court. Further, while the mother may thus be precluded from succeeding to the estate of the son, yet we know of no reason why she cannot be permitted to secure damages from the company when the negligence of this company resulted in the death of her child.

We, therefore, conclude that the plaintiff is entitled to damages. But the evidence indicative of the true measure of those damages is sadly deficient. All that we know certainly is that the deceased was less than 20 years of age, a student, and working in the Ateneo de Manila, but at what wages we are not told. We are also shown that approximately P200 was needed to defray the travel and funeral expenses. As would happen in the case of a jury who have before them one of the parents, her position in life, and the age and sex of the child, varying opinions, have been disclosed in the court regarding the estimate of the damages with reference to the next of kin. Various sums, have been suggested, beginning as low as P1,000 and extending as high as P5,000. A majority of the court finally arrived at the sum of P1,500 as appropriate damages in this case. The basis of this award would be the P1,000 which have been allowed in other cases for the death of young children without there having been tendered any special proof of the amount of damages suffered, in connection with which should be taken into account the more mature age of the boy in the case at bar, together with the particular expenses caused by his

death. (Manzanares vs. Moreta [1918], 38 Phil., 821; Bernal and Enverso vs. House and Tacloban Electric & Ice Plant [1930], 54 Phil., 327; Cuisson vs. Norton & Harrison Co. [1930], p. 18, ante.)

In the light of the foregoing, the various errors assigned by the appellant will in the main be overruled, but as above indicated, the judgment Will be modified by allowing the plaintiff to recover from the defendant the sum of P1,500, and the costs of both instances,

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

DISSENTING

Johnson, J.:

I dissent. I find nothing in the record which even remotely justifies a judgment for damages against the Manila Electric Company. There is not a word in the

testimony which shows in the slightest degree any culpability or negligence on the part of the appellant. The judgment appealed from should therefore be revoked.

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