

NARCISO GUTIERREZ, PLAINTIFF AND APPELLEE, VS. BONIFACIO GUTIERREZ, MARIA V. DE GUTIERREZ, MANUEL GUTIERREZ, ABELARDO VELASCO, AND SATURNINO CORTEZ, DEFENDANTS AND APPELLANTS.

G. R. No. 34840. September 23, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an action brought by the plaintiff in the Court of First Instance of Manila against the five defendants, to recover damages in the amount of P10,000, for physical injuries suffered as a result of an automobile accident. On judgment being rendered as prayed for by the plaintiff, both sets of defendants appealed.

On February 2, 1930, a passenger truck and an automobile of private ownership collided while attempting to pass each other on the Talon bridge on the Manila South Road in the municipality of Las Piñas, Province of Rizal. The truck was driven by the chauffeur Abelardo Velasco, and was owned by Saturnino Cortez. The automobile was being operated by Bonifacio Gutierrez, a lad 18 years of age, and was owned by Bonifacio's father and mother, Mr. and Mrs. Manuel Gutierrez. At the time of the collision, the father was not in the car, but the mother, together with several other members of the Gutierrez family, seven in all, were accommodated therein. A passenger in the autobus, by the name of Narciso Gutierrez, was en route from San Pablo, Laguna, to Manila. The collision between the bus and the automobile resulted in Narciso Gutierrez suffering a fractured right leg which required medical attendance for a considerable period of time, and which even at the date of the trial appears not to have healed properly.

It is conceded that the collision was caused by negligence pure and simple. The difference between the parties is that, while the plaintiff blames both sets of defendants, and the owner of the passenger truck blames the automobile, and the owner of the automobile, in turn, blames the truck. We have given close attention to these highly debatable points, and having done so, a majority of the court are of the opinion that the findings of the trial judge on all controversial questions of fact find sufficient support in the record, and so should be maintained. With this general statement set down, we turn to consider the respective legal obligations of the defendants.

In amplification of so much of the above pronouncement as concerns the Gutierrez family, it may be explained that the youth Bonifacio was an incompetent chauffeur, that he was driving at an excessive rate of speed, and that, on approaching the bridge and the truck, he lost his head and so contributed by his negligence to the accident. The guaranty given by the father at the time the son was granted a license to operate motor vehicles made the father responsible for the acts of his son. Based on these facts, pursuant to the provisions of article 1903 of the Civil Code, the father alone and not the minor or the mother, would be liable for the damages caused by the minor.

We are here dealing with the civil law liability of parties for obligations which arise from fault or negligence. At the same time, we believe that, as has been done in other cases, we can take cognizance of the common law rule on the same subject. In the United States, it is uniformly held that the head of a house, the owner of an

automobile, who maintains it for the general use of his family is liable for its negligent operation by one of his children, whom he designates or permits to run it, where the car is occupied and being used at the time of the injury for the pleasure of other members of the owner's family than the child driving it. The theory of the law is that the running of the machine by a child to carry other members of the family is within the scope of the owner's business, so that he is liable for the negligence of the child because of the relationship of master and servant. (Huddy On Automobiles, 6th ed., sec. 660; Missell vs. Hayes [1914], 91 Atl., 322.)

The liability of Saturnino Cortez, the owner of the truck, and of his chauffeur Abelardo Velasco rests on a different basis, namely, that of contract which, we think, has been sufficiently demonstrated by the allegations of the complaint, not controverted, and the evidence. The reason for this conclusion reaches to the findings of the trial court concerning the position of the truck on the bridge, the speed in operating the machine, and the lack of care employed by the chauffeur. While these facts are not as clearly evidenced as are those which convict the other defendant, we nevertheless hesitate to disregard the points emphasized by the trial judge. In its broader aspects, the case is one of two drivers approaching a narrow bridge from opposite directions, with neither being willing to slow up and give the right of way to the other, with the inevitable result of a collision and an accident.

The defendants Velasco and Cortez further contend that there existed contributory negligence on the part of the plaintiff, consisting principally of his keeping his foot outside the truck, which occasioned his injury. In this connection, it is sufficient to state that, aside from the fact that the defense of contributory negligence was not pleaded, the evidence bearing out this theory of the case is contradictory in the extreme and leads us far afield into speculative matters.

The last subject for consideration relates to the amount of the award. The appellee suggests that the amount could justly be raised to P16,517, but naturally is not serious in asking for this sum, since no appeal was taken by him from the judgment. The other parties unite in challenging the award of P10,000, as excessive. All facts considered, including actual expenditures and damages for the injury to the leg of the plaintiff, which may cause him permanent lameness, in connection with other adjudications of this court, lead us to conclude that a total sum for the plaintiff of P5,000 would be fair and reasonable. The difficulty in approximating the damages by monetary compensation is well elucidated by the divergence of opinion among the members of the court, three of whom have inclined to the view that P3,000 would be amply sufficient, while a fourth member has argued that P7,500 would be none too much.

In consonance with the foregoing rulings, the judgment appealed from will be modified, and the plaintiff will have judgment in his favor against the defendants Manuel Gutierrez, Abelardo Velasco, and Saturnino Cortez, jointly and severally, for the sum of P5,000, and the costs of both instances.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

VILLA-REAL, J.:

I vote for an indemnity of P7,500.

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