

CONSOLACION JUNIO, PLAINTIFF AND APPELLANT, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 37044. March 29, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Consolacion Junio, a young woman 22 years of age, and Beatriz Soloria, another young woman of 18 years, represented by her father, Fausto Soloria, who was appointed her guardian ad litem, brought these actions in the Court of First Instance of Pangasinan to recover from the defendant, Manila Railroad Company, damages suffered by them in an accident that occurred at the railroad crossing situated at the, outskirts of the town of Calasiao, Pangasinan, when the automobile in which they were passengers collided with a locomotive belonging to the aforementioned defendant. This is an appeal taken by them from the judgment rendered by the trial court absolving the defendant, without costs.

The two cases were tried jointly and only one decision was rendered for both cases.

The trial court summarizes the facts established by the evidence as follows:

"At about 11.40 o'clock on the night of April 13, 1930, the plaintiffs herein with some other persons were traveling in a PU-Car on the road between Calasiao and Santa Barbara. When they arrived at the intersection of the road and the defendant's railway, the car tried to cross the track and collided with the engine of the night express which left Dagupan for Manila at 11 o'clock that same night and which was then passing over the crossing in question at great speed. As a result of the collision, the car was thrown some distance, plaintiff Junio's right leg was amputated and her right arm fractured, and Soloria received various injuries on her head.

"The aforementioned crossing is situated in the town of Calasiao and the same is presumed to be dangerous due to the fact that gates were required at that crossing. (Section 83, Act No. 1459, as amended by Act No. 2100.) On the night of the accident, the gates were not lowered and there was no notice to the effect that they were not operated at night or that they were temporarily out of order. However, a notice to the effect that that was a railroad crossing was there.

"As a general rule, the rights and obligations between the public and a railroad company at a public crossing are mutual and reciprocal. Both are under mutual obligation to exercise due care to avoid causing or receiving injury. Each is in duty bound to exercise reasonable or ordinary care commensurate with the risk and danger involved.

"In the case under consideration, the driver alleges that he slowed down from 19 miles an hour, at which rate he was then going, to 16 miles, and that he was on the lookout for any approaching train, while the engineer insists that he rang the bell and sounded the whistle before reaching the crossing. Both parties claim to be free from guilt, and if the defendant company were completely so, the plaintiffs would have no cause of action against it."

In addition to the facts mentioned above, it has also been proved that the gate in question was about three hundred

(300) meters from the railroad station at Calasiao; that on each side of the crossing there was a wooden bar operated only during the daytime by a woman employee of the defendant, and that just before the crossing on one side of the road leading from the town of Calasiao there was a signpost bearing the notice, "RAILROAD CROSSING", written crosswise.

The evidence also shows that the car driven by the chauffeur, Pedro Talbo, was an old Ford bearing number plates PU-3636, which meant that it was a hired car. The plate, Exhibit 2, was found by the engineer on the side of the engine upon arrival at Paniqui, the next station, which indicates that it was torn from the front of the radiator when the auto collided with the right side of the engine of the night express.

The appellants were passengers who took the car in Bayambang and were bound for Asingan, via Dagupan.

The plaintiffs' attorney assigns in his brief the following alleged errors:

"First. The trial court erred in finding that the defendant company was not negligent in leaving its gates open at the moment of the accident when a special night express train was passing.

"Second. The trial court erred in holding that the driver of the car occupied by the plaintiffs was negligent.

"Third. The trial court erred in holding that the plaintiffs were negligent or in making them responsible for the driver's alleged negligence.

"Fourth. The trial court erred in holding that the main question in the accident was the driver's alleged negligence.

"Fifth. The trial court erred in absolving the defendant instead of ordering it to pay the damages proven which are the subject of these actions."

From the evidence, it is obvious that the defendant as well as the driver of the car in which the plaintiffs were passengers were negligent, the former because, by installing the gates at the place or crossing where the accident occurred, it had voluntarily imposed upon itself the obligation to operate them even at night and to close them every time a train passed in order to avoid causing injury to the public. It has been said that the gates constitute an invitation to the public to pass without fear of danger, and failure to operate them conveniently constitutes negligence on the part of the company.

The driver was, likewise, negligent because he did not comply with his duty to slacken the speed of the car and to "look and listen" before crossing the intersection and, above all, because he did not maintain a reasonable speed so as to permit him to stop any moment if it were necessary in order to avoid an accident. If, in the present case, the car had been running at a reasonable speed, there is no doubt that he could have stopped it instantly upon seeing the train from a distance of five meters.

If the action for damages were brought by the driver, it is certain that it would not prosper in view of the fact that he had incurred in a notorious contributory negligence. But the persons who instituted the action are the appellants who were mere passengers of the car. Therefore, the question raised is whether the driver's negligence is imputable to them so as to bar them from the right to recover damages suffered by them by reason of the accident.

Although this question is, perhaps, raised in this jurisdiction for the first time, it is, nevertheless, a well recognized principle of law that the negligence of a driver, who, in turn, is guilty of contributory negligence, cannot be imputed to a passenger who has no control over him in the management of the vehicle and with whom he sustains no relation of master and servant. This rule is applied more strictly when, as in the present case, hired cars or those engaged in public service, are involved.

"The doctrine prevails in a few states that the contributory negligence of the driver of a private conveyance is

imputable to a person voluntarily riding with him. But the general rule is that the negligence of the driver of a vehicle is not to be imputed to an occupant thereof who is injured at a crossing through the combined negligence of the driver and the railroad company when such occupant is without fault and has no control over the driver. And the law almost universally now recognized is that when one accepts an invitation to ride in the vehicle of another, without any authority or purpose to direct or control the driver or the movements of the team, and without any reason to doubt the competency of the driver, the contributory negligence of the owner or driver of the conveyance will not be imputed to the guest or passenger, so as to bar him of the right to recover damages from a railroad company whose negligence occasions injury to him at a crossing while he is so riding. This rule has been applied in a number of cases involving, the corresponding relation between the driver of an automobile and an occupant having no control over him. The rule is not confined to cases of gratuitous transportation, but has been applied where a conveyance is hired, and the passenger exercises no further control over the driver than to direct him to the place to which he wishes to be taken. Nor is any distinction made between private and public vehicles, such as street cars and stages." (22 R. C. L., pp. 1047, 1048.)

"As a general rule the negligence of a driver of a vehicle approaching a railroad crossing, in failing to look and listen for approaching trains, cannot be imputed to an occupant of the vehicle who is without personal fault, unless such driver is the servant or agent of the occupant, unless they are engaged in a joint enterprise whereby responsibility for each other's acts exists, or unless the occupant is under the driver's care or control or has the right to direct and control the driver's actions, or where the driver is of obvious or known imprudence or incompetency. This rule that negligence of the driver is not imputable to an occupant only applies to cases in which the relation of master and servant or principal and agent does not exist between the parties, or where the occupant has no right to direct or control the driver's actions, as where the occupant is a passenger for hire or is the guest of the owner or driver and has no reason to believe the driver careless or imprudent, or where the occupant is seated away from the driver or is separated from him by an inclosure so that he is without opportunity to discover danger and inform the driver thereof. * * *" (52 C. J., pp. 315, 316 and 317.)

"A passenger in the automobile of another having no control over the owner driving the car or the operation of the car which he occupied merely as passenger was not chargeable with contributory negligence of the owner and driver at a railroad crossing." (Carpenter vs. Atchison, 195 Pac, 1073.)

"In railroad crossing accident, negligence of truck driver was not imputable to truck passenger not himself guilty of contributory negligence." (Lucchese vs. Spingola, 289 Pac., 189.)

In the case of *Little vs. Hackett* (116 U. S., 366; 29 Law. ed., 652, 654, 657), the United States Supreme Court said:

"That one cannot recover damages for an injury to the commission of which he has directly contributed is a rule of established law and a principle of common justice. And it matters not whether that contribution consists in his participation in the direct cause of the injury, or in his omission of duties which, if performed, would have prevented it. If his fault, whether of omission or commission, has been the proximate cause of the injury, he is without remedy against one also in the wrong. It would seem that the converse of this doctrine should be accepted as sound; that when one has been injured by the wrongful act of another, to which he has in no respect contributed, he should be entitled to compensation in damages from the wrongdoer. And such is the generally received doctrine, unless a contributory cause of the injury has been the negligence or fault of some person towards whom he sustains the relation of superior or master, in which case the negligence is imputed to him, though he may not have personally participated in or had knowledge of it; and he must bear the consequences. The doctrine may also be subject to other exceptions growing out of the relation of parent and child, or guardian and ward, and the like. Such a relation involves considerations which have no bearing upon the question before us.

"There is no distinction in principle whether the passengers be on a public conveyance like a railroad train or

an omnibus or be on a hack hired from a public stand in the street for a drive. Those on a hack do not become responsible for the negligence of the driver, if they exercise no control over him further than to indicate the route they wish to travel or the places to which they wish to go. If he is their agent so that his negligence can be imputed to them to prevent their recovery against a third party, he must be their agent in all other respects, so far as the management of the carriage is concerned; and responsibility to third parties would attach to them for injuries caused by his negligence in the course of his employment. But as we have already stated, responsibility cannot, within any recognized rules of law, be fastened upon one who has in no way interfered with and controlled in the matter causing the injury. From the simple fact of hiring the carriage or riding in it no such liability can arise. The party hiring or riding must in some way have cooperated in producing the injury complained of before he incurs any liability for it. 'If the law were otherwise,' as said by Mr. Justice Depue in his elaborate opinion in the latest case in New Jersey, 'not only the hirer of the coach but also all the passengers in it would be under a constraint to mount the box and superintend the conduct of the driver in the management and control of his team, or be put for remedy exclusively to an action against the irresponsible driver or equally irresponsible owner of a coach taken, it may be, from a coach stand, for the consequences of an injury which was the product of the cooperating wrongful acts of the driver and of a third person; and that too, although the passengers were ignorant of the character of the driver, and of the responsibility of the owner of the team, and strangers to the route over which they were to be carried.' (18 Vroom, 171.)"

There is nothing of record to show that the appellants herein have incurred in any negligence imputable to them and we do not see any reason whatsoever why they should be made responsible for the driver's negligence. The doctrine established in the cases cited above should be applied to the case at bar and it should be held that the appellants herein are entitled to recover from the appellee damages occasioned by the accident of which they were victims.

We shall now proceed to determine the amount of the damages. With respect to Soloria, we do not find any difficulty because the evidence shows that she spent only three hundred pesos (P300) for her treatment and stay in the hospital. Her injuries are not of such a nature as to entitle her to a further indemnity. The damages to which she is entitled may, therefore, be assessed at the amount stated above.

Such is not the case with respect to Consolacion Junio. According to the evidence presented, she was a dancer earning from six pesos (P6) to eight pesos (P8) a day for two or three days every week that she danced. She lost her right leg which was amputated, suffered a fracture of her right arm and was wounded on her occipital region. With these details in view, the members of this court are of the opinion that she may justly be awarded the sum of two thousand five hundred pesos (P2,500) as damages and five hundred pesos (P500) as indemnity for expenses incurred by her in her treatment, medical attendance and stay in the hospital, making the total amount she is entitled to recover aggregating three thousand pesos (P15,000).

Wherefore, the judgment appealed from is hereby reversed and it is ordered that the appellee pay to Consolacion Junio the sum of three thousand pesos (P3,000) and to Beatriz Soloria three hundred pesos (P300), with costs of both instances. So ordered.

Street, Villamor, Ostrand, Abad Santos, Vickers, and Butte, JJ., concur.
Villa-Real, J., concurs in the result.

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