

TEH LE KIM, PLAINTIFF AND APPELLANT, VS. PHILIPPINE AERIAL TAXI CO., INC., DEFENDANT AND APPELLEE.

G.R. No. 39309. November 24, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff Teh Le Kim from the judgment rendered by the Court of First Instance of Manila, absolving the defendant Philippine Aerial Taxi Co., Inc., from the complaint, which was dismissed, without special pronouncement as to costs.

In support of his appeal, the appellant assigns five alleged errors as committed by the trial court, which we shall discuss in the course of this decision.

The following facts have been proven by a preponderance of evidence presented during the trial, to wit:

On the morning of September 4, 1931, the plaintiff herein bought, in Manila, a passenger ticket for a flight to Iloilo in one of the defendant company's hydroplanes starting from Madrigal Field in Pasay. Inasmuch as the engine of the plane Mabuhay, in which he was to make the flight, was not working Satisfactorily, the said plaintiff had to wait for some time. While the engine was being tested, the plaintiff saw how it was started by turning the propeller repeatedly and how the man who did it ran away from it each time in order not to be caught by the said propeller. Before the plane Mabuhay was put in condition for the flight, the plane Taal arrived and it was decided to have the plaintiff make the flight therein. The plaintiff and his companion were carefully carried from the beach to the plane, entering the same by the rear or tail end, and were placed in their seats to which they were strapped. Later, they were shown how the straps could be tightened or loosened in case of accident and were instructed further not to touch anything in the plane. After an uneventful flight, the plane landed on the waters of Guimaras Strait, in front of Iloilo, and taxied toward the beach until its pontoons struck bottom, when the plane stopped. The pilot shut off the gasoline feed pipe, permitting the engine, however, to continue to function until all the gasoline was drained from the feed pipe and carburetor. This operation was necessary in accordance with the established practice of aviation in order to avoid danger of fire which would exist if the pipes and carburetor remained full of gasoline, and to prevent the sudden cooling of the engine which might cause serious damage, especially to the valves.

When the pilot observed that a banca was approaching rapidly on the right hand side of the plane, he arose signalled and shouted to the boatman to keep his banca at a distance from the plane, inasmuch as there were waves and quite a strong current, and he feared that the banca, which had a high prow, might collide with the plane and damage either the wing or the pontoon thereof. While he was doing this, he heard the propeller strike something. He immediately turned off the switch and, looking on the other side, he saw Bohn picking up the plaintiff out of the water.

What really happened was that at the moment the pontoons touched bottom and while the pilot was signalling to the banca, the plaintiff unfastened the straps around him and, not even waiting to put on his hat, climbed over the

door to the lower wing, went down the ladder to the pontoon and walked along the pontoon toward the revolving propeller. The propeller first grazed his forehead and, as he threw up his arm, it was caught by the revolving blades thereof and so injured that it had to be amputated.

Bohn and Garrett of Warner, Barnes & Co., consignees of the defendant in Iloilo, were on the beach to meet the plane and to make arrangements for the disembarking of the passengers. Upon seeing the plaintiff walking toward the propeller, they shouted frantically and motioned to him to keep away from it, but the said plaintiff took no heed of them.

The usual procedure in discharging passengers from a hydroplane is to wait until the propeller stops, then turn the plane around by hand so as to have the rear or tail and thereof towards the beach, and then take the passengers to shore in a banca. The pilot in charge of the plane has had fourteen years experience, having first learned to fly during the World War. He is duly licensed by the Department of Commerce of the United States and by the Department of Commerce and Communications of the Government of the Philippine Islands.

The only question to decide in this appeal, which is raised in the first assignment of error, is whether or not the defendant entity has complied with its contractual obligation to carry the plaintiff-appellant Teh Le Kim safe and sound to his destination.

The contract entered into by the plaintiff Teh Le Kim and the defendant entity Philippine Aerial Taxi Co., Inc., was that upon payment of the price of the passage, which the carrier had received, the latter would carry the former by air in one of its hydroplanes and put him, safe and sound, on the beach at Iloilo. After an uneventful flight, the hydroplane, which carried the plaintiff and his companion, arrived at the Iloilo beach, as usual, with nothing more left to do but to take the plaintiff and his companion, safe and sound, ashore. In order to do this, it was necessary to wait for the propeller to stop, turn the rear or tail end of the plane towards the shore, take the passengers out by the aforesaid rear or tail end thereof, place them in a banca and take them ashore. By sheer common sense, the plaintiff ought to know that a propeller, be it that of a ship or of an aeroplane, is dangerous while in motion and that to approach it is to run the risk of being caught and injured thereby. He ought to know furthermore that inasmuch as the plane was on the water, he had to wait for a banca to take him ashore. Notwithstanding the shouts and warning signals given him from the shore by the representatives of the consignee firm, the plaintiff herein, not being a man of ordinary prudence, hastily left the cabin of the plane, walked along one of the pontoons and directly into the revolving propeller, while the banca which was to take him ashore was still some distance away and the pilot was instructing the boatman to keep it at a safe distance from the plane. Under such circumstances, it is not difficult to understand that the plaintiff-appellant acted with reckless negligence in approaching the propeller while it was still in motion, and when the banca was not yet in a position to take him. That the plaintiff-appellant's negligence alone was the direct cause of the accident, is so clear that it is not necessary to cite authoritative opinions to support the conclusion that the injury to his right arm and the subsequent amputation, thereof were due entirely and exclusively to his own imprudence and not to the slightest negligence attributable to the defendant entity or to its agents. Therefore, he alone should suffer the consequences of his act.

Wherefore, not finding any error in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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