

ALEKO E. LILIUS ET AL., PLAINTIFFS AND APPELLANTS, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.

G. R. No. 39587. March 24, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case involves two appeals, one by the defendant the Manila Railroad Company, and the other by the plaintiffs Aleko E. Lilius et al., from the judgment rendered by the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered ordering the defendant company to pay to the plaintiffs, for the purposes above stated, the total amount of P30,865, with the costs of the suit. And although the suit brought by the plaintiffs has the nature of a joint action, it must be understood that of the amount adjudicated to the said plaintiffs in this judgment, the sum of P10,000 personally belongs to the plaintiff Sonja Maria Lilius; the sum of P5,000, to the plaintiff Brita Marianne Lilius; the sum of P250, to Dr. Marfori of the Calauan Hospital, Province of Laguna, and the balance to the plaintiff Aleko E. Lilius."

In support of its appeal, the appellant the Manila Railroad Company assigns nine alleged errors as committed by the trial court in its said judgment, which will be discussed in the course of this decision.

As a ground of their appeal, the appellants Aleko E. Lilius et al., in turn, assign two alleged errors as committed by the same court a quo in its judgment in question, which will be discussed later.

This case originated from a complaint filed by Aleko E. Lilius et al., praying, under the facts therein alleged, that the Manila Railroad Company be ordered to pay to said plaintiffs, by way of indemnity for material and moral damages suffered by them through the fault and negligence of the said defendant entity's employees, the sum of P50,000 plus legal interest thereon from the date of the filing of the complaint, with costs.

The defendant the Manila Railroad Company, answering the complaint, denies each and every allegation thereof and, by way of special defense, alleges that the plaintiff Aleko E. Lilius, with the cooperation of his wife and co-plaintiff, negligently and recklessly drove his car, and prays that it be absolved from the complaint.

The following facts have been proven at the trial, some without question and the others by a preponderance of evidence, to wit:

The plaintiff Aleko E. Lilius has, for many years, been a well-known and reputed journalist, author and photographer. At the time of the collision in question, he was a staff correspondent in the Far East of the magazines *The American Weekly* of New York and *The Sphere* of London.

Some of his works have been translated into various languages. He had others in preparation when the accident occurred. According to him, his writings netted him a monthly income of P1,500. He utilized the linguistic ability of his wife Sonja Maria Lilius, who translated his articles and books into English, German, and Swedish. Furthermore, she acted as his secretary.

At about 7 o'clock on the morning of May 10, 1931, the plaintiff, his wife Sonja Maria Lilius, and his 4-year old daughter Brita Marianne Lilius, left Manila in their Studebaker car—driven by the said plaintiff Aleko E. Lilius—for the municipality of Pagsanjan, Province of Laguna, on a sight-seeing trip. It was the first time that he made said trip although he had already been to many places, driving his own car, in and outside the Philippines. Where the road was clear and unobstructed, the plaintiff drove at the rate of from 19 to 25 miles an hour. Prior thereto, he had made the trip as far as Calauan, but never from Calauan to Pagsanjan, via Dayap. He was entirely unacquainted with the conditions of the road at said points and had no knowledge of the existence of a railroad crossing at Dayap. Before reaching the crossing in question, there was nothing to indicate its existence and inasmuch as there were many houses, shrubs and trees along the road, it was impossible to see an approaching train. At about seven or eight meters from the crossing, coming from Calauan, the plaintiff saw an autotruck parked on the left side of the road. Several people, who seemed to have alighted from the said truck, were walking on the opposite side. He slowed down to about 12 miles an hour and sounded his horn for the people to get out of the way. With his attention thus occupied, he did not see the crossing, but he heard two short whistles. Immediately afterwards, he saw a huge black mass fling itself upon him, which turned out to be locomotive No. 713 of the defendant company's train coming eastward from Bay to Dayap station. The locomotive struck the plaintiff's car right in the center. After dragging the said car a distance of about ten meters, the locomotive threw it upon a siding. The force of the impact was so great that the plaintiff's wife and daughter were thrown from the car and were picked up from the ground unconscious and seriously hurt. In spite of the efforts of engineer Andres Basilio, he was unable to stop the locomotive until after it had gone about seventy meters from the crossing.

On the afternoon of the same day, the plaintiffs entered St. Paul's Hospital in the City of Manila where they were treated by Dr. Waterous. The plaintiff Aleko E. Lilius suffered from a fractured nose, a contusion above the left eye and a lacerated wound on the right leg, in addition to multiple contusions and scratches on various parts of the body. As a result of the accident, the said plaintiff was highly nervous and very easily irritated, and for several months he had great difficulty in concentrating his attention on any matter and could not write articles nor short stories for the newspapers and magazines to which he was a contributor, thus losing for some time his only means of livelihood.

The plaintiff Sonja Maria Lilius suffered from fractures of the pelvic bone, the tibia and fibula of the right leg, below the knee, and received a large lacerated wound on the forehead. She underwent two surgical operations on the left leg for the purpose of joining the fractured bones but said operations notwithstanding, the leg in question still continues deformed. In the opinion of Dr. Waterous, the deformity is permanent in character and as a result the plaintiff will have some difficulty in walking. The lacerated wound, which she received on her forehead, has left a disfiguring scar.

The child Brita Marianne Lilius received two lacerated wounds, one on the forehead and the other on the left side of the face, in addition to fractures of both legs, above and below the knees. Her condition was serious and, for several days, she was hovering between life and death. Due to a timely and successful surgical operation, she survived her wounds. The lacerations received by the child have left deep scars which will permanently disfigure her face, and because of the fractures of both legs, although now completely cured, she will be forced to walk with some difficulty and continuous extreme care in order to keep her balance.

Prior to the accident, there had been no notice nor sign of the existence of the crossing, nor was there anybody to warn the public of approaching trains. The flagman or switchman arrived after the collision, coming from the station with a red flag in one hand and a green one in the other, both of which were wound on their respective sticks. The said flagman and switchman had many times absented himself from his post at the crossing upon the arrival of a train. The train left Bay station a little late and therefore traveled at great speed.

Upon examination of the oral as well as of the documentary evidence which the parties presented at the trial in support of their respective contentions, and after taking into consideration all the circumstances of the case, this court is of the opinion that the accident was due to negligence on the part of the defendant-appellant company, for not having had on that occasion any semaphore at the crossing at Dayap, to serve as a warning to passers-by of its existence in order that they might take the necessary precautions before crossing the railroad; and, on the part of its employees—the flagman and switchman, for not having remained at his post at the crossing in question to warn passers-by of the approaching train; the stationmaster, for failure to send the said flagman and switchman to his post on time; and the engineer, for not having taken the necessary precautions to avoid an accident, in view of the absence of said flagman and switchman, by slackening his speed and continuously ringing the bell and blowing the whistle before arriving at the crossing. Although it is probable that the defendant-appellant entity employed the diligence of a good father of a family in selecting its aforesaid employees, however, it did not employ such diligence in supervising their work and the discharge of their duties because, otherwise, it would have had a semaphore or sign at the crossing and, on previous occasions as well as on the night in question, the flagman and switchman would have always been at his post at the crossing upon the arrival of a train. The diligence of a good father of a family, which the law requires in order to avoid damage, is not confined to the careful and prudent selection of -subordinates or employees but includes inspection of their work and supervision of the discharge of their duties.

However, in order that a victim of an accident may recover indemnity for damages from the person liable therefor, it is not enough that the latter has been guilty of negligence, but it is also necessary that the said victim has not, through his own negligence, contributed to the accident, inasmuch as nobody is a guarantor of his neighbor's personal safety and property, but everybody should look after them, employing the care and diligence that a good father of a family should apply to his own person, to the members of his family and to his property, in order to avoid any damage. It appears that the herein plain tiff-appellant Aleko E. Lilius took all precautions which his skill and the presence of his wife and child suggested to him in order that his pleasure trip might be enjoyable and have a happy ending, driving his car at a speed which prudence demanded according to the circumstances and conditions of the road, slackening his speed in the face of an obstacle and blowing his horn upon seeing persons on the road, in order to warn them of his approach and request them to get out of the way, as he did when he came upon the truck parked on the left hand side of the road seven or eight meters from the place where the accident occurred, and upon the persons who appeared to have alighted from the said truck. If he failed to stop, look and listen before going over the crossing, in spite of the fact that he was driving at 12 miles per hour after having been free from obstacles, it was because, his attention having been occupied in attempting to go ahead, he did not see the crossing in question, nor anything, nor anybody indicating its existence, as he knew nothing about it beforehand. The first and only warning, which he received of the impending danger, was two short blows from the whistle of the locomotive immediately preceding the collision and when the accident had already become inevitable.

In view of the foregoing considerations, this court is of the opinion that the defendant the Manila Railroad Company alone is liable for the accident by reason of its own negligence and that of its employees, for not having employed the diligence of a good father of a family in the supervision of the said employees in the discharge of their duties.

The next question to be decided refers to the sums of money fixed by the court a quo as indemnities for damages which the defendant company should pay to the plaintiffs-appellants.

With respect to the plaintiff-appellant Aleko E. Lilius, although this court believes his claim of a net income of P1,500 a month to be somewhat exaggerated, however, the sum of P5,000, adjudicated to him by the trial court as

indemnity for damages, is reasonable.

As to the sum of P10,635 which the court awards to the plaintiffs by way of indemnity for damages, the different items thereof representing doctor's, fees, hospital and nursing services, loss of personal effects and torn clothing, have duly been proven at the trial and the sum in question is not excessive, taking into consideration the circumstances in which the said expenses have been incurred.

Taking into consideration the fact that the plaintiff Sonja Maria Lilius, wife of the plaintiff Aleko E. Lilius is—in the language of the court, which saw her at the trial—"young and beautiful and the big scar, which she has on her forehead caused by the lacerated wound received by her from the accident, disfigures her face and that the fracture of her left leg has caused a permanent deformity which renders it very difficult for her to walk", and taking into further consideration her social standing, neither is the sum of P10,000, adjudicated to her by the said trial court by way of indemnity for patrimonial and moral damages, excessive. In the case of *Gutierrez vs. Gutierrez* (56 Phil, 177), the right leg of the plaintiff Narciso Gutierrez was fractured as a result of a collision between the autobus in which he was riding and the defendant's car, which fracture required medical attendance for a considerable period of time. On the day of the trial the fracture had not yet completely healed but it might cause him permanent lameness. The trial court sentenced the defendants to indemnify him in the sum of P10,000 which this court reduced to P5,000, in spite of the fact that the said plaintiff therein was neither young nor good-looking, nor had he suffered any facial deformity, nor did he have the social standing that the herein plaintiff-appellant Sonja Maria Lilius enjoys.

As to-the indemnity of P5,000 in favor of the child Brita Marianne Lilius, daughter of Aleko E. Lilius and Sonja Maria Lilius, neither is the same excessive, taking into consideration the fact that the lacerations received by her have left deep scars that permanently disfigure her face and that the fractures of both her legs permanently render it difficult for her to walk freely, continuous extreme care being necessary in order to keep her balance in addition to the fact that all of this unfavorably and to a great extent affect her matrimonial future.

With respect to the plaintiffs' appeal, the first question to be decided is that raised by the plaintiff Aleko E. Lilius relative to the insufficiency of the sum of P5,000 which the trial court adjudicated to him by way of indemnity for damages consisting in the loss of his income as journalist and author as a result of his illness. This question has impliedly been decided in the negative when the defendant-appellant entity's petition for the reduction of said indemnity was denied, declaring it to be reasonable.

As to the amount of P10,000 claimed by the plaintiff Aleko E. Lilius as damages for the loss of his wife's services in his business as journalist and author, which services consisted in going over his writings, translating them into English, German and Swedish, and acting as his secretary, in addition to the fact that such services formed part of the work whereby he realized a net monthly income of ^1,500, there is no sufficient evidence of the true value of said services nor to the effect that he needed them during her illness and had to employ a translator to act in her stead.

The plaintiff Aleko E. Lilius also seeks to recover the sum of P2,500 for the loss of what is called Anglo-Saxon common law "consortium" of his wife, that is, "her services, society and conjugal companionship", as a result of personal injuries which she had received from the accident now under consideration.

In the case of *Goitia vs. Campos Rueda* (35 Phil., 252, 255, 256), this court, interpreting the provisions of the Civil Marriage Law of 1870, in force in these Islands with reference to the mutual rights and obligations of the spouses contained in articles 44-48 thereof, said as follows:

"The above quoted provisions of the Law of Civil Marriage and the Civil Code fix the duties and obligations of the spouses. The spouses must be faithful to, assist, and support each other. The husband must live with and

protect his wife. The wife must obey and live with her husband and follow him when he changes his domicile or residence, except when he removes to a foreign country.

Therefore, under the law and the doctrine of this court, one of the husband's rights is to count on his wife's assistance. This assistance comprises the management of the home and the performance of household duties, including the care and education of the children and attention to the husband upon whom primarily devolves the duty of supporting the family of which he is the head. When the wife's mission was circumscribed to the home, it was not difficult to assume, by virtue of the marriage alone, that she performed all the said tasks and her physical incapacity always redounded to the husband's prejudice inasmuch as it deprived him of her assistance. However, nowadays when women, in their desire to be more useful to society and to the nation, are demanding greater civil rights and are aspiring to become man's equal in all the activities of life, commercial and industrial, professional and political, many of them spending their time outside the home, engaged in their businesses, industry, profession and within a short time, in politics, and entrusting the care of their home to a housekeeper, and their children, if not to a nursemaid, to public or private institutions which take charge of young children while their mothers are at work, marriage has ceased to create the presumption that a woman complies with the duties to her husband and children, which the law imposes upon her, and he who seeks to collect indemnity for damages resulting from deprivation of her domestic services must prove such services. In the case under consideration, apart from the services of his wife Sonja Maria Lilius as translator and secretary, the value of which has not been proven, the plaintiff Aleko E. Lilius has not presented any evidence showing the existence of domestic services and their nature, rendered by her prior to the accident, in order that it may serve as a basis in estimating their value.

Furthermore, inasmuch as a wife's domestic assistance and conjugal companionship are purely personal and voluntary acts which neither of the spouses may be compelled to render (*Arroyo vs. Vazquez de Arroyo*, 42 Phil., 54), it is necessary for the party claiming indemnity for the loss of such services to prove that the person obliged to render them had done so before he was injured and that he would be willing to continue rendering them had he not been prevented from so doing.

In view of the foregoing considerations this court is of the opinion and so holds: (1) That a railroad company which has not installed a semaphore at a crossing and does not see to it that its flagman and switchman faithfully complies with his duty of remaining at the crossing when a train arrives, is guilty of negligence and is civilly liable for damages suffered by a motorist and his family who cross its line without negligence on their part; (2) that an indemnity of P10,000 for a permanent deformity on the face and on the left leg, suffered by a young and beautiful society woman, is not excessive; (3) that an indemnity of P5,000 for a permanent deformity on the face and legs of a four-year old girl belonging to a well-to-do family, is not excessive; and (4) that in order that a husband may recover damages for deprivation of his wife's assistance during her illness from an accident, it is necessary for him to prove the existence of such assistance and his wife's willingness to continue rendering it had she not been prevented from so doing by her illness.

The plaintiffs-appellants are entitled to interest of 6 per cent per annum on the amount of the indemnities adjudicated to them, from the date of the appealed judgment until this judgment becomes final, in accordance with the provisions of section 510 of Act No. 190.

Wherefore, not finding any error in the judgment appealed from, it is hereby affirmed in toto, with the sole modification that interest of 6 per cent per annum from the date of the appealed judgment until this judgment becomes final will be added to the indemnities granted, with the costs of both instances against the appellant. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

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