

ELISA DE LA CRUZ, PLAINTIFF AND APPELLANT, VS. HUOS DE I. DE LA RAMA & CO., DEFENDANT AND APPELLEE.*G.R. No. 44112. December 21, 1935*

Ponente: IMPERIAL, J.

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The plaintiff, widow of Crecenciano Moraldá, brought this action against the defendant to obtain compensation for the death of her husband, under Act No. 3428, as amended by Act No. 3812. She appealed from the decision of the court dismissing her action, without costs.

Crecenciano Moralda was a chauffeur of the defendant earning approximately P40 a month, at the rate of P0.25 for every trip made by him with the truck he was driving loaded with sugar. He was married to the plaintiff with whom he had two children. All of them depended on Moralda's salary. In the afternoon of January 21, 1933, Moralda, as usual, drove the Chevrolet truck which the defendant had just bought from the Pacific Commercial Company. The truck was loaded with sugar bound for Pulupandan from the Lumangob Sugar Central which belonged to the defendant. Upon crossing a bridge near the intersection of the Pulupandan and Maa roads and while the truck was travelling at the rate of from 40 to 50 kilometers an hour, Moralda unexpectedly met a car coming in the opposite direction from Pulupandan. To avoid the imminent collision he made a false maneuver and the truck fell into a ditch, turned turtle, and the engine caught fire. As a result of the accident Moralda's clothes and those of the child with him caught fire, and both suffered serious burns on their bodies. Moralda died a few days later as a result of the accident, notwithstanding the assistance rendered him.

The foregoing proven facts are not disputed by the parties and the only question at issue is whether or not there was notorious negligence on the part of Moralda, preventing the plaintiff from obtaining the compensation claimed by her, as provided by section 4 of Act No. 3428.

The road on which the truck was traveling at the time of the accident formed a sufficiently steep slope and not only did Moralda drive the truck at the said speed but he also drove on the right side of the road without sounding his horn. We agree with the court that Moralda acted with notorious negligence in driving the truck at that speed under such circumstances, because any chauffeur employing ordinary diligence and care would not have driven the truck at more than 20 kilometers an hour in order to forestall any unexpected accident. If Moralda had maintained the truck he was driving at a reasonable speed, taking into consideration the fact that he was descending a slope, that there was a curve in the road, that the front view was obstructed by sugar cane plantations and that the truck was fully loaded with sugar, he would have been able to control it when he unexpectedly met the car, thereby preventing the truck from falling into a ditch and the engine from catching fire, which caused his burns and resulted in his death. We hold, therefore, that inasmuch as the direct and immediate cause of the accident was Moralda's own notorious negligence in driving the truck in the manner above stated, the plaintiff is not entitled to claim any compensation from the defendant in conformity with section 4 of Act No. 3428.

Wherefore, the judgment appealed from is affirmed, without costs. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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