

CLARA MARCELO, PLAINTIFF AND APPELLANT, VS. EL CHINO VELASCO, DEFENDANT AND APPELLEE.*G.R. No. 4640. September 17, 1908*

Ponente: WILLARD, J.

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On the 21st of November, 1906, while the plaintiff was in the store of defendant, in the city of Manila, making purchases, pieces of iron weighing about 100 pounds, fell upon her, breaking both legs. She was carried at once to St. Paul's Hospital, where she remained until the 19th day of July, 1907, when she left cured, being able to walk without assistance and without any apparatus to support her, but slightly lame.

On the 3d of December, 1906, she brought this action on account of the injuries received, laying her damages at upward of P20,000. Judgment was rendered in her favor, and against the defendant, for the sum of P2,368.24. This sum was made up of P1,813, the amount of doctor's bills and hospital bill, and of P555.24, the amount which the plaintiff lost by not being able to devote herself to her usual business during the time while she was in the hospital. From this judgment the plaintiff' appealed The defendant has not appealed.

(1) The court below found that the profits which the plaintiff received from her business were P70 a month. The plaintiff says that the court erred in this respect, in that her profits were P300 a month.

The plaintiff testified that she had a store in Baliuag, and that she was engaged in buying and selling rice, and in transporting by banca effects to and from Baliuag, Malabon, and Manila. While she admitted that her husband accompanied her on these trips, yet she claimed that the business was her own.

The testimony of the defendant tended to show that the business was not her business but was that of her husband. Upon this point the defendant proved that the plaintiff paid no internal-revenue tax as a merchant, while her husband did. The fact that a person does not pay internal-revenue taxes is not conclusive evidence that he is not engaged in trade, but where a business exists and the question is, to which one of two persons it belongs, evidence that one of them paid the internal-revenue tax is very material. In view of the evidence upon this point we can not say that the court below erred in not allowing the plaintiff more than P70 a month as the profits of her business.

(2) The court allowed such profits only for the time elapsing from the day of the accident until her departure from the hospital. She says that she should have been allowed such profits for an additional time.

The action was begun within two weeks after the accident. The trial was commenced and most of the evidence taken on the 16th day of April, while the plaintiff was still in the hospital. The last day upon which evidence was taken was on the 18th of October, three months after she had left the hospital. The testimony then presented consisted of the declarations of witnesses for the defendant, who testified that the plaintiff was completely cured and was able to walk without assistance and without crutches, but was slightly lame. No evidence was then offered by the plaintiff to show that this slight lameness in any way interfered with the conduct of her business or that she could make any less amount therein than she could make if she did not suffer from this defect. The court,

therefore, did not err in allowing her no further damages on this account, because there was no evidence that she had suffered any.

(3) On the 30th day of November, 1906, the doctors who attended the plaintiff gave a certificate in which it was said: "The complication of bone necrosis may yet arise and require a further operation, and thus complicate matters' and the plaintiff claims that damages should have been allowed her on account, of this possibility. It will be observed that this certificate was given within ten days after the accident. No proof was offered by the plaintiff that, as a matter of fact, any such complications had arisen as are stated in the certificate, and in the absence of such evidence, damages on that account can not be allowed.

(4) As we understand the third assignment of error, the plaintiff thereby insists that damages should have been allowed her for the pain which she suffered at the time of the accident and during her stay in the hospital. The court allowed her nothing on this account.

The action is brought under the provisions of article 1902 of the Civil Code, which is as follows:

"A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done."

Manresa, in his Commentaries on the Civil Code, speaking of this article, says (vol. 12, p. 604):

"The obligation imposed by said article comprises the two items or the two terms that are present in every indemnity, in accordance with article 1106 of said code, that is, the amount of the loss which may have been suffered, and that of the profit which a person may have failed to realize. Thus has the tribunal, so often cited, settled the matter in its decision of the 15th of January, 1902."

Article 1106 is as follows:

"Indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, reserving the provisions contained in the following articles."

For the profits which the plaintiff failed to obtain, spoken of in the latter part of this article, the plaintiff was allowed to recover, and the question is, whether the value of the loss which she suffered can be extended to the pain which she experienced by reason of the accident. We have found nothing either in the judgments of the supreme court of Spain or in any of the commentaries which would permit such a recovery. The phrase *a reparar el dano causado* (to repair the damage caused), found in article 1902 of the Civil Code, above quoted, is also found in article 119 of the Penal Code. Articles 119 and 121 of that code are as follows:

"ART. 119. The civil liability, established in Chapter II, Title II, of this book, includes: (1) Restitution; (2) Reparation for the damage caused; (3) Indemnification for losses.

"ART. 121. The reparation shall be made by the appraisal of the amount of damage by the court, taking into consideration the value of the thing, whenever possible, and the value as a keepsake to the party aggrieved
Viada, in his Commentaries on the Penal Code, speaking of article 121, says (vol. 1, p. 539) :

" * * * with regard to the offense of lesiones for example, the civil liability is almost always limited to indemnity for damages to the party aggrieved for the time during which he was incapacitated for work; * * *."

(See also same volume, p. 546.)

In the judgment of December 6, 1882 (27 *Jurisprudencia Criminal*, 414), the supreme court of Spain, in a criminal proceeding for slander, said:

" * * * inasmuch as the value of honor is a thing that can not be appraised, it is not possible to fix the amount of damages, nor can the payment of an indemnity be imposed upon the offender under article 18 of the code, by way of civil liability arising out of the criminal act."

The fact that in the United States damages are allowed in this class of cases for the pain and suffering can not affect the resolution of the question here.

This question has never been before considered by this court. In the case of *Rakes vs. The Atlantic, Gulf and Pacific Co.* (7 Phil. Rep., 359), nothing was said with reference to this point, and the damages there allowed by the court below and by this court might well have been given by reason of the permanent injury which the plaintiff suffered, he having lost a leg as a result of the accident. The case of *To Guioc-Co vs. Del Rosario* (8 Phil. Rep., 546) related to the damages which the heirs might recover for the death of their relative, a different question from the one raised in this case.

We hold, therefore, that this assignment of error can not be sustained and that no damages can be allowed for the pain and suffering which the plaintiff experienced at the time and after the accident.

(5) The last part of the judgment of the court below is as follows:

" * * * provided, however, that payment of one thousand seven hundred and thirteen pesos (P1,713) shall be made by the defendant, out of the said sum, when payment shall be demanded of Clara Marcelo by the Saint Paul's Hospital, to which latter the said sum should be paid."

The plaintiff says that the court committed error in ordering this money paid to the St. Paul's Hospital instead of ordering it paid to herself.

No part of this money has ever been paid by the plaintiff. Her husband testified that neither he nor his wife had ever made any agreement or promise to pay either the bill of the hospital or the bills of the doctors, and that neither he nor his wife had any property or money with which they could pay these bills or any part of them. As to the doctors' bills, one of them testified as follows:

"Q. Hence, if Clara Marcelo were a poor woman and had no means, would the fees have been the same as in the present case?—A. If she had no means with which to pay, we would have treated her for nothing; if she were unable to pay, we would have treated her gratuitously as we have treated other cases."

As to the hospital bill, one of the persons connected with it testified as follows:

"Q. Have you tried to collect them from her?—A. No, sir.

"Q. Did you allow the account to run without saying anything to her or to anyone else?—A. Many bills are thus allowed to run by the hospital; when a patient leaves the hospital the bill is made up and sent to him.

"Q. And if the patient is able to pay, you expect that he will do so, but if he can not pay the bill is placed on file; is that so?—A. Yes, sir; we have many bills pigeonholed."

It appears from this evidence that neither the plaintiff nor her husband ever agreed in any way to pay these bills, and that neither the doctors nor the hospital expected them to be paid unless the plaintiff voluntarily did so. Under these circumstances, any complaint against the order of the court above quoted would have to be made by the defendant. He, however, has not appealed and the plaintiff, under the circumstances, was in no way injured thereby.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Tracey, J., did not sit in this case.

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