

MARTIN DIUQUINO, PLAINTIFF-APPELLANT, VS.J. ANTONIO ARANETA, DEFENDANT-APPELLEE.

G.R. No. 48176. July 21, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from a judgment of the Court of First Instance of Manila dismissing plaintiff's complaint on the ground that it states no cause of action against the defendant.

The complaint alleges that the defendant employed one Pedro Estrada as a chauffeur, who operated defendant's car in Baguio on April 6, 1940; that on said date the said chauffeur, in driving the defendant's automobile No. 1-9940, thru negligence, carelessness, and imprudence, caused the said automobile to bump and hit the plaintiff while the latter was pouring water into the tank of the automobile belonging to his employer, Mr. Manuel Aguas, which was then parked in front of Villa Carmelita in Baguio; that the plaintiff suffered physical injuries, his kneeball having been broken, and was confined in the hospital from April 6 to May 4, 1940; that before the accident he was earning a salary of P35 a month, but that as a result of the accident he became permanently disabled to perform his ordinary work. The plaintiff claims damages from the defendant in the sum of P10,000, upon the allegation that the defendant did not use and exercise all the diligence of a good father of a family in the selection of his said chauffeur.

The action is predicated upon article 1903, in relation to article 1902, of the Civil Code. These two articles read as follows:

"Art. 1902.—Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

"Art. 1903.—The obligation imposed by the next preceding article is enforceable, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

"The father, or in case of his death, or incapacity, the mother, is liable for any damages caused by the minor children who live, with them.

"Owners or directors of any establishment or business are, in the same way, liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.

"The State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable.

"Finally, teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody.

"The liability imposed by this article shall cease in case the persons subject thereto prove that they exercised

all the diligence of a good father of a family to prevent the damage."

It is needless to say that article 1902 is not applicable against the present defendant—even assuming as true the allegation that he failed to exercise all the diligence of a good father of a family in the selection of his chauffeur—because such failure on his part was not the proximate cause of the damage complained of. He did not by such act or omission cause the damage in question. Said article would be applicable against the defendant's chauffeur alone, who himself was guilty of the negligent acts by which the damage was caused. (*Johnson vs. David*, 5 Phil., 663, 666- 667.) It is, however, insisted for the appellant that the appellee should be held responsible for the acts of his chauffeur under article 1903. But said article specifies the persons who are held responsible for the acts and omissions of another; and, as found by this Court in the cases of *Johnson vs. David*, supra, and *Chapman vs. Underwood*, 27 Phil., 374, "the driver does not fall within the list of persons in Article 1903 of the Civil Code for whose acts the defendant would be responsible." It is not alleged that the appellee is the owner or director of an establishment or business and that he was employing his chauffeur in such business at the time the latter is alleged to have caused the damage.

We are not persuaded that the interpretation of the codal provisions in question heretofore made by this Court in the cases above cited is wrong. Indeed, we feel that for the Court to so interpret said provisions as to include persons other than those therein specified as liable for the acts and omissions of another would be an invasion of the powers and prerogatives of the legislature. The later of the two cases above cited (*Chapman vs. Underwood*) was decided by this Court on March 28, 1914, and for nearly three decades the legislature has not seen fit to change the law as interpreted by this Court.

The judgment appealed from is affirmed, but no finding is made as to costs because the appellant has been allowed to litigate as a pauper.

Yulo, C. J., Moran, and Horrilleno, JJ., concur.

DISSENTING

BOCOBO, J., with whom concurs PARAS, J.,

I am constrained to dissent because I believe the strict and narrow interpretation by the majority overthrows the principle of responsibility enunciated in article 1903 of the Civil Code. The majority opinion by exempting from liability those employers who are not engaged in any enterprise defeats the object which the legislator contemplated.

I.

Articles 1902 and 1903 provide:

"Art. 1902.—El que por accion u omision causa daño a otro, interviniendo culpa o negligencia, esta obligado a reparar el dano causado.

"Art. 1903.—La obligacion que impone el articulo anterior es exigible, no solo por los actos u omisiones propios, sino por los de aquellas personas de quienes se debe responder.

"El padre, y, por muerte o incapacidad de este, la madre, son responsables de los perjuicios causados por los hijos menores de edad que viven en su compania.

"Los tutores lo son de los perjuicios causados por los menores o incapacitados que estan bajo su autoridad y habitan en su compania.

"Lo son igualmente los dueños o directores de un establecimiento o empresa, respecto de los perjuicios causados por sus dependientes en el servicio de los ramos en que los tuvieran empleados o con ocasion de sus funciones.

"El Estado es responsable en este concepto cuando obra por mediacion de un agente especial; pero no cuando el daño hubiese sido causado por el funcionario a quien propiamente corresponda la gestion practicada, en cuyo caso sera aplicable lo dispuesto en el articulo anterior.

"Son, por ultimo, responsables los maestros o directores de artes y oficios respecto a los perjuicios causados por sus alumnos o aprendices, mientras permanezcan bajo su custodia.

"La responsabilidad de que trata este articulo cesara cuando las personas en el mencionadas prueben que emplearon toda la diligencia de un buen padre de familia para prevenir el daño."

It will be seen that the first paragraph formulates a general principle, while the ensuing enumeration refers to those persons who are presumed to have acted negligently either in choice or supervision. But this list does not free from liability those persons who, though not included in the enumeration, are nevertheless in fact negligent and therefore come within the general principle. In the instant case, although the defendant is not one of those who are presumed to be negligent because he is not the owner or director of an establishment or enterprise, yet he is responsible on the general principle of the first paragraph of article 1903 because the complaint alleges (and defendant admits in his motion to dismiss the complaint) that he (defendant) has been negligent in the selection of Pedro Estrada as his driver, and that he has negligently failed to prevent the damage. Paragraphs 3 and 9 of the complaint allege:

"3. That defendant did not use and exercise all the diligence of a good father of a family in the selection of his said chauffeur, so that he has engaged and employed the services of the said operator who is careless, negligent, and imprudent in the performance of his service as such auto operator;

* * * * *

"9. That defendant was and still is duty bound to pay damages to plaintiff, due to the carelessness of his chauffeur, as alleged above, which caused the physical disability of the plaintiff, and further, because of his failure to exercise all the diligence of a good father of a family to prevent the said accident and the said damage, but defendant never has shown willingness to pay damage to said plaintiff;"

In other words, if the defendant had been the owner or director of any establishment or enterprise, it would not have been necessary to allege negligence on his part in choosing or overseeing his driver Estrada, because such negligence would have been presumed by Art. 1903, but inasmuch as he is neither an owner nor a director of any business, it was necessary to allege negligence on his part in selecting his driver, and by failing to prevent the damage, which allegations were made in the complaint in this case and admitted in the motion to dismiss the complaint.

Paragraph 2 of article 1903, Civil Code, reads, "El padre, y, por muerte o incapacidad de este, la madre, son responsables de los perjuicios causados por los hijos menores que viven en su compania". Supposing a case of negligence of a son, who was not living with his father, would the latter be responsible for the former's negligence? I believe that if the father and the son happened to be together at the time of the damage, and the father was negligent in not preventing the son's negligent act, the father would be liable. My reason is that although the father is not presumed to be negligent because his son is not living with him, yet because the father proved to be negligent, he is, in my opinion, responsible.

The above illustrates my theory that the enumeration of cases in article 1903 does not exclude other cases where the father, employer, etc., are shown to have been negligent.

In addition to the foregoing hypothetical case, let me present this one: Referring to owners of establishments, suppose the employee negligently caused the damage while he was doing work in a branch other than that in which he was regularly employed, but the owner or employer was present and he was really and actually negligent in not preventing the damage? I believe the owner or employer is liable, although paragraph 4 of article 1903 requires that the employee be "en el servicio de los rames en que los tuvieran empleados o con ocasi6n de sus funciones." My reason again is that although the owner or employer is not presumed to be negligent because the employee was doing work in another branch, nevertheless, the owner or employer being actually negligent, he is liable.

Another case may be supposed: There is a private charitable institution where beggars live and are taken care of. One of the employees through negligence, while burning certain odds and ends, caused a neighboring nipa house to catch fire and to be burned down. The owner or director of the institution had been previously warned of the danger but he negligently failed to prevent the employee's negligent act. I believe the owner or director is liable, although the charitable institution is not one of the cases enumerated in article 1903, My reason is the same: The owner or director was really and actually negligent, though he is not presumed to be so.

The same reasoning and conclusion may be had in the case of a private physician who negligently fails to supervise his nurse whose negligence causes injury to a patient.

Other cases could be supposed, but these four show that the enumeration of instances of presumed negligence in article 1903 does not exclude cases of actual and proved negligence.

In the present case it is alleged in the complaint (and admitted in the motion to dismiss) that defendant was negligent in not preventing the damage. Therefore, he is liable under article 1903.

II.

Let me now take up the two cases relied upon by the majority: Johnson vs. David, and Chapman vs. Underwood. Those two cases support my opinion that the defendant herein is liable.

In the first case, Johnson vs. David, 5 Phil., 663, it was found that the master had not been negligent either in the selection of or vigilance over his cochero. This Court said:

"The question presented by these facts is, Is the owner of a carriage driven by his cochero, liable for injuries growout of the negligence of said cochero, in the absence of such owner ?

"No evidence was adduced during the trial of said cause to show that the defendant had been negligent in the employment of the cochero or that he had any knowledge that such cochero was incompetent or of the general negligent character of said cochero, if such existed. * * *" (p. 666.)

In the other case, Chapman vs. Underwood, 27 Phil., 374, it was also found that the defendant, the owner of the automobile, although present in the vehicle, had had no reasonable opportunity to prevent the driver's negligent act. This Court said:

"* * * On the other hand, if the driver, by a sudden act of negligence, and without the owner having reasonable opportunity to prevent the act or the continuance, injures a person or violates the criminal law, the owner of the automobile, although present therein at the time the act was committed, is not responsible, either civilly or criminally, therefor. The act complained of must be continued in the presence of the owner for such a length of time that the owner, by his acquiescence, makes his driver's act his own.

"In the case before us it does not appear from the record that from the time the automobile took the wrong side of the road to the commission of the injury, sufficient time intervened to give the defendant an opportunity to

correct the act of his driver. Instead, it appears with fair clearness that the interval between the turning out to meet and pass the street car and the happening of the accident was so small as not to be sufficient to charge defendant with the negligence of the driver." (p. 377.)

It is thus clear that this Court, in the two cases cited by the majority, did not hold the owner of the private vehicle responsible as he was not negligent either in employing or overseeing his driver. These two cases impliedly hold that if the owner of a private vehicle is negligent, in the choice of or vigilance over his driver, he (the owner) is liable. In the instant case, the defendant was negligent in these particulars, as alleged in the complaint and admitted by defendant in his motion to dismiss.

III.

The defendant is liable not only as employer of the driver (Art. 1903) but also as owner of the automobile. If we analyze Chapter II, Title XVI of Book IV (Arts. 1902-1910) which treats of obligations arising from culpa or negligence, it will be noted that after enunciating the general principle of responsibility for culpa aquiliana (Art. 1902), the chapter proceeds to regulate the liability under two aspects: first, responsibility for another person's negligence (Arts. 1903-1904) and obligation for damage caused by a person's property (Arts. 1905-1910). The defendant as the owner of the automobile is liable for damages, it being admitted in the motion to dismiss that the driver acted with negligence, carelessness and imprudence. (Arts. 1905-1910.) It seems unreasonable and unjust to exempt the owner of a private automobile simply because he is not specifically listed in articles 1905-1910, ignoring the fact that he plainly comes within the fundamental principle of those articles. As Manresa says in commenting on the explosion of engines, excessive smoke, etc. in article 1908: (Vol. 12, p. 640, Manresa, *Comentarios Al Código Civil*.)

"Respondiendo dicho artículo al principio general que informa la materia objeto de este capítulo, de que aquel que cause a otro un daño por acción u omisión, mediando culpa o negligencia, debe repararlo, enumera algunos casos que pueden dar lugar a dicha reparación; pero debemos advertir que no son los únicos, y que la cita de los cuatro expresamente consignados en el referido artículo solo esta hecha *demonstrationis causa*; y en su virtud, en todos aquellos otros que puedan suscitarse en la práctica, y en que exista la misma razón fundamental, habrá lugar a la reparación, porque esta no depende de la expresión en la ley de las causas que la motivo, sino del principio esencial que antes hemos dicho, y por consiguiente, no puede dejar de haber lugar a ella porque los casos o sus causas no figuran en el Código,

"Esta es la opinión general de los tratadistas, y lo contrario resultaría una injusticia irritante y un desconocimiento de los derechos de los perjudicados, falto de toda razón jurídica." (Italics supplied.)

It will be observed that applying the principle of analogy, Manresa includes the ownership of other things than those enumerated in these articles because the same fundamental reason exists. And we know that automobiles have killed and injured more people than have dogs or ruinous buildings, or exploding engines or any of the things specified in articles 1905-1910.

IV.

Coming now to a more detailed discussion of analogy as applied in this case, the principle of analogy should be distinguished from liberal interpretation. Under the principle of analogy, the complaint herein states facts sufficient to constitute a cause of action.

Professor Clemente de Diego, an outstanding authority on the Spanish civil law and author of several books on the civil law of Spain, has written an essay on "La Analogía en el Código Civil Español" in the *Revista de*

Derecho Privado, (Vol. I, pp. 370-376, Sept. 1914).

After citing certain provisions to show that analogy is authorized by the Spanish Civil Code, he says:

"La misma prescription del articulo 6.o, al invocar los principios generales de derecho como fuente juridica en defecto de ley y de costumbre, comprueba la tesis, toda vez que el procedimiento analogico es el primer paso en la indagacion y aplicacion de tales principios.

"La analogia forma parte de la dotacion de medios e instruments con que el poder judicial cuenta para el ejercicio de su mision. Tampoco de la interpretacion se dice nada en el titulo preliminar delCodigo; solo se dan reglas mas alia con respecto a testamentos y contratos, y ¿quien puede deducir de ahi que no es licito a los jueces interpretar las leyes? La interpretacion y la analogia son recursos naturales e intrinsecos elementos de la funcion de juzgar que no han menester de declaracion expresa del legislador para ser licitamente empleados."

De Diego then proceeds to discuss the nature of analogy in part thus:

"¿Cual es la naturaleza de la analogia? ¿Es un simple modo de interpretacion y aplicacion del derecho, o es mas bien un procedimiento de produccion del derecho y en tal respecto verdadera fuente juridica? Entre los autores antiguos era muy general confundirla con la interpretacion extensiva, sin pensar en que en esta al fin hay una voluntad real del legislador, bien que expresada en formula estrecha e inadecuada, mientras que en la analogia falta completamente esa voluntad en cuanto que el legislador no previ6 el caso de que se trata. Savigny y Thol, en las obras citadas en estos articulos, creen que interpretacion y analogia son dos cosas distintas. Winscheid y Unger—a cuya opinion se inclina Regelsberger—entienden que es un procedimiento intermedio entre la interpretacion y la produccion del derecho, acercandose mas- a aquella la analogia de ley y a esta. la de derecho. Geny, que tan a fondo ha estudiado la cuestion, la coloca decididamente fuera de la interpretacion, constituyendo un procedimiento especial de investigacion cientifica del derecho y de alumbramiento de nuevas reglas juridicas, bien que tomando por hilo conductor el espiritu y disposiciones concretas de un derecho positivo.

"En la analogia, si es de ley, sobre la base de una disposicion legal se busca una solucion para un caso no comprendido en ella, solucion que habria dado el legislador si en el caso hubiera pensado; si es de derecho, montandose por encima de todo el derecho positivo y guiada por los principios informadores de este, busca una solucion que no discrepe, sino que este en armonia con el espiritu general del derecho. Manteniendose la analogia dentro de este y buscando tan solo las soluciones latentes en el sistema de un derecho, hay que convenir en que es mas bien un procedimiento de aplicacion del derecho que de creacion del mismo.

"Pero no es pura aplicacion del derecho ni mera interpretation, porque esta no fija ni halla normas nuevas como la analogia. En efecto, no es la norma misma que preve un caso la que se aplica a otro semejante, sino el principio juridico fundamental de aquella norma, y por tanto mas general y comprensivo del caso previsto y del no previsto; ese principio en esta determination representa una regla mas alta y extensa que la primitivamente formulada. No es, ya lo hemos visto, pura aplicacion mecanica de una norma existente a un caso en ella no comprendido, sino investigation de un principio mas elevado y mas general y obtencion de una regla aplicable a los dos casos semejantes.

"De todo lo dicho hasta aqui se deduce la diferencia que corre entre la interpretacion y la analogia. Como acertadamente dice Coviello, difieren por sus supuestos, por su fin y por su resultado. Por sus supuestos, porque la analogia supone la falta de norma expresa, mientras la interpretacion supone su existencia. Por su fin, porque el de la analogia es la investigacion del principio juridico, del que emana la regla por aplicar al caso previsto y al no previsto; el de la interpretacion es hallar el sentido de la norma. Por sus resultados, porque la analogia fija una regla nueva, latente y no formulada en el sistema juridico, lo que no sucede en la interpretation.

* * * * *

"Claro es que tienen un elemento comun, y esto es el motivo principal de la confusi6n general de los dos procedimientos. El elemento comun consiste en que en ambos se trata de un caso no comprendido en las palabras de la norma, y la diferencia esta en si esta o no previsto en el entendimiento del legislador; lo primero es mas visible ciertamente que lo segundo, y he aqui la razon de por que no escudrinando atentamente las cosas seamos dados a estimar por interpretacion extensiva lo que no es mas que aplicacion analogica,"

It is my humble opinion, therefore, that the principle of analogy, as conceived by the jurists, and as distinguished from liberal interpretation, would place the owner of a private automobile within the "principio juridico fundamental" of liability under Articles 1902-1910 of the Civil Code, although such owner was not specifically foreseen by the lawmaking body. Examining articles 1902-1910 of the Civil Code, one can see the general principle of responsibility for culpa aquiliana in Article 1902, and then such liability is applied to acts of dependents (Articles 1903-4), and on account of the ownership of property, whether the negligence is of the owner or of persons under him. (Arts. 1905-1910).

As to the first kind (acts of dependents), I reiterate the view that the enumeration in article 1903 (parents, guardians, directors of establishments, the State and teachers) is complete only as to those who are presumed to be negligent in the selection or supervision, but does not exclude those who, though not mentioned in Art. 1903, are alleged and proved to be negligent in selection or supervision. Such is the ratio decidendi in the two previous cases of Johnson vs. David and Chapman vs. Underwood.

Now then, by analogy as conceived by De Diego and other jurists, the employer of a driver of a private automobile comes within the fundamental principle of liability of one person for another's acts because of negligence in selection or supervision, even though such employer was not specifically foreseen by the drafters of the Civil Code.

For the same reason, the defendant is liable as the owner of the private automobile because he comes under the "principio juridico fundamental: (of which De Diego speaks) regarding the liability for damages caused by one's property. In this case, the automobile pertained to defendant, and the defendant's driver was admittedly negligent.

The rule of analogy—*eadem dispositio, ubi eadem ratio*— is plainly applicable to the present case. What is the reason for the general principle found in the first paragraph of article 1903? That a person is liable for the acts of those who are under his custody or in his employment because of his negligence in not preventing the damage. As Manresa says:

"Desarrollando en ellos elCodigo los principios fundamentales de dicha responsabilidad, la impone por cuatro conceptos distintos, en todos los cuales son extraños al obligado los actos u omisiones determinantes del daño reparable, pero en los que no deja de haber una razon o un motivo de culpa por su parte.

"Esos conceptos son;

"1. Por los danos y perjuicios causados por las personas que el responsable tuviera bajo su custodia o dependencia.

* * * * *

"Por la misma razon, aquel que por su industria, por su profesion o por otras circunstancias, tuviere alguna otra persona a su servicio o bajo su dependencia u custodia— como sucede a los dueños o directores de un establecimiento o empresa respecto de sus dependientes, y a los maestros o directores de artes y oficios con relacion a sus alumnos y aprendices—, debe exigir de ella que cumpla su cometido con la actividad y diligencia necesaria, y si por faltar a estas diera origen a un perjuicio, deben venir obligados a indemnizar al perjudicado aquel que tuviera a su servicio a bajo su vigilancia al que causo el daño, * * *" (pp. 607, and 608-609.)

Now, then, the reason for holding an employer in business,—that is, because he negligently failed to prevent the damage—liable is the same reason for holding an employer who is not in business, answerable, namely, that he negligently did not prevent the damage. Indeed, there is greater reason for making the owner of an automobile for personal use responsible than the proprietor of a motor vehicle devoted to business. The former keeps a car for comfort and convenience, while the latter's maintenance of a motor vehicle contributes to the economic development of the country. Incidentally, it should be remembered that all governments discourage the luxury of having private cars for pleasure.

At this juncture, it is well to remember that the rule declared in the first paragraph of article 1903 is found in all legal systems because it embodies a general principle of justice, which is, that one must exercise due care in supervising a minor, ward or pupil, or in selecting and supervising an employee.

That par. 1 of article 1903 expresses a general principle is seen when we read Manresa's comment as above quoted.

It will be noted that according to Manresa, the code develops four "fundamental principles": that a person is liable when he has others under his "custodia o dependencia"; and that such responsibility exists when a person by his industry, profession, or other circumstances has others in his service or employment. There being a general principle of right, it should be given a wide application.. It is for such situation as the present that the Roman law ordered the judge "ad similia procedere" because the law could not cover all cases, and no exception or limitation should be made unless it is clearly and expressly laid down by the law. In this case, however, the majority makes an exception by mere inference and implication, in open contravention of the general principle under consideration, and resulting in a manifest injustice because though the plaintiff has been permanently disabled for ordinary work, the majority would have him obtain the indemnity from the driver, Pedro Estrada, who is presumably too poor to pay adequate damages. To compel plaintiff to seek an illusory remedy is a virtual denial of that remedy. He is placed between Scylla and Charybdis, for while he can not sue the employer, he can get no satisfaction from an impecunious driver. As Manresa says, one of the reasons for article 1903 is that employees do not usually have sufficient means for indemnity (comment on Arts. 1903 and 1904).

Moreover, the principal basis of the liability recognized in article 1903 is the negligence of the employer in failing to prevent the damage (Manresa's comment, supra). But the majority in exonerating the defendant simply because he is not engaged in business would change the philosophy of article 1903 from that of negligence on the part of the employer in selecting and supervising the employee into that of economic benefit for the employer. Such a shift of juridical foundation of article 1903 is warranted by neither the letter nor the spirit thereof. Nor can such alteration of philosophy be justified in any manner, for it is absolutely indifferent to the injured party whether or not the employer is engaged in business; what is important to him and in the interest of justice is that he be indemnified by the person who has been admittedly negligent in selecting the careless driver and in failing to prevent the damage.

V.

Laws should be progressively construed, so that they may meet new conditions, so long as they fall within the general purpose of the legislature.

Thus we read in 26 R. C. L., pp. 778-9:

"24. Extension of Operation to New Cases and Subjects. —A general law may, and frequently does, originate in some particular case or class of cases which is in the mind of the legislature at the time, but so long as it is expressed in general language the courts cannot, in the absence of express restrictions, limit its application to

these cases, but must apply it to all cases that come within the terms and its general purpose and policy. Hence statutes framed in general terms apply to new cases that arise, and to new subjects that are created, from time to time, and which come within their general scope and policy. It is a rule of statutory construction that legislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects and business within their general purview and scope coming into existence subsequent to their passage."

It is this progressive interpretation that keeps legislation from becoming ephemeral and transitory. It is obvious that legislators want their creation to be a rule of conduct for an indefinite time. To carry out that desire of the legislator, a statute should always be made adaptable by the courts to the changing conditions of the social order. A strict interpretation, such as the majority adheres to, would render a statute obsolete shortly after it has been enacted, for human progress is always on the wing. Consequently, judicial statesmanship is ever mindful that time and tide wait for no static, fossilized statute, which is the fetish of rigid, literal interpretation. Courts are not museums for useless, anachronistic laws.

Therefore, while it is true that the speeding automobile was not yet in existence in 1889, when the Spanish Civil Code was promulgated, nevertheless, because it had become such a public menace when this case arose, killing and maiming countless people everywhere, it should for this very reason be deemed to be within the rule of liability of the employer, whether the employee is driving it for the master's profit or pleasure. This latter-day, speeding Juggernaut must somehow be curbed by making all owners responsible so that they will be careful in the choice and supervision of their drivers.

It is not quite accurate to say, as the majority does, that the Legislature has not seen fit to change the law as interpreted by this Court. Sec. 65, Act No. 3992 (the Automobile Law) makes it the duty of the operator, in case of an accident, to give the name and address of the owner of the motor vehicle, and it is also the duty of the owner Or driver of an automobile to notify the police. Said statutory provision reads:

"Sec. 65. Duties in case of accident.—In the event that any accident should occur as a result of the operation of a motor vehicle upon a highway, the operator shall stop immediately, and, if requested by any person present, shall show his chauffeur's license, give his true name and address and also the true name and address of the owner of the motor vehicle.

"It shall be the duty of the owner or driver of a motor vehicle to notify at once the nearest peace officer, police station, or municipality when it comes to his knowledge that his vehicle has been concerned in an accident."

It will thus be seen that recent legislation impliedly places upon both the owner and the driver the duty of preventing accidents by requiring the operator to give the name and address of the owner, and by making them report all such mishaps to the police so that the peace officers may inquire into the liability, if any, of either the owner or the driver, or both. It should be noted that the new law applies to all owners and drivers of automobiles, whether for business or not.

Therefore, even granting, *arguendo*, that article 1903 did not originally include automobiles not used for any enterprise, yet we must read said article in connection with the new Act (3992) and thus include automobiles within the scope of Art. 1903.

VI.

It is an established rule of interpretation of laws and contracts, that in case of doubt, that construction which is in favor of natural right should be adopted. (Sec. 294, Act 190; sec. 66, Rule 123, Rules of Court.)

In the instant case, it is admitted by defendant, through his motion to dismiss the complaint, that he has not

exercised the diligence of a good father of a family in the selection of Pedro Estrada as his chauffeur; that he engaged a careless driver; that he, defendant, failed to exercise the diligence of a good father of a family to prevent the damage; that said Estrada, in driving the defendant's automobile, through negligence, carelessness and imprudence, caused said automobile to bump and hit the plaintiff while the latter was pouring water into the tank of the car belonging to plaintiff's employer; and that plaintiff suffered injuries which permanently disabled him to perform his ordinary work. It is therefore the plaintiff's natural right to be indemnified either by defendant or by the driver Estrada or by both. But the adoption of a strict interpretation of article 1903 leaves plaintiff helpless and dependent for the rest of his life, because he can not expect to obtain adequate damages from Estrada, who may reasonably be presumed to be without means to indemnify plaintiff. With due respect to my colleagues who signed the majority opinion, I can not bring myself to turn a deaf ear to plaintiff's plea for relief. I therefore unhesitatingly follow a liberal interpretation of article 1903, considering that the latter killeth and the spirit giveth life. To prevent the enormous injustice of letting this victim, who has been crippled for life, suffer uncompensated from the defendant's own admitted negligence in selecting and supervising a careless driver, I would give efficacy to and apply in this case the general principle laid down in the first paragraph of article 1903 which I again quote:

"La obligation que impone el articulo anterior es exigible, no solo por los actos u omisiones propios, sino por los de aquellas personas de quienes se debe responder."

In this attitude, I do not share the majority's unfounded fear of invading the powers and prerogatives of the legislature because I think article 1903 plainly covers the present case, as already explained, and, because I am firmly persuaded that courts should breathe into the cold wording of codes and statutes the warm spirit of right and justice and equity. After all, the lawmaker can only frame the skeleton for the adjustment of rights among the citizens, so that it is the proper and inherent function of the courts to import to that skeleton the flesh and blood and sinew of the reality of social conditions. Far from invading legislative powers, the courts in this manner fulfill their true mission by causing the legislature's theory to stir and pulsate with the actuality of real problems in the relations among men, to the end that the abstract rule may become a living principle of effective justice.

VII.

Finally, this case raises the serious question of whether courts should tie their hands in the administration of justice. This is a problem that affects the very *raison d'être* of the courts. Fortunately, we have, among other principles, that of analogy as presented by the jurists. Such principle which according to De Diego "forma parte de la dotacion de medios e instrumentos con que el poder judicial cuenta para el ejercicio de su mision", is at the disposal of the courts to prevent a palpable injustice as in the present case where a poor man, disabled for life because of negligence of others, entreats us to afford him relief. Should we deny him redress because of a timid concept of the judicial power? Any restricted and inadequate view of the judicial function is not in keeping with the role which the courts have always played in the whole civilized world. To mention but a few well-known examples: the *jus honorarium* of the Roman praetor, the *usus modernus pandectarum* during the reception of the Roman law in Europe; and the decisions of the French courts which have for generations adapted the French Civil Code to changing conditions. The Supreme Court of the Philippines has in the last four decades likewise been a great factor in building up the Philippine legal system, in spite of many lapses into extreme legalism and technicality. I venture to say that the majority opinion in the present case is one of those lapses. The Spanish Civil Code (Art. 6) ordains that the courts, in case of doubt, should apply the general principles of right or "*derecho*" (as distinguished from statute or "*ley*"), which include the norms of natural justice and good conscience. In this task the courts do not really "make laws." Hence, in my humble opinion, the majority's fear of invading the powers and prerogatives of the legislature in this case, is groundless. Courts do not legislate by merely digging out of the bottom of primary concepts of right (or "*derecho*") a rule on which to base a decision, just as a miner does not

"make" the gold which he extracts from the subsoil. The rule of analogy, as above set forth, is one of the tools with which courts bring out principles from the latent mass of right or "derecho".

VIII.

Summarizing, I believe defendant is liable because:

- Though he is not presumed to be negligent, yet he is admitted to have been actually negligent. So this case is not excluded by article 1903.

- The Johnson and Chapman cases support my theory because in those cases the defendants were exonerated on the ground that there was no proof they had, been negligent.

- As owner of the private automobile, he is liable under articles 1905-1910, which make owners of things responsible for damages.

- We must apply the following principles:

- (a) The rule of analogy, as distinguished from liberal interpretation.

- (b) Progressive interpretation of statutes,

- (c) The construction favoring a natural right. Plaintiff being crippled for life, and the driver being too poor to pay adequate damages, the owner of the automobile should be solidarily liable with the driver.

- This Court should not tie its hands in administering justice. Its duty is to help build up the Philippine legal system by a broad view of its functions.

Therefore, I believe the complaint herein states facts sufficient to constitute a cause of action. My vote is for the reversal of the judgment appealed from.

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