

E. M. WRIGHT, PLAINTIFF AND APPELLANT, VS. MANILA ELECTRIC R. R. & LIGHT CO., DEFENDANT AND APPELLANT.

G.R. No. 7760. October 01, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action brought to recover damages for injuries sustained in an accident which occurred in Caloocan on the night of August 8, 1909.

The defendant is a corporation engaged in operating an electric street railway in the city of Manila and its suburbs, including the municipality of Caloocan. The plaintiff's residence in Caloocan fronts on the street along which defendant's tracks run, so that to enter his premises from the street plaintiff is obliged to cross defendant's tracks. On the night mentioned plaintiff drove home in a calesa and in crossing the tracks to enter his premises the horse stumbled, leaped forward, and fell, causing the vehicle to strike one of the rails with great force. The fall of the horse and the collision of the vehicle with the rails, resulting in a sudden stop, threw plaintiff from the vehicle and caused the injuries complained of.

It is undisputed that at the point where plaintiff crossed the tracks on the night in question not only the rails were above-ground, but that the ties upon which the rails rested projected from one-third to one-half of their depth out of the ground, thus making the tops of the rails some 5 or 6 inches or more above the level of the street.

It is admitted that the defendant was negligent in maintaining its tracks as described, but it is contended that the plaintiff was also negligent in that he was intoxicated to such an extent at the time of the accident that he was unable to take care of himself properly and that such intoxication was the primary cause of the accident.

The trial court held that both parties were negligent, but that the plaintiff's negligence was not as great as defendant's and under the authority of the case of *Rakes vs. A. G. & P. Co.* (7 Phil. Rep., 359) apportioned the damages and awarded plaintiff a judgment of P1,000.

The question before us is stated by the defendant thus:

"Accepting the findings of the trial court that both plaintiff and defendant were guilty of negligence, the only question to be considered is whether the negligence of plaintiff contributed to the 'principal occurrence' or 'only to his own injury.' If the former, he cannot recover; if the latter, the trial court was correct in apportioning the damages."

The question as stated by plaintiff is as follows: "The main question at issue is whether or not the plaintiff was negligent, and, if so, to what extent. If the negligence of the plaintiff was the primary cause of the accident then, of course, he cannot recover; if his negligence had nothing to do with the accident but contributed to his injury, then the court was right in apportioning the damages, but if there was no negligence on the part of the plaintiff, then he should be awarded damages adequate to the injury sustained."

In support of the defendant's contention counsel says:

"Defendant's negligence was its failure properly to maintain the track; plaintiff's negligence was his intoxication; the 'principal occurrence' was plaintiff's fall from his calesa. It seems clear, that plaintiff's intoxication contributed to the fall; if he had been sober, it can hardly be doubted that he would have crossed the track safely, as he had done a hundred times before."

While both parties appealed from the decision, the defendant on the ground that it was not liable and the plaintiff on the ground that the damages were insufficient according to the evidence, and while the plaintiff made a motion for a new trial upon the statutory grounds and took proper exception to the denial thereof, thus conferring upon this court jurisdiction to determine the questions of fact, nevertheless, not all of the testimony taken on the trial, so far as can be gathered from the record, has been brought to this court. There seem to have been two hearings, one on the 31st of August and the other on the 28th of September. The evidence taken on the first hearing is here; that taken on the second is not. Not all the evidence taken on the hearings being before the court, we must refuse, under our rules, to consider even that evidence which is here; and, in the decision of this case, we are, therefore, relegated to the facts stated in the opinion of the court and the pleadings filed.

A careful reading of the decision of the trial court leads us to the conclusion that there is nothing in the opinion which sustains the conclusion of the court that the plaintiff was negligent with reference to the accident which is the basis of this action. Mere intoxication is not negligence, nor does the mere fact of intoxication establish a want of ordinary care. It is but a circumstance to be considered with the other evidence tending to prove negligence. It is the general rule that it is immaterial whether a man is drunk or sober if no want of ordinary care or prudence can be imputed to him, and no greater degree of care is required to be exercised by an intoxicated man for his own protection than by a sober one. If one's conduct is characterized by a proper degree of care and prudence, it is immaterial whether he is drunk or sober. (Ward vs. Chicago etc., R. R. Co., 85 Wis., 601; H. & T. C. R. Co. vs. Reason, 61 Tex., 613; Alger vs. Lowell, 3 Allen, Mass., 402; Central R. R. Co. vs. Phinazee, 93 Ga., 488; Maguire vs. Middlesex R. R. Co., 115 Mass., 239; Meyer vs. Pacific R. R. Co., 40 Mo., 151; Chicago & N. W. R. R. Co. vs. Drake, 33 Ill. App., 114.)

If intoxication is not in itself negligence, what are the facts found by the trial court and stated in its opinion upon which may be predicated the finding that the plaintiff did not use ordinary care and prudence and that the intoxication contributed to the injury complained of? After showing clearly and forcibly the negligence of the defendant in leaving its tracks in the condition in which they were on the night of the injury, the court has the following to say, and it is all that can be found in its opinion, with reference to the negligence of the plaintiff: "With respect to the condition in which Mr. Wright was on returning to his house on the night in question, the testimony of Doctor Kneedler, who was the physician who attended him an hour after the accident, demonstrates that he was intoxicated. * * *

"If the defendant or its employees were negligent by reason of having left the rails and a part of the ties uncovered in a street where there is a large amount of travel, the plaintiff was no less negligent, he not having abstained from his custom of taking more wine than he could carry without disturbing his judgment and his self-control, he knowing that he had to drive a horse and wagon and to cross railroad tracks which were to a certain extent dangerous by reason of the rails being elevated above the level of the street.

"If the plaintiff had been prudent on the night in question and had not attempted to drive his conveyance while in a drunken condition, he would certainly have avoided the damages which he received, although the company, on its part, was negligent in maintaining its tracks in a bad condition for travel.

"Both parties, therefore, were negligent and both contributed to the damages resulting to the plaintiff, although the plaintiff, in the judgment of the court, contributed in greater proportion to the damages than did the defendant."

As is clear from reading the opinion, no facts are stated therein which warrant the conclusion that the plaintiff was negligent. The conclusion that if he had been sober he would not have been injured is not warranted by the facts as found. It is impossible to say that a sober man would not have fallen from the vehicle under the conditions described. A horse crossing the railroad tracks with not only the rails but a portion of the ties themselves aboveground, stumbling by reason of the unsure footing and falling, the vehicle crashing against the rails with such force as to break a wheel, this might be sufficient to throw a person from the vehicle no matter what his condition; and to conclude that, under such circumstances, a sober man would not have fallen while a drunken man did, is to draw a conclusion which enters the realm of speculation and guess work.

It having been found that the plaintiff was not negligent, it is unnecessary to discuss the question presented by the appellant company with reference to the applicability of the case of *Rakes vs. A. G. & P. Co.*, above; and we do not find facts in the opinion of the court below which justify a larger verdict than the one found.

The judgment appealed from is affirmed, without special finding as to costs.

Arellano, C. J., Torres and Araullo, JJ., concur.

Johnson, J., dissents.

DISSENTING

CARSON, J.

I dissent. I think, in the first place, that before pronouncing judgment the parties should have an opportunity, if they so desire, to correct the manifestly accidental omission from the record of a part of the transcript of the record. It is very clear that when the case was submitted, and the briefs filed, both parties were under the mistaken impression that all the evidence was in the record.

I think, furthermore, that if the case is to be decided on the findings of fact by the trial judge, these findings sufficiently establish the negligence of the plaintiff.

The trial judge expressly found that—

"If the plaintiff had been prudent on the night in question and had not attempted to drive his conveyance while in a drunken condition, he would certainly have avoided the damages which he received, although the company, on its part, was negligent in maintaining its tracks in a bad condition for travel."

This is a finding of fact—the fact of negligence—and I know of no rule which requires the trial court to set forth not only the ultimate facts found by it, but also all the evidentiary facts on which such conclusions are based. The finding is not in conflict with the other facts found by the trial judge, and though it is not fully sustained thereby, we must assume, if we decline to examine the record, that there were evidentiary facts disclosed at the trial which were sufficient to sustain the finding of negligence. "The statement of facts must contain only those facts which are essential to a clear understanding of the issues presented and the facts involved." (Act No. 190, sec. 133.)

"The facts required to be found are the ultimate facts forming the issues presented by the pleadings, and which constitute the foundation for a judgment, and not those that are merely evidentiary of them. The court is not required to find merely evidentiary facts, or to set forth and explain the means or processes by which he arrived at such findings. Neither evidence, argument, nor comment has any legitimate place in findings of facts." (Conlan vs. Grace, 36 Minn., 276, 282.)

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