

JUAN BAHIA, PLAINTIFF AND APPELLANT, VS. FAUSTA LITONJUA, DEFENDANT AND APPELLEE, AND MARIANO LEYNES, DEFENDANT AND APPELLANT.*G.R. No. 9734. March 31, 1915*

Ponente: MORELAND, J.

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This is an appeal by the defendant Leynes from a judgment of the Court of First Instance of Manila against him for the sum of P1,000, with costs; and by the plaintiff from a judgment dismissing the complaint as to the defendant Fausta Litonjua.

This is an action to recover damages from the defendants for the death of plaintiff's daughter alleged to have been caused by the negligence of defendants' servant in driving an automobile over the child and causing her death.

It appears from the evidence that one Ramon Ramirez was the owner and manager of a garage in the city of Manila known as the International Garage. His mother, the defendant Fausta Litonjua, sometime before the accident from which this action springs, purchased an automobile and turned it over to the garage to assist her son in the business in which he was engaged. On the 14th of May, 1911, Ramirez rented the automobile so purchased and donated by his mother to the defendant Mariano Leynes, together with a chauffeur and a machinist, to be used by him for a short time between Balayan and Tuy, Province of Batangas, to carry persons living in Balayan to and from the fiesta which was about to take place in Tuy. According to the arrangement between them, Ramirez was to furnish the automobile, chauffeur, and machinist, and the defendant Leynes was to pay him therefor P20 a day.

On the 16th of May, 1911, while passing from Balayan to Tuy, the automobile, by reason of a defect in the steering gear, refused to obey the direction of the driver in turning a corner in the streets of Balayan, and, as a consequence, ran across the street and into the wall of a house against which the daughter of plaintiff was leaning at the time. The front of the machine struck the child in the center of the body and crushed her to death.

The action was brought against the mother of Ramirez, who bought the automobile, and Leynes, under whose direction and control the automobile was being operated at the time of the accident. Ramirez was not made a party. The plaintiff and the defendant Leynes appealed from the judgment, the former on the ground that the court erred in dismissing the action as to the mother of Ramirez and the latter from that portion of the judgment requiring him to pay to plaintiff P1,000.

We are of the opinion that the action was properly dismissed as to Fausta Litonjua. It is a fact proved in the action and undisputed that, although the mother purchased the automobile, she turned it over to the garage of her son for use therein. The establishment belonged to the son, Ramon Ramirez, and he had the full management and control of it and received all the profits therefrom. So far as appears, the contract with Leynes was made without her knowledge or consent by Ramirez as the owner and manager of the International Garage. While she may have been in one sense the owner of the machine, that fact does not, under the other facts of the case, make her responsible for the results of the accident.

We are of the opinion that the judgment against Leynes must be reversed and the complaint dismissed as to him. While it may be said that, at the time of the accident, the chauffeur who was driving the machine was a servant of Leynes, in as much as the profits derived from the trips of the automobile belonged to him and the automobile was operated under his direction, nevertheless, this fact is not conclusive in making him responsible for the negligence of the chauffeur or for defects in the automobile itself. Article 1903 of the Civil Code not only establishes liability in cases of negligence, but also provides when that liability shall cease. It says:

"The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage."

From this article two things are apparent: (1) That when an injury is caused by the negligence of a servant or employee there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after the selection, or both; and (2) that that presumption is *juris tantum* and not *juris et de jure*, and consequently, may be rebutted. It follows necessarily that if the employer shows to the satisfaction of the court that in selection and supervision he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved from liability.

This theory bases the responsibility of the master ultimately on his own negligence and not on that of his servant. This is the notable peculiarity of the Spanish law of negligence. It is, of course, in striking contrast to the American doctrine that, in relations with strangers, the negligence of the servant is conclusively the negligence of the master.

In the case before us the death of the child caused by a defect in the steering gear of the automobile immediately raised the presumption that Leynes was negligent in selecting a defective automobile or in his failure to maintain it in good condition after selection, and the burden of proof was on him to show that he had exercised the care of a good father of a family. As to selection, the defendant has clearly shown that he exercised the care and diligence of a good father of a family. He obtained the machine from a reputable garage and it was, so far as appeared, in good condition. The workmen were likewise selected from a standard garage, were duly licensed by the Government in their particular calling, and apparently thoroughly competent. The machine had been used but a few hours when the accident occurred and it is clear from the evidence that the defendant had no notice, either actual or constructive, of the defective condition of the steering gear. From the commencement of the use of the machine until the accident occurred sufficient time had not elapsed to require an examination of the machine by the defendant as a part of his duty of inspection and supervision. While it does not appear that the defendant formulated rules and regulations for the guidance of the drivers and gave them proper instructions, designed for the protection of the public and the passengers, the evidence shows, as we have seen, that the death of the child was not caused by a failure to promulgate rules and regulations. It was caused by a defect in the machine as to which the defendant has shown himself free from responsibility.

The defendant Leynes having shown to the satisfaction of the court that he exercised the care and diligence of a good father of a family is relieved of responsibility with respect to the death of plaintiff's child.

The judgment, in so far as it dismisses the complaint against Fausta Litonjua, is affirmed with costs, and, in so far as it finds against Mariano Leynes, is reversed and the complaint as to him is dismissed, without special finding as to costs in this instance. So ordered.

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

Trent, J., concurs in the result.

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