

FEDERICO MANSAL, PLAINTIFF AND APPELLANT, VS. P. P. GOCHECO LUMBER CO., DEFENDANT AND APPELLEE.*G.R. No. L-8017. April 30, 1955*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Manila dismissing plaintiff-appellant's action for compensation for injuries received by him while working as a laborer in defendant's lumber yard. The appeal was made to the Court of Appeals, but in view of the fact that only questions of law are raised it was certified to us.

Plaintiff-appellant suffered injuries in the middle finger of his right hand while stacking lumber in the lumber yard of the defendant. As a member of a group of laborers doing that job for the defendant company, he was not employed directly by the company, but worked under a contractor by the name of Pablo Manansala who, in representation of the group of laborers, contracted the stacking of lumber in the lumber yard at P4.00 per thousand board feet, collected the price of the stacking and distributed it among the laborers. Manansala and his group did not work for the defendant alone; they also did similar work for other lumber yards. Defendant company was not also obliged to employ Pablo Manansala and his group everytime that it had lumber to be stacked up, but could call other contractors or groups of laborers. The defense of the defendant, which was sustained by the court a quo, is that plaintiff-appellant was a purely casual laborer, employed by what is known in law as an independent contractor, Pablo Manansala, who had direction and control of plaintiff-appellant without interference on the part of the defendant. Said the court:

"Ademas de lo arriba expuesto, la demandada niega en absoluto tener relacion contractual con dicho demandante, ni relacion directa eon el mismo, pues nunca ha empleado al demandante en los trabajos de la compania, porque esta ha entrado en contrato dbn Pablo Manansala bajo ciertas consideraciones, pero nunca convino con el demandante. sobre los trabajos aqui en cuestion. En una palabra, la demandada nunca ha tenido autoridad ni control sobre el demandante, ni sobre sus trabajos, porque estos fueron contratados bajo el sistema de pakiaw, or por board feet, entre la parte demandada y el contratista Pablo Manansala, y este a su vez utilizo a los obreros que el necesitaba bajo su responsabilidad y control, no habiendo nunca estos obreros sido contratados como trabajadores de la demandada. El demandante tiene el caracter de trabajador casual y depende de el el trabajar o no trabajar."

The Workmen's Compensation Act, under which plaintiff-appellant's action is based, provides that when an employee suffers personal injury from any accident arising out of and in the course of his employment * * * his employer shall pay compensation * * *." (Sec. 2, Act No. 3428 as amended by Rep. Act No. 772.) The same law gives the following definition of a laborer or employee.

" 'Laborer' is used as a synonym of 'Employee' and means every person who has entered the employment of, or works under a service or apprenticeship contract for an employer. It does not include a person whose employment is purely casual and is not for the purposes of the occupation or business of the employer. Any

reference to the person dependent on him, as defined in this Act, if the context so requires, or, if the employee is a minor or incapacitated, to his guardian or nearest of kin." (Sec. 39 [b], Act No. 3428 as amended by Rep. Act No. 772.)

There is no question in our mind that the court a quo gave an erroneous interpretation to the terms "independent contractor" and "purely casual" as used in the law on compensation. An independent contractor has been defined as one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work. (*Andoyo vs. Manila Railroad Co.*, G. R. No. 34722, cited in *Francisco, Labor Laws*, p. 817.) Some circumstances taken into account to determine whether a person is an independent contractor are: whether he has capital or money of his own to pay his laborers; whether he filed a bond to answer for the fulfillment of his contract with his employer. In the case at bar, the mere fact that Pablo Manansala had no capital or money of his own to pay plaintiff, and does not appear to have filed a bond to answer for his contract with the defendant, does not necessarily prove that he is not an independent contractor. (*Id.*) Neither does the fact that the payment for the work is to be made by piece (work), *pakiao*, make Pablo Manansala an independent contractor. This also is not determinative of the liability or non-liability of the employer for the physical injuries received by the laborer. (*Linaaw and Salome vs. The Mountain Province*, G. R. No. 40093, April 24, 1934; *Montalban vs. Tan Soon*, G. R. No. 4804, July 24, 1942; cited in *Francisco, Labor Laws*, pp. 818; 820.)

As to the finding of the court that the employment of the plaintiff-appellant was merely casual, because it was not continuous, we have already had occasion to decide that it is not the continuity of employment that renders the employer responsible, but whether the work of the laborer is part of the business or occupation of the employer. In the case of *Calupitan vs. Vda. e Hijos de Angel Jose* (40 Off. Gaz. [11th Sup.], p. 31 cited in appellant's brief, p. 12), the deceased laborer was hired only for one trip, yet we held that the work was not purely casual because the trip, was undertaken in two or three times a year for the accommodation of the defendant's customers and may be regarded as part of the employer's activities.

It will be noted that in order that an employer may not be responsible for an injury to a laborer it is necessary that the "employment is purely casual and is not for the purposes of the occupation or business of the employer." Casual means occasional, coming without regularity. The work is purely casual when it is not a part of the business in which the employer is engaged. The clause "is not for the purposes of the occupation or business of the employer" complements and explains the term "purely casual". In a sawmill, for example, if a power unit running the mill gets out of order and a mechanic is contracted to fix the engine, the work of the mechanic would be considered as purely casual, because the reparation of the mill is not the actual work or business of the sawmill but the sawing of lumber. But the piling up of lumber is work directly connected with the business of a lumber yard. Lumber must be sorted and piled up in groups according to sizes to facilitate handling and sale. The piling up of lumber is, therefore, an ordinary part of the Work in a lumber yard.

The case at bar is similar or parallel to that of stevedores unloading cargo from a ship. The fact that the stevedores work under the control of a contractor, who pays them. and that they may seek other work under different carriers, and their work covers a very short period of time as to each carrier, does not exempt the carrier who had employed them in the unloading of the cargo from paying compensation for death or injuries received by them because the unloading of the cargo is an ordinary part of a carrier's duty. To this effect is our decision in the case of *Flores vs. Cia. Maritima*, 57 Phil. 905, thus:

"There is not the least shadow of doubt that the deceased was a laborer in the legal sense. He had been recruited by order of the captain of the ship and he was engaged in the task of unloading the ship's cargo at the time of the accident. There can be no dispute that this kind of work is included in the business in which the

appellee is engaged. That the deceased had been recruited or engaged by a contractor is of no moment because the latter, for purposes of the law, was an agent or representative of the ship's captain who, in turn, represented the appellee."

The foregoing considerations clearly demonstrate that the trial court erred in holding that the plaintiff-appellant's employment was purely casual and not for the purposes of the business of the defendant company and the judgment in relation thereto must be reversed.

Under Section 14 of Act No. 3428, the plaintiff is entitled to receive 60 per cent of his average weekly wages for the period he was incapacitated for labor, exclusive of the first seven days. As his average weekly wage is P36.00, he is entitled to compensation amounting to P321.43. The judgment appealed from is hereby reversed and the defendant-appellee is hereby ordered to pay plaintiff-appellant the sum of P321.43, with costs.

Pablo, Acting C. J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

Judgment reversed.

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