

ESTEBAN CUAJAO, PLAINTIFF AND APPELLANT, VS. CHUA LO TAN, ET AL., DEFENDANTS. CHUA LO TAN, DEFENDANT AND APPELLANT.*G.R. No. L-16298. September 29, 1962*

Ponente: CONCEPCION, J.

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In his complaint, filed on November 29, 1956, plaintiff Esteban Cuajao seeks to recover from defendants Chua Lo Tan and Chua Luan & Co., Inc., the aggregate sum of P2,015.80 allegedly representing hospitalization expenses in the sum of P435.80 and vacation leave pay, as former driver of said defendants, in the sum of P1,580.00, with interest thereon, aside from attorney's fees and costs. Defendants filed separate answer admitting some allegations of the complaint, denying other allegations thereof and setting up several affirmative defenses, as well as a counterclaim for damages. Subsequently, the complaint was, on motion of defendant Chua Luan & Co., Inc., dismissed as regards this defendant. In due course, the Court of First Instance of Manila later rendered a decision rejecting plaintiff's claim for vacation leave and sentencing defendant Chua Lo Tan to pay to plaintiff the sum of P435.80 as hospitalization expenses, with interest thereon, from the filing of said complaint until fully paid, as well as the costs. Both parties have appealed from this decision: plaintiff, insofar as his claim for vacation leave was concerned; and Chua Lo Tan, as regards the hospitalization expenses.

The main facts are not disputed. As the family driver of Chua Lo Tan, plaintiff earned P5.00 a day from August 1, 1951 to November 4, 1956. Plaintiff was hospitalized for nineteen (19) days in 1951, thirteen (13) days in 1952, and three (3) days in 1953, and spent altogether P435.80 for hospitalization and medicine. During the period of his employment, he did not enjoy any vacation leave, which at the rate of four (4) days a month, as provided in Article 1695 of the Civil Code of the Philippines, would have aggregated, if accumulated, to 316 days vacation leave, worth, at the rate of P5.00 a day, P1,580.00. This notwithstanding, the lower court held that plaintiff is not entitled to recover the latter amount, upon the ground of waiver of his right thereto, in view of his failure to demand payment of said vacation leave, as his right thereto accrued.

Plaintiff maintains that there has been no such waiver on his part, he having testified that seasonable demands had been made by him upon Chua Lo Tan. The lower court, however, gave credence to the testimony of the latter to the contrary, and, we believe, correctly, plaintiff having remained in the service of Chua Lo Tan for about six (6) years, despite the fact that Chua Lo Tan had allegedly not heeded said demands. Moreover, we cannot review the findings of fact of said court on this point, plaintiff having stated in the notice therein filed by him that he appealed directly to the Supreme Court, to raise the questions of law specified in his notice of appeal.

Plaintiff insists that his right to vacation leave cannot be waived, but this Court has already held otherwise in *Sun Ripe Coconut Products, Inc. vs. National Labor Union*, 97 Phil., 691 (51 Off. Gaz., 5133-5137), in which we declared:

"The purpose of vacation leave is to afford to a laborer a chance to get a much-needed rest to replenish his worn out energies and acquire a new vitality to enable him to efficiently perform his duties, and not merely to give him additional salary or bounty. This privilege must be demanded in its opportune time and if he allows

the years to go by in silence, he waives it. It becomes a mere concession or act of grace of the employer." (See, also, *Philippine Air Lines, Inc. vs. Balanguit, et al.*, 99 Phil., 486; 53 Off. Gaz. 8349; *Tanguilig, et al. vs. Theo. H. Davis and Co.*, L-9144, May 30, 1959.)

Upon the other hand, the award for hospitalization expenses is based upon Article 1689 of the Civil Code of the Philippines which, Chua Lo Tan maintains, does not justify said award. Said article reads:

"Household service shall always be reasonably compensated. Any stipulation that household service is without compensation shall be void. Such compensation shall be in addition to the house helper's lodging, food, and medical attendance."

The issue is whether the phrase "medical attendance", as used in this provision, includes "expenses of hospitalization". The question is one of first impression in this jurisdiction, although the Court of Appeals has decided it in the negative in *Zamora vs. Sy*, [CA] 52 Off. Gaz., 1513. Neither does it appear to be settled either in the American or in the British jurisprudence. In fact, it would seem that the right to "medical attendance"—exclusive of hospitalization—is purely statutory in character. What is more, even where specifically conferred by statute, said right to medical attendance is deemed subject to the "rule of necessity" (*People vs. Pierson*, 103, 16 N.Y. 921, 68 N.E. 243), in the sense that said right is dependent upon the need for said medical attendance. Hence, the question whether "expenses of hospitalization" are included in "medical attendance", should not, and cannot, be decided in abstract. The determination of the issue must depend upon the circumstances surrounding each case.

In the one at bar, plaintiff has done no more than testify about the fact of his hospitalization and the illness for which he had been treated—namely, hemorrhoid—aside from identifying and presenting the bills allegedly paid by him therefor. There is absolutely no evidence expert or otherwise—regarding the necessity of his confinement in a hospital. He did not even try to prove that Chua Lo Tan had been advised of his (plaintiff's) illness, or of his hospitalization, either prior or subsequently thereto. Needless to say, it is only fair that, except in cases of extreme urgency, the party who may have to defray the cost of medical attendance and/or hospitalization, be given a say—which Chua Lo Tan has not had—in the choice of the physician who will treat the patient and/or the hospital in which he will be confined. In these circumstances, we find that—even if the expenses of hospitalization could, in proper cases, be deemed to be within the purview of "medical attendance", on which we do not express an opinion—the lower court erred in sentencing Chua Lo Tan to pay said expenses of hospitalization.

WHEREFORE, the award for said expenses is set aside, and, with this modification, the decision appealed from is hereby affirmed in all other respects, without costs. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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