

**AGUSTINO ABONG, PETITIONER, VS. THE WORKMEN'S
COMPENSATION COMMISSION, NELLY BALLARES, ANACO-RITA
DAHIL-DAHIL, MANUEL LAHAO-LA-HAO, CONCHITA MONTEROYO,
SHIRLEY LOZADA AND ROSARI...**

G.R. Nos. L-32347-53. December 26, 1973

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

I. STATEMENT OF THE CASE

Appeal by certiorari from the decision of the Work-men's Compensation Commission, awarding compensation to the private respondents.

II. FACTS OF THE CASE

The undisputed facts as borne out by the record are as follows:

Aladino Dionson, Filomeno Umbria, Noel Lahao-lahao, Juanito Monteroyo and Wilfredo Monteroyo and Demetrio Escoreal, all deceased, were members of a fishing outfit, the "IWAG" or more popularly called the "ALEX", owned by the petitioner herein, Dr. Agustino R. Abong.

On May 15, 1966, this fishing outfit set out to sea somewhere off the coast of Northern Negros. The decedents were among the 70 crew members who were loaded on two big bancas, 8 small fishing boats locally known as "lawa-gan" and one towing motorboat. While they were, thus, fishing, typhoon "IRMA" passed along their way, scatter-ing the boats and blowing them far out into the open sea. The tragedy netted eight (8) dead while some sixty (60) men survived the disaster.[1]

As a consequence of the incident seven (7) notices and claims for death compensation were filed with the Bacolod Sub-Regional Office (or Regional Office No. VII) of the De-partment of Labor by herein private respondents on June 1, 1966. A copy of the notices and claims were sent to petitioner Dr. Agustino R. Abong by registered mail at his place of business, but the envelopes containing said notices and claims were returned unclaimed, although petitioner was personally notified thrice. Thereafter, counsel for private respondents on July 6, 1966, and July 14, 1966, respectively, filed an ex-parte motion with the Bacolod Sub-Regional Office of the Workmen's Compensation Commission to de-clare petitioner in default, which motion was granted. There-upon, claimants were allowed to present their evidence. Finding the claims of the private respondents to be allied in nature, the cases were consolidated.[2]

After due hearing before Acting Referee, Bertito D. Dadivas, he rendered on August 1, 1966, a decision grant-ing the claims, the pertinent portions of which are quoted as follows:

"In the light of the testimonies of herein claimants and their principal witness, Filomeno Pason, who is a survivor of that unfortunate tragedy and who personally witnessed the deaths of all eight (8) deceased

work-ers of respondent, there is no doubt at all that their deaths arose out of and in the course of their employ-ment as 'washing' or helpers and light tenders of respondent Dr. Agustino R. Abong. Under Sections 2 and 8 of the Workmen's Compensation Act, as amended, the deaths of above deceased persons are, therefore, compensable.

"In granting this award - it should be considered that two of the eight de-ceased workers - Noel Lahao-lahao and Wilfredo Monteroyo - were minors at the time of employment. Respond-ent herein has also failed to submit a report of this accident 'as soon as pos-sible after the occurence of an injury resulting in absence from work for a day or more'; nor registered himself or his business enterprise in accord-ance with Sections 37 and 56 of the Workmen's Compensation Act, other-wise known as Republic Act No. 3428.

"Section 4-A of the Workmen's Compensation Act provides for payment of an additional compensation equal to fifty percentum of the compensation to be awarded, in case of failure of the employer to comply with any order, rule or regulation of the Workmen's Compensation Act in the event of the death of the employee or employees concerned.

"Wherefore, under the law, the claimants are entitled to compensation and respondent is hereby ordered:

"1.

To pay to claimant, ANACORITA DAHIL-DAHIL, the sum of SIX THOU-SAND PESOS (P6,000.00), plus 50% penalty in the sum of THREE THOUSAND PESOS (P3,000.00), plus the further sum of TWO HUNDRED PESOS as burial expenses, through this Office;

"2.

To pay to claimant, NELLY BAL-LARES, the sum of SIX THOUSAND PE-SOS (P6,000.00) plus 50% penalty in the sum of THREE THOUSAND PESOS (P3,000.00) or the total sum of NINE THOUSAND PESOS (P9,000.00) plus the further sum of TWO HUNDRED PESOS (P200.00), as burial expenses through this Office;

"3.

To pay to claimant, MANUEL LAHAO-LAHAO, the sum of TWO THOUSAND SIX HUNDRED PESOS (P2,600.00) plus 50% penalty in the sum of ONE THOUSAND THREE HUNDRED PESOS (P1,300.00), or the total sum of THREE THOUSAND NINE HUNDRED PESOS (P3,900.00), plus burial expenses in the sum of TWO HUNDRED PESOS (P200.00), through this Office;

"4.

To pay claimant, SHIRLEY LOZADA, the sum of FIVE THOUSAND ONE HUNDRED TWENTY PESOS (P5,120.00) plus 50% penalty in the sum of TWO THOUSAND FIVE HUND-RED SIXTY PESOS (P2,560.00) or the total sum of SEVEN THOUSAND SIX HUNDRED EIGHTY PESOS (P7,680.00), plus burial expenses of TWO HUNDRED PESOS (P200.00), through this Office;

"5.

To pay to claimant, ROSARIO ALOVA, the sum of SIX THOUSAND PESOS (P6,000.00) plus 50% penalty

in the sum of THREE THOUSAND PE-SOS (P3,000.00) or the total sum of NINE THOUSAND PESOS (P9,000.00), plus the further sum of TWO HUNDRED PESOS (P200.00) for burial expenses, through this Office;

"6.

To pay to claimant, CONCHITA MONTEROYO, the sum of SIX THOU-SAND PESOS (P6,000.00) plus 50% penalty in the sum of THREE THOU-SAND PESOS (P3,000.00) representing compensation for the death of her hus-band, Juanito; and TWO THOUSAND SIX HUNDRED PESOS (P2,600.00) plus 50% penalty in the sum of ONE THOU-SAND THREE HUNDRED PESOS (P1,300.00) or the total sum of THREE THOUSAND NINE HUNDRED PESOS (P3,900.00) representing compensation for the death of her son, Wilfredo; plus the further sum of FOUR HUNDRED PESOS (P400.00) for burial expenses of Juanito and Wilfredo Monteroyo; or a grand total for these two cases of THIRTEEN THOUSAND THREE HUNDRED PESOS (P13,300.00), through this Office;

"7.

To pay to counsel for claim-ants, Atty. Angel F. Lobaton, Sr. the sum of TWO THOUSAND SIX HUNDRED FORTY-FOUR PESOS (P2,644.00) as attorney's fees; and

"8.

To pay to the Workmen's Com-pensation Fund, through this Office, the sum of FIVE HUNDRED TWENTY PESOS (P520.00), pursuant to Section 55 of the Workmen's Compensation Act, as amended."[3]

On September 14, 1966, herein petitioner filed a (1) motion to set aside the order declaring him in default and a (2) separate motion to set aside the Decision of the Acting Referee, to which seasonable oppositions were interposed by private respondents on September 26, 1966.[4]

On October 25, 1966, Acting Referee Bertito D. Dadivas issued an Order denying both motions of petitioner.[5] A motion for reconsideration was then filed by petitioner on November 4, 1966, raising, inter alia, the fundamental question of jurisdiction and denial of due process.[6] An opposition thereto was interposed by private respondents on November 10, 1966.[7]

On March 23, 1970, Associate (Medical) Commissioner Herminia Castelo-Sotto, M.D., of the Workmen's Compen-sation Commission rendered a decision affirming the earlier decision of the referee.[8]

On April 17, 1970, petitioner sought the review of the decision of Associate (Medical) Commission Castelo-Sotto by the respondent Workmen's Compensation Commission sitting en banc, but the latter however affirmed the deci-sion with the modification that the 50% additional compen-sation earlier imposed as penalty was eliminated, in its resolution of July 7, 1970.[9]

Dissatisfied with the verdict, petitioner came to this Court for reversal of the adverse decision against him.

III. ISSUES OF THE CASE

In his brief before this Court the petitioner imputes five (5) errors committed by respondent Workmen's Com-pensation Commission, viz:

- THE RESPONDENT COMMISSION ERRED AND/OR ACTED WITH GRAVE ABUSE OF

DISCRETION IN HOLDING THAT THERE WAS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND THE DECEASED CREW MEMBERS OF THE "IWAG" FISHING OUT-FIT.

- THE RESPONDENT COMMISSION ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT DECLARING ITSELF WITHOUT JURISDICTION OVER THE CLAIMS FOR DEATH BENEFITS.
- THE RESPONDENT COMMISSION ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE DEATH OF THE DECEASED CREW MEMBER IS COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT, AS AMENDED, IN FINDING PETITIONER LIABLE FOR THE PAYMENT OF SUCH COMPENSATION.
- THE RESPONDENT COMMISSION ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER HIS RIGHT TO BE HEARD.
- THE RESPONDENT COMMISSION ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN GRANTING EXCESSIVE AWARDS TO THE CLAIMANTS.

The pivotal issue requiring determination is who is the statutory employer of the decedents and who should be liable for their death compensation. Nevertheless, We take up the merits of the points raised ad seriatim.

IV. DISCUSSION

As regards the first three interrelated assigned errors, there is a faint attempt by petitioner Agustino R. Abong to evade liability by advancing the theory that he had absolutely no voice or intervention in the choice, hiring, dismissing, control, supervision and compensation of the fishermen-crew members, and that these matters, which are the essence of employer-employee relationship, are the sole responsibility of the team-leader, Simplicio Panganiban, and the team-members or crew pursuant to their Agreement (Exhibit "G").^[10]

The contention of petitioner is devoid of merit. It should be pointed out that this case is an appeal from the decision of the Workmen's Compensation Commission. And in this class of proceedings, only questions of law should be raised, the findings of facts made by the Commission being conclusive and binding upon this Court.^[11] Although this Court is authorized to inquire into the facts, it only does so when the conclusions therefrom are not supported by the evidence. In the case at bar, however, this Court finds the findings of fact made by Associate (Medical) Commissioner Herminia Castelo-Sotto, M.D., and concurred in by the Commission en banc to be fully supported by the evidence on record which clearly points out that petitioner Agustino R. Abong is the statutory employer of the decedents. In ruling for the deceased workers, the Commission said:

"x x x After a careful review of the evidence and the records, We are inclined to agree with the proposition, advanced by the claimant's counsel that there existed an employer-employee relationship between the respondent and the decedents. Not only that the said deceased workers worked for and in the interest of the business of the herein respondent. But that they were subject to the control, supervision, and dismissal of the respondent, thru its agent, Simplicio Panganiban, the alleged 'partner' of herein respondent. And while these workers were paid in kind, or by 'pakiao basis' still that fact did not alter the character of their relationship with the respondent as employees of the latter. The intervention of Simplicio Panganiban, in this case, is merely that of an agent or intermediary between the owner of the fishing boat and the members of its crew. In short, Panganiban is merely the person charged by Dr. Abong to recruit the said fishermen to work for and for the enforcement of the business venture of herein respondent.

"The proposition, on the other hand, of the respondent's counsel, that Dr. Abong was not the employer of the decedents, simply because of an alleged partnership agreement, executed on March 23, 1962, between the

respondent Dr. Agustino R. Abong, as 'Financier' and Simplicio Panganiban, as his 'Teamleader', is intended certainly as a very clever device designed primarily to exempt the employer from answering any liability under the provisions of the Workmen's Compensation Act, as amended.

"The said contract of partnership, while it may be considered as valid and lawful, between the signatories thereto, the respondent Dr. Abong and his 'partner' or agent, Simplicio Panganiban, nowhere in that said agreement did the decedents or their heirs in interests take any participation or manifested their conformity to the said covenant. Thus, even if we consider this contract as valid and enforceable between them, it cannot bind the non-signatories thereto, like the deceased fishermen.

"The case invoked by the respondent (Pajarillo, et al., v. Social Security System, G. R. No. L-21930, August 31, 1966) can not be legally applied in the instant case, for the simple reason that the facts in that aforesaid case are not the same as those in the case at bar. Moreover, we are of the view, that the said Pajarillo case may be good only as far as the Social Security System, for purposes of membership thereat, is concerned and is not readily applicable to cases involving Workmen's Compensation claims as the one at bar. For here, the contract of partnership, if valid, only binds the parties thereto, and the decedents in this case, as the records will show, were never a party signatory thereto. How then can we tie them to that partnership agreement when it only holds the two-party, Abong and Panganiban, as the sole 'partners' in that agreement?

"Furthermore, even if Panganiban will be considered as an independent contractor, which he is not, his position as such will not relieve the employer, respondent Abong, from his liability under the Act. It is well-defined in the Act, that 'an employer includes every person or association of persons, incorporated or not, public or private, and the legal representatives of the deceased employer. It includes the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there.' (Section 39, paragraph [s], Workmen's Compensation Act, as amended).

x x x x .[12]

As pointed out by the Commission's findings, the fundamental bases showing that petitioner, Dr. Agustino R. Abong, is the employer, are present, namely, the selection and engagement of the employee; the payment of wages; the power of dismissal and the employer's power to control the employees' conduct.[13] These powers were lodged in petitioner Abong, thru his agent, Simplicio Panganiban, whom he alleges to be his "partner". On this score alone, the petition for review must fail. It is well-settled that employer-employee relationship involves findings of fact which are conclusive and binding and not subject to review by this Court.[14]

Petitioner also argues that he was denied his right to be heard.[15] It is contended that petitioner was not properly notified of the proceedings against him.

The assigned error merits scant consideration. Proper notices and claims for compensation together with a formal letter to accomplish WCC Form No. 3 - Employer's Report of Accident or Sickness - were duly served upon petitioner at his place of business in Sagay, Negros Occidental.[16] His failure to claim his mail and to answer the claims or controvert the same, and to accomplish WCC Form No. 3, are fatal errors which cannot be repaired at this time. It needs no argument to show that service by registered mail is deemed completed upon petitioner's failure to claim his mail from the post office within five (5) days from the first notice sent by the postmaster.[17] The further contention that the "notices" should have been sent to his place of residence in Bacolod City is of no moment either. Section 26 of Republic Act No. 3428, as amended, provides:

"SEC. 26. Delivery of notice and claim x x x. The notices shall be served by personal delivery or by sending it by registered letter addressed to the employer at his last known residence or at his place of business. (Emphasis supplied)

Clearly, there was no error in sending petitioner's mails to his place of business at Sagay, Negros Occiden-tal.

And now We come to the last point. It is contended that respondent Commission erred in granting excessive awards to the claimants.

We find this contention incorrect. The Commission's findings relative to the wages of the decedents are findings of facts which are not open to review by this Court as the same are supported by substantial evidence on record.[18] We, therefore, find no cogent reason to disturb the Com-mission's findings on this point.

V. CONCLUSION

Under the circumstances, private respondents' claims should be upheld not only because they are supported by the evidence on record, but also because the Workmen's Compensation Act is a social legislation designed to give relief to the workman who has been the victim of an acci-dent in the pursuit of his employment, and the law must be liberally construed to attain the purpose for which it was enacted.[19] Moreover, this Tribunal finds no reason in this case to depart from the rule which limits its appellate jurisdiction to the review of errors of law only, accepting as conclusive the factual findings of the Work-men's Compensation Commission which in this case are supported by substantial evidence.

VI. JUDGMENT

ACCORDINGLY, the assailed decision is hereby fully affirmed.

Costs against the petitioner.

Makalintal, C.J., Ruiz Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] Record, p. 20.

[2] Record, pp. 19-20.

[3] Record, pp. 31-33.

[4] Id., p. 34; 37; 41; 47.

[5] Id, p. 57.

[6] Id., pp. 58-65.

[7] Id., pp. 66-72.

[8] Record, pp. 82-90.

[9] Id., pp. 83-90; 92-93.

[10] Record, p. 13.

[11] Bernardo v. Pascual, 109 Phil., 936, 939.

[12] Record, pp. 79-81.

[13] Id., De los Reyes v. Espineli, 30 SCRA 574.

[14] Id., R.F. Sugay & Co. Inc. v. Reyes, et al., 30 SCRA 705.

[15] According to the constitutional provision in force at the time the hearing took place: "No person shall be de-prived of life, liberty, or property without due pro-cess of law, nor shall any person be denied the equal

protection of the laws." Article III, Section 1, par. 1. Such a provision, identically worded, is now found in Section 1 of Article IV of the New Constitution.

[16] Record, p. 14.

[17] Rule 13, Sec. 8, Rules of Court.

[18] *Bardwill Bros. v. Philippine Labor Union*, 70 Phil., 672, 673; *International Oil Factory v. Martinez, et al.*, 109 Phil. 553, 554.

[19] *Abana v. Quisumbing*, 22 SCRA 1278, 1283; *Batangas Transportation Co. v. Perez*, 11 SCRA 793, 799; *Francisco v. Consing*, 63 Phil. 354, 360.

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