

VISAYAN STEVEDORE TRANSPORTATION CO., PETITIONER VS. THE WORKMEN'S COMPENSATION COMMISSION, ET AL., RESPONDENTS.

G.R. No. L-22135. December 27, 1963

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Appeal by certiorari from a resolution of the Workmen's Compensation Commission in the case of Exaltation Barrion et al. vs. Visayan Stevedore Transportation Company (WCC Case No. R07-757).

It appears that Graciano Gutana was a laborer of petitioner in its stevedoring business at the Pulupandan wharf in Occidental Negros, at a daily salary of P4.60. Sometime in May 1958, petitioner undertook the loading of sugar on the Japanese ship "Hiyeharu Maru" then anchored about two miles from the coast of Pulupandan, and Gutana was one of the more than seventy of its laborers assigned to do the loading.

In the afternoon of May 19, 1958, after having rendered the usual eight hours of work, the laborers were given time off to take their evening meal before working overtime, as it was the purpose of the employer to finish the loading of the sugar as soon as possible. After taking their meal on board the ship, Gutana and some of the laborers had to answer the call of nature by the left side of a barge tied along the right side of the Japanese ship, in view of the insufficiency of the sanitary facilities on board. After relieving himself, and as he was standing and buttoning up his pants, the raft "Narwhal" came along the right side of the barge and bumped it, causing it to hit the right side of the Japanese vessel. As a result, Gutana was pinned by the end of the hatch cover of the barge against the side of the vessel, thereby suffering physical injuries which resulted in his death.

Petitioner's foreman at the premises immediately notified the latter of the fatal accident, and petitioner shouldered all the funeral expenses.

A claim for compensation for the death of Gutana was filed by the widow of the deceased and their children on September 1, 1958, and petitioner controverted it in its answer filed on the 29th of the same month.

After hearing, the Regional Office of the Department of Labor, Bacolod City, rendered a decision awarding death compensation to the claimants in the total amount of P4,000.00, plus attorney's fees and costs. Petitioner appealed to the Workmen's Compensation Commission which, in turn, affirmed the decision just mentioned in its resolution of October 15, 1963, the latter being now the subject of appeal.

The first question raised by petitioner is that the claim for compensation had prescribed having been filed more than three months after Gutana's death. We find petitioner's contention to be without merit. The case is covered by the provisions of Section 24, Workmen's Compensation Act No. 3428, as amended, which dispenses with, the requirement of filing a claim for compensation if the employer had voluntarily made compensation payments. Under Section 8 of the same act, burial expenses are considered as part of the death benefits due to the heirs of a deceased laborer. It appears in this case that petitioner had voluntarily paid the burial expenses in connection with the burial of Gutana. Consequently, the late filing of the claim for compensation is not fatal.

Petitioner likewise contends that the death of Gutana was due to his notorious negligence. On this matter, we are of the opinion, as was the Workmen's Compensation Commission, that the facts established by the evidence do

not support petitioner's contention. Due to the number of laborers engaged in the loading works the sanitary facilities on board the "Hiyeharu Maru" were gendered inadequate, thus compelling some of the laborers to answer the call of nature by going down a barge tied along the right side of the ship. The deceased Gutana was among those who was forced to resort to this uncomfortable way of relieving himself. Moreover, in the circumstances of this ease, it is but logical to consider the barge as an extension of the premises where the laborers were working. As already stated, they, took their evening meal on board the ship and were supposed to resume their work (overtime work) a reasonable time thereafter. As, because of this, they were not free to leave the vessel, the accident must be deemed to be one arising out of, or in the course of employment.

Promises considered, we find the petition under consideration to be without merit, and the same is hereby dismissed.

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

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