

**NOLI DEMONTEVERDE, FOR HERSELF AND IN BEHALF OF HER
MINOR CHILD, NOCELYN DEMON-TEVERDE, PETITIONER, VS.
WORKMEN'S COMPENSATION COMMISSION AND A-1 PRIME
SECURITY AGENCY (MR. MAUR...**

G.R. No. L-41695. September 12, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition to review the September 30, 1975 decision of the respondent Commission in WC-Case No. R04-144088, reversing the November 28, 1973 Award of the Acting Chief Referee of Regional Office No. IV of the Department of Labor.

Petitioner Noli Demonte Verde filed on August 20, 1973 a notice and claim for death benefits with the Workmen's Compensation Unit of the Department of Labor, Regional Office IV, for the death of her husband, Zenon Demonte Verde, who was employed as a security guard with respondent employer when he died in a vehicular accident at around 7:05 in the evening of June 8, 1973 in front of Christ the King Compound at E. Rodriguez Blvd., Quezon City, approximately 500 meters from the Ysmael Compound, his place of assignment. Petitioner stated in her claim that "Deceased from his place of work at the Ysmael Compound and crossing España Ext., Quezon City was bumped by a car causing his death" (p. 103, WCC rec.).

On November 2, 1973, respondent employer filed its Employer's Report of Accident or Sickness and therein controverted the death benefits claim of petitioner on the ground that "x x at the time of accident deceased Zenon Demonte Verde was off duty. His working duty (is) from 7:00 A.M. to 3:00 P.M. x x." (P. 96, WCC rec.). Respondent employer stated in the aforesaid report that it came to know of the accident on June 9, 1973.

On November 28, 1973, the Acting Chief Referee issued an Award thus:

"It appearing, upon perusal of the records, that the deceased Zenon Demonte Verde husband of claimant-widow Noli G. Demonte Verde and father of Nocelyn Demonte Verde succumbed on June 8, 1973 to personal injury (meningeal hemorrhage with skull fracture, traumatic) sustained due to a vehicular accident which arose out of and in the course of employment as Security Guard (with an average weekly wage of P56.00) of the respondent A-1 Prime Security Agency; and it appearing further that the respondent failed to controvert the claimants' right to compensation within 10 days from knowledge thereof, pursuant to Section 45 of Act 3428, as amended, resulting, as it did, in the forfeiture of his non-jurisdictional defenses and ultimate admission of the compensability or work-connection of the decedent's death, an outright award in favor of the latter is, under these conditions, legally warranted.

"Under Sections 8(b) and 10 of the Act, as amended, the claimants who were wholly dependent upon deceased at the time of the latter's death, are entitled to 50% of the average weekly wage of said deceased for a period of 208 weeks. Fifty percentum of the deceased's average weekly wage of P56.00 (P8.00 daily wage x 7 working days) which is reduced to P50.00 (maximum average weekly wage allowed in death case for

computation purposes), equals P25.00 and for 208 weeks, the claimants should receive the sum of FIVE THOUSAND TWO HUNDRED (P5,200.00) PESOS, plus P200.00 burial expenses x x" (p. 92, WCC rec.).

On December 27, 1973, respondent employer, which received a copy of the aforesaid Award on December 22, 1973, filed a motion for reconsideration (p. 85, WCC rec.) contending that it timely filed its controversion; that the cause of the death of the petitioner's husband was not work-connected; and that the respondent was not served with notice of hearings despite the fact that it timely filed its controversion (pp. 85-87, WCC rec.).

On July 17, 1974, the Acting Chief Referee of the Regional Office No. IV, Department of Labor ruled that the motion for reconsideration was a useless piece of paper because the same failed to show that a copy of the motion was served on the other party as required by Section 8, Rule 15 of the New Rules of the Workmen's Compensation Commission in relation to Section 6, Rule 15 of the Revised Rules of Court; and consequently declared the award as final and executory and accordingly directed the respondent employer to remit to his office the amounts stated in the Award (p. 84, WCC rec.).

Thereafter, respondent employer filed a motion for reconsideration but the same was denied for lack of merit by the Acting Chief Referee who however ordered the entire records of the case to be elevated to the respondent Commission for review, pursuant to Section 8, Rule 15 of its rules.

On June 26, 1975, the respondent Commission issued an order setting the hearing of the case on July 17, 1975. The order read as follows:

"To enable this Commission to act intelligently on respondent's motion for reconsideration dated December 27, 1973 specifically as to the ground invoked therein that the deceased met a vehicular accident when he was already off-duty and the situs of the accident was almost a kilometer away from his place of work in relation to what is alleged in the notice and claim for compensation stating therein that deceased from his place of work at the Ysmael compound and crossing España Ext., Quezon City, was bumped by a car causing his death, this case is called for hearing on July 17, 1975 (Thursday) at 9:30 o'clock in the morning at the Office of this Commission located at 5th Floor, Hizon Building, 29 Quezon Blvd. Ext., Quezon City, before Atty. Guillermo R. Viojan of the Legal Division."

Thereafter the hearing as ordered was conducted and on September 30, 1975, a decision was rendered by the respondent Commission setting aside the Award and dismissed the claim for lack of merit, thus:

"x x x Records show that respondent filed its employer's Report with the proper compensation unit of November 2, 1973 stating therein that claimant's claim was being controverted on the ground that at the time of the accident which resulted in the death of the deceased he was off duty, his working hours in the day of the accident being from 7:00 A.M. to 3:00 P.M. as evidenced by the deceased's time card and the police investigation report. It is upon this particular issue that this Commission called the case for hearing. During the hearing conducted by this Commission, both parties represented by their respective counsels, presented their respective evidences in support or in avoidance of the claim. In a nutshell, the evidence presented by respondent, through the testimony of Consolacion Flores, treasurer of respondent agency whose main duty was to pay the security guards of the respondent upon submission of the corresponding daily time records, and based on the daily time records of the deceased and the other security guards who took over the guards duties upon completion of deceased's tour of duty, marked and identified as Exhibits '4' to '12', is shown as follows: That the tour of duty of the late Zenon Demonteverde on June 8, 1973 and week prior thereto was from 7:00 A.M. to 3:00 P.M. after which he was relieved by Security Guard Genaro Urbano whose duty was from 3:00 P.M. to 11:00 P.M., and there-after by Security Guard Isaias Antas who assumed duty from 11:00 P.M. to 7:00 the following morning; that the deceased met the accident minutes past 7:00 P.M. on June 8, 1973 as per police investigation report, copy of which was presented during the hearing and adopted by both claimant and respondent as Exhibits 'A' and '1', respectively; and that the place of the accident was in the highway used as

thoroughfare by the general public which as per Exh. 'A' was at E. Rodriguez Sr. Boulevard in front of Christ the King Compound, Quezon City. It was further adduced during the hearing that the deceased was assigned as guard in the Ysmael compound immediately before the accident which is only less than a kilometer distant to the place where the accident happened as admitted /herself/ by the claimant, thus as established, the accident occurred beyond the premises where the deceased was assigned as guard on that day of the accident.

"Claimant's evidence was to the effect that Zenon Demonte Verde rendered guard duty not only from 7:00 A.M. to 3:00 P.M. but from 7:00 A.M. to 7:00 P.M. on July 8, 1973 and that his guard duty up to 7:00 P.M. although not recorded in the time record, was recorded in the respondent's record book for extra hours of guard duties which is termed as 'cover-up', as testified to by claimant's witness, Reynaldo Galicha, also a security guard of respondent and brother-in-law of the deceased. The same witness admitted that the deceased met the accident at E. Rodriguez St., Quezon City, approximately about 500 meters from the Ysmael compound where the deceased was guarding.

"The most decisive factor to be considered in resolving the compensability of this claim is the time and place surrounding the occurrence of the fatal accident that caused the death of the deceased. The issue is whether the deceased rendered guard duty from 7:00 A.M. to 7:00 P.M. on June 8, 1973 as pointed out by claimant and her witness or only from 7:00 A.M. to 3:00 P.M. on the same day.

"In off the premises accidents, the general rule is 'in the absence of special circumstances, an employee injured in, going to, or coming from, his place of work is excluded from the benefits of the Workmen's Compensation Act. The exceptions are:

"1. Where the employee is proceeding to or from his work on the premises of his employer;

"2. Where the employee is about to enter or about to leave the premises of his employer by way of the exclusive or customary means of ingress or egress (Proximity rule);

"3. Where the employee is charged, while on his way to or from his place of employment or at his house, or during his employment, with some duty or special errand connected with his employment; and

"4. Where the employer, as an incident of the employment, provides the means of transportation to and from the place of employment (Schneider, Workmen's Compensation Text, Vol. 8, pp. 7-8).

"In the case at bar, it was established both by the evidence presented by claimant and respondent that Zenon Demonte Verde was already off from his guarding duties at 7:00 P.M. on June 8, 1973 and was on his way from his guarding station at the Ysmael compound and allegedly crossing E. Rodriguez Sr. Blvd., Quezon City from the Puzon Building towards Christ the King compound when he became a victim of a vehicular accident. The time was about 7:00 P.M.. Even assuming that the deceased was only off from work at 7:00 P.M. and at 7:05 P.M. he was already on the highway which was about 500 meters away from his place of employment where he met the fatal accident, the cold fact remains that he met the accident when he was already off duty and about 500 meters from his place of work, on a public high-way used as thoroughfare by the public in common, and no longer engaged in something connected with his guarding duties or at least incidental thereto. A careful study of the exceptions to the general rule in off the premises accident, as afore-enumerated will show that not one of these exceptions would apply to the case of the deceased as to include him in pursuance therewith. Upon the other hand, respondent, in order to prove that the deceased was no longer on duty after 3:00 P.M. on the day of the accident was able to present the corresponding daily time records of the duties rendered by the respondent's security guards on the day of the accident and weeks prior thereto while claimant relies only on the uncorroborated testimony of the deceased's co-worker and the claimant's information to that effect, without presenting documentary evidence showing that the deceased's guarding duties on June 8, 1973 lasted up to 7:00 P.M..

"Viewed from the foregoing, we find that claimant failed to present a valid cause of action as against the

respondent and for such failure, much as we pity the claimant, we find no valid and justifiable reason to allow an award of death compensation to the claimant. To rule otherwise would be to make the employer an insurer of the life and limbs of the employee even where it is shown, as in the instant case that the employee was injured when he was already off duty and while he was at place no longer within the vicinity of the employer's area of employment responsibility" (pp. 28-31, rec.).

Hence, this petition.

The records patently show, and We so rule, that the respondent Commission committed a grave abuse of discretion in reversing the Award of the Acting Referee, which is anchored on law and the controlling jurisprudence on workmen's compensation.

1. The Acting Referee made a finding in his Award, that the death compensation claim was not timely and effectively controverted by the respondent employer. Respondent employer, by its own admission in its employer's report filed only on November 2, 1973, had knowledge of the accident that caused the death of its employee, Zenon Demonteverde on June 9, 1973, or a day after the accident. Section 37 of the Workmen's Compensation Act, as amended in relation to Section 45 thereof, requires that such report be filed either on or before the fourteenth day of disability or within ten days after it has knowledge of the alleged accident. And by decisional doctrine, failure on the part of the employer to comply with the aforesaid constitutes a renunciation of the right to controvert the claim.
2. An employer suffering from the disastrous effects of non-controversion may regain his full standing in the Commission only after his right to controvert is reinstated by the Commission on the basis of reasonable grounds for the failure to make the necessary reports to be submitted by the said delinquent employer (Section 45, Workmen's Compensation Act, as amended). The records do not show that respondent employer availed of this remedy.
3. Consequently, the respondent Commission had no more authority to order the reopening of the case so as to allow the respondent employer to prove its defense that the death of deceased Zenon Demonteverde was not compensable as the accident that caused the same was not work-connected, having taken place outside its compound and after the deceased's working hours. For as aforestated such defense has been foreclosed by the failure of respondent employer to timely controvert the compensation claim. In the 1976 case of *Security Services Unlimited Inc. vs. Workmen's Compensation Commission* (69 SCRA 269-275), the uncontroverted claim of the heirs of the deceased security guard was sustained by this Court despite the contention of the therein petitioner employer that the death of the aforesaid security guard "happened while not in the performance of his duties as an employee and not in connection with the employment," thus:

"To Our mind there exists but infinitesimal doubt that the respondent Commission lawfully acquired jurisdiction over private respondents' claim for death benefits against the petitioner-employer because it is not contested, even by petitioner, that at the time of Rogelio Umpad's death on December 24, 1972, he was employed as a security guard of the respondent, or stated otherwise, employer-employee relationship existed at the time of Umpad's death. Petitioner's contention that Umpad's death happened while not in the performance of his duties as an employee and not in connection with the employment are proper and legal defenses to evade the claim filed against it, and they are proper defenses that may be raised before respondent Commission, non-jurisdictional in nature or defenses that impliedly accepts the jurisdiction of the entity before whom they are raised to evade liability.

"The Workmen's Compensation Act, as amended, in Section 45, provides:

"In case the employer decided to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with

the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with this requirement shall constitute a renunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate the right to controvert the claim (*Italicized for emphasis*).'

"Act 3428 being in the nature of social legislation there is no question that its provision must be interpreted liberally in favor of employees because the law is intended to protect their rights. The aforequoted provision x x succinctly provides that the failure on the part of the employer x x x to controvert the right to compensation within fourteen days from disability or ten days from knowledge of the accident shall constitute a renunciation of his right to controvert. The period provided by law may be of short duration but it must have been intended to protect employees from subsequently concocted defenses upon advice of legal counsel they (employers) could well afford to pay and which may be raised by the employer simply to defeat or delay the legitimate claims of employee. When petitioner failed to comply with the aforementioned requirement of the laws by its own act it waived its right to controvert the claim, hence with its presumed knowledge of the law, it voluntarily waived its right to due process (hearing and presentation of evidence to prove its defenses). Petitioner has nobody to blame but itself for its failure to controvert the claim on time.

"This Court already held that failure to submit the required report (Sec. 37, Act 3428) by the employer may mean 'constructively admitting that it is compensable' and 'constitutes a renunciation of the right to controvert the claim' (Gen. Shipping Co. Inc. vs. WCC and Vda. de Ricardo, G.R. No. L-14936, July 30, 1960)" [69 SCRA 269 (1976); italics supplied; see also Vda. delos Santos vs. WCC, 88 SCRA 134 (1979); Contratista vs. Artex Development Co., Inc., 79 SCRA 624 (1977); Delgado Brothers Inc. vs. WCC, 75 SCRA 343-349 (1977); and Bael vs. WCC, 75 SCRA 181, 182-185 (1977)].

4. Finally, it must be pointed out that the deceased, contrary to the findings of the respondent Commission, rendered service on that fateful day up to seven o'clock in the evening. A co-worker of his, Reynaldo Galicha, testified that the late Zenon Demonteverde rendered guard duty not only from 7:00 A.M. to 3:00 P.M. but also from 3:00 P.M. to 7:00 P.M., which, although not reflected in respondent employer's time record, was recorded in its record book for extra hours of guard duties termed as "cover-up." This damaging testimony of the witness which implies something illegal, was never directly rebutted by the respondent employer. Moreover, respondent employer never presented as witness the security guard who it claimed relieved deceased Zenon Demonteverde at 3:00 P.M. of June 8, 1973.

While the above findings may not alter the cold facts that the deceased met his death after seven o'clock in the evening, or immediately after he was off from work and outside the premises of the respondent employer, WE nevertheless passed upon them in order to point out the attempt of the respondent employer to widen the time-gap between the accident and the deceased's off-duty so as to firm up its defense of non-compensability.

Indeed, the Workmen's Compensation Act provided for a short period as aforestated within which the employer may controvert the compensation claim "so as to protect employees from subsequently concocted defenses upon advice of legal counsel they (employers) could well afford to pay and which may be raised by the employer simply to defeat or delay the legitimate claims of employees" (Security Unlimited Services vs. WCC, *supra*). In the instant case, respondent employer filed its controversion only on November 2, 1973 or almost five (5) months after the accident that killed its employee, Zenon Demonteverde.

WHEREFORE, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY REVERSED AND SET ASIDE, AND RESPONDENT EMPLOYER A-1 PRIME SECURITY AGENCY IS HEREBY ORDERED

1. TO PAY PETITIONERS THE SUM OF FIVE THOUSAND TWO HUNDRED (P5,200.00) PESOS AS DEATH BENEFITS AND TWO HUNDRED (P200.00) PESOS AS BURIAL EXPENSES;
2. TO PAY ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT (10%) OF THE TOTAL AWARD; AND
3. TO PAY THE SUCCESSOR OF THE DEFUNCT COMMISSION, ADMINISTRATIVE, FEES.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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