

**CONRADO PAEZ, PETITIONER, VS. THE WORKMEN'S
COMPENSATION COMMISSION AND ISABELA JAPONES, IN BEHALF
OF HER MINOR CHILDREN RODOLFO, BOLANDO AND JAIME, ALL
SURNAMED BARAWID, RESPON...**

G.R. No. L-18438. March 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On October 30, 1957, the heirs of Marciano Barawid, presented with the Department of Labor, Regional Office No. 3, a complaint for compensation. A Motion to Dismiss the complaint was presented on January 28, 1958, on three grounds to wit—

- The allegations do not constitute a cause of action;
- Lack of jurisdiction; it appearing that the capital of Paez is very much less than P10,000.00 and that his business of buying and selling palay is not hazardous nor deleterious to employees; and
- The claim is barred by the statute of limitations.

On March 10, 1958, Hearing Officer Juan M. Gerardo, issued an Order, the dispositive portion of which states—

"Without prejudice to the right of the claimant to file suit against the respondent under Employer's liability Act (Act No. 1874) before the Courts as directed by Sec. 4Z, of the Workmen's Compensation Act, the instant claim is hereby declared DISMISSED for want of jurisdiction of the Regional Office to take cognizance of the same."

Complainant Isabela Japones, presented a Petition for Review of the above Order. Associate Commissioner Jose Sanchez, on January 9, 1959, remanded the case for such action as is consistent with the Order, making the following observations—

"* * * The Hearing Officer is correct in his finding that the respondent regularly used a truck owned by him in his business of buying palay. But this is precisely the reason for the logical conclusion that, although the business of buying palay is not in the enumeration contained in Section 42 of the Act, which is not exclusive, said business should nevertheless be considered 'hazardous or deleterious' as this phrase is meant to be understood in the Act.

Moreover, the Hearing Officer found that the respondent used his truck for transporting not only the palay he purchased but also that of the other persons engaged in the same or similar business as his; and that in all these instances he charged freight for such transportation. Respondent must, therefore, be deemed engaged in the business of transporting goods which causes him to fall under sub-paragraph 1, of Section 42 of the Act.

In view of the foregoing, we hold that the respondent comes within the coverage of the Workmen's Compensation Act, as amended, either in his business in buying palay, or in his enterprise of transporting goods; hence, the Regional Office No. 3 Manila, has jurisdiction to take cognizance of the claim for

compensation. filed against him . by the claimant."

and remanding the case for further investigation and/or hearing on the merits. The Hearing Officer, received evidence, and rendered the same decision, dismissing the case, which was again reversed by the same Associate Commissioner who ordered Paez—

- To pay the claimants, thru this Commission, the. sum of THKBE THOUSAND FOUit HUNDRED FIFTY-FIVE and 71/100 (r3,4bo.71j PESOS as Death benefits;
- To reimburse the claimant, thru this Commission, the sum of P150.00 for burial expenses;
- To pay the amount of TWO HUNDRED FIFTY-NINE and 18/100 (F259.18) PESOS as attorney's fees pursuant to Section 8, Rule 26, of the Rules of the Workmen's Compensation Commission and Article 2208 (8) of the new Civil Code; and
- To pay the Commission the sum of P35.00 as fees pursuant to Section 35 of the Act."

After the denial of a motion for reconsideration, the case was brought to this Court, for review.

Paez and his wife were on and sometime before 1953, engaged in the business of buying palay for the King Tohg Seng Ricemill of Victoria, Tarlac, with the latter supplying the capital of P1,00,0.00 to P2,000.00. In August, 1953, Paez had been buying palay in Isabela. jor such purpose, he employed agents, two truck drivers and two truck helpers, all of whom were paid on commission basis. In bringing the palay purchased by his agents to Nueva Beija or Tarlac, the same had to be ferried in bancas across the Magat River in Aurora, Isabela, towards the other bank, which is Cabatuan; from Cabatuan side to Guimba, the palay were hauled by truck which was regularly driven by Valentin Lagman. Respondent's truck driver on. the Aurora.side was.Primitivo Apolonio, who also collected all the palay on said side—hailed them .to the. river bank (Aurora side); where he engaged boatmen to ferry the palay to the Cabatuan side and where Lagman would take them and.bring them to Guimba or Victoria, as the case may be. On August 1, i953, .because his child became seriously ill, Lagman engaged the services, of Marciano Barawid to substitute him . in undertaking the trip to Isabela, with the understanding that he (Barawid), was to receive his (Lagman's) pay during the laser's absence. On August 2, 1953, Barawid drove respondent's truck, up to the Cabatuan side of the Magat River to await for the palay that were to be ferried from the Aurora side. On the same date, instead of awaiting the palay on the Cabatuan side,. Barawid grossed the Magat River and joined Apolonio on the Aurora side in hauling the palay. After having, collected all the palay on the Aurora side, Apolonio and Barawid reached the river's bank at about ,S.:00 o'clock in the evening, and both helped in loading three (3) bancas. Apolonio advised Barawid not to ride the third banca because same was already fully loaded, but to take another the next morning. Barawid told him he was in a hurry to return to Guimba, as he had to drive a new truck of his brother-in-law. While in the midst of the Magat River, the banca capsized and sunk, and Barawid was drowned.

The petitioner submits the following issues for determination, to wit—

- a) the jurisdiction of the Workmen's Compensation Commission over the case;
- b) whether the death arose out of and in the course of employment;
- c) prescription of action; and
- d) whether the deceased was guilty of notorious negligence.

The Workmen's Compensation Act No. 3428, as amended, pfvides—

"Sec. 42. Law applicable to swll industries.—All claims for compensation by reason of an accident in an

enterprise, industry, or business carried on or in a trade, occupation or profession exercised by an employer for the purpose of gain, whose capital amounts to less than ten thousand pesos and is not hazardous or deleterious to employees, shall be governed by the provisions of Act Numbered Eighteen hundred and seventy-four and its amendments: Provided, however, That the following enterprises or establishments shall be (Among those considered hazardous or deleterious to employees:

(1) Any business for the transportation of persons or goods, or both;***.

The regular use of motor vehicles, was indispensable and essential in carrying on petitioner's business, and necessarily placed his business under the category of hazardous enterprises. Without the use of motor vehicles, it would be extremely difficult for petitioner to conduct such business. The provision of law above cited is not exclusive, for it clearly provides that the enterprises or establishments enumerated therein are among those that are considered hazardous or deleterious to the employees. True it is, that the mere act of buying and selling palay is in itself not hazardous, but when the one engaged in the business used motor vehicles to transport the goods, especially when, as in the instant case, the place of purchase was very far from the place of sale (Isabela to Tarlac), that business became inherently hazardous and dangerous. To a driver, like the deceased Barawid, risk on the road was great, resulting from hold-ups and outlaws, falling into ravines, vehicular accidents of all sorts, collisions, tire blowouts, etc. There seems to be no serious discussion that the regular use of motor vehicles by the claimant's own employees makes the business hazardous (*Haddad vs. Commercial Motor Truck Co.*, 146 La, 897, 84 So. 197, [1920]).

The respondent Court found that petitioner was in a sense engaged in the transportation of goods, (palay), by charging, freight from other persons who loaded their palay in his trucks, thereby definitely classifying the business of the petitioner as hazardous. It was shown that for buying palay for the ricemill, the petitioner was paid a commission of P.20 for every cavan of palay; purchased, aside from the freight he charged for transporting palay from Isabela to Nueva Ecija or Tarlac at P1.50 per cavan. This being the case, We need not stretch our imagination far, to visualize that petitioner was engaged more in the transportation of palay than in the buy-and-sell thereof. The trial court was, therefore, correct in assuming jurisdiction of the case.

Petitioner contends that the respondent WCC erred in finding that the death of Barawid arose out of and in the course of employment. In justifying its findings in this respect, respondent court said—

"* * And so, each case must be analyzed and : decided according to its, own peculiar facts and careful consideration given to the nature and incidents entailed by the employment.

Here, as elsewhere stated, the deceased Marciano Barawid left the International truck assigned to him and went to the other side of the Magat River (Aurora side) for the purpose of advising the other truck driver, Primitivo Apolonio, to have all the palay bought by the respondent's agent loaded early because he was in a hurry to go back to Guimba. In fact, Barawid joined Apolonio in the work of loading and unloading the palay at the bank of the river then he ferried towards the Cabatuan side where the International truck was parked. The activities performed by Barawid, we believe, were incidental to his duties not only as driver but as purchaser of the respondent who was engaged in the business of buying and selling palay. It is reasonable to expect an employee, as in the case of Barawid, to help a co-employee in the performance of his duties. And even granting, only for the sake of argument, that the acts performed by the deceased were not strictly within the bounds of his duties still he was, in the fullest sense of the term, in the course of the employment. For the performance of those acts helping the other employee of the respondent load and unload palay—would inure to the benefit of the respondent in the pursuit of his business. As Arthur Larsen, an eminent authority on the subject of Workmen's Compensation Laws, has put it: ,

'An act outside an employee's regular duties which is undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is hereby furthered, is within the course of

employment.' (Larsen's Workmen's Compensation Text, Vol. 7, p. 338)."

"Simply stated, 'if the act is one for the benefit of the employer or for the mutual benefit of both, an injury arising out of it will usually be compensable.' (Schneider's Workmen's Compensation Text, Vol. 7, p. 338).

There is little to be added to the above observations, except to state that they are based upon the evidence and law on the subject,

The third proposition dwells on the non-dismissal of the claim for having been filed out of time. The record shows that the petitioner had knowledge of the death of Barawid, and he himself made immediate arrangements for the removal of his body from the place of the accident, (Caha-tuan) to his home town, Guimba; and that the petitioner also gave respondent Isabels Japohes, the amount of ₱ 350.00 for burial and other expenses and another ₱150.00 for family subsistence. Knowledge of the accident by the employer, his agent or representative, is sufficient notice of section 27, of Act No. 3428, as amended); so that, even if the notice of injury was filed beyond the 3 months period fixed, by law, the proceeding is still valid. The fact that the petitioner also made voluntary compensation payments to the widow, rendered it no longer necessary to file the claim for compensation within the time prescribed, by law, as provided for in section 24 of the same Act. The present action is not, therefore, barred by the statute of limitations.

It is finally contended that the respondent WCC erred in not finding that the accident was caused through the notorious negligence of the deceased (Sec. 4, of Act No. 3428). Petitioner's answer to the complaint for compensation, does not allege notorious negligence in his defense. That defense should be proven by the party invoking it. Notorious negligence is something more than mere or simple negligence; or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety. In the case at bar, there is no showing at all that the deceased Barawid had deliberately disregarded his safety; no intention was attributed to him to end his life or that he wantonly courted death. The deceased wanted to return home as it was getting late, and even helped in the loading and unloading of the palay to the banca and truck, to finish the work that day. It is claimed that the deceased wanted to return home, because he was to drive the new truck of his brother-in-law, and he was in such a hurry that he unheeded the suggestion of his companion not to embark any more, as it was dark and the banca was fully loaded. Conceding this, to be true, for the purpose of argument, Barawid can no longer contradict it, his lips having been sealed by death, still the disregard of the warning, can not be considered as a notorious negligence. Disobedience to rules, orders, and/or prohibition, does not in itself constitute notorious negligence, if no intention can be attributed to the injured to end his life. And if in the case at bar, there was any negligence at all, the same can not be considered notorious or evident. The deceased did not act with the full knowledge of the existence of a danger that ordinary prudence would counsel him to avoid such a case. That a banca loaded with palay and 3 persons, at night time, would sink if one person more was added to its weight, constituted merely a miscalculation on the part of such person, if he thought it would be safe for him to embark, the alleged overloading notwithstanding Barawid's promptness in accomplishing his duties, to enable him to attend his personal interest thereafter, cannot be a valid reason to deny him the right to be compensated. In view hereof, the petition is dismissed, and the decision appealed from is affirmed, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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