

CIRIACO ROBLES, PLAINTIFF-APPELLANT, VS. YAP WING, DEFENDANT-APPELLEE.

G.R. No. L-20442. October 04, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal in forma pauperis taken by the plaintiff from the order of the Court of First Instance of Manila dated September 12, 1962, dismissing the complaint on the ground of lack of jurisdiction.

The allegations of the complaint, which for purposes of the motion to dismiss were deemed admitted, are as follows: that the plaintiff was employed by defendant in its contracting business; that on July 6, 1961 at about 1:30 p.m. while plaintiff was dismantling lumber brace in the construction of a bodega which defendant undertook to construct, defendant negligently failed to provide safety measures within the construction premises, as a result of which a piece of lumber fell and hit plaintiff on the head, causing him physical injuries; that immediately thereafter plaintiff was taken to a medical clinic, where he remained unconscious for several hours; that defendant defrayed plaintiff's medical expenses; that since then plaintiff was unable to work, thereby losing his expected earnings at an average of P39.00 a week or a total of P2,340.00, more or less, up to the filing of the complaint; that because of the physical injuries sustained by plaintiff due to defendant's negligence, he suffered mental anguish, anxiety, fright and pain; and that because he was compelled to hire the services of a lawyer he is entitled to recover attorney's fees.

In his answer defendant alleged by way of affirmative defense that plaintiff's claim is one for disability resulting from an accident arising out of and in the course of his employment and thus pertains to the exclusive jurisdiction of the Workmen's Compensation Commission. Upon defendant's motion for a preliminary hearing on the alleged lack of jurisdiction of the lower court (which was actually a motion to dismiss) and after plaintiff had filed its opposition thereto, the lower court dismissed plaintiff's complaint. Plaintiff moved to reconsider, alleging that his claim was for actual damages under Articles 1711 and 1712 of the New Civil Code and not a claim for compensation under Act No. 3428, otherwise known as the Workmen's Compensation Act. The motion to reconsider was denied; hence, this appeal.

The lone issue before us for resolution is whether or not the trial court erred in dismissing plaintiff's complaint on the ground of lack of jurisdiction.

Before the enactment of Republic Act No. 772 (amending Act No. 3428), which took effect on June 20, 1952, claims for compensation under the Workmen's Compensation Act were cognizable by the regular courts, but since then, as provided in Section 46 thereof as amended, "the Workmen's Compensation Commission shall have jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court..." In relation to this, Section 5 of the Act provides that "the rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to an employee, his personal representatives, dependents or nearest of kin

against the employer under the Civil Code or other laws, because of said injury..."

In the case of *Manalo vs. Foster Wheeler Corporation, et al.*, 98 Phil. 856, in sustaining the order of the trial court dismissing an employee's claim for damages against the employer for injuries suffered in an accident which happened in the course of his employment, this Court said that "the Legislature evidently deemed it best, in the interest of expediency and uniformity, that all claims of workmen against their employers for damages due to accidents suffered in the course of employment shall be investigated and adjudicated by the Workmen's Compensation Commission, subject to the appeal in the law provided." This was reiterated in at least two subsequent cases, namely, *Vda. de Mallari vs. National Development Company*, G.R. No. L-17914, October 31, 1962; and *Hudencial vs. S.P. Marcelo & Co., Inc.*, G.R. No. L-23969, February 27, 1971.

We are not unmindful of our rulings in the cases of *Pacaña vs. Cebu Autobus Co.*, 32 SCRA 442, and *Valencia vs. Manila Yacht Club, Inc.*, G.R. No. L-27346, June 30, 1969. In the *Pacaña* case, the plaintiff had several other money claims such as for separation pay, sick leave pay, vacation leave pay, overtime pay, moral damages and attorney's fees, aside from permanent disability compensation benefits. In reversing the trial court's order of dismissal, we held that the plaintiff had the choice of instituting the action in the regular courts under Article 1711 of the Civil Code. We said:

"x x x Of course, the plaintiff thus forgoes the far more expeditious procedures for recovery as provided in the Workmen's Compensation Act, which practically foreclose the employer from controverting the claim upon failure to file a report of disability with notice of controversion (Section 45) and the liberal presumptions in favor of the employees, inter alia, that the claim comes within the provision of the Act (Section 44). But there may be cases where, as in the case at bar, the plaintiff is constrained to invoke the provisions of Article 1711 of the Civil Code and files his suit in the regular courts due to his prosecution of various other money claims, such as separation pay, accrued sick and vacation leave pay, and overtime pay during his employment, which do not fall under the purview of the Workmen's Compensation Act.

"The validity of upholding the lower court's jurisdiction to hear and decide the various claims of plaintiff in the single case filed by him may readily be seen from the tenuous jurisdictional arguments raised by defendant, where it would have the plaintiff shuttle to four different courts and agencies to prosecute his claims, namely, Workmen's Compensation Commission and Social Security Commission for disability compensation benefits and sick leave pay, the Court of Industrial Relations for overtime pay and the Municipal Court for separation pay. Courts do not look with favor on split jurisdiction and piecemeal litigation. x x x" (italics supplied)

It must be noted that in the above case we upheld the jurisdiction of the trial court in view of the plaintiff's various other claims which did not fall under the purview of the Workmen's Compensation Act, and also to avoid multiplicity of suits. Obviously that case does not apply to the one at bar.

Similarly, the *Valencia* ruling is not applicable here. In that case the only issue was "whether claimant's acceptance from the Social Security System of sickness and disability benefits, which are available to him as a member of the System, precludes further collection from the employer of compensation allowed under the law (Workmen's Compensation Act) for the same sickness or injury." We there said:

". . . . To deny payment of social security benefits because the death or injury or confinement is compensable under the Workmen's Compensation Act would be to deprive the employees members of the System of the statutory benefits bought and paid for by them, since they contribute their money to the general common fund out of which benefits are paid. In other words, the benefits provided for in the Workmen's Compensation Act accrues to the employees concerned due to the hazards involved in their employment and is made a burden on the employment itself. However, social security benefits are paid to the System's members, by reason of their membership therein for which they contribute their money to a general common fund.

"It may be added that whereas social security benefits are intended to provide insurance or protection against the hazards or risks for which they are established, e.g., disability, sickness, old age or death, irrespective of whether they arose from or in the course of the employment or not, the compensation receivable under the Workmen's Compensation Law is in the nature of indemnity for the injury or damage suffered by the employee or his dependents on account of the employment."

The Workmen's Compensation Act provides for two exceptions. The first is in Section 6, which gives the injured employee the option to claim compensation benefits against his employer under the Act or to sue the third person who caused the injury for damages in the regular courts. The other exception is in Section 42, which refers to small private employers, in which case claims for compensation by reason of accident or injury shall be governed by the provisions of Act No. 1874 or by those of the Civil Code. The instant case does not fall under any of the exceptions.

Appellant contends that his claim is not for compensation under the Workmen's Compensation Law but one for damages under Article 1711 of the New Civil Code. The contention is without merit. Article 1711 provides for the payment by employers of compensation for the death of or injuries to their employees as well as for illness or disease arising out of and in the course of the employment, which provision is essentially the same as that of Section 2 of the Workmen's Compensation Act. The fact that Article 1711 of the Civil Code appears to cover appellant's claim is not decisive of the question: it should still be prosecuted in accordance with the Workmen's Compensation Act by virtue of Section 5 thereof which makes the rights and remedies granted by said Act exclusive, as well as by virtue of Article 2196 of the Civil Code itself, which provides:

"ART. 2196. The rules under this Title are without prejudice to special provisions on damages formulated elsewhere in this Code. Compensation for workmen and other employees in case of death, injury or illness is regulated by special laws..." (italics supplied)

Our Workmen's Compensation Act is patterned after the statutes of Hawaii, New York and Minnesota (Labor Standards and Welfare Legislation by Fernandez and Quiazon, Vol. 2, p. 401). American decisions and authorities are therefore relevant in the interpretation of our local law on the subject, thus:

"The Compensation remedy is exclusive of all other remedies for the same injury, if the injury falls within the coverage formula of the act. If it does not, as in the case where occupational diseases are deemed omitted because not within the concept of accidental injury, the compensation act does not disturb any existing remedy. However, if the injury itself comes within the coverage formula, common-law action is barred although the particular element of damage is not compensated for, as in the case of disfigurement in some states, impotency, or pain and suffering." (Larson's Workmen's Compensation Law, Vol. 2, p. 135).

"The Workmen's Compensation Act supersedes common-law redress in tort and substitutes a strictly statutory formula for paying compensation without regard to the fault of the employer or the contributory negligence or assumption of risk of the employee." (Dudley vs. Victor Lynn Lines, Inc. [N.J.] 161 A. [2] 479 [1960]).

"The Workmen's Compensation Acts are sui generis and create rights, remedies and procedure which are exclusive; (that) they are in derogation of the common law and are not controlled or affected by our rules of procedure in suits at law or actions in equity, except as provided therein." (Hudson v. Herschback Drilling Co., 46 N.M. 330, 128 P [2] 1044 [1942]).

"The Workmen's Compensation statute regulates the relation not between the workmen and the world at large, but between the workman and employer. x x x As between them the remedies provided therein are exclusive." (Caulfield vs. Elmhurst Contracting Co., - A.D. - 53 N.Y.S. [2] 25 [1945])

"The Workmen's Compensation Act which gives exclusive rights and remedies, was enacted to exclude common law actions for injury or death caused by accident arising out of and in the course of employment.

The legislature intended to leave unimpaired common law right of action for damages for injury or death not so arising; in other words to the extent that the field is not touched by the act, the employee's common law right of action is preserved inviolate." (Griffith v. Raven Red, etc., Coal Co., - Va.-, 20 S.E. [2] 530, 1. c. 533 [1942]).

To say that compensation as provided for in Article 1711 of the Civil Code is recoverable by action in the ordinary courts, at the option of the claimant, just because the Workmen's Compensation Act is not expressly invoked is to ignore the fact that the grounds upon which compensation may be claimed are practically identical in both statutes and to ignore likewise the exclusive character of "the rights and remedies granted by this Act" as stated in Section 6 thereof, as well as the provision of Article 2196 of the Civil Code.

The suggestion has been made that there is in this case a claim for moral damages suffered by the plaintiff as a result of the negligence of the defendant, and that such damages do not come within the purview of the Workmen's Compensation Act. It should be pointed out first, that the negligence alleged in the complaint consists of the defendant's failure "to provide safety measures within the construction premises," the nature of which negligence is precisely covered by Section 4-A of the same Act, which makes the employer liable to pay additional compensation (of 50%) to the claimant-employee for failure "to install and maintain safety appliances, or take other precautions for the prevention of accident or occupational disease." Secondly, the alleged negligence was not a quasi-delict inasmuch as there was a pre-existing contractual relation of employer and employee between the parties (Art. 2176, Civil Code); and in breaches of contract moral damages may be recovered only where the defendant acted fraudulently or in bad faith (Art. 2220), and neither fraud nor bad faith is alleged in the complaint here. In any event, whether or not such an allegation, in relation to the breach of a contract of employment by the employer, resulting in injury to an employee or laborer, would justify a claim for moral damages and place it within the jurisdiction of ordinary courts is a question which we do not decide in this case, not being the issue involved.

In view of all the foregoing, the order appealed from is affirmed, without costs.

Dizon, Zaldivar, and Barredo, JJ., concur.

Ruiz-Castro, JJ., in a separate opinion, concurs fully in the main opinion of Mr. Justice Q. C. Makalintal.

Fernando, J., while the separate opinion of Justice Teehankee accords greater receptivity to the claims of labor and thus gains my concurrence, I am in agreement with so much of the main opinion to the extent that its application is limited to the peculiar facts of the case.

Teehankee, J., concurs in the result and files a separate opinion.

Makasias, J., concurs in the result and in the concurring opinion of Mr. Justice Teehankee.

Concepcion, C.J., Reyes, J.B.L., and Villamor, JJ., concur in the separate opinion of Justice Teehankee.

RUIZ CASTRO, J., concurring in the opinion of Mr. Justice Makalintal:

I am in full accord with the opinion so ably penned by Mr. Justice Makalintal. In my view, the Court of First Instance is devoid of statutory competence to pass upon the subject-matter of the plaintiff's complaint. The latter's right to relief derives from the injury he sustained while in the actual performance of the work assigned to him and as a result of the defendant-employer's negligence in not providing for safety measures at the place of work. The plaintiff's claim comes within the coverage of the Workmen's Compensation Act,^[1] and the proper forum is the Workmen's Compensation Commission which is the body exclusively empowered to act upon all claims for compensable death, injury or sickness. The ordinary courts are precluded from entertaining suits for compensation lodged by an employee against his employer.

In our deliberations on the case at bar, my attention was called to the fact that the plaintiff's complaint also opts

for moral damages. As it is conceded that the Workmen's Compensation Act contains no provision for an award of moral damages, the view was advanced that the claim for such damages, together with the claims for actual and other damages, may be properly entertained by a court of general jurisdiction.

The main opinion which I join does not consider the acceptance or rejection of such view essential to the final adjudication of the case at bar. As it is, the claim for moral damages (held by the proponents of the view mentioned as arising from breach of the contract of employment) does not contain the necessary allegation that the defendant acted with fraud or bad faith and, therefore, no proper cause of action is stated in that regard.

Mr. Justice Teehankee has chosen to file a separate opinion which explores the issue of whether the injured employee has the option to litigate against his employer either before the Workmen's Compensation Commission under our compensation statute or in the ordinary courts under the provisions of the Civil Code. Our jurisprudence on this matter does not appear at all settled.^[2] In any event, motivated no doubt by a well-meaning desire to afford the workman more elbow room, a number of my colleagues have joined in espousing recognition of the employee's right to elect the forum in which to pursue the totality of his claims.

Again, my position is that the case at bar does not warrant an expedition into the domain of an issue not raised by the parties.

Nonetheless, articulating my thoughts on the matter may not be amiss.

Lest my observations below pin me down prematurely, I must hasten to add that they should not be taken as constituting an unyielding position on the question at hand, for I prefer to await an appropriate case.

Section 2 of the Workmen's Compensation Act delineates a right to compensation. Mainly, it provides that whenever an employee suffers personal injury "from any accident arising out of and in the course of his employment," his employer shall pay compensation in the sums specified elsewhere in the Act. Section 46 confers upon the Workmen's Compensation Commission exclusive jurisdiction to entertain any claim brought within its purview. Sections 47 to 51 lay down the procedure of adjudication.

Under Section 5 of the same Act, the rights and remedies granted to the employee by reason of a personal injury entitling him to compensation "exclude all other rights and remedies" he may have against his employer "under the Civil Code and other laws because of said injury." (*italics mine*) It would appear, therefore, that while the Civil Code and other laws may have provided for some other bases for recovery (such as the employer's tortious act or breach of the contract of employment), these are expressly excluded by the Workmen's Compensation Act insofar as they relate to the injury declared compensable by the latter statute. To be more precise, where the employee's cause of action against his employer derives mainly from an injury received in an accident arising out of and in the course of employment, such employee may not elect other forms of damages in place of and/or in addition to compensation. He may not have recourse in the ordinary courts, for his remedies are confined to lodging the proper claim with the Workmen's Compensation Commission.

The foregoing observations find uniform and unanimous support in pertinent American case law. Larson sums up the rule, thus: "The compensation remedy is exclusive of all other remedies by the employee or his dependents against the employer and insurance carrier for the same injury, if the injury falls within the coverage formula of the act."^[3] And so, it has been held that "Even if the employee himself has never made application for compensation, his right to sue his employer at common law is barred by existence of the compensation remedy."^[4] The following cases illustrate the point further:

"D' Anofrio v. Hatten, 25 Misc. 2d 346, 206 N.Y.S. 2d 923 (1960). The plaintiff was injured while watching a co-employee work on his personal car during the lunch hour on the employer's property. An action for personal

injuries was denied on the ground that the plaintiff's sole and exclusive remedy was that afforded by Workmen's Compensation Law."

"Durso v. Modern Biscuit Corp., 11 A.D. 2d 1036, 205 N.Y.S. 2d 923 (1960). An employee was injured when he was assaulted by a fellow employee known by the employer to be pugnacious. Since the injuries arose out of and in the course of employment the court held that action against the employer could not be sustained, but that the employee's sole remedy was under the Workmen's Compensation Statute."

In the State of New York (one of the States cited as the source of our own compensation statute), the courts have barred ordinary actions filed against the employer "by husbands for loss of the wife's services and consortium, by wives for loss of the husband's services and consortium, by parents for loss of minor children's services, and by next of kin under wrongful death statutes." [5]

The immediate impression that the no-election rule creates is that it works to the clear disadvantage of the employee, because the latter cannot opt for a civil suit in the ordinary courts where lies the possibility of his obtaining not only actual damages, which approximate compensation, but also moral as well as the other forms of damages provided for in Article 2197 of the Civil Code.

Let us, however, look into the intendment and philosophy of the law, as so construed, that we may yet broaden our perspectives.

The jurisprudence in the United States whence came our concept of compensation acknowledges the fact that the compensation statutes "form a legislative response to a public demand for a system to provide compensation to employees, for injuries received in their employment without personal injury litigation." [6] Legislative bodies realized that the principles of the common law, "even as amended by the employer's liability act, in many cases leave an injured employee remediless, since they predicate the employee's right to recovery entirely on the existence of actionable negligence; and in perhaps the majority of occupational injuries, it is impossible directly to impute fault either to the employer or to the employee, since accident and risk of injury or death are incidents of, or inevitable in, employment in industry, and most accidents, it has been said, are attributable to the inherent risk of employment." [7]

Other considerations leading to the enactment of compensation acts include "the desire to avoid or minimize litigation and expensive contests, to minimize appeals, to create a new and wider remedy for victims of industrial accidents and a new tribunal for the administration of such remedy, to relieve employees of the uncertainties of a trial in a suit for damages, to substitute a more uniform scale of compensation than the varying and widely divergent estimates of juries, to lessen the temptation to perjury in courts of justice, to provide for employers a liability which is limited and determinate, to protect employers against the hazards and expense of litigation, to protect the employer from unjust or exaggerated claims, and from unjust and excessive verdicts, resulting from the hardships of particular cases, to protect employees or dependents against the burden of attorney's fees incident to the former remedy, and to secure to the employee having a just claim the full amount of compensation awarded him without diminution by reason of the expense of litigation." [8]

"... The ultimate 'social philosophy,' then, behind nonfault compensation liability is the desirability of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits which an enlightened community would feel obliged to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source." [9]

The remedy provided in the compensation statutes has been "properly characterized as expeditious, direct, simple and informal, inexpensive, scientific, fair and equitable, efficient and effective, adequate, fixed, certain, definite, final and without the annoyance of a suit of law." [10]

The principal objection against the no-election rule lies in the limited benefits it affords to the worker. (The ceiling for death allowances is P6,000 plus burial expenses of P200 and, possibly, medical expenses where incurred.)[11] It has been said, however, that "Even among those who contend that the scale of benefits is generally too low, there are few if any who would contend that anything resembling tort principles of amount of recovery should be imported into compensation law. It was never intended that compensation payments should equal actual loss, for the reason, if no other, that such a scale would encourage malingering." [12] Furthermore, the limits set for recovery may be said to be "part of the quid pro quo in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts." [13] But even then, our present law on compensation grants the employee or his dependents an additional sum equivalent to fifty per centum of that fixed by the Act in the instances where the employee's death, injury or sickness is attributable to the employer's unlawful act or omission. [14]

At all events, without reneging on the no-election policy laid down by the law, an ever-solicitous legislature may, by amendment to the law, adjust the quality and quantity of compensation to suit the growing needs of the worker. I do not hesitate to comment, for instance, that the sum of P6,000, fixed as maximum compensation for death, is hardly realistic considering the inflationary movement taken by our currency in the intervening years. In the cases litigated in the ordinary courts, we have set down the sum of P12,000 as the minimum amount to which the heirs of a deceased are entitled. [15]

Finally, nowhere in our laws can one find any express authority for ruling that the employee has an option to claim from the employer either damages for personal injuries or compensation. Upon the other hand, the exclusiveness of the remedy available to the employee for injury received from any accident arising out of and in the course of employment is expressly provided by the Workmen's Compensation Act. But even where the latter injunction is absent, still the right of election would be of doubtful wisdom. To borrow the language of Larson, "Workmen's compensation is above all a security system; a strict election doctrine transforms it into a grandiose sort of double-or-nothing gamble. Such gambles are appealing to those who still think of the judicial process as a glorious game in which formal moves and choices are made at peril, and in which the ultimate result is spectacular victory for one side and utter defeat for the other. The stricken workman is in no mood for this kind of play, and should not be maneuvered into the necessity for gambling with his rights, under the guise of enforcing a supposed penalty against the employer." [16]

[1] Act 3428, as amended by Republic Act 772.

[2] See the Philippine cases cited in the main and separate opinions.

[3] Larson, Workmen's Compensation Law, Vol. 2 (1970), p. 135.

[4] Ibid., p. 135, citing *Ogino v. Black*, 304 N.Y.S. 872, 109 N.E. 2d 885 (1952).

[5] Ibid., p. 151.

[6] 99 C.J.S., Sec. 5, p. 36.

[7] Ibid., pp. 44-45.

[8] Ibid., pp. 43-44.

[9] Larson, Workmen's Compensation Law, Vol. I (1968), p. 7.

[10] 99 C.J.S., Sec. 5, pp. 41-43.

[11] Sections 8, 12 & 13, Workmen's Compensation Act.

[12] Larson, Workmen's Compensation Law, Vol. 1 (1968), p. 12.

[13] Ibid., Vol. 2, p. 137.

[14] Section 4-A, Workmen's Compensation Act.

[15] People vs. Pantoja, L-18793, October 11, 1968, 25 SCRA 468.

[16] Larson, Workmen's Compensation Law, Vol. 2 (1970), p. 152.20.

SEPARATE OPINION

TEEHANKEE, J.:

I concur in the result of the main opinion of Mr. Justice Makalintal, since while it affirms the dismissal order appealed from, it in effect leaves the door open for plaintiff-appellant to amend his complaint by expressly making proper allegations therein that "defendant acted fraudulently or in bad faith" (at the last page thereof) and to premise thereon his claim for moral damages before the court a quo. Although the main opinion makes no pronouncement as to whether such a claim for moral damages is "within the jurisdiction of ordinary courts," it is respectfully submitted, for the considerations stated hereinbelow, that the courts of first instance as courts of general jurisdiction, such as the court below, may properly take cognizance of and adjudge an action for actual damages plus moral and other forms of damages provided in Article 2197, Civil Code, such as that presented at bar by plaintiff-employee against plaintiff-employer.

Plaintiff-appellant, who received apparently serious head injuries when a piece of lumber fell on his head while working on July 6, 1961 on a construction job of his employer, defendant-appellee, filed the damage suit below in the regular court of first instance, alleging that "defendant (employer) negligently failed to provide safety measures within the construction premises" and praying specifically for actual damages of P2,340.00 up to the filing of the complaint on August 7, 1962 and P39.00 per week thereafter until plaintiff may be pronounced fit for work, moral damages of P20,000.00, exemplary and nominal damages of P5,000.00, besides 30% thereof as attorneys' fees.

Defendant-appellee filed in due course his answer, traversing the allegations of the complaint, and raising as an affirmative defense that plaintiff's claim "for disability resulting from an accident arising out of and in the course of his employment" pertained to the exclusive jurisdiction of the Workmen's Compensation Commission.

The lower court preliminarily heard, upon defendant's motion, the question of jurisdiction, and overruling plaintiff's opposition, dismissed plaintiff's complaint for damages with costs, holding that under Rep. Act 772, enacted on June 20, 1952, amending Act 3428 (the basic Workmen's Compensation Act), it had no jurisdiction over the case, since all such claims for compensation fell within the exclusive jurisdiction of the Workmen's Compensation Commission.

The appeal therefore squarely presents the issue of whether by virtue of the provisions of the Workmen's Compensation Act, as amended, an ordinary action for damages based on the negligence of the employer or other employees, resulting in death or disability of the employee, is barred to the employee or his heirs, as the case may be. Stated otherwise, is the action of the injured employee or that of his heirs, in case of his death, restricted to

seeking the limited compensation provided under the Workmen's Compensation Act, such that they cannot seek higher damages from the employer by virtue of negligence (or fault) of the latter or of his other employees?

I respectfully submit that the employee or his heirs have the choice of cause of action and corresponding relief, i.e. either an ordinary action for damages before the regular courts or a special claim for limited compensation under the Workmen's Compensation Act before the Workmen's Compensation Commission; and that the Court's jurisprudence has long sustained this right of choice of action.

1. In the 1955 case of *Belandres v. Lopez Sugar Central Mill Co., Inc.*,^[1] the Court, through Mr. Justice Labrador, specifically defined and upheld the jurisdiction of the regular courts over such actions for damages caused by the negligence of the employer or his other employees thus: "It is very evident that the action is not one for compensation with the provisions of the Workmen's Compensation Act (At No. 3428 as amended). The subject matter of any given case is determined, not by the nature of the action which the party is entitled under the facts and the law to bring, but by the nature and character of the pleadings and issues submitted by the parties to the court for trial and judgment. The plaintiff in this case seeks damages under the provisions of Article 2176 and Article 2180 of the Civil Code,^[2] because it is alleged in her complaint that through fault or negligence of the defendant's employees, death was caused to her son while in the employ of defendant. It is not alleged in the complaint that the deceased died because of accident due to and in the course of employment, as defined in Section 2 of Act No. 3428, as it is expressly alleged that the death was caused by the negligence of defendant's employees. Under the pleadings, therefore, the court a quo had jurisdiction over the subject matter, because it is an action for damages caused by the negligence of defendant's employees."

The Court, in setting aside the lower court's dismissal order on the ground of lack of jurisdiction after it had received plaintiff's evidence and remanding the case for the continuation of trial, expressly held that the lower court had jurisdiction over the claim for damages and its duty was to render judgment, absolving the defendant employer from the damage suit, if it found no negligence on the employer's part, instead of disclaiming jurisdiction over the case: "It would seem to appear from the decision of the court a quo that the judge was of the opinion that plaintiff's action should have been one for compensation under Act No. 3428, perhaps because the evidence supporting the claim of negligence on the part of the defendant's employees may not have been sufficient to support the same; in other words, that the death was accidental. His Honor's opinion, however, as to the action which the plaintiff is entitled to bring under the facts proven in the course of the trial, does not control or determine the nature or character of the case under trial, for it is the pleadings that do so. The Court should have acted on the matter in issue as developed in the pleadings; it was its duty to do so. If it was of the opinion that the plaintiff-appellee was not entitled to the damages claimed in the complaint because the death was accidental, it should have made a finding to this effect and dismissed the action, or absolved the defendant therefrom. It could not under the pleadings declare that it had no jurisdiction of the subject matter."^[3]

2. The 1953 case of *Castro vs. Sagales*,^[4] was erroneously relied upon by the lower court to disclaim its jurisdiction in favor of that of the Workmen's Compensation Commission. This and other subsequent cases settled the conflict of jurisdiction "to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court" (under Section 46) after the approval on June 20, 1952 of Republic Act 772 conferring upon the Workmen's Compensation Commission "exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act." As reiterated by the Court in the latest case of *Pacaña vs. Cebu Autobus Co.*,^[5] the enactment on June 20, 1952 of the amendatory statute, Republic Act 772, divested the regular courts of first instance of jurisdiction to hear and decide compensation cases under the Workmen's Compensation Act, which jurisdiction was exclusively lodged in the Workmen's Compensation Commission, subject only to appeal to the Supreme Court.

The Court thus held in Pacaña that "(T)hese and other cases mainly settled the conflict of jurisdiction between the regular courts and the Workmen's Compensation Commission after the approval on June 20, 1952 of Republic Act 772 conferring upon the said Commission 'exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act' (Section 46) and ruled, as in Asuncion vs. de Aquino that '(W)hile the regular courts had jurisdiction to try and decide compensation cases under Act 3428 and Commonwealth Act No. 210, however, upon the enactment of Republic Act No. 772 the regular courts were divested of such jurisdiction, because the same was transferred to the Workmen's Compensation Commission. Thus, insofar as claims accruing before June 20, 1952, but formulated thereafter, are concerned, the proper forum is the Workmen's Compensation Commission and not the regular courts, and that as to the particular claims under the Workmen's Compensation Act pending with the Court of First Instance at the time of enactment of Republic Act 772 that "said court had been divested of its power to hear and decide it and so it can no longer continue acting on said claim." In the Pelaez case itself, it was specifically held that "the provisions of the Workmen's Compensation Act have been specifically invoked in paragraph 16 of appellant's complaint and therefore, his right to seek recourse in the regular courts was barred by the provisions of Section 5 of the Workmen's Compensation Act." [6]

3. In the cited case of Pacaña, affirming likewise the regular court's jurisdiction over the employee's choice of forum as upheld in Valencia vs. Manila Yacht Club, Inc., [7] the Court upheld the injured worker's choice of remedies either for compensation under the Workmen's Compensation Act before the Workmen's Compensation Commission or for damages before the regular courts of first instance: "In the analogous case of Esguerra vs. Muñoz Palma, involving the application of Section 6 of the Workmen's Compensation Act on the injured workers' right to sue third-party tortfeasors in the regular courts, Mr. Justice J.B.L. Reyes, again speaking for the Court, pointed out that the injured worker has the choice of remedies but cannot pursue both courses of action simultaneously and thus balanced the relative advantage of recourse under the Workmen's Compensation Act as against an ordinary action:

"As applied to this case, petitioner Esguerra can not maintain his action for damages against the respondents (defendants below), because he has elected to seek compensation under the Workmen's Compensation Law, and his claim (Case No. 44549 of the Compensation Commission) was being processed at the time he filed this action in the Court of First Instance. It is argued for petitioner that as the damages recoverable under the Civil Code are much more extensive than the amounts that may be awarded under the Workmen's Compensation Act, they should not be deemed incompatible. As already indicated, the injured laborer was initially free to choose either to recover from the employer the fixed amounts set by the Compensation Law or else, to prosecute an ordinary civil action against the tort-feasor for higher damages. While perhaps not as profitable, the smaller indemnity obtainable by the first course is balanced by the claimant's being relieved of the burden of proving the causal connection between the defendant's negligence and the resulting injury, and of having to establish the extent of the damage suffered; issues that are apt to be troublesome to establish satisfactorily. Having staked his fortunes on a particular remedy, petitioner is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission. Anyway, under the proviso of Section 6 aforequoted, if the employer Franklin Baker Company recovers, by derivative action against the alleged tortfeasors, a sum greater than the compensation he may have paid the herein petitioner, the excess accrues to the latter."

In fact, it was further pointed out therein that where the plaintiff employee had various other money claims against his employer which do not fall within the purview of the Workmen's Compensation Act, he would be practically constrained to seek even his compensation claim before the regular courts, to avoid multiplicity of suits and piecemeal litigation: "Of course, the plaintiff thus foregoes the far more expeditious procedures for recovery as provided in the Workmen's Compensation Act, which practically foreclose the employer from controverting the claim upon failure to file a report of disability with notice of controversion (Section 45) and the

liberal presumptions in favor of the employee, inter alia, that the claim comes within the provision of the Act (Section 44). But there may be cases where, as in the case at bar, the plaintiff is constrained to invoke the provisions of Article 1711 of the Civil Code and files his suit in the regular courts due to his prosecution of various other money claims, such as separation pay, accrued sick and vacation leave pay, and overtime pay during his employment, which do not fall under the purview of the Workmen's Compensation Act." The Court held that "(T)he validity of upholding the lower court's jurisdiction to hear and decide the various claims of plaintiff in the single case filed by him may readily be seen from the tenuous jurisdictional arguments raised by defendant, where it would have the plaintiff shuttle to four different courts and agencies to prosecute his claims, namely, Workmen's Compensation Commission and Social Security Commission for disability compensation benefits and sick leave pay, the Court of Industrial Relations for overtime pay and the Municipal Court for separation pay. Courts do not look with favor on split jurisdiction and piecemeal litigation." [8]

4. The injured employee or his dependents are granted the fixed compensation provided in the Workmen's Compensation Act, in the event of injury or death from any accident arising out of and in the course of his employment or illness caused or aggravated by his employment.[9] Section 6 of the Workmen's Compensation Act,[10] however, expressly recognizes the injured employee's option and right to sue for and recover higher damages against third parties who may be liable therefor, and goes to the extent of providing that even if the employee opts for compensation under Workmen's Compensation Act and is paid the same by his employer, the employer is subrogated to his right of action against the third party provided that any damages recovered by the employer in excess of the compensation paid to the employee shall nevertheless inure to the employee's benefit and shall be delivered to him.

5. Such right to recover higher damages from a third party would generally arise from a tort committed against the employee, based on fault or negligence. In the interest of avoiding multiplicity of suits, the employee may file such action for damages jointly against the third party and his employer; or as in the case at bar, where the employer rather than his other employees was directly charged of negligence, the employee may choose to file such damage suit only against the employer. I believe that to hold that the employee's right of recovery, as far as his employer is concerned, is limited to the fixed amounts of the Workmen's Compensation Act and that he has no right to seek greater actual, moral and exemplary damages in appropriate cases from his employer, — just like any other person or like his employer, for that matter — would be in violation of the employee's constitutional right to due process and equal protection of the laws.

6. The pre-existing contractual relation of employer and employee between the parties does not bar the employee from the recovery of actual and civil damages against his employer. Article 2201, Civil Code, expressly provides as to actual damages that:

"ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

Articles 2216 et seq., Civil Code, provide for payment of moral and other kinds of damages, as assessed by the court, "according to the circumstances of each case."

The provisions of Article 2196, Civil Code, that:

"The rules under this Title are without prejudice to special provisions on damages formulated elsewhere in this Code. Compensation for workmen and other employees in case of death, injury or illness is regulated by

special laws. Rules governing damages laid down in other laws shall be observed insofar as they are not in conflict with this Code."

may not be invoked to bar a damage action under the Civil Code by the employee against his employer before the regular courts. By its own terms, the cited Article merely provides that the employee's claim for compensation - not for damages - if availed of by him under the special law, i.e. Act 3428, as amended, (Workmen's Compensation Act) shall of course be regulated by the provisions of said special law. Similarly, the provisions of Section 4-A of the same Act, which hold the employer liable, to pay the employee additional compensation of 50% for failure "to install and maintain safety appliances or take other precautions for the prevention of accident or occupational disease" may of course be invoked only when the employee files a claim for the limited compensation under the Workmen's Compensation Act with the Workmen's Compensation Commission and not when the employee or his heirs opt to prosecute an ordinary action for civil damages.

7. Finally, the question arises: should the employee's ordinary action to recover damages in the regular courts fail, may he still seek to claim compensation under the Workmen's Compensation Act from the employer? I believe that as intimated in *Pacaña*, supra, the employee should be held to the particular remedy on which he has staked his fortunes and must pursue even his alternative claim for compensation exclusively in the same regular courts, once he has opted to seek his remedy there rather than in the Workmen's Compensation Commission. Such a view would be more in consonance with the legal principles that enjoin multiplicity of suits and splitting a cause of action. Conversely, if the employee has originally opted to seek his remedy in the Workmen's Compensation Commission, he is barred from the regular courts, since Section 5 of the Workmen's Compensation Act expressly thereby "excludes all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury."

[1] 97 Phil., 100 (May 27, 1955, italics furnished).

[2] The cited Civil Code provisions deal with quasi-delicts. Thus, Article 2176 provides: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

[3] *Idem*, at pp. 103-104; emphasis furnished.

[4] 94 Phil. 208 (Dec. 29, 1953).

[5] 32 SCRA 442 (April 30, 1970).

[6] "SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury. x x x"

[7] 26 SCRA 724 (June 30, 1969).

[8] Cited in *Hudencial vs. Marcelo & Co.*, 37 SCRA 707, (February 27, 1971); emphasis furnished.

[9] Sec. 2, Act 3428, as amended.

[10] "SEC. 6. Liability of third parties.— In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other persons for damages, in accordance with

law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid: Provided, That in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings. The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of this Act, shall not be admissible as evidence in any damage suit or action."

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