

LUZON STEVEDORING CORPORATION, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND ROSARIO VDA. DE ROSANO, RESPONDENTS.

G.R. No. L-27588. April 28, 1969

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Petition filed by the Luzon Stevedoring Corporation for review of the decision of the Workmen's Compensation Commissioner (in RO4 WC Case No. 3941), ordering it to pay claimants Rosario Vda. de Rosano, minors Rebecca, Edgardo and Baltazar, all surnamed Rosano, death compensation benefits, burial expenses and attorney's fees for the death of Pastor Rosano; as well as of the resolution of the Workmen's Compensation Commission en banc denying petitioner's motion for reconsideration of the aforesaid decision.

As found by the Acting Referee of the Department of Labor, supported by the evidence on record, the facts of the case are as follows:

At about 6 o'clock in the morning of 30 November 1964, stevedore Pastor Rosano went to Pier 9, Manila, to await the arrival of a barge of herein petitioner corporation, scheduled to dock at 9 o'clock in the morning. While thus waiting for the vessel, Rosano had a heated verbal argument with one Benjamin Valdez, another stevedore engaged by petitioner corporation, over the possession of a platform used in the loading and unloading of cargoes taken into or out of the watercraft. Rosano was able to get it. As the barge did not arrive as scheduled, Rosano went home for lunch. When he returned at about 1 o'clock in the afternoon, he found the platform again in the possession of Valdez. Rosano's demand for delivery to him of said platform precipitated another argument which almost ended in fist fight. Valdez finally gave up the platform, but not before he had uttered threats against the life of Rosano. Later, informed that the barge they were waiting for definitely was not arriving, Rosano, with two companions, boarded a passenger jeep bound for Tondo. When he got off from the jeep near his house, he was met by Valdez,¹ who whipped out a knife and stabbed him. Rosano fell to the ground. He was immediately brought to the hospital, where he expired at 2:30 in the afternoon of that same day, 30 November 1964 (Exhibit C).

On 1 March 1965, the widow, Rosario Vda. de Rosano, for herself and on behalf of her 3 minor children, filed with the Department of Labor a formal claim for death compensation benefits against petitioner Luzon Stevedoring Corporation for the death of her husband, Pastor Rosano. The company answered, denying the allegations of the complaint and raising the defense of prescription, in that the claim was filed beyond the 3-month period from the death of Rosano, as provided in the Workmen's Compensation law.

On 15 September 1965, after due hearing, the Acting Referee rendered judgment, ordering the company to pay to the claimants death compensation benefits in the sum of P6,000.00; P200.00 as reimbursement for burial ex-penses; P200.00, as attorney's fees; and P61.00 as fees payable to the office. The award was based on the finding that Rosano was an employee of the company and that death arose out of his said employment. The

defense of prescription was rejected, it appearing that the company had failed to controvert the claimants' right to compensation within the period prescribed in Section 45 of Act 3428. The company appealed to the Workmen's Compensation Commission, which affirmed the decision of the Referee. And when its motion for reconsideration of said decision was denied by the Commission en banc, the company filed the present petition for review, assigning as alleged errors committed by the Commission its finding on the existence of employee-employer relationship between the petitioner and the deceased and the ruling that the right to demand compensation benefits has not prescribed.

The contention that there existed no employer-employee relationship between petitioner and the late Pastor Rosa no is premised on the allegation that the latter was a "gang boss" working with the petitioner on an "on and off" basis; that Rosano worked for petitioner when so assigned by the union, of which he was a member that, if at all, the employer-employee relationship existed only whenever the deceased rendered actual service for the petitioner. Since on 30 November 1964 Rosano was not able to work (because the barge did not arrive), then, according to petitioner, he was not an employee when he (Rosano) met his death.

There is no merit to this contention. In the first place, while petitioner company failed to submit any evidence that the work rendered by the deceased was purely casual,[1] it has been established that prior to the stabbing incident the deceased, with other stevedores, was in the pier prepared to do hauling jobs for the petitioner, which work, it can not be denied, is connected with petitioner's business. And there is un-rebutted testimony that the deceased had been doing stevedoring work for said petitioner for 15 years.[2] Secondly, even assuming petitioner's allegations to be true, that the deceased was a union member, and that it was the union that furnished laborers and stevedores when required by petitioner company, presumably with the latter delivering the stevedoring charges directly to the union for distribution to the individual laborers, these facts did not make the union an independent contractor whose intervention relieved the said company of liability for the death of a laborer, specially where no contractor's bond was required for the union's performance of its undertaking.[3] The union here was no more than an agent of the company and whose function is merely to save the latter from the necessity of dealing with individual laborers. And in this kind of indirect employment, it has been repeatedly held, the employer is not relieved of liability under the Workmen's Compensation law.[4]

It is next claimed for the petitioner that even if he were an employee, Rosano's death is not compensable because it came when he was outside of the company premises and not at work.

We do not agree with the appellant. From the proved sequence of events that took place on 30 November 1964 involving the deceased Pastor Rosano, it is evident that the cause of his fatal stabbing by Benjamin Valdez (who was thereafter accused and convicted) can be traced to their disagreement over the possession of a platform that was to be used in their work for petitioner; that although the altercation started in the morning the same was resumed when they returned in the afternoon and carried on when Valdez left, lay in wait near Rosano's house, and there met and stabbed the latter when he alighted from the jeep. Neither can it be said that the employer is exempt from liability under the Workmen's Compensation law because the cause of death arose outside of the company premises,[5] whereas the quarrel happened at the waterfront, at Pier 9.

For an injury to be compensable, it is not necessary that the cause therefor shall take place within the place of employment. If a workman is acting within the scope of his employment, his protection "in the course of" the employment usually continues, regardless of the place of injury.[6] Thus, in one case,[7] an employee went to the house of the employer across the warehouse where he worked to get a drink of water; that there, while trying to drive away a puppy that he saw eating fish in the employer's kitchen, he was bitten in the hand, as a result of which he later died of hydrophobia. The death of the employee was held compensable, on the ground that his trip to the kitchen was occasioned by the employer's fault in not providing adequate drinking water at the warehouse.

In the present case, it cannot be disputed that it is inherent in the stevedoring work for the petitioner that the laborers, like the deceased, stay in the pier and wait for the docking of petitioner's vessels.

Furthermore, jurisprudence is to the effect that injuries sustained by an employee while in the course of his employment, as the result of an assault upon his person by another employee, or by a third person, no question of the injured employee's own culpability being involved, is compensable where from the evidence presented, a rational mind is able to trace the injury to a cause set in motion by the nature of the employment, or some condition, obligation or incident therein, and not by some other agency.[8]

"The rule as stated by the Connecticut Supreme Court is that x x x when the employee is assaulted while he is defending his employer, or his employer's interests, or when the assault was incidental to some duty of his employment, the injuries he suffers in consequence of the assault will, as a rule, arise out of the employment. He will then be serving his employer's ends and not of his own. (Jacquemin vs. Turner and Seymour Manufacturing Co., Conn., 103 A. 115; Goldhirsch vs. American Character Doll Co., 135 Misc. 817, 238 N. Y. 519)

Similarly, in *Appleford vs. Kimmel*, 296 NW. 861, it appearing that a theater employee's job required him to handle disturbances in the theater; that several patrons were ordered by him to leave the theater because of disturbances they were causing; and that after the theater closed the employee started for home and was subjected to injurious assault by those he had previously ordered to leave; the court held that the evidence sustained the finding that the employee's injury arose out of, and in the course of, the employment.

In the leading case of *Field vs. Charmette Knitted Fabric Co.*, 245 N.Y. 138, where a superintendent was injured on the sidewalk by workmen with whom he had quarreled in the mill, the late Justice Cardozo (then of the New York Supreme Court) declared the injury compensable, reasoning that the quarrel outside of the mill was merely a continuation or extension of the quarrel begun within; that continuity of the case had been so combined with continuity in time and space " that the quarrel from origin to ending must be taken to be one".

The rationale applies to the case at bar, where the facts, shown by the evidence found by the referee and affirmed by the Commission, are that Rosano had been assaulted by the man with whom he had quarreled barely a half hour after leaving the place of work where the quarrel occurred, in connection with the possession of the platform to be used in unloading cargo, without any independent agency or cause for the assault being shown. As pointed out by Larson (*Workmen's Compensation Law*, Vol. I, section 29.21) -

"since the ultimate test applied by judge Cardozo was whether 'the quarrel from origin to ending must be taken to be one' it should make no difference how widely separated the assault was from the employment in time and space if it remained an in-herent part of an employment incident."

Other cases applying the same principle are collated in *Schneider, Workmen's Compensation*", Perm. Ed., Vol. 6, page 131, et seq.

As regard the defense of prescription raised by petitioner, it is true that the formal demand for compensation for the death of Pastor Rosano on 30 November 1964 was made by the dependent widow and minor children only on 1 March 1965, or beyond the 3-month period provided for in section 24 of the *Workmen's Compensation Act*. But we are not impressed by petitioner's disclaimer that it had no knowledge of the stabbing incident prior to its notification by the Regional Office of the filing of the claim. It may be pointed out that the law does not speak of "formal notice" by the employer of the accident; it specifies only "knowledge of the accident". For petitioner to say that it had no actual knowledge of the stabbing incident on 30 November 1964 would run counter to the ordinary course of human behavior. An employer could scarcely have been spared the news of the killing of one of its laborers by another laborer, especially where the cause therefor started in the place where the laborers gather

and work. When the widow went to the company premises to demand compensation for the death of her husband a week after his burial, she was able to talk to an unknown employee inside the compound, who told her that she could not get anything because the death of her husband did not occur in the company premises. Far from showing lack of knowledge by the employer, this fact constitutes sufficient indication that the death of Rosano was already a matter of common knowledge in petitioner's office that even an allegedly unidentified employee could advance the exact defense that the employer later set up in the case.

The fact remains that petitioner failed to controvert in due time the right of the claimants to compensation, as required by section 45 of Act 3428. And the rule is now well-settled that the requirements (for claimants) of giving of notice of injury and filing of claim within the prescribed period is non-jurisdictional and does not constitute a bar to compensation proceedings if the employer, who had knowledge of the accident, failed to controvert the claimant's right to compensation pursuant to section 45 of the law.[9] For such failure of the employer to controvert the claim constitutes a waiver (or a forfeiture by law) of its right to question the validity and reasonableness of the claim and precludes the setting up of all non-jurisdictional defenses, such as non-compensability of injuries, prescription, and the like.[10]

WHEREFORE, finding no error in the appealed decision of the Workmen's Compensation Commission and its resolution en banc, the petition for review is hereby dismissed, with costs against the petitioner.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.

Capistrano, J., did not take part.

Concepcion, C.J., voted in favor of this opinion before going on official leave.

Castro, J., on leave.

[1] Casual means occasional, coming without regularity. The work is purely casual when it is not a part of the business in which the employer is engaged (*Mansal vs. P.P. Gocheco Lumber Co.*, 96 Phil. 941, 945).

[2] T.S.N., page 7, hearing of 6 April 1965.

[3] *Madrigal Shipping Co., Inc. vs. WCC*, L-17495, 29 June 1962.

[4] *Flores vs. Compañia Maritima*, 57 Phil. 905; *Asia Steel vs. WCC*, L-7636, 27 June 1955; *Mensal vs. P. P. Gocheco Lumber Co.*, 96 Phil. 941; *U. S. Lines vs. Associated Watchmen & Security Union*, L-12208-11, 11 May 1958; *Madrigal Shipping Co., Inc. vs. WCC*, supra.

[5] Petitioner has its office at Tacoma Street., Port Area.

[6] *Younger vs. Motor Cab Co.*, 260 N.Y. 396, cited in *Horovitz on Workmen's Compensation*, page 172.

[7] *Chua Yeng vs. Roma*, L-14827, 31 October 1960.

[8] *Morgan vs. Hoage*, 63 App. D.C. 355, 72 F. (2d) 727.

[9] *Surigao Consolidated Mining Co., Inc. vs. WCC*, L-26077, 27 May 1968, 23 SCRA 820; *Pampanga Sugar Mills vs. De Espeleta*, L-24073, 30 Jan. 1968, 22 SCRA 325; *San Miguel Brewery vs. Vda. de Joves*, L-24258, 26 June 1968, 23 SCRA 1093; *Talisay Silay Milling Co. vs. WCC*, L-22096, 29 Sept. 1967, 21 SCRA 366; and others.

[10] *Magalona vs. WCC*, L-21849, 11 Dec. 1967, 21 SCRA 1199; also *MRR vs. WCC*, L-21504, 15 Sept. 1967, 21 SCRA 98; *MRR vs. Binoso*, L-18264, 26 May 1964; *NDC vs. WCC*, L-21724, 27 April 1967, 19 SCRA 861; *Republic vs. WCC*, L-22650, 28 April 1967, 19 SCRA 1022.

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