

DAVAO GULF LUMBER CORPORATION, PETITIONER VS. HON. N. BAENS DEL ROSARIO, ET AL., RESPONDENTS.

G.R. No. L-15978. December 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Review of a decision of the Workmen's Compensation Commission:

On September 29, 1957, the truck of Davao Gulf Lumber Corporation carrying some lumber from its sawmill to Davao City, accidentally overturned on the road. Vicente Soriano, its driver, was killed instantly together with his son, Vicente Soriano Jr.

His widow, Flavia A. Soriano, Claimed compensation on November 11, before the Regional Office No. 8, at Davao, of the Department of Labor. Having found the driver guilty of notorious negligence, the hearing officer denied compensation.

On appeal, the Chairman of the Workmen's Compensation saw differently. He found no such negligence, and awarded compensation. Fifteen days after receiving copy of such award, the Davao Gulf moved for reconsideration by the Commission as a whole. It happened, however, that there was a rule of the Commission which provided:

"Sec. 3. Disposition of Appeal.—The Commissioner to whom an appealed case is assigned by the Chairman shall decide the same on its merit. Either appellee or appellant, or both, may seek the reconsideration of tile decision of a Commissioner by the Commission en banc within 10 days from receipt of said decision."

So, pursuant to such rule, the Commission denied the motion for being out of time.

Now, this petition for mandamus seeks .to compel the Commission to decide its motion on the merits, petitioner contending that its motion to reconsider had been filed on time, because the law allows "fifteen days" for appeal, under sec. 50, Republic Act No. 772. The rule is void, asserts herein petitioner, because it shortens the period specified by law. We think it clear, however, that the section cited by petitioner refers to appeals from Workmen's Commission to this Court. Maybe the Commission rule holds that when no appeal to it from the decision of one Commissioner is made in ten days, the latter's opinion becomes the decision of the Commission. From which an appeal may be taken to this Court within fifteen days from notice, as by statute provided.

Nevertheless, without ruling on this matter, we have chosen to act in accordance with the second alternative of the petition before us; to regard it as a petition for review of the compensatory award.

According to the decision, the facts were these:

"Vicente Soriano since 1947 until his death on September 29, 1957, was employed as a driver of the respondent corporation, earning P5.00 a day or P30.00 per week. In the early morning of the last mentioned date, said Vicente Soriano together with his assistant Mario Bariquit, and one Rodolfo Mapa, another

employee of the respondent corporation, loaded his truck with lumber from the sawmill to be brought to the company yard in Davao City. Then Vicente Soriano brought the truck to the gasoline station owned and operated by the respondent within its sawmill compound, and filled the truck with gasoline (60 liters). A delivery receipt for the lumber was issued by the dispatcher and the truck was allowed to proceed to Davao City. On the way, the truck did have passengers—Vicente Soriano's wife and 3 minor children, his assistant, Mario Bariquit and 6 laborers who hitched a ride in the truck.

Sitting beside Vicente Soriano was Vicente Soriano, Jr., then Mario Bariquit, Conchita, a daughter of Soriano, and Mrs. Flavia Aliwasag de Soriano. The truck was loaded with about one hundred (100) pieces of rough lumber. Sitting on the load of rough lumber were the aforementioned laborers of the Davao Gulf Lumber Corporation.

"At about 10:30 a.m., same date, when they were near the house of Ex-Sgt. Oxales, PC, at Nalagos, Davao City, driver Vicente Soriano stopped the truck because they heard an unusual sound from under the rear portion thereof. Soriano, together with Mario Bariquit, descended from the truck and decided to investigate. They then dismantled the rear axle of the vehicle and seeing no defect therein, they returned the parts to their respective places and then proceeded with their trip. At about 11 o'clock that same morning, after having passed Nalagos crossing, policeman F. Macias of Davao City, signalled the truck to stop because he wanted to ride, but seeing no place to sit in the truck, he gave up the idea and told the truck driver to proceed.

After the truck had run about a period of 20 minutes along the descending road, at Km. 30, Nalagos, Davao City, the gear of the truck went out of order rendering the gear shift useless. The truck was rapidly gaining speed and Vicente Soriano finding that the brakes would not function, ordered the persons riding atop the load of lumber to jump off the vehicle.

At this instance Mario Bariquit pulled, the handbrake so as to stop the truck but it did not function. Vicente Soriano stepped on the clutch pedal and manipulated the transmission in order to switch to low gear but to no avail. Vicente Soriano was able to guide the truck from Km. 30 to Km. 29 at Nalagos, Davao City. But Vicente Soriano, Jr. became scared and jumped into the arms of his father who lost control of the vehicle, which then bumped Km. Post #29 and a pile of big stones about one (1) meter in diameter by the right side of the road causing the truck to somersault. As a result of the impact, the new cable about one half inch in diameter with which the load of lumber was tied was cut and the pieces of lumber were strewn on the road. Vicente Soriano, Sr. and his son, Vicente Soriano, Jr. were killed instantly."

On the basis of the above, the ^Commissioner ordered the Davao Gulf Lumber Corporation to pay. The latter insists the accident was due to the deceased's reckless negligence, and points out to the findings of the hearing officer. The latter, it must be stated, imputed notorious negligence to the driver because:

- "1. Preceding the accident the truck was running 40 to 50 kilometers per hour;
2. That the road was dangerous forming a steep slope and the curve of the road was very near the accident;
3. That the machine of the truck was very defective as the truck that met the accident has no more brakes at the time it was going down at a distance of 5 kms;
4. That the trip in question was personal to meet the relative of the wife of the deceased and the loading of the lumber on that day Sunday was never authorized by the respondent nor any of its representatives. (Pp. 3-2 s.t.n.) (P. 8 s.t.n.)
5. That the trip was made solely at the instance of the deceased;
6. That the dump truck that met the accident was not registered in the Motor Vehicle Office as the same must be utilized only in carrying slabs inside the sawmill compound; so that its brakes are not in good condition and unworthy to be taken to the public highway;

7. That despite the defective condition of the truck the deceased (Vicente Soriano Sr.) still drove the truck until he met the accident;

8. That the members of his family were all seated in the front seat and immediately preceding the accident his Jr. jump into his arms as a consequence of which he lost control of the steering wheel thus hitting a kilometer post. (Affidavit of Mario Bariquit). (Exh. 7-B)"

In our opinion, the truck was running fast just before overturning because it was then on a slope, and (as declared by the Commission) the "gear of the truck went out of order rendering the gear shift useless," and that the brake "would not function." As to the fourth and fifth circumstances, the Commissioner's decision says the Company consented to or authorized the trip.

Concerning the non-registration of the truck in the Motor Vehicle' Office, and its defective condition—there is no finding that the driver knew this at the time of driving. Registration of the vehicle was npt his concern.

As to the presence of members of his family in the vehicle, supposing it was in violation of company regulations, it is not certain that it caused the accident.[1] Indeed, as his wife and. children were present, this driver must, have been extremely careful—not reckless. What happened must, have been unforeseen, it may only be blamed upon the worn-out condition of the motor transport, or to "accident," for which the employer is responsible, it having arisen out of and in the course of the deceased's regular duties as driver. (Sec. 2, "Act No. 3428 as amended by Republic Act 772.)

The death was, consequently, compensable. The Commission and this Court find no notorious negligence.

Judgment affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

[1] Marinduque Iron Mines vs. Workmen's Compensation Commission, 99 Phil., 480; 53 Off. Gaz. (17) 5611.

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