

PHILIPPINE IRON MINES, INC., PETITIONER, VS. TOMAS ABEAR AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-22555. October 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner, Philippine Iron Mines, Inc., seeks the review by certiorari of a decision of the Workmen's Compensation Commission.

The main facts are not disputed. While in the performance of his duties as petitioner's employee, since 1934, herein respondent Tomas Abear met an accident in 1936, in consequence of which his left leg was then amputated below the knee, and he received from petitioner, by way of compensation benefits therefor, the sum of P600.00.

About one year later, Abear returned to work as bolt threader in petitioner's shop. Owing to the loss of his left foot, Abear was then using a home made metal walking caliper. On January 12, 1957, at about 7:00 a.m., while getting the threader out of the repair shop, Abear slipped and fell on the cement floor of petitioner's bodega, thereby causing the stump of his previously amputated foot to bleed profusely. Because of this, on February 19, 1957, a surgeon had to operate on Abear's leg stump and amputated his left leg, above the knee.

Soon thereafter, he reported back to work as re-threader of bolts, performing comparatively light work, but, on November 30, 1961, he was laid off due to petitioner's retrenchment policy. On August 20, 1962, a physician of the Workmen's Compensation Commission found him to be suffering from a 100% permanent partial disability of the left leg. Upon a claim for compensation, based on the loss of his left leg, above the knee, Abear secured a decision of an Associate Commissioner of the Workmen's Compensation Commission, which was affirmed by the Commission, granting him the full compensation provided by law for said loss.

Hence, this appeal by petitioner, who maintains: (1) that Abear's claim is barred by the statute of limitations of action; and (2) that, having been awarded and paid compensation in 1936, for the disability resulting from the amputation of the left leg, below the knee, the amount of such compensation should be deducted from the sum collectible for the amputation of the left leg, above the knee, in 1957.

Petitioner's claim of prescription is based upon the fact that, although the last accident took place on January 12, 1957, Abear's claim for compensation therefor was not filed until August 2, 1962. This defense cannot be entertained, petitioner having failed to set it up in the Workmen's Compensation Commission. It is well-settled that the benefits of the statute of limitations of action cannot be invoked for the first time on appeal, the defense being deemed waived if not seasonably pleaded in the lower court.[1] Moreover, although aware of the accident that befell Abear on January 12, 1957 - he having been confined in petitioner's hospital from said date to February 25, 1957 - petitioner did not report it to the Workmen's Compensation Commission within 14 days from the date of the disability or within 10 days after it had knowledge of the accident. In fact, said report was not submitted until after the filing of Abear's claim, or on August 9, 1962. Pursuant to Section 45 of Act No. 3428, as amended, petitioner is deemed to have "renounced the right to controvert" the claim.[2]

As regards the question whether the compensation paid by petitioner in 1936, on account of the amputation of Abear's left foot, below the knee, should be deducted from the compensation due for the disability resulting from the amputation of the left leg, above the knee, in 1957, it is well settled that no such deduction can be made, unless the law so provides, and there is no such provision in our laws.[3] Thus, in *Knoxville Knitting Mills v. Galyon*,[4] the employee, who had lost three fingers of his left hand, nineteen years before he entered the service of the employer involved in the case, lost his left hand in an industrial accident while performing his duties as the latter's employee. He sought to recover for the loss of the hand, but the employer contended that the value of the three fingers, previously lost, should be deducted. After declaring that the apportionment statute clearly prohibited the deduction, the Tennessee Supreme Court further declared that independently of such provision the weight of authority is against said deduction. It continued:

"In *Industrial Commission v. State Ins. Compensation Fund*, 71 Colo 109, 203 Pac. 216, the court said: 'The remaining question is whether claimant became totally . . . blind by the accident at the Camp Bird mine when, as matter of fact, he was practically sightless in the right eye prior to such employment. There is nothing in our compensation statute requiring employees to be physically perfect in order to come within its provisions. Claimant, for practical purposes, was blind in one eye when he entered the service of the Camp Bird Company. This, however, did not prevent him from doing the work which he was employed to. His wages were the same as his fellow employees with perfect vision; the Camp Bird Company paid the same compensation insurance premium for him as for workmen with normal sight; no penalty whatsoever attached to him because he was practically sightless in one eye. When he lost the sight of his remaining eye in an accident arising out of and in the course of his employment, we are of opinion that he became totally and permanently disabled within the meaning of our Compensation Act.'"

"In *Schwab v. Emporium Forestry Co.* 216 N.Y. 712, 111 N.E. 1099, an award for total disability was affirmed under the following facts, stated in the opinion, to wit: 'The claimant suffered an injury on July 6, 1914, while in the employ of the Emporium Forestry Company, the injury resulting in the loss of his right hand at the wrist. Many years before, in some way not disclosed by the record, the claimant had lost his left hand, not, however, while engaged in the same employment, nor while working for the said Emporium Forestry Company. The question at issue was: "'Shall the claimant be awarded as for total permanent disability, as provided in subdivision 1 of § 15 of the Workmen's Compensation Law, or for permanent partial disability for a period of 244 weeks, as provided in subdivision 3 of said § 15?'"

"In *Branconnier's Case*, 223 Mass. 273, 111 N. E. 792, the court, speaking through Chief Justice Rugg, said:

"The employee, a man who in 1910 had lost one eye, met with an injury in 1915 arising out of and in the course of his employment for a subscriber under the Workmen's Compensation Act, whereby he lost the sight of his remaining eye. The question presented is whether there was error in refusing to rule as matter of law that the total incapacity of the employee could not be attributed to the injury of 1915, because made up in part of the result of a previous accident.

"The denial of this request was right. The employee, when he entered the service of the subscriber, had that degree of capacity which enabled him to do the work for which he was hired. That was his capacity. It was an impaired capacity as compared with the normal capacity of a healthy man in the possession of all his faculties. But nevertheless it was the employee's capacity. It enabled him to earn the wages which he received. He became an "employee" under the act and thereby entitled to all the benefits conferred upon those coming within that description. The act affords a fixed compensation for a limited time, "while incapacity for work, resulting from the injury is total." Stat. 1911, chap. 751, pt. 2, § 9. It establishes no other standard. It fixes no method for dividing the effect of the injury and attributing a part of it to the employment and another part to some pre-existing condition, and gives no indication that the legislature intended any such division.

The total capacity of this employee was not so great as it would have been if he had had two sound eyes. His total capacity was thus only part of that of the normal man. But that capacity, which was all he had, has been transformed into a total incapacity by reason of the injury. That result has come to him entirely through the injury. In principle this case is concluded by the reasoning and the decision of *Madden's Case*, 222 Mass. 487, L. R.A., 1916D, 1000, 111 N.E. 379, where the subject of pre-existing infirmities of the employee, as bearing upon the right and extent of compensation under the act, was discussed, at large. *Brightman's Case*, 220 Mass. 17, L.R.A. 1916A, 321, 107 N.E. 527, 8 NC.C.A. 102."

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"A case exactly in point is that of *Mark Mfg. Co. v. Industrial Commission* 286 Ill. 620, 122 N.E. 84, in which the court said: 'Where, as a result of an injury, an employee has per-manently lost the use of one hand he is entitled to compensation for the loss at the rate fixed by statute; and the facts that one finger had been previously injured and partly amputated, and that he might have recovered for that injury, do not reduce the amount of compensation to which he is entitled.' The court further said: 'Though the defendant in error had previously lost a part of one finger he had the use of his hand, with a capacity somewhat reduced by reason of the defect. The fact that his hand was not perfect did not render its loss any less complete. As the result of his injury he has totally lost the use of the hand which he previously had, and under the statute he is entitled to compensation for that loss. *Wabash R. R. Co. v. Industrial Commission*, 286 Ill. 194, 121 N. E. 569; *Branconnier's Case*, and *Schwab v. Emporium. Forestry Co.*, supra. The fact that he might have recovered for the first injury did not reduce the amount for compensation to which he is entitled for the loss of the use of his hand.'" (Underlining supplied.)

We are aware of the fact that, instead of helping the injured employee, this view may, sometimes, be detrimental to him, in that it may deter the employer from re-engaging his services after the first accident. We feel, however, that the language of the law is such as to give us no discretion in the matter. Pursuant to Section 17 of Act No. 3428, as amended, "in the case of disability which is partial in its nature but permanent in its duration" - and the loss of a leg, to which "amputation at or above the leg shall be considered as equivalent,"[5] belongs to this class -- "the compensation shall be fifty per centum of the average weekly wages" for "one hundred and ninety weeks." We cannot, by judicial fiat, qualify this provision by, in effect, adding thereto the words "less the compensation formerly paid for the previous loss of a foot" -- to which "amputation between knee and ankle shall be considered" as equivalent[6] - or "fifty per centum of the average weekly wages" for "one hundred thirty weeks."

It may not be amiss to add that, to offset the undue hardship or injustice that may, at times, be caused to the employer, in consequence of the strict or literal interpretation of the law, the following alternatives have been resorted to in some jurisdictions, namely: (a) an insurance secured by the employer to protect him or his business from the resulting loss, or (b) an amendment of the law, to provide for a deduction of the compensation formerly paid, otherwise known as "apportionment statute." In either case, courts of justice are limited to the application of the law, without opening themselves to the charge of indulging in judicial legislation or of encroaching upon the political field reserved by the Constitution for Congress, and sometimes, for the Executive.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against petitioner herein.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] *Tan Tiong Tiok v. Philippine Manufacturing Corporation*, L-19152, Feb. 29, 1964; *Remonte v. Bonto*,

L-19900, Feb. 28, 1966; Valdehueza v. Republic, L-21032, May 19, 1966; Republic vs. Venturanza, L-20417, May 30, 1966; Piñero v. Hechanova, L-22562, Oct. 22, 1966; City of Manila v. Garcia, L-26053, Feb. 21, 1967 and "Y" Shipping Corporation v. Erispe, L-20627, May 4, 1967.

[2] National Development Company vs. Workmen's Compensation Commission, G. R. No. L-19863, April 29, 1964; General Shipping Co. vs. WCC, L-14936, July 30, 1960; Victory Shipping Lines vs. WCC, L-19268, November 28, 1959; Victoria Milling Co. vs. WCC, L-10533, May 13, 1957; and MRR Co. vs. WCC, G. R. No. L-19773, May 30, 1964.

[3] "In the absense of an apportionment statute, the general rule is that the employer becomes liable for the entire disability resulting from a compensable accident." The Law of Workmen's Compensation, Larson, Volume 2, p. 55.

[4] 30 A.L.R. 976.

[5] Section 18 of Act No. 3428, as amended.

[6] Section 18 of Act No. 3428, as amended.

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