

VIDAL PAULINO, PETITIONER, VS. ADELAIDA ROSENDO AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G. R. No. L-20484. November 28, 1964

Ponente: REGALA, J.

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REGALA, J.:

This case comes to Us for review from the Workmen's Compensation Commission which affirmed a workmen's compensation award made by Regional Office No. 3 in favor of respondent Adelaida Rosendo.

It appears that respondent Rosendo filed a claim under the Workmen's Compensation Act for the death of her husband, Vicente Nieto. The claim was brought in the Regional Office No. 3 against Amado de la Cruz, Anastaquio Manuel and Vidal Paulino.

Summons were sent out by only Vidal Paulino, the petitioner in this case, filed an answer. Accordingly, de la Cruz and Manuel were both declared in default. The case was then heard.

The Regional Office found—

"That sometime before February, 1960, the respondents Amado de la Cruz, Anastaquio Manuel and Vidal Paulino were engaged in a joint venture of buying watermelons in Pangasinan and wiling them wholesale by the truckload in Manila and suburban places for profit; that each of them invented P1,000.00 as his contribution to the venture and 6 x 6 cargo truck was used to carry the watermelons in Hacienda Roa, Mangabol, Bayambang, Pangasinan; that sometime in February, 1960, the respondents went to the house of the late Vicente Nieto in Guiguinto, Bulacan and hired him to work for them as guard in Bayambang, Pangasinan at P2.50 a day and as guard at P5.00 a night; that he started his work in Pangasinan on February 25, 1960; that on the night of March 28, 1960, the deceased was shot at and killed by a bunch of robbers while guarding watermelons belonging to the respondents in Hacienda Roa, Mangabol, Bayambang, Pangasinan; that three of the robbers were apprehended the following month and confessed to the killing of Nieto, according to the confidential report of the 121st P.C. Company of Bayamhang, Pangasinan, Exhibit 'C' * * *"

On the basis of this finding, Regional Office No. 3 rendered judgment as follows:

"WHEREFORE respondents Amado de la Cruz, Anastaquio Manuel and Vidal Paulino are hereby adjudge jointly and severally to pay Adelaida Rosendo Vda. de Nieto. thru this Office the sum of P4,000.00 as death compensation plus P200.00 as burial expenses or a total of FOUR THOUSAND TWO HUNDRED PESOS (P4,200.00).

"Respondents are further ordered to pay this Office the sum of FOURTY ONE PESOS (P41.00) as fees pursuant to Sec. 55 of the Act."

Petitioner asked for a reconsideration, but the Regional Office found no reason to disturb its decision and so elevated the case to the Workmen's Compensation Commission.

After reviewing the case, Associate Commissioner Jose Sanchez and, later, the Commission en bane, affirmed the

decision of the Regional Office and ordered petitioner, along with Amado de la Cruz and Anastaquio Manuel, to pay the additional sum of P5.00 as fee for the review and P300.00 as attorney's fees. Hence, this appeal.

It is contended that petitioner's business was not covered by the Workmen's Compensation Act because its capital was less than P10,000 and it was not hazardous. In support of this assertion, the following provisions of the law are cited:

"SEC. 42. Law applicable to small industries.—AH claims lot 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 lie among those considered hazardous or deleterious to employees:

"(1) Any business for the transportation of persons or goods or both;

"(2) Any factory, establishment, or shop where machinery is used;

"(3) Any factory, establishment, or shop where the employee is exposed to dust or other particles of matter, fumes, gases and other chemical substances;

"(4) Plants or establishments for the making or manufacture of fireworks, dynamite, munitions, and similar things or articles;

"(5) Employment for circus, boxing, football, basketball, wrestling, racing, and similar sports; and

"(6) Fishing, lumbering and mining."

Although the petitioner's business was capitalized at less than P10,000, the Workmen's Compensation Commission nevertheless held it to be covered by the Workmen's Compensation Act because it was hazardous. According to the Commission, the regular use of a cargo truck in transporting watermelons placed the business in the category of an hazardous enterprise.

The second contention of petitioner is that there is no substantial evidence supporting the finding that Vicente Nieto was an employee and not a business partner. According to petitioner, the finding that Nieto was hired as guard is based on the testimony of respondent Rosendo which, according to petitioner, is not credible because this witness, on cross-examination, admitted that there could possibly be some part of the conversation between petitioner Paulino and the late Nieto as to the alleged hiring of Nieto as guard that she did not hear and that at the hearing of the case, Rosendo was not even able to point to Paulino, she having pointed to a different person namely Alfonso Lopez. According to petitioner, all these cast doubt on the credibility of Rosendo's testimony to the effect that he heard Paulino offering Nieto the job of a guard. On the other hand, according to the petitioner the evidence submitted by him was straight forward and categorical, to the effect that it was actually Nieto and Anastaquio Manuel and Amado de la Cruz who invited him (Paulino) to join them, with Nieto acting as "socio-industrial." Pitted against this evidence, according to the petitioner, the story of Rosendo certainly cannot prevail.

Petitioner's third point is that there was no evidence that the motive for the killing of Nieto was robbery because (1) the Philippine Constabulary report only stated he was murdered and (2) it was inconceivable that robbery could be the motive considering that only watermelons were being guarded. It was more probable to believe, according to petitioner, that Nieto was killed because he did not take precautions to hide from the killers. Anyone would have been killed. It could not be said that the deceased's presence at the scene exposed him to a special degree to the risk which could not have been incurred by other persons similarly situated.

The last point deals with the computation of the death benefits given to the heirs of Nieto. The Commission arrived at P4,000 as death benefits thus:

"Under Sec. 8(a) of Act 3428, as amended, the claimant widow, being without any dependant children is entitled to 45% of the deceased average weekly wage of P52.50 (P2.50 plus P5.00 equals P7.50 x 7 days) or P23.62 and for 208 weeks or the sum of P4,912.00 or only P4,000.00 maximum allowed by this Act."

According to petitioner, the finding as to the wages of Nieto is based on the vague and unreliable testimony of Rosendo who could not recall when her husband allegedly started working for petitioner and whether the service rendered was continuous.

With respect to the first point raised by the petitioner, it is sufficient to point out the fact that a truck was used in the business of transporting the watermelons from Pangasinan to Manila. Hence, this makes it hazardous. As was held in *Paez vs. The Workmen's Compensation Commission* G. R. No. L-18438, March 30, 1963;

"* * * 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 good?, especially when, as in the instant case, the place of purchase was very far from the place of sale (Isabcla to Tarlac), that business became inherently hazardous and dangerous. To a driver like the deceased Barawid, a risk on the road was great, resulting from hold-ups and outlaws, falling into ravines, vehicular accidents of ail 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. 807 So. 197, [1920])"

In *2 Schneider's Workmen's Compensation*, pp. 358 and 360 it is stated that the question is not whether the services which an employee was performing were hazardous but rather whether the employee, at the time of the injury, was carrying on work for an employer who is engaged in a hazardous business.

As noted above, the law requires that the capital of the business must be less than ten thousand pesos and that the business must not be hazardous in order that the exemption from the law might operate. These two must concur. It is not enough, therefore, that the business is capitalized at less than ten thousand pesos. The business must likewise be "not hazardous." The fact, then, that in this case the Commission ruled that the business of the plaintiff is hazardous, the compensation awarded is legal and proper.

The next point raised by the petitioner is that the respondent's husband was not a guard of the petitioner's firm but a mere partner. The question, therefore, hinges on the credibility of Rosendo's testimony. In a long line of cases decided by this Court, the ruling has consistently been to the effect that where the death occurred in the course of the employment, it is presumed to have likewise arisen out of the said employment and therefore compensate. (*Iloilo Drydock and Engineering Co. vs. Workmen's Compensation Commission*, G. R. No. L-16202, June 29, 1962)

Section 44 of the Act provides further that in any proceeding for the enforcement of the claim for compensation it shall be presumed in the absence of substantial evidence to the contrary (1) That the claim comes within the provisions of the Act and (2) That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another.

With reference to the last point raised by the petitioner, it is sufficient to quote the pertinent provisions Of law, to wit:

Section 8, Workmen's Compensation Act, provides in part:

"Death benefit.—If the disease contracted or injury received by the employees as provided in section two hereof cause his death within two years from the date of such injury or sickness the employer shall pay the

compensation to the persons entitled thereto, and in case there shall be none, he shall pay to the person representing the deceased employee the burial expenses not to exceed two hundred pesos, and shall also pay to or for the following persons, in the order of priority and during the period hereinafter set forth, a weekly compensation equivalent to the following percentages of the average weekly wages of the employee as determined in Section nine-teen of this Act:

"(a) To the dependent widow or widower, in case there are no dependent children, forty-five per centum. * * *"

Section 19 reads:

"Computation of wages.—The average weekly wages shall be computed in such manner that it shall be the best computation that can be made of the weekly earnings of the laborer during the twelve weeks next preceding his injury: Provided, That if, on account of the shortness of the time during the laborer was so employed or of the cessation of the employment, it is impracticable to compute the remuneration, consideration may be had of the average weekly wages earned during the last twelve months preceding the injury by a person employed in the same grade and same work' by the employer of the injured laborer, or if there is no person employed, of the average weekly wages earned by a person employed in the same grade and the same kind of employment in the same district or locality."

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, with costs against the petitioner.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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