

LUIS S. AFABLE AND BONIFACIO DY, DOING BUSINESS UNDER THE NAME AND STYLE OF MALOMA SAWMILL, PETITIONERS, VS. ANTONIA LEONARDO VDA. DE LOYOLA, FOR HERSELF AND AS GUARDIAN FOR FEL...

G.R. No. L-7789. May 27, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of a referee of the Workmen's Compensation Commission, as amended by the latter, ordering petitioners to pay to respondents-claimants the sum of P4,000 as compensation, with legal interest thereon from March 18, 1953, and the sum of P41.00 as costs.

On June 30, 1954, respondents-claimants filed a motion to dismiss on the ground, among others, that the right of petitioners to appeal had already expired, but this motion was denied by this Court in its resolution of July 23, 1954. In view of such denial, we don't deem it necessary to discuss again the same issue which is now reiterated by the respondents in their memorandum.

This appeal stems from a claim filed by Antonia Leonardo Vda. de Loyola, in her behalf and in that of her minor children, for compensation against respondents for the death of one Teofilo Loyola. The claim was referred to Juan N. Gerardo who, after hearing, rendered decision in favor of the claimants. This decision was affirmed by the commissioner. with a slight modification. Respondents then, now petitioners, interposed the present petition for review contending that said decision is contrary to law and the evidence.

The facts as found by the referee are as follows:

"Under a contract for the supply of logs (Exhibit I), Arsenio Rivera, owner of a timber concession rights, agreed to supply the Maloma Sawmill with logs and timber of commercial sizes from his timber concession area in the mountains of Norzagaray, Bulacan to yard of the respondents' mill in the same municipality at the market prices prevailing at the time of the delivery of the logs; that as a guarantee for the continuous supply of timber and logs of the Maloma Sawmill, Arsenio Rivera and associate are 'restrained and prohibited by this agreement (Exhibit I) to sell or dispose of his timber or logs to any sawmill or parties other than the Party of the Second Part (Maloma Sawmill) during the period of subsistence and full force of this instrument'; that the contract was dated Oct. 24, 1952 and to last for two years therefrom; that according to the testimony of Rolando Medina, accountant of the respondents, Dy Hlan Tat is 'an agent of the Maloma Sawmill on commission basis selling sawn lumber or logs to third parties'; that according to the testimony of Dy Han Cho, witness far respondent, the truck that figured in the accident resulting in the death of Teofilo Loyola on February 10, 1953 was owned by Dy Hian Tat but was then being used by Arsenio Rivera for hauling the logs which was then being supplied to the respondents by virtue of their contract, Exhibit I; that the deceased, Teofilo Loyola, was regularly employed by the respondents as sawmill mechanic with an average wage of P6.00 a day for 6 days a week on the basis of board feet sawn; that according to Mateo Cambas, mill contractor and foreman and in charge of the preparation of payrolls (testimony of Rolando Medina) the survivors of the

ill-fated accident on February 10, 1953 namely, Edilberto Mangahas, driver of the truck and the helpers, Toribio Cristobal and Irineo Palad were all working for the first time for the Maloma Sawmill when their truck got out of control and loaded with logs on their way to the sawmill; that before the accident, the deceased, after repairing the fatal truck on February 5th, was called by one of the helpers to repair again the truck on February 9th which stalled in the mountains which he did; that the cost of the repair by Dy Hian Tat's truck was paid by the Maloma Sawmill and charged against the cost of the logs supplied by Arsenio Rivera; that the claimants are the widow and minor children of the late Teofilo Loyola and fully dependent on his wages for support; while the respondents are the general partners and owners of the Maloma Sawmill.

From the foregoing facts the following resumé may be deduced: Teofilo Loyola was employed by the Maloma Sawmill as a mechanic with an average wage of P6.00 a day on the basis of board feet of lumber sawn. Arsenio Rivera, owner of a timber concession, agreed to supply the mill with logs and timber from his concession in the mountains of Norzagaray, Bulacan, at the market price prevailing at the time of delivery, which contract providing that Rivera was prohibited from rolling or disposing of his logs or timber to any other sawmill. Dy Hian Tat was an agent of the Maloma Sawmill with a contract to sell sawn lumber or logs of the mill on commission basis, and the truck that figured in the accident which resulted in the death of Teofilo Loyola was owned by Dy Hian Tat but was then being used by Arsenio Rivera to haul his logs to the yard of the sawmill.

On February 9, 1953, the eve of the accident, one Irineo Palad, an employee of Rivera, requested Teofilo Loyola to repair the truck which stalled in the mountains, which he did, and after the repair, he rode on the same truck on its way to the sawmill loaded with logs and it was on that occasion that the truck got out of control resulting in the death of Loyola. The cost of the repair was paid by the Maloma Sawmill though it was charged against the cost of logs supplied by Arsenio Rivera. It also appears that Teofilo Loyola repaired the same truck on February 5, 1953 and when he repaired it for the second time it was with the tacit consent of one Dy Hian Cho, the superintendent of the sawmill.

Do the foregoing facts show that the accident which resulted in the death of Teofilo Loyola arose out of and was in the course of his employment in contemplation of law? The referee found that it was because (1) the truck was owned by Dy Hian Tat, a sales agent of the Maloma Sawmill; (2) the operator of the truck was Arsenio Rivera who was under an exclusive contract to deliver logs to said sawmill; (3) Loyola was tacitly permitted by Dy Hian Cho, the mill superintendent, to go to the mountains to repair the truck; and (4) both Arsenio Rivera and Dy Hian Tat were associates in the business of hauling logs from the former's concession to the sawmill. This finding is now assailed as arbitrary, or one made against the law and the evidence.

After a careful analysis of the facts and surrounding circumstances we are inclined to uphold the finding of the referee to the effect that the act of the late Loyola in repairing the truck which eventually led to his death may be deemed to be as one done in the course of his employment as a mechanic and as one arising out of said employment. It is true that, strictly speaking, the employment of Loyola was that of a mechanic of the sawmill and that his main duty was to take charge of the repair of the mill and see to it that it be always in running condition. But it should be noted that while that was his main work he was however also available to any other odd job that may be assigned to him by the management as shown by the fact that he was living with his family within the compound of the sawmill. In fact, he repaired the fateful truck not only on February 9 but also on February 5, this time in the very premises of the mill. And when he was asked to repair the truck for the second time by an employee of Arsenio Rivera he did so with the tacit consent of the mill superintendent. This acquiescence or consent is very significant. It means that Loyola acted the way he did believing it to be his duty because the work to be done was in furtherance of the interest of his employer. Loyola could not adopt any other attitude lest he incur in the displeasure of his employer knowing that Rivera had business relations with the latter. For having done what he believed to be his duty Loyola cannot be blamed for the consequences. It is therefore fair

and just that the repair he made of the truck be considered as one done in the course of his employment in contemplation of law.

Can said act be also considered as one arising out of employment? Of course, if we have to be too technical in the application of the law and limit ourselves strictly to its literal terminology we may readily concede that the act in question is beyond its proper bound. This ordinarily happens when the situation is so close that one is at a loss to draw the proper legal boundary. And perhaps this is one of such cases. Fortunately, however, we are helped here by certain facts and circumstances which, if properly scrutinized, would give us a proper basis for a rational conclusion. These facts are: Arsenio Rivera, the one using the truck subject of repair, had an exclusive contract with the sawmill to bring logs to its mill in order that it may operate. Before the happening of the accident the sawmill was not in operation precisely because it did not have then in stock any log or lumber to be sawn and it was to its interest that Rivera comply with his commitment of bringing logs to the mill within the briefest time possible. Because of such interest and the urgency that the situation demanded, Rivera had to make use of the services of mechanic Loyola in order that the hauling of logs may be accomplished, and in such predicament the management of the sawmill could not but consent knowing that it was to promote its best interest. And the truck which was to be repaired belonged to Dy Hian Tat who had a co-equal interest in the business because he was its sales agent, and so Loyola had to undertake the repair impelled by his desire to promote the interest of his employer. Can we now characterize the performance of that duty as one done outside of his employment? Is it fair and just to brand what Loyola had done as one divorced from his employment when what he did was precisely to advance the interest of his employer? To give an affirmative answer would be not only to unreasonably interpret the law but to commit a brazen injustice to the deceased and his heirs. We are therefore persuaded to conclude that this case comes within the purview of the law.

The authorities cited in respondents' memorandum are pertinent and are deemed to be of persuasive force on the issues under consideration:

"Broadly defined, it may be taken as authoritatively settled that 'out of and in the course of his employment' covers those accidents which befall an employee while he is discharging some duty he is authorized or directed to perform for the furtherance, directly or indirectly, of his employer's business." (*Clifton v. Kroger Grocery & Baking Co., et al.*, 187 N.W. 380, 381.)

"Again it is said that, if the work being done at the time of the accident may properly be regarded as within the ordinary expectation or contemplation of the parties, as being necessary or proper for the employee to do, to aid in carrying out, either directly or indirectly, the main purpose or business of the employer, even though the workman steps aside from his usual work to do it, the accident may be said to be one arising out of his employment." (*Vickers v. Alabama Power Co.*, 117 So. 650, 651.)

"The effect of these and other well-considered cases is to firmly establish the principle, based of course upon the theory of a liberal rather than a strict or narrow construction, that an employee's injury may be properly held to have arisen out of his employment notwithstanding that the act or conduct of the employee to which the injury is proximately referable was not within the scope of his authority nor strictly within the line of his duty, provided it was reasonably related to the service he was employed to render and was in good faith done or undertaken in furtherance of the employer's business; and notwithstanding, also, that the injury in question was not one of the anticipated risks of the service." (*Ex parte Terry et al.*, 100 So. 768, 769.)

"It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a

reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment." [In re Employers' Liability Assur. Corp. (McNicol's Case) 215 Mass. 497, 102 N.E. 697.]

Petition is denied, without pronouncement as to costs,

Pablo, Bengzon, Reyes, Labrador, Concepcion, and Reyes, J.B.L., concur.

Montemayor, J., concurs in a separate opinion.

CONCURRING OPINION

MONTEMAYOR, J. concurring:

In the case of Chavez vs. A.L. Ammen Transportation Co., Inc. and Court of Appeals, G. R. No. L-7318, decided by this Court and promulgated on April 20, 1955, we held that where despite the regulations of a transportation company that only motor vehicles belonging to it should be repaired in its shop, the branch manager of the company who has control and supervision of the operation of the shop, presumably in the furtherance of the interests of the company, orders a mechanic in the employ of the company to repair a motor vehicle belonging to a third person, and where in the course of said repair in the shop of the company, an accident takes place resulting in the death of the mechanic, the accident and death of the mechanic may be considered as not only in the course of the mechanic's employment but also arising out of said employment. The reasons for our holding was because the repair was being made within the premises of the company and upon order of the immediate chief of the mechanic.

In the present case, the fact that the repair of the truck was done out in the mountains and way outside the premises of the sawmill, somewhat detracts from the liability of the Maloma Sawmill for the death of mechanic Teofilo Loyola, this aside from the circumstance that the accident occurred not during the time the repairs on the truck were being made, but while he was riding on said truck on its trip toward the mill after the repairs. Was Loyola lawfully riding in said heavily loaded truck? I understand that companies transporting heavy logs, especially in mountain roads, generally have rules or regulations against persons other than the driver and his helper, riding in such heavily loaded trucks because of the inherent danger to said passengers in case the logs fall or slide from the truck or the truck meets with an accident because of the extraordinary weight it is carrying.

If I concur as I do in the decision penned by Mr. Justice Bautista, it is because during the discussion of this case, we had the understanding that the permission given by the sawmill manager to mechanic Loyola to repair the truck in question was equivalent and amounted to an order which Loyola could not very well ignore or disobey, and in addition, that in case of reasonable doubt as to whether or not an injury suffered by an employee or laborer arose from his employment, the courts may well incline toward granting compensation under the Workmen's Compensation Act.

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