

## **ENCARNACION VDA. DE YOHANON, PETITIONER, VS. JOSE BALEÑA AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.**

*G.R. No. L-43641. August 26, 1977*

Ponente: MAKASIAR, J.

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### **MAKASIAR, J.:**

This is a petition for review of the decision dated February 23, 1976 of the now defunct Workmen's Compensation Commission (hereinafter referred to as WCC) in RO9-WC Case No. 14180, which affirmed the decision of WCC Regional Office No. 8 (Tacloban City) dismissing the claim of herein petitioner for failure "to substantially prove that her husband's death arose out of his employment."

Petitioner Encarnacion Vda. de Yohanon is the surviving spouse of the deceased Mayorico Yohanon who, during his lifetime, was employed as conductor in Bus No. 7 of the Pioneer Bus Lines operated by private respondent Jose Baleña. The deceased was paid a monthly salary of P150.00 plus P3.00 daily meal allowance.

On March 21, 1974 at about 8:00 o'clock in the evening, said deceased fell from atop Bus No. 7 referred to above and landed on the cemented pavement resulting in his death. Subsequently, on October 31, 1974, the widow of the deceased, petitioner herein, filed a death compensation claim alleging, in the main, that the deceased, while arranging the cargoes on top of the passenger bus as its conductor, fell to the cemented pavement, suffered a fractured skull, and as a consequence, died on March 22, 1974.

A decision dated December 10, 1975 (pp. 5-9, rec.) was rendered by Labor Attorney and Hearing Officer Bienvenido C. Elorcha, dismissing the case since the claimant-widow failed "to substantially prove that her husband's death arose out of his employment." Petitioner filed a motion for reconsideration (pp. 10-11, rec.) of the said decision on January 15, 1976, praying, inter alia, that in the event of denial of the motion, the records of the case be elevated to the Workmen's Compensation Commission for review (pp. 10-11, rec.). In an order dated January 26, 1976 (p. 12, rec.), the Hearing Officer denied the aforementioned motion and, as prayed for by the movant (petitioner herein), elevated the entire records of the case to the respondent Commission. Acting on the appeal interposed by the petitioner, the Workmen's Compensation Commission, sitting en banc, in a decision dated February 23, 1976 (pp. 13-15, rec.), affirmed the decision appealed from, absolving the respondent from any liability to the claimant under the Workmen's Compensation Act concluding "that the deceased died not in line of duty nor was he doing something incidental to his employment but due to an accident which was attended by exculpating circumstances of notorious negligence and drunkenness on his part" (p. 14, rec.).

In her petition for review, the petitioner raised three issues which she reiterated in her memorandum (pp. 47-50, rec.), namely:

1. That the decision (pp. 5-9, rec.) affirmed by respondent Workmen's Compensation Commission (pp. 13-15, rec.) has not appreciated nor considered the significance or import of petitioner's evidence;

2. That private respondent's failure to controvert the claim within the reglementary period provided for under the Workmen's Compensation Act and the rules and regulations militates against defense of drunkenness; and
3. That payment made by private respondent to petitioner in the total amount of P1,013.00 is an admission of the compensability of the petitioner's claim.

The points raised by the petitioner herein are indeed well-taken and are discussed herein below ad seriatim.

The admission of private respondent's witnesses that there were already passengers in the bus and cargoes loaded on the top of the bus (p. 3, rec.), gave credence to petitioner's contention that the deceased was on top of the bus receiving, loading, and arranging the cargoes when he fell from the bus to the concrete pavement. As one of the bus conductor's duties, as it was in the case of the deceased, Mayorico Yohanon, was to be present, available and ready to serve these passengers and load their cargoes, so it was at 8:00 o'clock that night of March 21, 1974 that Yohanon was on top of the bus receiving, loading and arranging the cargoes when he fell to the concrete pavement. The deceased was therefore in the actual performance of his duty as a bus conductor when he suffered from a fractured skull resulting in his death.

Moreover, apart from the testimony of one Pedro Jundarino that he and the deceased had a drinking spree and that they both proceeded to the bus drunk, no other evidence was adduced by private respondent to show that the deceased was extremely or very drunk at the time of the incident, and that being drunk, was then absolutely incapable of maintaining his balance and equanimity so that he was exposed to the danger of falling from atop the bus. The records clearly show that when the deceased fell to the cemented pavement, he was immediately taken to the Samar Provincial Hospital. Strangely, the private respondent did not present in evidence the hospital bulletin or record of the deceased. Neither was an autopsy, if any, performed upon the deceased, submitted to show whether the deceased smelt of liquor or his blood had alcohol content. Even if it could be shown that a person drank intoxicating liquor, still it is incumbent upon the person invoking drunkenness as a defense to show that the said person was extremely drunk. This is so because a person may take as much as several bottles of beer or several glasses of hard liquor and still remain sober and unaffected by the alcoholic drink. "Thus, intoxication which does not incapacitate the employee from following his occupation is not sufficient to defeat the recovery of compensation, although the intoxication may be a contributory cause of his injury. It must be shown that the intoxication was the proximate cause of the death or injury and the burden of proof lies on him who raises drunkenness as a defense" (*Compania Maritima vs. Cabagnot*, L-10675, April 29, 1960; *Balbiga vs. Time Taxicab Co.*, CA-GR 12219-R, Oct. 20, 1955).

On the whole, therefore, the evidence of private respondent disclaiming liability is not sufficient to overcome the presumption of compensability of the death of Mayorico Yohanon.

Again, assuming arguendo that the deceased was drunk at the time when he fell from atop the bus, herein private respondent cannot avail of the defense of drunkenness by reason of his failure to controvert petitioner's claim for compensation within fourteen (14) days following the date of the disability, if known to the employer, or within ten (10) days after he has knowledge of the alleged accident (Sec. 45, Act No. 3428, as amended).

Private respondent herein had knowledge of the accident immediately after it occurred because he testified that his checker, Fortunato Yulas, informed him of the accident the following day, March 22, 1974. Private respondent's notice of controversion was filed only after the claim had been filed and received by the WCC Regional Office on October 31, 1974 -- more than seven (7) months after the death of the employee on March 22, 1974.

In the stipulation of facts between the parties herein, petitioner admitted having received the total amount of P1,013.00 from respondent (p. 6, rec.). Petitioner contended, and rightly so, that said amount of P1,013.00 is an advance payment, and constitutes an admission of the compensability of the death of Mayorico Yohanon. Private

respondent is presumed to know the law and his liability to his employees under the Workmen's Compensation Act, and accordingly made an advance settlement of his liability thereunder. It cannot, in the absence of proof to the contrary, be considered an act of charity, as adverted to by private respondent in his memorandum (p. 44, rec.).

WHEREFORE, THE DECISION APPEALED FROM IS HEREBY REVERSED, AND PRIVATE RESPONDENT JOSE BALEÑA IS HEREBY DIRECTED TO PAY

1. PETITIONER ENCARNACION VDA. DE YOHANON THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DEATH COMPENSATION BENEFITS, LESS THE AMOUNT OF ONE THOUSAND THIRTEEN (P1,013.00) PESOS ADVANCED TO THE PETITIONER BY RESPONDENT HEREIN;
2. ATTY. CELESTINO B. SABATE OF BORONGAN, EASTERN SAMAR, THE SUM EQUIVALENT TO TEN PERCENT (10%) OF THE AMOUNT RECOVERABLE, AS ATTORNEY'S FEES;
3. THE WORKMEN'S COMPENSATION COMMISSION THE AMOUNT OF SIXTY-ONE (P61.00) PESOS AS ADMINISTRATIVE FEE; AND

**4. THE COSTS.**

**SO ORDERED.**

Teehankee, (Chairman), Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

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