

ELISEO SAULOG, PETITIONER AND APPELLANT, VS. N. BAENS DEL ROSARIO, ACTING COMMISSIONER OF THE WORKMEN'S COMPENSATION COMMISSION AND SERGIO MONTTOYA, RESPONDENTS AND APPELLEES.

G.R. No. L-11504. May 23, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from an award of the Workmen's Compensation Commission dated October 4, 1956, requiring Eliseo Saulog to furnish Sergio Montoya with medical and hospital services, to pay him a total of P5,200.00 and to pay regular official fees.

In 1949, and 1950, Montoya worked as conductor of the Saulog Transit, a common carrier engaged in land transportation by buses, owned and operated by Eliseo Saulog. About the end of February 1950, he began spitting blood and having chest pains which resulted in his hospitalization about April up to November of the same year. Due to physical inability he resigned from Saulog Transit in May 1950. And on September 12, 1952, he filed with the Commission the corresponding Notice of Injury or Sickness and Claim for Compensation. Over Saulog's opposition, he obtained favorable action.

The contentions of the appellant may be summarized as follows: (a) the notice of injury and claim for compensation were not presented in due time; (b) the factual findings of the Commissioner disregarded those of the referee; (c) the award of compensation was excessive; and (d) the employer's liability, if any, should be enforced against Saulog Transit Co.

Concerning the last contention it appears that on October 24, 1951, Eliseo Saulog sold his entire transportation business to Saulog Transit Co. a corporation; so that when Montoya filed his claim on September 12, 1952, the business already belonged to Saulog Transit Co. Consequently, argues appellant, the latter is the responsible entity.

In the absence of proof that the sale included this particular liability, there is no legal ground to make this corporation pay. Apart from the question whether such transfer of liability, even if agreed upon between Eliseo Saulog and the purchaser, could legally affect the rights of Sergio Montoya, who had not consented to the transfer.

But the principal issue tendered before the Commission and reiterated here, refers to the claimant's failure to give notice of his injury or sickness and failure to claim for compensation within the two-month period provided in section 24 of the Workmen's Compensation Act. On this point, the Commissioner found that in the end of January 1950, while Montoya stood on his bus punching passenger tickets, he was suddenly thrown down when the driver abruptly applied the brakes to avoid hitting another conveyance; that Montoya accidentally bumped his chest against one of the seats; that apparently the accident had no consequences because Montoya continued working

for three weeks; but afterwards he felt breast and back pains and began spitting blood which resulted in his confinement in a hospital from April 1, 1950 up to November of the same year. The Commissioner also found that one day, prior to April 1950, claimant Montoya met Andres Medina, assistant manager of the Saulog Transit, and informed the latter about his illness; and that when Montoya was first brought to the hospital, Montoya's mother and brother went to the office of the Saulog Transit to ask for medical and hospitalization expenses, but Mercedes Saulog, (wife of the petitioner) who was treasurer of the organization, refused to extend any help alleging that his illness had not been contracted in line of service.

In the circumstances we think it improper to count the two-month period from the day claimant bumped his chest, because at that time he experienced no untoward consequences, so much so that he continued working for three weeks. The period should begin to run when he realized or felt that he was sick-that was about the end of February. And from that time to the end of March (prior to April 1, 1950 or on that date) when Medina and Mrs. Saulog were notified, not more than two months had elapsed. If necessary, it may be held that this claim rested on the disease[1] which manifested itself only in the last week of February 1950-not on the accidental bumping in the previous month.

In fact, we have heretofore held that "when an injury is apparently unimportant and does not at first warrant the filing of a claim for compensation, a laborer may submit such claim to the employer within two months after he learned that the injury resulted to be serious, and said claim is a substantial compliance with law." (Francisco, Labor Laws p. 940 citing Libron vs. Binalbagan, G. R. No. 41475, July 27, 1934.) See also Philippine Manufacturing Co. vs. Nabor, 40 Off. Gaz., 9th Supplement p. 164.

The petitioner disputes the findings of the Commission on the dates of the verbal notices; but we do not feel justified to interfere on such factual question. This, notwithstanding the assertion that the referee's findings had been overruled.

Again, petitioner insists that there was no written notice, in violation of section 25 of the Act which provides that "the notice and claim shall be in writing," and shall contain the name and address etc. etc. However, section 27 of the Act provides as follows:

"SEC. 27. Sufficient notice.-Any notice given in accordance with the provisions of section 25 of this Act shall not be considered as invalid or insufficient by reason of any incorrectness in the statement of time, place, nature or cause of the injury or of anything else, unless it be shown that the employer has been actually misinformed respecting the injury. Failure to or delay in giving notice shall not be a bar to the proceeding herein provided for, if it is shown that the employer, his agent or representative had knowledge of the accident or that the employer did not suffer by such delay or 'failure.'"

Under the above provisions, a verbal notice or a belated notice might be good if the employer does not show he has been actually misinformed respecting the injury. The section may be construed to mean that the notice shall not be considered invalid by reason * * * "of anything else," (which would include verbal notice) "unless the employer be misinformed." Furthermore, even if the verbal notice to Medina and to Mrs. Saulog be regarded as no notice for the purposes of section 25, this claimant may still recover pursuant to the last part of the above section 27, because the employer or his agent had knowledge[2] of the injury or sickness.[3] And also because according to the Commissioner, the employer did not suffer by such failure or delay.[4]

If petitioner should argue that above section 27 applies only to "notice" and not to "claim," the answer is that since according to section 25 of the Act as amended "notice may include claim," any provisions concerning the form of "notice" should normally be deemed applicable to "claim."

Disregarding the tardiness in the presentation of a written notice and claim, the Commissioner declared that Eliseo

Saulog suffered no loss from such delay. Appellant disputes this declaration, insisting that had he been duly notified he could have included this claim among the "liens and encumbrances" transferred to the purchaser Saulog Transit Incorporated. Granting the possibility of such inclusion, we still think it does not necessarily imply any damage to herein appellant, because the purchase price would have been correspondingly reduced at the same time. Anyway, as it is not denied that the corporation is merely the "alter ego" of herein petitioner, who practically owns it[5] the point thus raised becomes purely academic.

If all the above issues are decided against petitioner-appellant, one issue on the matter of compensation must be decided in his favor: it was error for the Commission to require him to furnish Montoya with medical and hospital services and supplies until his illness is declared arrested or cured. We hold it was error, because Montoya had resigned from the Saulog's services before starting these proceedings.

But as regards the amounts already expended for claimant's medical treatment and hospitalization, we see no reason to interfere. There was evidence that such expenses amounted to P2,500.00. Evidently, the Commission deemed such expenditure to exceed the amount ordinarily paid in the community for such treatment of an injured person of the same standard of living" and in the exercise of discretion reduced it to P2,200.00. (Sec.13 About 99 % of the stock is owned by him.13 of the Act.) Neither do we find fault with the estimate of claimant's total disability compensation:

"Claimant is entitled to 60% of Ms average weekly wages for the period he is incapacitated for labor but not exceeding 208 weeks and exclusive of the first 7 days. In this case, he has been disabled since April 1, 1950 to the present. Sixty per centum of his average weekly wage which was P35.00 equals P16.20 and for 208 weeks (same had already elapsed), he should receive the total compensation of P3,369.60 or P3,000.00 (maximum prior to R. A. No. 772)."

This computation accorded with sec. 14 of the Act, and there is no dispute as to Montoya's weekly wages. For all the foregoing reasons, the award of the respondent Commissioner is hereby affirmed, except the part hereinabove found to be erroneous. Costs against petitioner-appellant.

Paras, C.J., Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

[1]Caused or aggravated by his work as bus conductor from 4:00 a.m. to 10:00 p.m. daily. Very little time for rest.

[2]Through the information given to Medina and Mrs. Saulog.

[3]Altho the section specifies "injury" only, the latter word includes 'sickness." (See sec. 39 Workmen's Compensation Law.)

[4]Written notice was served on September 12, 1952.

[5]About 99% of the stock is owned by him.

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