

**LEONORA VDA. DE CABARUBIAS, FOR HERSELF AND ON BEHALF OF
HER FOUR MINOR CHILDREN, MAXIMINO JR., MARIPAS, MARISSA
AND MARITES, ALL SURNAMED CABARUBIAS, PETITIONER, VS.
WORKMEN’S ...**

G.R. No. L-43382. June 30, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the decision of the respondent Workmen's Compensation Commission in R04-WC Case No. 163164, dated February 13, 1976, reversing that of the Department of Labor, Regional Office No. 4, Manila, dated October 23, 1975, ordering the Top Service, Inc., a company duly organized and existing under the laws of the Philip-pines, to pay the claimant Leonora Cabarubias P6,000.00 as death compensation benefits and P300.00 for attorney's fees, as well as to pay the said regional office P61.00 as administrative expenses (Annex "A" of Petition).

This COURT, by resolution of May 5, 1976, gave due course to the petition, treated it as a special civil action and required the parties to submit simultaneous memoranda.

On February 12, 1975, Leonora Vda. de Cabarubias, the surviving spouse of the late Maximino Cabarubias, in her own behalf and in behalf of their minor children, Maximino Jr., Maripas, Marissa and Marites, all surnamed Cabarubias, filed a claim for compensation against the Top Service, Inc. with the Department of Labor, Regional Office No. 4, Manila.

On October 23, 1975, the hearing officer of the said regional office rendered a decision, finding that "the late Maximino Cabarubias in the course of his employment as pump operator of respondent and assigned in the night shift from 6:00 p.m. to 6:00 a.m., met a vehicular accident on December 23, 1974 while performing his duty in going to (the) pump station. He was immediately brought to (the) Rizal Memorial Hospital where he expired on January 3, 1975." The said regional office concluded that the claimant and her children are entitled to death benefits, burial expenses and attorney's fees and, accordingly, ordered the Top Service, Inc. to pay the same.

In a motion dated November 6, 1975, respondent company prayed for a reconsideration of the decision of the regional office, on the ground that the vehicular accident that befell the late Maximino Cabarubias did not arise out of and in the course of his employment or was not service-connected, to which claimant filed an opposition dated November 8, 1975.

On February 13, 1976, the Workmen's Compensation Commission rendered a decision, the pertinent portions of which read:

"The pertinent facts of the case disclosed from the record show that the late Maximino Cabarubias was in the employ of the respondent company as pump operator in one of its vessels or barges and was paid an average weekly wage of P51.00 for working six days a week. On December 23, 1974, he worked from 8:00 A.M. to

12:00 noon and from 1:00 P.M. to 5:00 P.M. At about 8:30 in the evening of December 23, 1974, the late Cabarubias while on his way home to Beverly Hills Subdivision, Antipolo, Rizal, met a vehicular accident at Cir Road, Antipolo, Rizal, involving a Baby Bus with Plate No. YA-855 (PUB-Manila-74) and the motor-cycle driven by him (Cabarubias). He was rushed to the Rizal Provincial Hospital, Pasig, Rizal where he succumbed on January 3, 1975, due to intracranial injury.

"It is very obvious that the fatal vehicular accident that befell (to) Cabarubias was not due to and in pursuance of his employment. At the time he met the said fatal vehicular accident on December 23, 1974; he was not performing any service or work for the benefit and interest of the respondent nor doing something in pursuance and in the furtherance of the business of the respondent (*Murillo vs. Mendoza*, 66 Phil. 689, etc.), but was on his way home after his off duty at 5:00 p.m. and had left the premises of his employer which was very far from the place of accident. It is already settled that a workman is not entitled from (sic) personal injuries resulting from an accident that befell him while going to or returning from his place of employment, because such an accident does not arise out of and in the course of his employment (*Afable vs. Singer Sewing Machine Co.* 31 OG 2312, 58 Phil. 40; *Donato Quiroz vs. Pampanga Development Co., Inc.* L-22117, April 29, 1966, etc.).

"We cannot also invoke here the proximity doctrine under the exceptions 'off premise rule', because when Maximino Cabarubias met the fatal accident in Antipolo, Rizal on December 23, 1974 at about 8:30 p.m., he was on his way home which was 3 1/2 hours after his off duty at 5:00 p.m. from the premises of his employer and very far from the place of accident (*Iloilo Dock Engineering Co. vs. WCC*, L-76341, Nov. 29, 1968, Vol. 26 SCRA pp. 102-120)" [pp. 10-12, rec.].

Hence, the present petition.

Petitioner contends that when the deceased Maximino Cabarubias met the fatal accident at about 8:30 p.m. of December 23, 1974, it was during his assigned working hours in the night shift from 6:00 p.m. to 6:00 a.m., and that the mishap occurred while he was performing his duty as a pump operator in going to inspect respondent corporation's pump station in Antipolo, Rizal, coming from said respondent's office at the Beverly Hills Subdivision, also in Antipolo, Rizal.

Respondent Top Service, Inc., upon the other hand, contends that the injury which resulted in the death of the deceased did not arise out of and in the course of his employment, for the deceased was injured in a vehicular accident outside of the premises of respondent company and was not performing his duty at that time for he was then off-duty for almost four (4) hours, because as a pump operator, his time schedule on the date and time of the accident was from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m.

After a careful review of the records before this COURT, WE reverse the decision of the respondent Workmen's Compensation Commission.

As a pump operator of the respondent company, one of the specific duties of the deceased was to inspect the respondent's pump station installed in the town proper of Antipolo, Rizal. It was, therefore, imperative that in inspecting the pump, the deceased had to travel by motorcycle from respondent's office in Beverly Hills Subdivision, in Antipolo, Rizal, to the said respondent's pump station and back. When the fatal accident occurred on December 23, 1974, at about 8:30 p.m., the deceased, riding in the company's motorcycle, was going to Antipolo town proper to inspect the pump station. This is borne by the affidavit of Eduardo Novero dated October 14, 1975, the deceased's co-employee working as a driver-operator of respondent company (pp. 13, 14, rec.) as well as by the affidavit of the wife of the deceased, also dated October 14, 1975 (pp. 15, 16, rec.).

Respondent company insists that when the mishap occurred at about 8:30 p.m., it was already four (4) hours after the deceased had knocked off from work at 5:00 p.m. This insistence could be based on the daily assignment and time record (Annex "C" of respondent's comment). This annex was submitted by one whose name is not printed

and whose signature is "illegible". The finding of the Department of Labor Regional Office No. 4, Manila, dated October 23, 1975, that on December 23, 1974 the deceased was "assigned in the night shift from 6:00 p.m. to 6:00 a.m." finds support in the affidavit of Eduardo Novero, who attested that the deceased's "tour of duty was from 6:00 p.m. to 6:00 a.m.". This finding is further strengthened by the affidavit of the deceased's wife attesting to the same schedule or tour of duty. The affidavits of the driver-operator of respondent company and of the wife of the deceased are superior to and therefore more credible than an unsworn daily assignment and time record signed by one who was not presented by the employer to testify.

There is, therefore, sufficient substantial evidence to prove that when petitioner's deceased husband met the fatal accident at about 8:30 p.m. on December 23, 1974, he was on his way to inspect respondent company's pump station in the town proper of Antipolo, Rizal, riding on a motorcycle furnished by the company and well within the time frame of his schedule of work assignment. The fatal accident resulting in the death of petitioner's husband happened while in the performance of his duties as a pump operator for the benefit and interest of the respondent corporation, which death must be held compensable.

WHEREFORE, THE DECISION OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND RESPONDENT TOP SERVICE, INC. IS HEREBY ORDERED TO PAY:

1. CLAIMANT LEONORA VDA. DE CABARUBIAS, FOR HERSELF AND IN BEHALF OF HER FOUR MINOR CHILDREN, NAMELY, MAXIMINO, JR., MARIPAS, MARISSA AND MARITES, ALL SURNAMED CABARUBIAS:

A. THE SUM OF SIX THOUSAND AND TWO HUNDRED PESOS (P6,200.00) AS DEATH COMPENSATION BENEFITS AND REIMBURSEMENT OF BURIAL EXPENSES; AND

B. SIX HUNDRED TWENTY PESOS (P620.00) AS ATTORNEY'S FEES;

2. THE WORKMEN'S COMPENSATION COMMISSION THE SUM OF SIXTY-ONE PESOS (P61.00) AS ADMINISTRATIVE FEES; AND

3. THE COSTS.

SO ORDERED.

Teehankee, (Chairman), Martin, Fernandez, and Guerrero, JJ., concur.
Muñoz Palma, J., no part.

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