

YSMAEL MARITIME CORPORATION, PETITIONER, VS. HON. CELSO AVELINO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH XIII, COURT OF FIRST INSTANCE OF CEBU AND SPOUSES FELIX C. LIM AND ...

G.R. No. L-43674. June 30, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This special civil action for certiorari raises the question of whether the compensation remedy under the Workmen's Compensation Act [WCA], and now under the Labor Code, for work-connected death or injuries sustained by an employee, is exclusive of the other remedies available under the Civil Code.

It appears that on December 22, 1971, Rolando G. Lim, single, a licensed second mate, was on board the vessel M/S Rajah, owned by petitioner Ysmael Maritime Corporation, when the same ran aground and sank near Sabtan Island, Batanes. Rolando perished as a result of that incident.

Claiming that Rolando's untimely death at the age of twenty-five was due to the negligence of petitioner, his parents, respondents Felix Lim and Consorcia Geveia, sued petitioner in the Court of First Instance on January 28, 1972 for damages [Civil Case No. R-12861].

In its answer, petitioner-defendant alleged by way of affirmative defenses [1] that the complaint stated no cause of action; [2] that respondent-plaintiffs had received P4,160 from petitioner and had signed release papers discharging petitioner from any liability arising from the death of their son, and [3] that most significantly, the respondents had already been compensated by the Workmen's Compensation Commission [WCC] for the same incident, for which reason they are now precluded from seeking other remedies against the same employer under the Civil Code.

A protracted legal battle over procedural points ensued. Finally, on July 30, 1975, the case was set for pre-trial. Petitioner sought the dismissal of the complaint on the ground that the trial court had no jurisdiction over the subject matter of the action.

In his order of December 29, 1975, respondent Judge Avelino upheld respondents' vigorous opposition and denied petitioner's motion to dismiss for being unmeritorious. Its motion for reconsideration having met the same fate on February 3, 1976, petitioner filed the instant special civil action for certiorari, prohibition and mandamus with preliminary injunction, contending that respondent judge acted with grave abuse of discretion when he refused to dismiss the complaint for damages on the ground of lack of jurisdiction. This Court subsequently granted a temporary restraining order prohibiting the trial court from proceeding with the hearing of the case.

At issue is the exclusory provision of Section 5 of the Workmen's Compensation Act reiterated in Article 173 of the Labor Code:

"Sec. 5. Exclusive right to compensation. -The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury.

"Art. 173. Exclusive of liability.-Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act No. 1161, as amended, Commonwealth Act No. 186, as amended, Republic Act No. 610, as amended, Republic Act No. 4864, as amended, and other laws whose benefits are administered by the System, during the period of such payment for the same disability or death, and conversely."

Petitioner invokes the case of *Robles vs. Yap Wing*, L-20442, October 4, 1971, 41 SCRA 267, to support its contention that all claims for death or injuries by employees against employers are exclusively cognizable by the Workmen's Compensation Commission regardless of the causes of said death or injuries. That case no longer controls.

In the recent case of *Floresca vs. Philex Mining Company*, L-30642, April 30, 1985, 136 SCRA 141, involving a complaint for damages for the death of five miners in a cave-in on June 28, 1967, this Court was confronted with three divergent opinions on the exclusivity rule as presented by several amici curiae. One view is that the injured employee or his heirs, in case of death, may initiate an action to recover damages [not compensation under the Workmen's Compensation Act] with the regular courts on the basis of negligence of the employer pursuant to the Civil Code. Another view, as enunciated in the *Robles* case, is that the remedy of an employee for work-connected injury or accident is exclusive in accordance with Section 5 of the WCA. A third view is that the action is selective and the employee or his heirs have a choice of availing themselves of the benefits under the WCA or of suing in the regular courts under the Civil Code for higher damages from the employer by reason of his negligence. But once the election has been exercised, the employee or his heirs are no longer free to opt for the other remedy. In other words, the employee cannot pursue both actions simultaneously. This latter view was adopted by the majority in the *Floresca* case, reiterating as main authority its earlier decision in *Pacana vs. Cebu Autobus Company*, L-25382, April 30, 1982, 32 SCRA 442. In so doing, the Court rejected the doctrine of exclusivity of the rights, and remedies granted by the WCA as laid down in the *Robles* case. Three justices dissented.

It is readily apparent from the succession of cases dealing with the matter at issue* that this Court has vacillated from one school of thought to the other. Even now, the concepts pertaining thereto have remained fluid. But unless and until the *Floresca* ruling is modified or superseded, and We are not so inclined, it is deemed to be the controlling jurisprudence yice the *Robles* case.

As thus applied to the case at bar, respondent Lim spouses cannot be allowed to maintain their present action to recover additional damages against petitioner under the Civil Code. In open court, respondent Consorcia Geveia admitted that they had previously filed a claim for death benefits with the WCC and had received the compensation payable to them under the WCA [Rollo, pp. 22-23, 29-30]. It is therefore clear that respondents had not only opted to recover under the Act but they had also been duly paid. At the very least, a sense of fair play would demand that if a person entitled to a choice of remedies made a first election and accepted the benefits thereof, he should no longer be allowed to exercise the second option. "Having staked his fortunes on a particular remedy, [he] is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission." [See Separate Opinion by Justice Teehankee in *Robles vs. Yap Wing*, supra on pp.

281-282].

In the light of this Court's recent pronouncement in the Floresca case, respondent Judge Avelino's denial order of petitioner's motion to dismiss is adjudged to be improper.

WHEREFORE, respondent Judge Avelino's orders dated December 29, 1975 and February 3, 1976 are reversed and set aside. Civil Case No. 12861, entitled "The Spouses Felix C. Lim, and Consorcia Geveia vs. Ysmael Maritime Corp." is hereby ordered dismissed. The temporary restraining order issued by this Court on May 5, 1978 enjoining respondent Judge Avelino from conducting further proceedings in said case is made permanent. No costs.

SO ORDERED.

Yap, Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin and Cortes, JJ., concur.

Teehankee, C.J., files a brief concurrence.

Melencio-Herrera, J., maintains her view in Floresca pursuant to the clear exclusory provision of Section 5 of the Workmen's Compensation Act.

Gutierrez, Jr., J., in the result, reiterates his dissent in the Floresca case.

Sarmiento, J., no part, for having the general counsel of all Ysmael interests and this was one of them.

* Manalo vs. Foster Wheeler Corp., 98 Phil. 856; Vda. de Mallari vs. National Development Company, G.R. No. L-17914, October 31, 1962, 6 SCRA 538; Valencia vs. Manila Yacht Club, Inc., G.R. No. 27346, June 30, 1969, 28 SCRA 724; Hudencial vs. S.P. Marcelo and Co., Inc, G.R. No. L-23969, February 27, 1971, 37 SCRA 707

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CONCURRING OPINION

TEEHANKEE, C.J.:

The decision at bar rejects the majority ruling in Robles vs. Yap Wing (41 SCRA 267), citing the later case of Floresca vs. Philex Mining Company (136 SCRA 141), that the action of the injured employee or that of his heirs, in case of his death, is restricted to seek-ing the limited compensation provided under the Workmen's Compensation Act, such that they cannot seek higher damages from the employer by virtue of negligence (or fault) of the latter or of his other employees. Such rejection is in consonance with my separate opinion in Robles "that the employee or his heirs have the choice of cause of action and corresponding relief, i.e. either an ordinary action for damages before the regular courts or a special claim for limited compensation under the Workmen's Compensation Act before the Workmen's Compensation Commission; and that the Court's jurisprudence has long sustained this right of choice of action," per the cases cited by me therein.

However, as likewise stressed in my said separate opinion and applied in the judgment at bar, this right of choice is qualified in that "the employee should be held to the particular remedy on which he has staked his fortunes and must pursue even his alternative claim for compensation exclusively in the same regular courts, once he has opted to seek his remedy there rather than in the Workmen's Compensation Commission. Such a view would be more in consonance with the legal principles that enjoin multiplicity of suits and splitting a cause of action. Conversely, if the employee has originally opted to seek his remedy in the Workmen's Compensation Commission, he is barred

from the regular courts, since section 5 of the Workmen's Compensation Act expressly thereby 'excludes all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury.'

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