

LUZON STEVEDORING CO., INC., PETITIONER VS. WORKMEN'S COMPENSATION COMMISSION, ET AL., RESPONDENTS.

G.R. No. L-19742. January 31, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Antonio Cordero was employed as a sailor on a barge of the Luzon Stevedoring Co., Inc. receiving a wage of P28.00 a week. His duty was to look after the safety of the barge and its cargo especially in the absence of the patron. On September 11, 1956, Cordero, having been requested by the patron to take over, was left alone in charge of the barge. Two days later his lifeless body was found floating in the Pasig river by Det. Labao of the Manila Police Department. A post-mortem examination revealed that he died of asphyxia as a result of submersion in water.

After the incident, Eamon Relente, president of the union to which the deceased belonged, reported the matter to the officer in charge of the marine department of the company and asked for financial aid to the family of the deceased, and this request having been denied, he made arrangement for a loan of P250.00 from the company. The company filed a report with the Workmen's Compensation Commission manifesting its desire to controvert the claim if one is later filed.

On March 5, 1957, the deceased's widow filed a formal claim for compensation which was referred to a hearing officer who, after hearing, rendered decision ordering the company to pay to claimant death benefits in the amount of P2,912.00, to reimburse the claimant the amount of P200.00 as burial expenses, to pay attorney's fees in the amount of P218.40, and the sum of P35.00 as fees of the Workmen's Compensation Commission Office.

The company filed a petition for reconsideration based on three grounds: (a) there was no causal connection between Cordero's death and his employment as a sailor; (b) Cordero's death was due to his own negligence; and (c) claimant's right, if any, is already barred by Section 24 of Act 3428, as amended.

The Workmen's Compensation Commission, on March 12, 1962, affirmed the decision in toto; hence the present petition for review.

It is contended that the claim filed by the deceased's widow is already barred by law because it was filed beyond the 3-month period within which the law requires that it be filed from the death of the deceased. Thus, Antonio Cordero died on September 11, 1956, and under the law the heirs of the deceased had until December 11 of the same year within which to file the claim for death benefits, but the widow filed her claim only on January 31, 1958, which is after a period of more than three months. But the Workmen's Compensation Commission did not consider this objection material it appearing that the president of the union to which the deceased belonged had taken immediate steps to inform the management of the incident while he asked that financial aid be extended to the bereaved family even to the extent of making arrangement for a loan to cover the burial and other expenses of the family.

Under the facts of this case, we are inclined to agree to this finding of the Workmen's Compensation Commission. Yes, under Section 24 of Act 3428, in order that a claim for compensation may prosper it is necessary that it be made not later than three months after the death of the deceased and that if that is not done the claim may be considered of no legal effect,[1] but in this case the facts are such that this requirement may be deemed to have been complied with considering that the company cannot claim ignorance of what has actually happened. Thus, it appears that when Antonio Cordero died, notice of his death was given by Ramon Relente two or three days thereafter to the officer in charge of the marine department of the company. Relente likewise asked the company to extend certain financial aid to the family of the victim and when this was denied he made representations that some loan be extended to it to cover the expenses it may have to face as a result of Cordero's death. But all this was denied on the technical ground that the deceased died not in the course of employment or that he is guilty of notorious negligence. We believe that such request for financial aid can be considered as advance filing of claim in contemplation of law for then the company plead surprise in the preparation of its defense, this being the only tenable reason for requiring an early filing of the claim on the part of the employee or heirs of the deceased. This is especially so taking into account that under Section 44 of the same Act it is presumed that "the claim comes within the provision of the Act and that sufficient notice thereof was given." This provision should be liberally construed.

The second point raised by petitioner is that Cordero died not in the course of employment, or that his death did not arise out of it, because at the time of his death he was swimming with some companions in the Pasig river and as a consequence he was drowned and his lifeless body was found floating on the surface of the river. Hence, petitioner claims, his heirs are not entitled to the compensation prescribed by law.

As to the nature of the employment of Cordero, the Workmen's Compensation Commission made the following finding:

"The nature of the employment of the deceased was like that of the barge of which he was in charge-moored at the Pasig River and tied to the seawall. His duty required him to be nailed to his post 24 hours of a day followed by other days. But he was a moving human being and not like a machinery which can be kept sleeping in a little corner of the barge during the long and monotonous hours of the days and nights of his employment. He had to move and perform the ordinary functions of a human being like for example, answering the calls of nature, bathing, eating and sleeping. When he took a bath, in the water, he performed a daily routine needed by the human body, incidental to, and 'habitual and usual in the life of a sailor, and any accident occurring to him due to ordinary and necessary incidents of his employment is well within the sphere of such unusual employment and the employer is liable to pay compensation to the family."

While in the strict sense death caught up with Cordero when he was not in the barge where he is supposed to be for 24 hours watching and taking care of it but swimming with some companions somewhere in the Pasig river near where the barge was moored, it may be said that he died in line of duty for he was then undertaking something that is necessary to his personal need and comfort since the taking of bath is not only habitual in a sailor, which he was, but necessary to the human body. He went swimming not for pleasure, nor for fun, but in answer to the daily need of nature, in the same manner as a human being needs to answer other calls, such as eating, sleeping and the like. When these needs are satisfied in the course of employment and something takes place that may cause injury, harm or death to the employee or laborer, it is fair and logical that the happening be considered as one occurring in the course of employment for under the circumstances it cannot be undertaken in any other way. The situation would be different if the mishap occurs in a manner that it may clearly show that the laborer has acted beyond his duty or course of employment. Not so in this case.

Neither can it be contended that in going out with some companions to swim the deceased is guilty of notorious negligence for the reason that if his purpose was to take bath he could have done it with the aid of a water tank on

board the barge. If the deceased were one who does not know how to swim or is not a sailor accustomed to the perils of the water, the argument may have some value, but not so in the case of the deceased who undisputedly was a swimmer. He must have preferred to take bath while swimming than by pouring water over his body on board the barge because of his awareness that he was a swimmer and for him to swim in a river was merely a routine. And if he died in the course thereof it must be due to an event that he has not foreseen: At any rate, there is no clear evidence that his death was due to his notorious negligence and not to a cause which he could not have reasonably avoided.

Wherefore, the decision appealed from is affirmed. No costs.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] Luzon Stevedoring, Company vs. Hon. Cesareo de Leon, et al., 106 Phil., 562; Manila Railroad Company vs. Workmen's Compensation Commission, et al., L-18388, June 23, 1963.

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