

MERCEDES OLLERO, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND CENTRAL LUZON MISSION OF SEVENTH DAY ADVENTISTS, RESPONDENTS.

G.R. No. L-41742. August 23, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Mercedes Ollero is a teacher by occupation. Since the school year 1969-1970, Ollero was employed by the Central Luzon Mission of Seventh Day Adventists (SDA Mission for short) as a teacher in the Philippine Union College Annex at Baesa, Caloocan City, where she was residing at the time. For the school year 1973-1974, Ollero was given an assignment at the SDA Mission's Elementary School in Galas, Quezon City, with the school shouldering 75% of Ollero's transportation expenses from her residence in Caloocan to Galas and back. On December 11, 1973, after her afternoon classes, Ollero boarded a passenger jeep at Galas, bound for home. At the junction of Quezon Boulevard Extension and Roxas District, Ollero alighted from the jeepney to take another vehicle bound for Baesa, Caloocan City, and while alighting she was bumped by a speeding car which threw her to the ground. Ollero was taken to the National Orthopedic Hospital where she was treated for a fracture of her "right femur and tibia." As a result of that accident, Ollero was unable to continue with her teaching from December 12, 1973 to October 24, 1974, and suffered partial loss of the use of her right leg.

On February 22, 1974, Ollero filed with Regional Office No. 4, Department of Labor, "Notice of injury and claim for compensation" against the SDA Central Luzon Mission which had its principal offices at 20 Gov. Pascual Street, Malabon, Rizal. A notice dated June 21, 1974, was sent to the manager of the school concerning the filing of the claim, and copy of this notice was received on July 17, 1974.[1] On August 7, 1974, the employer's report was filed, and in Item 8 thereof which reads: "State whether you controvert employee's right to compensation (yes or no)", the answer was left blank, while in Item 17 which read: "Was she injured in regular Occupation" the answer was "yes".[2]

On November 14, 1974, acting chief of section E. M. Cayapas issued an outright award in favor of the claimant, Mercedes Ollero, and against the respondent employer Central Luzon Mission of Seventh Day Adventists. For the temporary total disability and permanent partial disability suffered by the claimant, the employer was directed to pay the maximum allowed by law in the amount of P6,000.00 plus the sum of P61.00 as administrative fee.[3]

On November 27, 1974, the respondent employer filed a "Motion for reconsideration/petition for review" with prayer to reinstate its right to controvert the claim alleging as principal reason that the claim is not compensable because the vehicular accident arose not in the course of employment as it took place far away from the place of work of claimant.[4] This motion for reconsideration was denied by the Hearing Officer Cayapas. Upon elevation of the records of the case to the Commission En Banc, the latter in its decision of September 30, 1975, set aside the award reasoning as follows:

"We find on review that the determination of the compensability of the present claim should be governed by the law in off-the-premises injuries it appearing that at the time claimant met the accident, she was already on her way home from school after school hours and that the accident occurred very far from her place of employment. Since the accident happened in a public highway common to the public as a thoroughfare and it was not attended by any special circumstance related or incidental to her employment as teacher of respondent or that it falls under any of the exceptions to the general rule in off-the-premises accidents, we are of the opinion and so hold that claimant is not entitled to the benefits provided for under the Workmen's Compensation Act. The rule referred to is stated as follows: 'In the absence of special circumstances, an employee injured in going to, or coming from, his place of work is excluded from the benefits of the Workmen's Compensation Act.' At the time of the accident claimant was already off-duty and at a place very far from her place of employment, where she had to be exposed to the hazards of traffic common to the public and no longer traceable to the demands or nature of her employment as a teacher of respondent." (p. 21, *ibid.*)

Hence, this petition for review.

The issue posed in this petition for review is not new; it concerns what has been termed as the "proximity", the "going to and coming from", or the "off-premises" rule. In other words, is the place of occurrence of an injury suffered by an employee an essential factor in determining its compensability that is, whether or not the injury occurred in the course and by reason of the employment?

It is now the settled principle in this jurisdiction that for an injury to be compensable it is not necessary that the cause therefor shall have taken place within the place of employment, for so long as the worker acted within the scope of his employment, performing an act reasonably necessary or incidental thereto, the injury sustained by reason thereof falls within the protection of the law regardless of the place of injury.[5]

The situation of the petitioner herein, Mercedes Ollero, involves more particularly the "going to and coming from work" or what has been referred to also as the "street-peril" principle.

Under American Jurisprudence, the general rule is that the hazards encountered by employees while going to or returning from their regular place of work, before reaching or after leaving the employer's premises, are not ordinarily incident to the employment, and for this reason injuries resulting from such hazards are in most instances held not to be compensable as arising out of and in the course of the employment.[6]

The aforementioned general rule however admits various exceptions in most of the States of the Union, and among these are: where the employer provides transportation or remunerates the employee for the time or expense involved, where the employee performs same task in connection with his employment at home or en route, or is on a special mission at his employer's behest, and so on.[7]

Following American Jurisprudence, in the early case of *Afable, et al. vs. Singer Sewing Machine Co.*, 1933, this Court in a decision penned by Justice James C. Vickers, denied compensation to the heirs of Leopoldo Madlangbayan, a collector of defendant company who was run over and fatally injured in one of the streets in the city of Manila while returning home after making his collections in San Francisco del Monte.

The Court *inter alia* held:

"The accident which caused the death of the employee was not due to and in pursuance of his employment. At the time that he was run over by the truck, Leopoldo Madlangbayan was not in the pursuance of his employment with the defendant corporation, but was on his way home after he had finished his work for the day and had left the territory where he was authorized to make collections for the defendant. The employer is not an insurer "against all accidental injuries which might happen to an employee while in the course of the

employment", and as a general rule, an employee is not entitled to recover from personal injuries resulting from an accident that befalls 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." (58 Phil. 39, 41, citing *Mueller Construction Co. vs. Industrial Board*, 283 Ill., 148; N.E., 1028; *Indemnity Co. vs. Dinkins*, 211 S.W., 949; *In re Peter S. Winchester*, 2nd A.R.U.S.C.C. 262; *In re Julius Rosenberg*, 2nd A.R.U.S.C.C., 263; *Kirby Lumber Co. vs. Scurlock*, 229 S.W., 975, among others)

In the later case of *Philippine Engineer's Syndicate, Inc. vs. Flora S. Martin & WCC*, 1962, per then Justice later Chief Justice Roberto Concepcion, this Court applied one of the exceptions above enumerated. In the *Martin* case, Aurelio Martin was employed by the Philippine Engineer's Syndicate as a plant operator in its project in Benguet, Mountain Province. Late in the afternoon of December 2, 1957, after coming from work Aurelio Martin was standing together with other co-workers by the roadside near his place of work waiting for the truck or the company that would convey them home. When the service truck arrived Martin clung to the truck and in doing so he slipped and fell and as a result he sustained fatal injuries. The Court affirmed the award of compensation to the heirs of the deceased worker, ruling that the accident arose out of or in the course of employment because the truck involved in the accident was the service truck of the employer furnished by the latter to convey its workers home from work, citing the following:

"... Off-Premise injuries to or from work, in both liberal and narrow states, are compensable (1) if the employee is on the way to or from work in a vehicle owned or supplied by the employer, whether in a public (e.g., the employer's street car) or private conveyance." (*Workmen's Compensation Laws* by Horowitz, p. 162)[8]

On January 21, 1977, this Court following its continued trend of liberalization of the application of the *Workmen's Compensation Act*,[9] promulgated its decision in *Bael vs. Workmen's Compensation Commission, et al.*, thereby once and for all clearing the judicial atmosphere of any uncertainty on this "going to and coming from work" rule. In that case, Lourdes Vda. de Bael was employed by the Bureau of Public Schools as an elementary grade school teacher in Dipolog City and after her classes in the afternoon of July 26, 1975, she took a jeepney to return to her home and on the way the jeepney rammed against an electric post, turned turtle, resulting in her death. The *Workmen's Compensation Commission* set aside the referee's award granted in favor of the heirs of the deceased teacher. On appeal to this Court, among the issues raised was whether or not the death of an employee occurring on her way home from work outside the employer's premises entitled said employee to compensation. The Court through Justice Ruperto Martin set aside the decision of the *Workmen's Compensation Commission* and held:

"In the case before Us, the circumstances attending the death of the deceased constrain Us, to hold that the accident of the deceased comes within the 'going to and coming from rule.' The records show that right after her work at school she immediately proceeded to go home by taking a jeepney. In going home, she has still other school work to do, like preparing lesson plans for the next day, correcting papers and preparing school projects. When she therefore took a jeepney on her way home, she was merely commuting to another place to continue with her work. Her taking the ride in that fatal vehicle can be treated as a necessary incident to her school work. The very nature of the work of the deceased, the time required of her after class hours created that special circumstances that qualify her heirs to the benefits arising from her death." [10]

Similarly, in this case of *Mercedes Ollero*, there are special circumstances present which reinforce Our ruling that her accident is compensable. Claimant Ollero was a regular teacher since 1969 of the SDA Mission in its school at

Baesa, Caloocan City, but for the school year 1973-74 she was given an assignment in Galas, Quezon City, to take the place of another teacher, and because of the distance of the school from her residence in Baesa, the employer agreed to shoulder 75% of her transportation expenses. On that particular afternoon of December 11, 1973, Mercedes took the only available means of transportation — a jeepney — from the school bound for her home in Caloocan City, and she followed the ordinary route from Galas to Quezon Boulevard Extension where she had to transfer to another public utility vehicle which makes a regular trip to Baesa, Caloocan City. It was at Quezon Boulevard Extension where she was bumped by a speeding car. Under the foregoing circumstances Mercedes Ollero is entitled to a disability compensation for she was injured while performing an act — traveling home from her school — which We hold was a necessary incident to her employment.

Finally, mention is to be made that the referee's outright award was justified by the non-controversion of the claim of petitioner. The accident of December 11, 1973, was known to the school authorities for Mercedes Ollero was unable to resume her teaching on the following day, December 12; that notwithstanding, the school failed to comply with Section 37 of the Workmen's Compensation Act when it did not file with the Workmen's Compensation Commission a notice of accident stating therein, among other things, the date and hour of the accident, the nature and cause of the injury, and whether or not the liability was being admitted or controverted. Having failed to file said notice on or before the 14th day of disability or within 10 days after it had knowledge of the injury, pursuant to Section 45 of the same Act, respondent school renounced its right to controvert the claim and ultimately admitted the latter's compensability. In fact, in the employer's report submitted before the Workmen's Compensation Commission on August 7, 1974, almost eight months after the accident, the school did not controvert or oppose the claim. The employer's "Motion for Reconsideration" with prayer to reinstate its right to controvert filed on November 27, 1974, was therefore too late, not to mention the fact that said motion failed to allege under oath any circumstance showing fraud, accident, mistake, excusable negligence, or other reasons which resulted in its failure to timely controvert the claim.

WHEREFORE, the appealed decision of respondent Commission is set aside. The hearing officer's award of November 14, 1974, ordering respondent employer to pay:

- claimant Ollero the amount of SIX THOUSAND PESOS (P6,000.00) as maximum compensation for her temporary total, as well as, permanent partial disability; and
- the Workmen's Compensation Fund the amount of P61.00 as administrative fee.

is hereby revived and reinstated.

Respondent employer is likewise ordered:

- to reimburse claimant's expenses for medical and hospital services duly supported by receipts;
- to provide claimant with such services, appliances and supplies as the nature of her disability and the process of her recovery may require and that which promote her early restoration to the maximum level of her physical capacity; and
- to pay attorney's fees for both instances in the total amount of Six Hundred Pesos (P600.00).

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] p. 3, WCC records

[2] p. 5, *ibid.*

[3] p. 8, *ibid.*

[4] p. 15, *ibid.*

[5] *Chua Yeng vs. Roma, et al.*, 1960, 109 Phil. 1022, citing *Vergoza vs. Arnaz Vda. de Cruz*, L-7305, December 15, 1953; *Ramos vs. Poblete*, 40 Off. Gaz. 3474; and *Estandarte vs. Phil. Motor Alcohol Corp.*, G.R. No. 39733, November 1, 1933

Iloilo Dock & Engineering Co. vs. WCC, et al., 1968, 26 SCRA 102

Luzon Stevedoring Corp. vs. WCC, et al., 1969, 27 SCRA 1132

Belarmino, et al. vs. WCC, Pacific Metals Corp., et al., L-41747, March 31, 1978

[6] 82 Am Jur 2d, Sec. 255, p. 43, citing: *Voehl v. Indemnity Ins. Co.*, 288 US 162, 77 L Ed 676, 53 S Ct 380, 87 ALR 245, and a host of cases

[7] p. 44, *ibid.*

[8] 4 SCRA 356, 357

[9] In *Uy vs. WCC, et al.*, 1975, 64 SCRA. 37, per Esguerra, J., this Court awarded disability compensation to a public school teacher who sustained a head injury while going to work which possibly caused a tumor resulting in her mental and physical disability to continue with her teaching.

[10] 75 SCRA 181, 186

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