

ASIA STEEL CORPORATION, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND ISMAEL CARBAJOSA, RESPONDENTS.

G.R. No. L-7636. June 27, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

Petition to review the order of the Workmen's Compensation Commission approving the award of its referee in favor of the laborer Ismael Carbajosa, against his employer Asia Steel Corporation.

It appears that on April 16, 1951, while working in said Corporation's steel factory in Grace Park, Manila, Carbajosa tapped the belt of a running machine to tighten it, but his hand was caught accidentally by the belt, he stumbled down and his two feet were so seriously injured, they had to be amputated at the Chinese General Hospital where he was rushed immediately after the mishap. Hospitalization were paid by the corporation.

Thereafter Carbajosa claimed for compensation. The referee, having found that he was employed as apprentice, and that the accident arose out of employment, required the Asia Steel Corporation to indemnify in the total sum of two thousand two hundred forty six pesos and forty centavos (P2,246.40) and to pay the costs.

The instant petition for review rests on two major propositions: (1) Ismael Carbajosa was not an employee or laborer and (2) the accident was "occasioned by" his "own fault and negligence".

This second issue, however, was not tendered in the Corporation's motion to dismiss, Annex B, filed with Workmen's Compensation Commission, and neither the referee nor the Commission made findings on such question of negligence. Anyway it is no excuse for the employer: it merely reduces the compensation. (Art. 1711 New Civil Code.) Nevertheless, on close examination the contention turn out to be founded on the reasoning that being a stranger in the premises -not an employee- Carbajosa had no right, and therefore was careless, to touch the machines of the factory. (p. 27 Record.)

Hence this revision may be limited to the simple question whether the petitioner had given employment to Carbajosa.

According to the Commission,

"x x the claimant, a native of Negros Occidental, came to Manila on March 31, 1951, to look for a job. On April 5, 1951, he met an acquaintance, Pablo Sesia, whose aid sought in the matter of securing employment. Sesia, who was employed in the Asia Steel Corporation as a mechanic, promised to take Carbajosa to his employer.

Upon previous arrangement with Sesia, therefore, Carbajosa went to respondent's nail factory at Grace Park, Caloocan, Rizal, on April 9, 1951. Sesia introduced the claimant to Mr. Kim, in charge of the factory. During the interview, Kim told the claimant that he, (Kim) would take up the matter with the manager, and Carbajosa would know the manager's decision as soon as he (the claimant) returned. The next morning, the claimant

came back to the factory and was told by Kim to begin working as an apprentice. It was further agreed that claimant's wage would be determined upon the arrival of materials which the manager ordered from Japan. The claimant assumed work on the same day, doing odd jobs under the direction of Sesia.

It also appears that Kim lived in the factory. Pablo Sesia was also lodging in the factory and permission was secured from Kim in order that the claimant might live in the factory with Sesia.

On April 16, 1951, hardly a week since the claimant began working in the factory, while he was tightening the belt of one of the machines, his hand was caught by the running belt. The force of the moving belt caused claimant to lose his balance. He was dragged to the other end of the machine. His feet were smashed by the iron shaft and he was pinned under the machine itself."x x x

Under the laws we are bound to accept these findings; and must disregard petitioner's arguments disputing them[1]. But this does not necessarily dispose of the matter, because there remains the legal proposition extensively discussed by counsel for petitioner that Kim's acts could not bind the corporation, since only the President, Yu Kong Tiong, was authorized by its by-laws to hire employees for the manufacturing establishment.

The Commission found that Yu Kong Tiong was the president of the corporation and Sy Te the manager; but Yu Kong Tiong was permitted actually to manage its affairs, (it being a "family" corporation) by remote control from his office in Manila thru Kim who was "in charge" of the factory in Caloocan. It also declared that Kim was allowed by Yu Kong Tiong to employ Carbajosa as apprentice. (p. 52 Record.)

From such circumstances, the conclusion flows inevitably that Carbajosa was, at the time of the occurrence, an employee of the petitioning corporation.

Of course it is undeniable that as president and manager Yu Kong Tiong could legally employ, by himself, manual laborers to work in the factory[2]. And there is nothing to prevent him from employing Carbajosa, thru his agent Kim, as the latter did. In fact it may even be held that in default of proof establishing Yu Kong Tiong's assent to the employment, inasmuch as Kim the person actually in charge of the factory represented to Carbajosa that he was authorized by the manager to engage his (Carbajosa's) services, there was apparent authority of Kim, sufficiently ample to create the relationship of employer and employee for the purposes of the Workmen's Compensation Law.

"It may be stated as a general rule that an agent, who with authority express, implied, apparent or actual, employs help for the benefit of his principal's business, thereby creates the relationship of employer and employee between such help and his principal." (Schneider, Workmen's Compensation (Permanent Ed.) Vol. I p. 617, citing many cases.)

"It has been held: that where a driver, employed to solicit sales of beer and make delivery, was permitted to employ helpers, a helper who was injured while in the performance of his duty was entitled to compensation from brewery; that an expert, hired by a factory owner to supervise the installation of machinery, who hired assistants, paid by the owner, one of such assistants being injured while so engaged was entitled to compensation from the factory owner; that workmen hired by an agent of the company, which took over the logging work of an independent contractor, became the employees of the company." (Schneider, op. cit. p. 619.)

Needless to say, the existence of employer-employee relationship is the jurisdictional foundation without which an indemnity is unauthorized. Schneider p. 569-570.) It is often difficult of determination, because purposely made so by employers bent on evading liability under the Compensation Acts. Hence, if the object of the law is to be accomplished with a liberal construction[3], the creation of the relationship should not be adjudged strictly in accordance with technical legal rules, but rather according to the actualities and realities of industrial or business

practice. A laborer is told to work for the establishment by the person-in-charge, who in turn represented he had consulted with the manager. If the by-laws of the corporation had provided that no laborer may be hired unless with the written consent of the board of directors, would it be consonant with justice to deny such laborer compensation for injuries, upon the ground of lack of written authority? If so, a loophole has thereby been created in the Workmen's Compensation Law. That is perhaps the reason why apparent authority has been considered enough, what with the principles of estoppel lending persuasive support. (Schneider op. cit. Vol. I p. 623.)

A parallel situation arose in *Flores et al. v. La Compañia Maritima*, 32 O. Gaz. No. 21 pp. 406-407. The heirs of Graciano Paninsoro demanded compensation because he died by reason of injuries received while working on the ship "Albay" belonging to and operated by the *Compañia Maritima*, a corporation. The facts were;

"About the last week of the month of October, 1929, the defendant's boat, Albay, dropped anchor in the port of Cebu where the captain thereof, through a contractor or agent, recruited laborers who were to board the ship for the purpose of unloading her cargo upon arrival at the next port of call, Davao, and loading cargo for various ports of call on her return trip. Among those laborers was the appellant Eusebia Flores' husband, Graciano Paninsoro, who was earning a daily wage of P1.50 including subsistence."

The defendant contended on appeal that Paninsoro was not its employee. This Court held,

"There is not a least shadow of a doubt that the deceased was a laborer in the legal sense. He had been recruited by order of the captain of the ship and he was engaged in a task of unloading the ship's cargo at the time of the accident. There can be no dispute that this kind of work is included in the business in which the appellee is engaged. That the deceased had been recruited or engaged by a contractor is of no moment because the latter, for purposes of the law, was in turn, represented the appellee." (*Flores et al. v. La Compañia Maritima*, 32 O. Gaz. No. 21 pp. 406-407.)

It should be observed in the above litigation that neither the board of directors nor the President nor the manager of the defendant corporation had hired the laborer Paninsoro. It was the captain of the ship, thru an agent, that employed him. Now then, in this case as the person-in-charge of the factory (Kim) hired Carbajosa, the contract of employment should be upheld.

There is further circumstance, implying ratification of the employment, that the acting manager of the corporation Atty. Mercado directed the payment by the corporation of Carbajosa's hospital expenses, amounting to P2,000.00. Mercado's explanation that he did it out of pity, was not, and could not be accepted since the Asia Steel Corporation is not a charitable institution.

In view of the foregoing, and the petitioner not having questioned the amount of compensation, the order of the Commission, should be , as it is hereby, affirmed with costs. So ordered.

Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] Sec. 46 Act No. 3428 as amended by Rep. Act 772. Rule 44 sec.2.

[2] *Yu Chuck v. Kong Li Po*, 46 Phil. 608

[3] *Vergara v. Pampanga Bus Co.* 62 Phil. 820; *Francisco v. Consing* 62 Phil. 354; *Ramos v. Poblete* 73 Phil. 241.

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