

JULIANA VDA. DE LICARDO, FOR HERSELF AND IN BEHALF OF HER MINOR CHILDREN, MARIA TERESA, MARIA LUISA AND JESUS, ALL SURNAMED LICARDO, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSIONER

G.R. No. L-35745. July 30, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review of the decision of Associate Medical Commissioner Herminia Castelo Sotto, M.D. in R04-WC Case No. 9926, entitled "Juliana Vda. de Licardo, for herself and in behalf of her children, Maria Teresa, Maria Luisa and Jesus, all surnamed Licardo, versus Otis Elevator Company, denying her claim for compensation under the Workmen's Compensation Act, as amended, for the death of Jorge B. Licardo, as well as the resolution of the Commission en banc denying her motion for reconsideration.

The deceased, Jorge B. Licardo, was in the employ of Otis Elevator Company, located at Marquez de Comillas Street, as an elevator mechanic-examiner since 1947 with a last rate of salary at P83.04 a week. But since 1960 and up to his last day of work on April 23, 1969, he was assigned to service and repair the elevators at Philamlife Building at the United Nations Avenue, Manila. By reason thereof, he reported for work directly at the Philamlife, not at the office of Otis Elevator Company. However, in the maintenance of the elevators, he occasionally needed parts for replacement purposes and equipments and whenever the necessity for them arose, he had to render the extra service of errand or messenger work to secure from respondent company what he needed.

In one of such occasions, specifically on April 23, 1969, he left home early at 6:00 A.M. informing his wife that he had to pass by respondent's office to get some spare parts and equipment, boarded a De Dios bus, a public utility, and alighted at Ayala Boulevard, which is around a block away from respondent's office. While crossing, he figured in an accident. He was the victim of a hit and run "speed maniac" who left him lying unconscious along the boulevard.

Soon after the mishap which occurred at 7:10 A.M., he was given emergency treatment at the Singian Clinic but had to be transferred to the Philippine General Hospital where he expired. (Exhibit B, Certificate of Death) His cause of death was listed as follows: "Traumatic fracture of the skull with subarachnoid hemorrhages and maceration of the brain." (Post mortem certificate of death).[1]

Petitioner's claim for death compensation under the Workmen's Compensation Act, as amended, was dismissed in a decision dated January 22, 1970 of the Acting Referee, Regional Office No. 4. Her motion for reconsideration having been denied, too, the said regional office forwarded the entire records to the Workmen's Compensation Commission for review under Section 49 of the Act. Unfortunately, the Commission, through Associate Medical Commissioner Herminia Castelo-Sotto, M.D. affirmed the decision of the Acting Referee on June 28, 1972. Quoted hereunder is a portion of the aforesaid decision:

"There is no gainsaying the fact, that, on April 23, 1969 at about 7:00 a.m. Licardo was on his way to his office to report for duty, when he was hit by a speeding car. The place of accident, however, was about 200 meters away from said office and was a public road, which cannot apparently be claimed to be the most reasonable, natural, practical, customary and recognized way of ingress, or egress by the employees of the respondent like the deceased. In plain words, wanting in this particular case is the requisite 'perils of the employment'. Meaning to say, in order to warrant recovery for off-premises injury, the latter must be shown to have been due to a very special danger or some particular risk which the employer could have caused or allowed to exist. Thus, occupational injuries are defined to be those having causative connection with something, not merely in common with the general public, but peculiar to the employment. (See *Iloilo Dock and Engineering Co. vs. WCC et al.*, L-26341, November 27, 1968, cited in the decision appealed from.)

"Claimant would like to impart to this Commission, that the deceased was on a special errand when he met with the fatal accident, for he was allegedly then to get spare parts and equipment to be brought to the (Philamlife) where he was at the time especially assigned. We cannot, however, sustain this argument of the claimant. As we have been discussing at the outset, evidence appears clearly convincing, that the deceased's hour of work was to start at 8:00 o'clock in the morning and at the moment the accident happened which was more or less 7:10 a.m., he was still to report for duty. Plainly, he had not yet assumed office for that day; and, the fact that he was still about 200 meters away from his place of destination, completely brings the instant case out of the coverage of the Workmen's Compensation Law, as amended, as applied on off-premises injuries. We are of the opinion that the foregoing arguments apply even assuming, for argument's sake, that Licardo had his place of assignment at the (Philamlife) on the date of the incident in question."[2]

Upon appeal to the Commission en banc, three (3) members of the Commission out of four (4) members, found "no valid reason to modify or alter, much less, reverse said decision" in a resolution dated September 29, 1972. Associate Commissioner Eugenio I. Sagmit, Jr. penned a dissenting opinion. Hence this petition, in support of which, petitioner assigns by way of errors the following, to wit:

ASSIGNMENT OF ERRORS

- (1) The Honorable Commission erred in not considering the incident which befell the late Jorge B. Licardo on the date he met the accident which caused his death as having arisen out and in the course of his employment as contemplated by Section 2 of Act No. 3428, as amended;
 - (2) The Honorable Commission erred in not considering the late Jorge B. Licardo was on a special duty or special errand for his employer on the date he met the accident as an element of "arising out of" and "in the course of" employment relationship;
 - (3) The Honorable Commission erred in not considering the respondents act in extending medical services and hospitalization to the late Jorge B. Licardo, as an admission of liability; and
 - (4) The Honorable Commission erred in not considering the respondent herein to have failed to file a reasonable controversion and thereby had waived its right to contest the compensability of the instant claim.
- [3]

The main issue raised in this petition involves the "going to and coming from work" rule or the "street peril" principle. The general rule is that "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 workmen's compensation acts." The reason given is that accidents do not arise out of and in the course of employment. (*Iloilo Dock and Engineering Co. vs. WCC*, 26 SCRA 102; *Afable vs. Singer Sewing Machine Co.*, 58 Phil. 39).

This rule, however, admits of exceptions. The very case of *Afable* says that "we do not of course mean to imply that an employee can never recover for injuries suffered while on his way to and from work. That depends on the

nature of his employment." The case of Iloilo Dock Engineering Co. even enumerates four well-recognized exceptions, to wit: (1) where the employee is proceeding to or from his work on the premises of his employer; (2) where the employee is about to enter or about to leave the premises of his employer by way of, the exclusive or customary means of ingress and egress; (3) where the employee is charged, while on his way to or from his place of employment or at his home, or during his employment, with some duty or special errand connected with his employment; and (4) where the employer, as an incident of the employment, provides the means of transportation to and from his place of employment.

Among the cases decided in this jurisdiction granting compensation under the exceptions to this rule are the following:

Where an employee was accidentally injured while running to his place of work to avoid rain, slipped and fell into a ditch in front of the factory's main gate, as a result of which he died the next day, this Court ruled that when the employee is accidentally injured at a point reasonably proximate to the place of work, while going to and from his work, such an injury is deemed to have arisen out of and in the course of employment. (Philippine Fiber Processing Co., Inc. vs. Fermina Ampil, 99. Phil. 1050)

Where the truck involved in the accident was the service truck of the employer furnished by the latter to convey its workers home from work, the accident arose out of or in the course of employment, said this Court citing the following:

"Off-premise injuries to and 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 Law by Horovitz, p. 162)

(Philippine Engineer's Syndicate, Inc. vs. Flora S. Martin and WCC, 4 SCRA 356)

Where injuries are sustained by a workman who is provided with transportation while going to or coming from his work, they are considered as arising out of and in the course of his employment, and therefore, are compensable. (Talisay-Silay Milling Co., Inc. vs. WCC, 21 SCRA 366)

Where a school teacher was on her way home from school and would continue to perform other school works in connection with her employment as school teacher, her taking the ride in that fatal vehicle can be treated as a necessary incident to her school work, thus her heirs were entitled to the benefits arising from her death as having occurred in connection with her duty. (Bael vs. WCC, 75 SCRA 181)

Where the employer remunerates the employee for transportation expenses and agreed to shoulder 75% of her transportation expenses when the employer assigned her to take the place of another teacher in a different place not her regular place of work, said employee was entitled to a disability compensation for she was injured while performing an act - travelling home from school, which was a necessary incident to her employment. (Ollero vs. WCC, 84 SCRA 695)

Where the records show that the deceased was a college professor of the University of Mindanao (Tagum Branch), a place about 60 kilometers from Davao City and that the respondent failed to disprove the claim of petitioner that the deceased at the time of his death was going to attend a conference at the University of Mindanao in Davao City for which he was called, the foregoing is sufficient to create a disputable presumption that the deceased was in the performance of an official mission for the school at the time of the accident and that his death was therefore compensable. (Galindez vs. WCC and University of Mindanao, 79 SCRA 332)

Where the record establishes that claimant petitioner was on his way to Mariveles in a passenger bus in line of duty in order to discharge his mission as RCA retail inspector to supervise the unloading of the RCA rice when

the bus turned turtle in a vehicular accident and caused him serious injury that resulted in the amputation of his left leg, the resulting disability was undoubtedly compensable within the "going to and coming from rule" and the dismissal of the claim is untenable. (Unite vs. WCC, 90 SCRA 313)

Following the rule enunciated in these cases, We hold that the death of the late Jorge B. Licardo arose out of and in the course of his employment. It is clear that he could not have had any other reason to leave his residence early on that fateful morning of April 23, 1969 but to perform an extra task, different from his designation as elevator mechanic-examiners that is, to pass by the office of his employer, Otis Elevator Company, to get spare parts and equipment to be used at his assigned place of work at Philamlife Building. At the time of the accident in question, he was performing a special messengerial work which was not part of his daily morning routine of reporting for work. If not for his exemplary devotion to duty and his special concern in rendering efficient and prompt service in the repair of elevators, he would not have performed this extra errand work. And if not for this special errand, he would not have been there at that precise place at the tragic moment. To deny therefore, death compensation to the heirs of an employee who died while in the pursuit of accomplishing something for the good of the service, is violative of the Workmen's Compensation Act, which was, enacted to assuage pecuniarily the sufferings of the heirs of employees who die of illnesses or accidents which arise out of or in the course of employment.

The fact that the deceased employee herein had passed by his employer's office many times before does not remove his being at the accident site on April 23, 1969 from its special character as an extra work. The primordial consideration is whether or not such work is an employee's daily, normal routine work. In this case, it is not.

While We do not agree with the third and fourth assignments of errors of petitioner for the reasons, respectively, that respondent's act of extending medical services and hospitalization is not an admission of liability but merely performs the functions of dispensing with the giving of notice of injury^[4] and that respondent had, in fact, filed a seasonable controversion of the claim, as shown in Annexes "A" and "B" of its answer to the petition,^[5] We are of the firm view that the case herein is compensable.

WHEREFORE, the decision dated June 28, 1972 of the Commission and the resolution dated September 29, 1972 of the Commission en banc, are hereby REVERSED and SET ASIDE and respondent Otis Elevator Company is ORDERED:

1. To pay petitioner the sum of SIX THOUSAND PESOS (P6,000.00) as death compensation benefits and TWO HUNDRED PESOS (P200.00) for burial expenses;
2. To reimburse petitioner of the sum of TWO THOUSANDS TWO HUNDRED PESOS (P2,200.00) for medical and hospital expenses incurred;
3. To pay petitioner the sum equivalent to 10% of the recoverable amount as attorney's fees; and
4. To pay the successor of the Workmen's Compensation Commission the amount of SIXTY-ONE PESOS (P61.00) as administrative fees.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Decision of Acting Referee, Regional Office No. 4.

[2] Rollo, pp. 30-31.

[3]

[4] Plywood Industries, Inc. vs. WCC, 5 SCRA 276.

[5] Rollo, pp. 59 & 60.

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