

JULITA T. VDA. DE SEVERO, ANTONIETE SEVERO, BERNADIT SEVERO, RICARDO SEVERO, JR. AND MARISOL SEVERO, PETITIONERS, VS. LUNINGNING FELICIANO GO AND JOAQUIN CO, AND THE HONORABLE C...

G.R. No. L-44330. January 29, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This case treated as a special civil action for certiorari was originally filed as a petition for review by way of appeal on certiorari seeking to set aside the order of the then Court of First Instance of Samar, Branch V, in Calbayog City dated April 6, 1976 dismissing Civil Case No. 522-CC entitled "Julita T. Vda. de Severo, et al., versus Luningning Feliciano Go, et al." for lack of jurisdiction.

The antecedents of the case are as follows:

The late Ricardo Severo was an employee of herein private respondents Luningning Feliciano Go and Joaquin Go, first as baker of "Joni's Cakes and Pastries," an enterprise owned by respondents located at 1634 P. Guevarra Street, Santa Cruz, Manila and finally, as driver-mechanic from 1961 up to February 16, 1972. On the latter date, unidentified armed men forcibly took away and/or carnapped the car owned by respondents and driven by Ricardo Severo who, in his efforts to resist the carnappers, was shot and killed by the latter. Up to now, the parties responsible for Severo's death have not been identified nor apprehended.

On September 18, 1974, herein petitioners, the widow and minor children of Ricardo Severo, filed an action against respondents-employers before the trial court for "Death Compensation and Damages" in the total amount of P74,500.00, the complaint inter alia alleging:

"IV

That sometime on February 16, 1972 while the said Ricardo Severo was in the actual discharge of his duties as an employee of defendants that is, he was driving the car of defendants, carnappers forcefully took away and/or carnapped the said car of defendants and in his attempts to resist and prevent the subject car from being taken away, the said carnappers shot and killed the said Ricardo Severo, thus his death arose out of and in the course of his employment with defendants:

V

That plaintiffs herein depend solely and rely completely upon the late Ricardo Severo for their financial needs and means of living, and at the time of his death the said Ricardo Severo was receiving monthly compensation by defendants herein at the rate of P250.00;

VI

That for the loss of the life of said Ricardo Severo, plaintiffs herein are entitled to indemnification or death compensation from defendants in the least amount of P50,000.00 considering the fact that at the time of his death

the said Ricardo Severo was only 33 years and could have lived for many years as he was in a very good physical condition.

VII

That because of the sudden and violent death which Ricardo Severo met in the faithful service to his employers the defendants herein, the plaintiffs herein suffered moral damages in the form of deep grief, lonesomeness, mental anguish and shock which sufferings although not capable of pecuniary estimation may be conservatively fixed at P20,000.00;

VIII

That defendants manifested bad faith when they willfully failed to comply with their promise that they would properly compensate plaintiffs herein for the death of Ricardo Severo and that they would help plaintiffs prosecute the carnappers-killers of said Ricardo Severo, thereby plaintiffs were compelled to institute this suit whereby they incur litigation expenses of at least P500.00 and to contract the services of their counsel on a contingent basis of P2,000.00."

On November 18, 1974, private respondents filed a motion to dismiss the complaint on the ground that respondent Court has no jurisdiction over the nature of the action but the same was denied by respondent Court in its order dated January 9, 1975. Respondents' motion for reconsideration was likewise denied by the trial court. On May 3, 1975, private respondents filed their answer traversing the material allegations of the complaint and raised as special affirmative defenses that the lower court has no jurisdiction over the claim of the petitioner and that the complaint failed to state a sufficient cause of action.

During the pre-trial on January 16, 1976, private respondents again filed a motion to dismiss reiterating their allegation that the lower court has no jurisdiction over the claim of petitioner and that the complaint failed to state a cause of action. Petitioners filed a reply (opposition) dated February 5, 1976 contending that their claim is not for compensation under the Workmen's Compensation Act but for damages under Article 1711 and Article 21 of the Civil Code, hence, cognizable by the regular courts.

The respondent court, acting on the latest motion to dismiss, issued an order dated April 6, 1976 stating that petitioners' cause of action falls within the purview of the Workmen's Compensation Act and the proper forum was the Workmen's Compensation Commission. It declared itself without jurisdiction following Our ruling in the case of Robles vs. Yap Wing, L-20442, October 4, 1971, 41 SCRA 267, to wit:

"The Court after a careful consideration of the grounds in the defendants' motion, and considering the allegation of the complaint describing their main cause of action, which is a claim for death compensation and damages, is of the opinion and so holds that this Court has no jurisdiction to hear and decide the case. The plaintiffs' right to relief being derived on an accident resulting in death of Ricardo Severo, an employee of the defendants, while engaged in the performance of the task assigned to him, this Court is devoid of statutory competence to pass upon the subject matter of the plaintiffs' claim, as of the time the cause of action accrue, falls within the purview of the Workmen's Compensation Act as amended and, therefore, the proper form (sic) was the Workmen's Compensation Commission, thru its regional offices under the Department of Labor, a body empowered to act upon all claims for compensation for death, injury or sickness. Thus our Supreme Court in the case of Ciriaco Robles vs. Yap Wing, No. L-20442, Oct. 4, 1971 ruled:

'Before the enactment of Republic Act No. 722 (Amending Act No. 3228), which took effect on June 20, 1952, claims for compensation under the Workmen's Compensation Act were cognizable by the regular courts, but since then, as provided in Section 46 thereof as amended, "the Workmen's Compensation shall have jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court..." In relation to this, Section 5 of the Act provides that '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 an employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code or other laws, because of said injury.'

The petition is impressed with merit. The ruling in the case of Robles vs. Yap Wing, *supra*, that the action of the injured employee or that of his heirs in case of his death is restricted to seeking the limited compensation provided under the Workmen's Compensation Act relied upon by the trial court, no longer controls. We have abandoned the same in the recent case of Ysmael Maritime Corporation vs. Hon. Celso Avelino, G.R. No. L-43674, promulgated on June 30, 1987, citing the case of Floresca vs. Philex Mining Company, L-30642, April 30, 1985, 136 SCRA 141. We stated thus:

"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."

As clarified by Mr. Chief Justice Claudio Teehankee in his concurring opinion in Ysmael, "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 x x x. However, this right of choice is qualified in that the employee should be held to the particular remedy in 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." This is what the petitioners did in filing their complaint for "Death Compensation and Damages" before respondent Court. Petitioners have opted to seek their remedy before the regular court. Their demand for compensation is predicated on the employers' liability for the death of their employee (Ricardo Severo) imposed by Article 1711 of the Civil Code which reads:

"Art. 1711. Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees even though the event may have been purely accidental or entirely due to fortuitous cause if the death or personal injury arose out of and in the course of employment x x x ."

Petitioners' claim for compensation based on the Civil Code pertain to the jurisdiction of the regular courts (Pacana vs. Cebu Autobus Co., 32 SCRA 442).

WHEREFORE, the petition is Granted and the order dated April 6, 1976 of respondent Court dismissing petitioners' complaint is hereby Set Aside and the case Remanded to the trial court for further proceedings. No pronouncement as to costs.

SO ORDERED.

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

Teehankee (C.J.), with a separate concurrence.

Melencio-Herrera, J., dessents and reiterate my dissent in the Floresca and Ysmael cases considering the clear exclusory provision of Section 5 of the Workmen's Compensation Act.

Gutierrez, Jr., J., please see attached dissent.

CONCURRING OPINION

TEEHANKEE, C.J.:

The judgment at bar adheres to the Court's prevailing doctrine categorically enunciated in Ysmael Maritime Corporation vs. Hon. Celso Avelino, G.R. No. L-43674, June 30, 1987, based on Floresca vs. Philex Mining Co., 136 SCRA 141 (1985), that the action of the injured employee or that of his heirs, in case of his death, is not restricted to seeking 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, but, 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, in consonance with the Court's jurisprudence which has long sustained this right of choice of action.[1]

Thus, Mr. Justice J.B.L. Reyes, speaking for the Court in Esguerra vs. Munoz Palma, 104 Phil. 582 (1958), pointed out that the injured worker has the choice of remedies but cannot pursue both courses of action simultaneously and balanced the relative advantage of recourse under the Workmen's Compensation Act as against an ordinary action, in this wise: "x x x the injured laborer was initially free to choose either to recover from the employer the fixed amounts set by the Compensation Law or else, to prosecute an ordinary civil action against the tort-feasor for higher damages. While perhaps not as profitable, the smaller indemnity obtainable by the first course is balanced by the claimant's being relieved of the burden of proving the causal connection between the defendant's negligence and the resulting injury, and of having to establish the extent of the damage suffered; issues that are apt to be troublesome to establish satisfactorily."

The rationale for upholding the employee's or his heirs' choice of forum and cause of action and corresponding relief was set forth in my separate opinion in Robles: "Such right to recover higher damages from a third party would generally arise from a tort committed against the employee, based on fault or negligence. In the interest of avoiding multiplicity of suits, the employee may file such action for damages jointly against the third party and his employer; or as in the case at bar, where the employer rather than his other employees was directly charged of negligence, the employee may choose to file such damage suit only against the employer. I believe that to hold that the employee's right of recovery, as far as his employer is concerned, is limited to the fixed amounts of the Workmen's Compensation Act and that he has no right to seek greater actual, moral and exemplary damages in appropriate cases from his employer - just like any other person or like his employer, for that matter - would be in violation of the employee's constitutional right to due process and equal protection of the laws."[2]

Of course, as the cited jurisprudence clearly indicate, once the choice of forum and remedy has been made, the claimants are bound thereby and may no longer pursue the alternative course, in consonance with the established principles that enjoin multiplicity of suits and splitting a cause of action.

[1] See cases cited in writer's separate opinion in Robles vs. Yap Wing, 41 SCRA 267, 276-285 (1971); Pacana

vs. Cebu Autobus Co., 32 SCRA 442 (1970).

[2] This question is extensively discussed in Floresca.

DISSENTING OPINION

GUTIERREZ, JR., J.:

I am reiterating my dissent in *Floresca v. Philex Mining Corporation* (136 SCRA 178) where I pointed out that to allow victims of industrial accidents to file damage suits based on torts would be a radical innovation contrary to the express provisions of the Workmen's Compensation Act and an unfortunate and unwise departure from the principles evolved in the long history of workmen's compensation.

Quite recently, the Court has revisited and modified earlier decisions which I contended at the time were wrong because they allowed payment of compensation for contingencies never envisioned to be compensable when the law was formulated. Perhaps, the time will also come when the Court shall return to earlier rulings and undo the harm which was foisted on the principle of workmen's compensation when *Floresca v. Philex Mining Corporation* was promulgated.

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