

KOPPEL (PHIL.), INC., PETITIONER, VS. AURELIO JAVELLANA, SR., AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.*G.R. No, L-19926. April 30, 1965*

Ponente: MAKALINTAL, J.

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Koppel (Phil.), Inc. prays for review of the decision of the Workmen's Compensation Commission awarding compensation benefits to Aurelio Javellana, Sr.

Respondent Javellana started working as salesman for Petitioner on March 22, 1954 without undergoing pre-employment physical examination. Prior thereto he had been confined in the Iloilo TB Pavillion, where he was treated for pulmonary tuberculosis from January 13 to April 29, 1953. His last fluoroscopic examination in June 1953 revealed "minimal lesions" in the right lung and a "prominent hilar shadow" in the left. A few weeks after his employment, however, Javellana was examined by Dr. Agustin Bencer at the instance of petitioner's Davao branch manager, Max Stuessi, and allowed to continue working. Respondent's duties as salesman took him through Koronadal, Cotabato, Iligan City, northwestern Mindanao, Misamis Occidental, Lanao, the northern part of Zamboanga, Davao City and the province of Davao. In those travels he took any available means of transportation although later on he was allowed to use the company's pick-up truck, which he drove personally.

Sometime in November 1956, having driven the truck to Iligan, respondent spat blood and was confined at the Mindanao Sanitarium in Iligan City. Upon Stuessi's orders he went back to Davao City, where he was X-rayed and examined by Dr. Gantioque. He was then sent to the Quezon Institute in Manila, where he was confined from December 26, 1956 to January 24, 1957. A week after his discharge, again upon Stuessi's instruction, he resumed his duties as salesman. Several weeks later, he was assigned as acting officer-in-charge of petitioner's Cotabato Office, at the same time continuing to perform his duties as salesman in the area.

On April 21, 1958 while respondent was driving the company truck to Iligan City, it developed some defect in the brakes, and fell into a ravine. He sustained injuries in one of his ears and on his left arm and complained of chest and back pains. He was taken to the Cagayan de Oro Provincial Hospital, where he stayed three days, after which he was confined for, a week at the Brokenshire Hospital. Late in May 1958 he again resumed his duties as salesman in Iligan City. On November 8, 1958 Dr. Diosdado Tech of the Davao Chest Center X-rayed him and found that his tuberculosis was active in a far advanced stage.

On September 30, 1959 respondent filed in Office No. 3, Department of Labor, a compensation alleging that his pulmonary illness had been aggravated by the nature and conditions of his employment. The claim was dismissed by the hearing officer, but reconsidered by the Workmen's Compensation Commission, which after hearing, ordered petitioner to pay respondent P4,000.00 as compensation, minus the sum of P1,098.00 which it had previously paid him. The Commission denied a motion for reconsideration, whereupon the company filed the instant petition for review.

The first issue raised by petitioner is the question of compensability. Petitioner contends that the Commission erred in holding (1) that the claimant's work and the vehicular accident which befell him aggravated his pre-existing illness and (2) that the mere "worsening" of his ailment was equivalent to "aggravation" within the meaning of Section 2 of the Workmen's Compensation Act.

The company maintains that before an employee may be awarded compensation benefits due to the aggravation of his disease he must prove that he had a pre-existing dormant or inactive disease; that an injury which is in itself compensatory lighted up or aggravated the same; that the aggravation or acceleration must be substantial or material beyond the natural progress of the disease; and that the injury or accident must have arisen out of and in the course of the employment. Petitioner points out that in a number of states in the American Union the laws on Workmen's Compensation cover only occupational diseases, while in other states they cover principally industrial injuries accidentally sustained and are generally construed as not including occupational diseases (3 Schneider's Workmen's Compensation Law 497). Citing decisions in this latter group, where only non-occupational diseases are compensable, petitioner argues that to be compensable respondent's illness must be shown to have been aggravated by a determinate injury or accident sustained at work. The decisions relied upon, however, are not in point here in view of our own law on compensation.

Section 2 of Act No. 3428 provides that when an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation.

The conclusion reached by the Commission that the aggravation of respondent's illness was attributable to his Koppel (Phil.) Inc. vs. Javellana, Sr. and WCC employment is premised on the following findings of fact: The disease was in its minimal stage when petitioner first employed respondent on March 22, 1954. His work as salesman took him to different places, traveling over rugged, bumpy and dusty roads. He would often rise as early as three o'clock in the morning to catch buses bound for his destination. He underwent considerable physical strain when driving the company's pick-up truck. At times, when his destination could not be reached by any means of transportation, he had to go on foot.

These circumstances affected his health; his minimal tuberculosis became moderately advanced and caused him to spit blood. In spite of this petitioner allowed him to resume work after a short rest and treatment at the Quezon Institute. Because of the accident he had while driving the company's pick-up truck he was again hospitalized. And although he complained of chest and back pains he was permitted by petitioner to resume his work as salesman. There can be no doubt that his illness was aggravated by his employment, so much so that when he was X-rayed on November 6, 1958, it was discovered that his tuberculosis was already in a far-advanced stage. It is significant likewise that on December 8, 1959, that after respondent retired from his employment, his physical condition improved and his tuberculosis regressed to a moderately advanced stage only.

“Another situation arises when the disease antedates the injury or the exposure to unfavorable conditions. If the employee has tuberculosis in an inactive or dormant form, and the injury or exposure lights up or activates the disease, that constitutes a compensable injury. This is on the theory that the injury or exposure set in motion a force or disease that possibly would never have manifested its presence had it not been activated by injury or exposure. The same rule applies when there is an active tubercular condition and the injury or exposure aggravates the malady and possibly accelerates the demise of the victim. This is compensable when the increased intensity of the disease is traceable to the injury or exposure. In a word, every employee is taken as he is, with his infirmities, whether few or many, and those infirmities are not to be aggravated or accelerated unnecessarily during his employment. And to the extent they are aggravated or accelerated by accidental injuries and in some states to exposures to hazardous conditions not necessarily constituting an accident,

compensation may be awarded." 5 Schneider's Workmen's Compensation Law 501.

The next issue is with respect to the amount which, prior to the award, petitioner paid to respondent and which must therefore be deducted from the amount of compensation due the latter. The Commission allowed the deduction of only P1,098.00, this being the amount which petitioner mentioned in its "Employer's Supplementary Report" dated April 4, 1959. However, on June 13, 1959, it submitted to the Commission another "Employer's Supplementary Report," wherein it stated that the amount it had paid respondent was really P1,199.00. The first report, as now pointed out, must have been a mistake. It refers to payment of P1,098.00 for 15 weeks and 5 days or 3 months 19 days," but the correct amount for such period of time, at respondent's salary of P330.00 a month, is P1,199.00. This is the amount that should have been deducted from the compensation due to respondent.

We now come to the amount of P1,237.50 which respondent had likewise received from petitioner. The Commission refused to subtract this amount from respondent's compensation award on the ground that it constituted retirement pay. The ruling is based on the fact that in the voucher covering the payment it is referred to as retirement pay" and as "retirement credits of Salesman A.E. Javellana from March 22, 1954 to March 31, 1959 at 6.25% of P330.00 (monthly salary) per month, or P20.625 x 60 months." But it appears that on the same day the amount was paid the parties executed on "Agreement and Release," out of the provisions of which was that "all claims of whatever nature and kind which employee has or may have against employer and its officer be considered fully satisfied upon payment of the Catapang vs. WCC and Victorias Milling Co., Inc. sum of one thousand two hundred thirty seven pesos and fifty centavos (P1,237.50), provided that, with respect to any Workmen's compensation to which employee may be entitled and in the event that the Workmen's Compensation Commission awards employee an amount greater than P1,237.50, said sum of P1,237.50 shall be considered as an advance against the amount so awarded to employee."

The terms of the agreement are quite clear. Should the Commission grant compensation to respondent said amount would be deemed as an advance on the award. This does not run counter to Section 7 of our Compensation law, which says that any contract, regulation or device of any sort intended to exempt the employer from all or part of the liability created by the law shall be null and void the agreement does not in any way exempt petitioner from paying compensation should respondent be declared entitled thereto. It merely provides that the payment voluntarily made shall be deemed as an advance payment on any compensation to be awarded. There is nothing illegal in this agreement and it must be given effect.

The decision appealed from is modified, by allowing the deduction of the sums of P1, 199.00 And P1,237.50 from the award of P4,000.00 in favor of respondent, leaving balance of P1 ,563.50, which petitioner should pay respondent Javellana. No pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon, J.P. and Zaldivar, JJ., concur.

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