

ELENA AMEDO, PLAINTIFF AND APPELLANT, VS. RIO Y OLABARRIETA, INC., DEFENDANT AND APPELLEE.

G.R. No. L-6870. May 24, 1954

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This case was instituted on October 18, 1950. In her original complaint, plaintiff Elena Amedo sought to collect from defendant Rio y Olabarrieta, Inc., the sum of P2,038.40 as compensation for the death of her son, Filomeno Managuit, who worked for the defendant as a seaman of the M/S Pilar II. The main allegation of said original complaint was:

"That on May 27, 1949 at about 11:30 o'clock in the morning, while the deceased Pilomeno Managuit was on board M/S 'Pilar II' as such seaman, he jumped into the water to retrieve a 2-peso bill belonging to him, and as a consequence of which, he was drowned."

On November 1, 1950, defendant filed a motion to dismiss upon the ground that said allegation does not show that the death of plaintiff's son was due to an "accident arising out of and in the course of employment," and that, accordingly, the complaint does not state a cause of action. This motion was granted and the complaint dismissed, accordingly, by an order dated December 11, 1950. A motion for the reconsideration of this order having been denied, plaintiff appealed to this Court, which, on October 30, 1952, rendered a decision affirming the order appealed from, but "without prejudice to the right of the plaintiff, the mother of the deceased seaman, to file an amended complaint within fifteen (15) days from notice by the clerk of the trial court that the record of this case had been remanded to and received by the trial court, without costs." Hence, on December 22, 1952, plaintiff filed an amended complaint, paragraph 4 of which alleges:

"That on May 27, 1949, at or about 11:30 o'clock in the morning while the said Filomeno Managuit was in the course of his employment, performing his duties as such ordinary seaman on defendant's M/S 'Pilar II', which was anchored then about 1 1/2, miles from the seashore of Arceli Dumarang, Palawan, his two-peso bill was blown by the breeze into the sea and in his effort to retrieve the same from the waters he was drowned."

A motion to dismiss this amended complaint upon the ground of failure to state a cause of action was granted and the case, consequently, dismissed without costs. A reconsideration of this action having been denied, the case is once again before us on appeal.

Plaintiff's claim is admittedly predicated upon Act No. 3428, otherwise known as the Workmen's Compensation Act. The same was amended, first, by Act No. 3812, then, by Commonwealth Act No. 210 and, lastly, by Republic Act 772. The latter, however, took effect on June 20, 1952 or after the accident upon which plaintiff bases her cause of action. Hence, in the consideration of this case, we shall disregard the provisions of said Republic Act No. 772. Sections 2 and 4 of Act No. 2428, prior to its latest amendment, read:

"SEC. 2. Grounds for compensation.—When any employee receives a personal injury from any accident arising out of and in the course of the employment, or contracts any illness directly caused by such employment, or the

result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified."

"SEC. 4. Injuries not covered.—Compensation shall not be allowed for injuries caused (1) by the voluntary intent of the employee to inflict such injury upon himself or another person; (2) by drunkenness on the part of the laborer who had the accident; (3) by notorious negligence of the same."

Pursuant to these provisions—in so far as pertinent to the case at bar—three conditions are essential to hold an employer liable to compensate his employee for a personal injury sustained by him from an accident, namely: (1) the accident must arise out of the employment; (2) it must happen in the course of the employment; and (3) it must not be caused by the "notorious negligence" of the employee.

Admittedly, the death of Filomeno Managuit was due to an accident. The point in issue is whether such accident occurred under the three (3) conditions aforementioned. Referring to the first two requirements, we said, in *Afable et al. vs. Singer Sewing Machine Co.* (58 Phil., 39, 42) :

"The phrase 'due to and in the pursuance of' used in section 2 of Act No. 3428 was changed in Act No. 3812 to 'arising out of and in the course of'. Discussing this phrase, the Supreme Court of Illinois in the case of *Muller Construction Co. vs. Industrial Board* (283 Ill., 148; 118 N. E., 1028; 1 W. C. L., 943), said:

'The words 'arising out of' refer to the origin or cause of the accident and are descriptive of its character, while the words 'in the course of' refer to the time, place, and circumstances under which the accident takes place. (*Fitzgerald vs. Clarke & Sons*, 1 B.W.C.C., 197; *Dietzen Co. vs. Industrial Board*, 279 Ill. 11; 116 N.E. 684.) By the use of these words it was not the intention of the legislature to make the employer an insurer against all accidental injuries which might happen to an employee while in the course of the employment, but only for such injuries arising from or growing out of the risks peculiar to the nature of the work in the scope of the workmen's employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment. Risks to which all persons similarly situated are equally exposed and not traceable in some special degree to the particular employment are excluded.' "

Adopting a liberal view, it may be conceded that the death of Filomeno took place "in the course of" his employment, in that it happened at the "time" when, and at the "place" where—according to the amended complaint—he was working. However, the accident which produced this tragic result did not "arise out of" his employment. Indeed, the latter was not "the origin or cause of said accident. The blowing of his 2-peso bill may have grown out of, or arisen from, his employment. It was the result of a risk peculiar to his work as a seaman or incidental to such work. But, his death was the consequence of his decision to jump into the water to retrieve said bill. The hazardous nature of this act was not due specially to the nature of his employment. It was a risk to which any person on board the M/S *Pilar II*, such as a passenger thereof or an ordinary visitor, would have been exposed had he, likewise, jumped into the sea, as Filomeno had.

Irrespective of whether or not the accident in question arose out of, or took place in the course of the employment, was it caused by his "notorious negligence"? The phrase "notorious negligence" has been held to be tantamount to "gross negligence", which, in turn, has been defined as follows:

"Gross negligence is defined to be the want of even slight care and diligence." (*Mobile & M. R. Co. vs. Aschcraft* [1872] 48 Ala., 15.)

"By gross negligence is meant 'such entire want of care as to raise a presumption that the person in fault is conscious of the probable consequences of carelessness, and is indifferent, or worse, to the danger of injury to person or property of others.... The negligence must amount to a reckless disregard of the safety of person or property.'" (*Wall vs. Cameron* [1882] 6 Colo., 275; see, also, *The Law Governing Labor Disputes in the*

Philippines by Francisco, 2nd ed., p. 877.)

It cannot be denied that in jumping into the sea, one mile and a half from the seashore of Arceli, Dumarang, Palawan, Filomeno failed to exercise "even slight care and diligence," that he displayed a "reckless disregard of the safety" of his person, that he could not have been but conscious of the probable consequences" of his carelessness and that he was "indifferent, or worse, to the danger of injury."

Thus, in the case of *Government of the Philippines vs. The Manila Electric Co.* (40 Off. Gaz., 9th Suppl. 232), an employee of the Bureau of Posts who died by electrocution, as the lines which he was repairing came into contact with those of the Manila Electric, was held to be guilty of gross negligence, he having been previously warned that the service of electric light had been reestablished and that he should, therefore, be careful in handling the wires. The same conclusion was reached in *De la Cruz vs. Hijos de I. de la Rama & Co.* (62 Phil., 653), involving a truck driver who died, because his truck fell into a ditch in consequence of a false maneuver he made to avoid collision with another car which unexpectedly appeared on the road, while he was driving on the wrong side of the highway, at a speed of 40 to 50 km. an hour.

To the same effect was the decision in *Jahara vs. Mindanao Lumber Co.* (57 Phil., 853), referring to a laborer who was run over by a car, as he fell therefrom, when he tried to board it while moving backward. Similarly, the death of a carpenter as he slipped from the roof of a building he was repairing was blamed on his gross negligence in *Caunan vs. Compania General de Tabacos* (56 Phil., 542, 545), he having worn rubber shoes despite the fact that the roof was wet.

The case of *Reyes vs. The City of Manila* (G. R. No. 29112, July 18, 1933) referred to a watchman assigned to a road-roller, who sat on a piece of board one end of which was over a box placed on the hind wheels of the road-roller and the other end over a box of tools on the same roller two meters above the ground. As he tried to drive away the mosquitoes and flying ants which bothered him, the board slipped off the wheel of the roller. So, he fell to the ground and his knee and left pelvis bumped against the cement sidewalk, sustaining physical injuries as a consequence thereof. It was held that he had been grossly negligent in seating on the piece of board which was precariously placed and in making motions for the purpose of driving away the mosquitoes and flying ants. Again in *Guilas vs. The Province of Pampanga* (G. R. No. 37744, July 21, 1933), a laborer on board a truck who stood up as it was approaching a curve and fell over when the vehicle turned the curved, was held guilty of gross negligence.

In none of these cases was the danger as apparent or imminent as when Filomeno Managuit jumped into the sea to recover his 2-peso bill. Hence, there is more reason to hold that his death was caused by his notorious negligence.

His case is easily distinguishable from that of *Cuevo vs. Barredo* (G. R. No. 45669, decided February 24, 1938, the employee involved therein, who appeared to be a good swimmer, having acted in obedience to an order of his foreman, to save or protect a property of the employer. It is, also, distinguishable from accidents occurring while the laborer or employee is answering a call of nature, or throwing away his cigarette (*Columbia Casualty Co. vs. Parham*, 69 Ga. App. 258), or picking up his pipe, which had fallen, or retrieving his shoes from a car into which a fellow worker had thrown it (*Donovan vs. Bush Terminal Co.*, 6 N. Y. S. 2nd 860, 255 App. Div. 737), these acts not being dangerous per se and the employee being legally justified or supposed to perform either of them in the course of his employment. So, also, if, while Filomeno Managuit was working, his 2-peso bill merely fell from his pocket, and as he picked up the bill from the floor something accidentally fell upon him and injured him, he would surely be entitled to compensation, his act being obviously innocent. In such case, it could be said, in the words of the Lord President in *Lauchlan vs. Anderson* (S. C. 529), that "He had the right to be at the place * * *; he was within the time during which he was employed * * *; and he was doing a thing which a man while

working may reasonably do—a workman of his sort may reasonably smoke, he may reasonably drop his pipe, and he may reasonably pick it up again." (See *Ramos vs. Poblete et al.*, 40 Off. Gaz., 3474). Jumping into the sea, however, is entirely different, the danger which it entails being clear, potent and obvious.

In view of the foregoing the decision appealed from is hereby affirmed, without special pronouncement as to costs.

It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Labrador, JJ., concur.

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