

CREW & SHIP MANAGEMENT INTERNATIONAL, INC. AND CLIO NAVIGATION CORPORATION, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION) AND AMELITA R. MORILLO, RESPONDENTS.

Ponente: BARRIOS, J.

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BARRIOS, J.:

This petition for certiorari was filed by Crew and Ship Management International, Inc. and CLIO Navigation Corporation (or the petitioners) assailing the National Labor Relations Commission's (or NLRC) Decision dated July 26, 2005 granting the claim for death benefits of the respondent Amelita R. Morillo (or the respondent) arising from the demise of her son Alvin R. Morillo (or Alvin), and the Resolution dated December 28, 2005 denying its reconsideration.

Alvin was employed by the petitioners as a deck cadet on board the vessel M.V. Tiger from March 2000 until his death on August 5, 2001. His employment contract was for a period of one (1) year for the monthly salary of \$165.00.

The circumstances of his death as borne by the records are as follows: On August 5, 2001, their vessel M.V. Tiger reached the Ukraine where it laid anchor at the Nikolaev River. Alvin, together with three of his crewmates identified as 3rd Officer Markiss Pepito, A.B. Frederico Paitim and Deck Cadet Lucky Maximo Bellardo decided to take a swim in the river. While swimming within the vicinity of the vessel, the strong current carried away Alvin some 20 to 30 meters from the vessel. A crewmember noticed that he was starting to drown and a life ring was thrown towards him. This and other attempts to save him however proved futile, and Alvin sank and disappeared. A call for assistance was immediately made to the Port Control of Nikolaev, and a boat was sent to the place where Alvin floundered but he could not be found. The next day, divers were sent to search for him but he was not found. It was only three (3) days thereafter when he was retrieved, drowned and dead.

On September 4, 2001, the respondent filed a claim for death benefits against the petitioners. She contended that the death of her son happened in the course of his employment and was due to an accident which can not be attributed to his willful act.

For their part, the petitioners maintained that the respondent is not entitled to death benefits because the cause of the death of Alvin is not work related. They also alleged that Alvin's death resulted from his willful act and an intentional breach of his superior officer's order. There was an express and standing order from the ship master prohibiting the crew from swimming in the river because of its strong and dangerous current and murky waters.

On April 22, 2003, the Labor Arbiter rendered a Decision in favor of the petitioners, disposing that:

WHEREFORE, premises considered, this case should be, as it is hereby DISMISSED for lack of merit.SO ORDERED. (p. 49, rollo)

The respondent appealed this to the NLRC. This was reversed in the now assailed Decision dated July 26, 2005

holding that:

WHEREFORE, on all the foregoing, the instant appeal is hereby GRANTED. Accordingly, the decision of the Labor Arbiter dated May 15, 2003 (sic) is hereby Reversed and Set Aside and anew (sic) one being rendered ordering respondents to pay complainant as follows:

- Death benefits in the amount of Fifty Thousand US dollars (US\$50,000.00) or its peso equivalent at the rate of exchange at the time of actual payment.
- Burial expenses in the amount of One Thousand US dollars (US\$1,000.00) or its peso equivalent at the exchange rate prevailing at the time of actual payment.
- Moral Damages in the amount of P200,000.00;
- Exemplary Damages in the amount of P200,000.00;
- Attorney's fees equivalent to 10% of the total amount due.

SO ORDERED. (pp. 37-38, rollo)

A motion for reconsideration was filed by the petitioners but this was denied by the NLRC in its Resolution dated December 28, 2005.

The petitioners now seek relief through this petition raising the following issues for consideration:

- THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED DEATH BENEFITS AND BURIAL EXPENSES TO THE PRIVATE RESPONDENT BECAUSE:

A) THE DEATH OF THE DECEASED WAS NOT WORK-RELATED.

B) THE DEATH WAS DUE TO THE WILLFUL ACT AND INTENTIONAL BREACH OF DUTY OF THE DECEASED.

C) THE LABOR ARBITER DID NOT COMMIT GRAVE ABUSE OF DISCRETION OR SERIOUS ERROR IN A FINDING OF FACT, THUS HER DECISION SHOULD BE RESPECTED AND IMPLEMENTED.

- THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AWARDED ATTORNEY'S FEES, AS WELL AS MORAL AND EXEMPLARY DAMAGES TO THE PRIVATE RESPONDENT BECAUSE;

A) THE PETITIONERS DID NOT AND IT WAS NEVER SHOWN THAT THEY DID ACT IN GROSS AND EVIDENT BAD FAITH TOWARDS THE PRIVATE RESPONDENT.

B) THE PRIVATE RESPONDENT NEVER PRESENTED ANY EVIDENCE THAT WOULD WARRANT AN AWARD OF DAMAGES AND ATTORNEY'S FEES.

C) THE PRIVATE RESPONDENT DID NOT ASK FOR DAMAGES WHEN THE CASE WAS BEFORE THE LABOR ARBITER. THE BELATED PRAYER FOR DAMAGES SHOULD THEREFORE BE DENIED. (p. 8, rollo)

As their principal thrust, the petitioners maintain that Alvin's death is not compensable pursuant to Section 20(d) of Department Order No. 4 (Standard Format) of the Department of Labor and Employment which states that:

No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the

employer can prove such incapacity, disability or death is directly attributable to the seafarer.

and Sec. 1(a), Rule III of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, providing thus:

(a) For injury and the resulting disability or death to be compensable, the injury must be a result of an employment accident satisfying all of the following grounds:

- the employee must have been injured at the place where his work requires him to be;
- the employee must have been performing his official functions; and
- if the injury is sustained elsewhere, the employee must have been executing an order from the employer.

The petitioners argue that Alvin's death was not work related and was caused by his willful act and intentional breach of duty. Alvin died on a Sunday at around 6:45 p.m., when there was no work to be done, and he was not required by his work to swim in the river. The petitioners maintain that Alvin deliberately and intentionally breached an express order from the ship master prohibiting the crew from swimming in the river. To support their claim, the petitioners submitted the deck log abstract dated August 5, 2001 (p. 63, rollo), Ship Master's Report (p. 64, rollo), statements from the Chief Officer and the Chief Engineer (pp. 65-66, rollo), and an affidavit executed by a Deck Cadet (p. 67, rollo).

We find merit in the petition.

To begin with, the death of a seaman during the effectivity of his employment contract makes the employer liable for death compensation benefits. This rule, however, is not absolute. The employer may be exempt from liability if he can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act (NFD International Manning Agents vs. NLRC, 284 SCRA 239).

In accordance with this rule and as correctly found by the Labor Arbiter, petitioners' evidence sufficiently proves that Alvin's death was a result of his willful and deliberate act of breaching the order of the ship master prohibiting all the crew from swimming in the Nikolaev River. As borne by the records, the ship master gave an explicit instruction for the crew not to swim in the river because of its strong and dangerous current and murky waters. But Alvin and his companions defied the interdiction and proceeded to frolic in the river in utter disregard of the order and their own safety. The deck log abstract, the written statement of the ship master confirming the contents of the vessel's logbook, as well as the written statement of the chief mate/officer and the affidavit of a deck cadet, clearly and convincingly proved that there was indeed an order from the ship master prohibiting the crew from swimming in the river. Alvin's disobedience to the reasonable prohibition of the ship master constituted a willful, deliberate and reckless act, and his death is directly attributable to this and his folly. No premium can be placed on death which resulted from an employee's deliberate and willful act breaching a lawful order of his employer, nor can the employer be made to suffer for its interdiction that was breached.

Hoary is the rule that a writ of certiorari is intended to redress grave abuse of discretion or lack of jurisdiction on the part of the public respondent (Sy vs. Commission on Settlement of Land Problems, 365 SCRA 49). We find that the petitioners have sufficiently alleged and shown that the NLRC committed grave abuse of discretion in the issuance of its assailed Decision, and the grant of certiorari is proper under the premises.

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed Decision of the NLRC dated July 26, 2005, as well as its concomitant Resolution of December 28, 2005, are SET ASIDE and VACATED. Accordingly, the Decision of the Labor Arbiter dated April 22, 2003 is REINSTATED.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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