

LA MALLORCA TAXI, PETITIONER, VS. ROMAN GUANLAO, ET AL.,RESPONDENTS.

G. R. No. L-8613. January 30, 1957

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is a petition for review on certiorari of the decision of the Workmen's Compensation Commission awarding in favor of the respondent and against the petitioner, the sum of P1,560.00, plus P200.00 as burial expenses, representing compensation for the death of Gonzalo Guanlao who was in the employ of the petitioner

There is no question that Gonzalo Guanlao was shot by his co-employee, Rolando Jayme, on November 15, 1952, as a result of which he died on November 19, 1952. The Commission found that the incident took place in the premises of the petitioner between 1:30 and 2:00 o'clock in the afternoon of November 15, 1952, the exact place being near the window of the stock room; that the deceased Gonzalo Guanlao had at the time gone to the stock room to get some "jabilla" which he intended to use in his work as a latheman. Notwithstanding the fact that there is Evidence to the effect that shortly before the incident in question the deceased Gonzalo Guanlao entered petitioner's canteen, sat beside Rolando Jayme who was then eating his lunch, and thereupon got the cup of Rolando Jayme, thereby creating a sort of resentment or ill feeling between the two, the Workmen's Compensation Commission held that the death of Gonzalo Guanlao was compensable.

The petitioner now argues that the accident resulting in the death of Gonzalo Guanlao did not arise out of and in the course of his employment, first, because the incident took place before one o'clock (employee's lunch time); secondly, because the accident had nothing to do with his work; and thirdly, because the deceased suffered injury through his notorious negligence.

The allegation that the incident occurred during lunch time, cannot prevail over the factual finding of the Workmen's Compensation Commission that it took place between 1:30 and 2:00 o'clock in the afternoon. The time record of Gonzalo Guanlao presented in evidence by the petitioner, which had not been punched in at one o'clock on November 15, 1952, thereby showing that his failure to do so was due to the accident which occurred before one o'clock, cannot have any conclusive effect, especially because there is sufficient oral evidence to the effect that the accident took place between 1:30 and 2:00 o'clock in the afternoon. This is apart from the claim made by the respondent that said time record was of recent preparation, with erasures, and without indication of the year and signature of the deceased Gonzalo Guanlao. Moreover, the point raised by the petitioner would be immaterial, considering that the Commission found that the deceased had gone to the stock room to get some "jabilla" which he would use in his work, with the result that, regardless of the time, he was in the performance of his duties.

"An injury sustained by an employee outside his regular working hours or during a temporary stoppage or cessation of work may nevertheless, under some circumstances, be compensable as arising out of and in the course of the employment, and is generally held to be so where the employee was at the time engaged in the

performance of some service for the benefit of the employer in connection with his usual duties. (Mosley vs. Royal Indemnity Co. [CCA 5th Tex] 68 F2d 220, citing RCL: Anno. 7 ALE 1078)."

While the deceased Gonzalo Guanlao might have played a joke upon Rolando Jayme when the fonner got the soup of the latter, which offended and led Rolando Jayme to assault Gonzalo Guanlao, said circumstance is not sufficient to charge the deceased with such gross negligence as to make his death not compensable. As correctly maintained by the respondents, there is no showing that Gonzalo Guanlao foresaw or had any knowledge of the fact that Rolando Jayme would be in a position to seize a Thompson gun which was then in the stock room and with it to shoot Gonzalo Guanlao when the latter went to the stock room. We cannot say that in going to the stock room, after getting the cup of soup of Rolando Jayme in the canteen,the deceased committed a misconduct "to which moral blame attaches,intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its probable consequences." (Baltimore par Found. Co. vs. Ruzicka, 132 Md 491, 104 A 167, 4 ALR 113; Harbroe's Case, 223 Mass. 139, 111 NE 709, LRA 1916D 933. Cited in 58 Am. Jur. 708, Sec. 200.) Upon the other hand, the petitioner may be blamed for assigning Rolando Jayme, a minor, in the stock room where the Thompson gun was accessible to him. As held in Kansas City Fibre Box Co. vs. Connell, 43 ALR 478, "if an employer places boys as co-workers with others in a hazardous employment, he is charged under the statute with what may happen for their curiosity zeal, vigor, or boyishness, as for an injury arising out of the employment.

The petitioner further contends that the deceased Gonzalo Guanlao was guilty of aggression and that after the incident in the canteen he followed Rolando Jayme and challenged the latter to a fight. This contention deserves little or no attention since the records show that Rolando Jayme pleaded guilty to the charge of homicide filed against him in the Court of First Instance of Bulacan without even bringing to the attention of the Court, for all legal effects, the alleged aggression on the part of the deceased.

Wherefore, the appealed decision is affirmed with costs against the petitioner.

Bengzon, Padilla, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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