

RIO Y COMPANIA, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION, VIVENCIO SOLIS AND REMEDIOS M. SOLIS, RESPONDENTS.

G.R. No. L-21467. August 30, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition to review a decision of the Workmen's Compensation Commission dated January 29, 1963, and its en banc resolution of May 22, 1963, declaring that Virgilio Solis was an apprentice-mate of the M/V Pilar II, owned and operated by the Rio Y Compania, when it sank on August 20, 1959, and holding the latter liable to the parents of the deceased in the sums of P1,528.80 as death compensation benefit and P114.66 as damages.

As a result of a cyclonic typhoon on August 20, 1959, the M/V Pilar II, owned and operated by the Rio y Compania, sank off Cabuli Island, north of Palawan, on its return voyage to Manila. A great number of its passengers and crew members perished. Among those reported dead in the local dailies was Virgilio Solis, whose body, in spite of an extensive search, was never recovered.

On November 18, 1960 Vivencio Solis, father of Virgilio, filed a formal claim for death compensation with the Regional Office No. 3 of the Department of Labor in Manila. In answer, the Rio y Compania alleged, among other things, that the deceased was not its employee and that he was not on board the vessel when it sank. In the course of the hearing, the mother of the deceased, Remedios M. Solis, was included as one of the claimants.

On January 31, 1962 the Hearing Officer of the Department of Labor, although he found, among other things, that "Among those reported in the local dailies as victim of the tragedy was one Virgilio Solis", nevertheless dismissed the claim on the ground of absence of employer-employee relationship between the latter and the company. From this decision, the spouses Solis filed a petition for review with the Workmen's Compensation Commission. The Commission, thru Commissioner N. Baens del Rosario, after review, rendered judgment on January 29, 1963, reversing that of the Hearing Officer and finding that Virgilio Solis was an apprentice-mate of the said vessel at the time of his death, and, therefore, entitled to compensation. On May 22, 1963 the company filed a motion for review of the said decision, for the first time interposing the defense of prescription, that is, that the action had already prescribed because the claimants failed to file a notice and claim compensation within three months after the death of Virgilio Solis. The motion for review was denied by the Commission en banc, on a vote of two of its members (one did not participate), on May 22, 1963.

Hence, the present appeal by certiorari.

The petitioner company tenders for resolution only two issues, namely, (1) whether the Commission erred in ruling that the defense of prescription was not well-taken; and (2) whether the Commission erred in finding that the relation of employer-employee existed between the company and Virgilio Solis. The fact of the latter's death is not in issue.

We will pass upon the second issue first. The company contends that on the question of whether Virgilio Solis was an employee of the petitioner, the Shipping Articles should be accorded more weight than the Coasting Manifest, because the latter contains only a list of prospective crew members of the vessel, while the former is the written contract of employment; that the purpose of the Coasting Manifest is not to establish employer-employee relationship but merely to comply with customs, radio and post-office regulations. In this connection the company argues that the carbon copy of the Coasting Manifest which was presented at the hearing is inadmissible without proof of loss of the original.

We have read the Commission's decision, and we are of the view that there is sufficient substantial evidence to support the finding that Virgilio Solis at the time of the fatal mishap was an apprentice-mate of the M/V Pilar II. We quote with approval the following excerpt from the decision:

"That his (Virgilio Solis) name was included in the Crew List dated August 12, 1959 signed under oath by the Captain of M/V Pilar II, is indeed a strong argument which cannot be shaken in favor of the stand taken by the claimants that Virgilio Solis was actually employed as apprentice-mate when it left Manila Port on August 12, 1959. Although Solis' name does not appear in the Shipping Articles dated August 12, 1959, which may have been prepared by an office clerk of the company, this deficiency alone will not vitiate the fact that the deceased actually served as apprentice-mate of said vessel. For as testified to by Mrs. Guillerma E. Garcia, Employment Agent of the Manpower Services of the Department of Labor, the crew members who were on board the ship at that time were checked by her against the names appearing in the Shipping Articles dated August 12, 1959. We do not assail this testimony inasmuch as it is the routine duty of the witness an employment agent of the Manpower Office of the Department of Labor to check the crew members aboard the ship and we presume that she did her duty properly. In view of the many boats plying between the islands and the numerous members of the crew manning all of them, said employment agent of the Department of Labor will be helpless in remembering all their names as well as their faces. And this checking is usually done hours or sometimes days, when the trips are delayed, before the boat sails. It is very apparent that the checking precedes the sailing. Even minutes before the sailing if the captain of the boat, who is traditionally named as the king of the sea, saw it fit to pick up another member of the crew so necessary in order to complete the complement of the vessel in order to make a successful voyage, he had the right to do it. Hence, in the Coasting Manifest he added the name of Virgilio Solis as apprentice-mate and in listing his name the late captain made it under oath. In all probability, therefore, at the time of this check up, Virgilio Solis was not actually on board the ship. But the fact that his name was included as 'apprentice-mate' in the Crew List under the signature of the Captain is convincing evidence, notwithstanding the Shipping Articles, that Solis was such an employee for that voyage, for the captain himself is the best and most competent person to determine and know who were the members of his crew before the boat sailed on. It must be emphasized, and this is very significant, that, according to the testimony of Don Benigno del Rio, Assistant Manager and Treasurer of respondent, it was the Captain who appoints apprentice-mates, and is responsible for the dismissal or termination of their services. (tsn p. 6, Hearing on Sept. 27, 1961). Upon this fact alone, the probative value of the 'Coasting Manifest' dated August 12, 1959 becomes unassailable compared to the Shipping Articles upon which respondent anchors its desistance in admitting employer-employee relationship."

In passing upon the oral testimony of Benigno del Rio who testified that Virgilio Solis was not an apprentice-mate at the time the vessel sank, the Commission aptly said:

"In the above testimony, the affiant admitted that the captain needed two apprenticeship-mates for the trip and the inclusion of the name of Virgilio Solis made him the second apprenticeship-mate.

"It will be noted that Don Benigno del Rio never categorically answered that Solis' services were terminated before the departure of M/V Pilar II on August 12, 1959, but merely declared that Rodolfo Armoreda, son of the captain, took Solis' place as apprentice-mate. But was Rodolfo Armoreda really employed as 'apprentice-mate' of Pilar II on August 12, 1959 and previous voyages? The answer to this question lies the

desperate attempt of respondent to escape liability under the Workmen's Compensation Law, for the Crew List dated August 12, 1959 signed under oath by Captain C.M. Armoreda, explicitly shows that Rodolfo Armoreda's name is listed No. 11 thereof as 'Quartermaster' and not as 'apprentice-mate'. Again we see the futility of respondent's ground when we consider that in the Shipping Articles dated June 5, 1959 (Exh. '2') and dated July 6, 1959 (Exh. '3'), Rodolfo Armoreda's name is listed No. 8 in both documents with the designation of 'Ableseaman' with address at 1725 Pasay City, age 27, and with a salary of P100.00. Plainly, it can be said, without fear of contradiction, that Rodolfo Armoreda was not employed as 'apprentice-mate' for the voyage of August 12, 1959 but as 'Quartermaster' of Pilar II. Even the shipping articles dated August 12, 1959 will show that his name was originally listed No. 8, but was apparently cancelled in favor of one Oscar de la Vega; then his name was listed No. 25 with the designation of 'apprentice-mate'. Obviously, the change herein made on the Shipping Articles dated August 12, 1959 was done to suit respondent's defense. As can be clearly seen from the previous shipping articles, Rodolfo Armoreda was no longer an apprentice-mate and it would be plainly illogical that he should be reverted to such status after having been previously employed as 'Ableseaman' and 'Quartermaster' without an ulterior motive to strengthen the weak defense. It is hard to believe the harsh designation in view of the fact that the captain was his father. The Shipping Articles dated August 12, 1959, adjudged by the Hearing Officer to have more weight, faith and credit should, in the light of the above facts, be viewed with much skepticism and should not be allowed to prevail over the 'Oath of Master Covering List of Officers on Coastwise Vessels' dated August 12, 1959 subscribed by the captain himself. Of course, the best and most authoritative person who could testify as to whether or not Virgilio Solis was actually employed as apprentice-mate on board M/V Pilar II is Captain C.M. Armoreda himself who personally knew all the members of his crew. Unfortunately, he is now dead and death sealed his lips so that he could no longer testify but he left his written testimony in the 'Coasting Manifest' which he signed under oath. This unassailable document - the 'Oath of Master' dated August 12, 1959 - indelibly imprints the fact that Virgilio Solis was employed as 'apprentice-mate' on said vessel when it began its ill-fated voyage of August 12, 1959 for the Palawan Ports."

The above findings of the Workmen's Compensation should not be disturbed unless there is a clear showing of failure to consider evidence on record, or a failure to consider fundamental and patent logical relations in the evidence, amounting to abuse of discretion, which are not present in this case.

"As a general rule, findings of fact by the Industrial Court or the Workmen's Compensation Commission are final and conclusive (*Madrigal Ship-ping Co. Inc. v. Nievas Baens del Rosario, et al.*, L-13190, October 31, 1959; *St. Thomas Aquinas Academy v. WCC, et al.*, L-12297, April 22, 1955; *NLU v. Sta. Ana*, L-9987, April 29, 1957), unless the lower court acted with grave abuse of discretion, or said findings find absolutely no support in the evidence on record, or are unsupported by substantial or credible evidence (*PAL v. PAL Employees Association*, L-8197, October 31, 1958; *Donato v. Phil. Marine Officers' Association*, L-12506, May 18, 1959; *15¢ and Up Employees Association v. Dept. and Bazar Free Workers' Union*, L-9168, Oct. 18, 1956; *NLU v. Dinglasan*, L-7945, March 23, 1956)." (*B.T. Co. v. Rivera*, L-14427, Aug. 29, 1960).

Anent the petitioner's claim that the carbon copy of the Coasting Manifest is inadmissible under our law of evidence, without proof of loss of the original, suffice it to say that since it is not asserted in this appeal that the said evidence was objected to at the hearing, the admissibility, due execution and validity thereof may not now be raised in issue at this stage of the proceedings. At all events there is a rule in compensation cases that -

"Primarily the problem in workmen's compensation is not the admissibility of evidence incompetent by the ordinary legal rules but the ability of such evidence to support an award or decision. Consequently, it can be said that the admission of incompetent evidence is not in itself ground for reversal of an award. (*Larson's Workmen's Compensation Law*, Vol. II, page 238)." (*Morabe & Inton, The Workmen's Compensation Act*, 1955 ed p. 205.)

We now come to the first issue. The petitioner contends that the Commission erred in ruling that the defense of

prescription was not well taken. The petitioner argues that the failure of the claimants to file a notice and claim for compensation within three months after the death of the deceased is fatal, invoking section 24 of the Workmen's Compensation Act, as amended.

This Court has repeatedly held that failure to comply with the requirements of section 24 of the Workmen's Compensation Act -that is the giving of notice and the filing of a claim within the time prescribed in said section -- is non-jurisdictional.[1] It is also a settled rule that failure or delay in giving notice, as required in section 24 of the law, shall not be a bar to the proceeding in a claim for compensation if it is shown that the employer, his agent or representative, had knowledge of the injury, sickness, or death, or that the employer did not suffer by such delay or failure.[2] It is likewise settled that even if a claim for compensation is filed beyond the period prescribed in section 24, when it is shown that the employer has not manifested his intention to controvert the right to compensation within ten days after he has knowledge of the accident, the Workmen's Compensation Commission can proceed to determine and decide the claim for compensation.[3]

In this case the requirement prescribed in section 24 may be dispensed with, for the record unmistakably shows that the company had knowledge of the accident that resulted in the death of Virgilio Solis, and there is no showing that the company had suffered by the delay in the filing of the claim in question. Furthermore, the defense of prescription may be rejected on the ground of the failure to controvert the claim within ten days after the company had knowledge of the accident. The petitioner's failure to comply with the requirement in paragraph 2 of section 45 resulted in statutory renunciation of its right to controvert the claim even if the same was filed beyond the period prescribed by section 24.

The obligation of the employer to file the notice of controversion is independent of the filing by the employee of the notice and the claim under section 24.[4] It is also noteworthy that Rio y Compania failed to file a report as required by section 37 which provides, among other things, that "as soon as possible after the occurrence of an injury resulting in absence from work a day or more, the employer shall give written notice thereof to the Workmen's Compensation Commissioner." Because of such failure, the company must be deemed to have waived its defense that the claim is not compensable for failure to file it within the statutory period.[5]

ACCORDINGLY, the judgment a quo is affirmed in toto, at petitioner's cost.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Victorias Milling Co., Inc. v. Villanueva, et al., L-10533, May 13, 1957; Century Insurance Co., Inc. v. Fuentes, et al., L-16039, August 31, 1961.

[2] Section 27, Act 3428; Paez v. Workmen's Compensation Commission, et al., L-18438, March 30, 1963; Pangasinan Transportation Co., Inc. v. Workmen's Compensation Commission, et al., L-16490, June 29, 1963.

[3] Section 45, Act 3428; Marth Lumber Mill Inc. v. Workmen's Compensation Commission, L-7599, June 27, 1956; Tan Lim Te v. Workmen's Compensation Commission, et al., L-12324, August 30, 1958; Iloilo Dock and Engineering Co. v. Workmen's Compensation Commission, et al., L-17283, July 31, 1962; National Power Corporation v. Workmen's Compensation Commission, et al., L-19843, Jan. 30, 1965; National Development Co. v. Workmen's Compensation Commission, et al., L-20504, March 31, 1965; Manila Railroad Company v. WCC, et al., L-21902, August 10, 1967.

[4] National Development Company v. WCC, et al., L-20504, March 31, 1965.

[5] Manila Railroad Company v. WCC, et al., L-19377, Jan. 30, 1964.

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