

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

G.R. No. L-4466. October 30, 1952

Ponente: PADILLA, J.

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PADILLA, J.:

This is a suit to collect compensation under Act No. 3428, known as the Workmen's Compensation Act, as amended by Act No. 3812. The defendant moved to dismiss the complaint on the ground that the facts pleaded therein do not constitute a cause of action. The court dismissed the complaint on the ground that the facts set out therein are insufficient to constitute a cause of action. A motion for reconsideration was denied. Hence this appeal.

The only question is whether paragraph 5 of the complaint which reads as follows:

That on May 27, 1949 at about 11:30 o'clock in the morning, while the deceased Filomeno Managuit was on board the 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;
is sufficient to constitute a cause of action.

The test on sufficiency of the facts alleged in a complaint is whether upon such facts a judgment may be rendered against the defendant. To entitle the plaintiff, the mother of the deceased seaman who was wholly dependent upon him, to a compensation award, it is at least essential to aver that the seaman was engaged in the work assigned to him on board the M/S "Pilar II" owned, run and operated by the defendant and while at such work he dropped the two-peso bill belonging to him and to retrieve it he leaped into the sea and was drowned. The averment that he was on board the M/S "Pilar II" as seaman does not mean and convey the idea that he was engaged in the work assigned to him for he might be playing or relaxing, taking into consideration the asserted time the fatal accident took place, to wit: 11:30 a.m. and the averred fact that the two-peso bill dropped into the water belonged to him. It is of common knowledge that steamers are washed and cleaned early in the morning. At 11:30 in the morning, the seamen or the crew, if working, must be doing other kinds of labor. The dropping or blowing of the bill into the water implies the idea that the seaman was not at work but must have been playing with it. And the determination to retrieve it suggests also the thought that the steamer was not running but was docked or anchored. So to enable a court of competent jurisdiction to render a judgment for the plaintiff on the pleadings, an averment that the seaman was performing the work assigned to him on board the M/S "Pilar II" owned, run and operated by the defendant, in addition to the other material averments pleaded in the complaint, is essential and necessary. Lack of such averment in the complaint renders it insufficient to constitute a cause of action.

The order appealed from dismissing the complaint is affirmed, 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.

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

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