

JOSEPH LU, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND AUDIPAZ FRANCISCO, RESPONDENTS.

G.R. No. L-43181. October 27, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Originally a Petition for Review of the Decision of the Workmen's Compensation Commission, the Court resolved to treat the case as a special civil action.

Petitioner, Joseph Lu, was the operator of a Caltex gasoline station at San Jose Road, Zamboanga City. The deceased, Rolando Francisco, used to work thereat as a gasoline attendant. At the time of the incident resulting in Rolando's death, a Ford Fiera jeepney was garaged at said gasoline station.

The factual circumstances surrounding the demise of Rolando are documented in two reports, the first being the Case Report of the Zamboanga City Police Department (Annex "A"), which reads in part:

"SYNOPSIS:

"That at or about 11:45 pm, October 28, 1974, Rolando Francisco y Acol of Libertad Street, this city, was driving at top speed a Ford Fiera Jeepney bearing "plate No. OK-766 along Libertad Street, and he lost its control thereby accidentally toppled into a ditch and pinned the driver who died on the spot. The vehicle was heavily damaged.

xxx xxx xxx

"INVESTIGATION:

"Prior to the accident, Rolando Francisco drove the Ford Fiera bearing plate No. OK-766 from the Shell Gasoline Station at San Jose road this city, without any permission or consent from the watchman thereat, and thereafter drove it to Tetuan street, and while fronting the residence of Mr. Natividad situated at the right side of the road he lost the control of steering wheel, ran off the roadway, fell into the ditch and toppled upside down and there it rested pressing him Rolando Francisco y Acol, the driver, (who) died on the spot and the Ford Fiera was heavily damaged.

"That the Ford Fiera jeepney is owned by To Tek So Furniture, and according to the owner it was garaged at the Shell Gasoline Station. The ignition key was taken home by To Tek. That, Francisco Rolando furtively took the Ford Fiera jeepney without their permission and at Tetuan he met the accident killing himself.

"Francisco Rolando is employed as laborer of the Shell Gasoline Station but he works at daytime according to the proprietor Mr. Joseph Lu. On that night he borrowed a key from the watchman identified as Enrico Legasos, (then) secretly Francisco drove the Ford Fiera jeepney out of the gasoline station with a boy companion Ricardo Perez who later alighted out of fear because Francisco was driving fast. Thereafter, at Libertad Street, Francisco due to overspeeding and allegedly under the influence of liquor had the accident which killed him. (That,) Francisco Rolando possessed no driver's license or permit."

"xxx xxx xxx"

And the second is the Investigation Report (Annex "B") of the legal counsel of Perla Compania de Seguros, Inc., who processed the insurance claim of the owner of the Ford Fiera and arrived at the following findings:

"Facts of the Case:

It appears that the insured unit was being garaged in the Shell Gasoline Station operated by Joseph Lu nightly, the said station being the usual supplier of your assured's motor needs.

On October 28, 1974, at or about 11:30 P.M. one of the gasoline boys by the name of Rolando Francisco y Acol, allegedly took the ignition key of the insured unit from the watchman and without notice drove the "insured unit out of the station with another companion named Ricardo Perez.

Somewhere in Tetuan, allegedly at top speed, the insured unit fell into a canal pinning the driver to death and causing considerable damage to the unit.

"Our Investigation and Findings:

Rolando Francisco y Acol, has no driver's license. This is confirmed by the police. He was not the authorized driver. Prior to the accident, Rolando Francisco and Ricardo Perez went to a liquor store and drank liquor. After becoming tipsy, (he) took the insured unit and drove it towards Tetuan. At Libertad Street, however, Ricardo Perez went down allegedly to urinate just to get off because of his fear on the way Rolando Francisco was driving.

After he was down on the road, Ricardo Perez started walking away telling Rolando he will just walk home. Rolando got angry and drove after Ricardo, trying to run down the latter, who avoided being hit by running zigzag on the road until the insured unit fell into the canal.

"The claim:

The insured is claiming for the repair cost of his unit under the own damage coverage, on the estimate of P9,333.00 by Zamboanga Motors Inc. Then your assured proposed to have his unit repaired by Delta Motors, on the latter's estimate of P4,963.00. He also asked for consideration on the death of the person driving by way of contribution or aid.

"Action Taken:

Based on our findings and as supported by police investigation, we respectfully DENIED all claims by your assured on the following grounds:

- The driver was unlicensed.
- The driver was unauthorized.
- The driver was using the unit other than its usual use.
- The driver was drunk.

"Recommendation:

On the basis of the foregoing, we are therefore recommending DENIAL of this claim.

"xxx xxx xxx"

By reason of Rolando's death caused by "cerebral hemorrhage sec. to vehicular accident", his widow, private respondent Audipaz Francisco, filed a claim for death compensation benefits under the Workmen's Compensation

Act.

Petitioner did not file his Employer's Report of Accident nor controvert the claimant's right to compensation on the theory that Rolando did not die in the performance of his duties so that the claim is not compensable.

In a Decision rendered, after hearing, by the Workmen's Compensation Unit, Regional Office No. 9, Zamboanga City, compensation benefits were denied premised on the following findings:

"xxx xxx xxx

"The records of this case show the following point: that the claimant is the lawful wife of the late Rolando Francisco; out of their wedlock they have begotten two minor children, namely; Burt, born on February 16, 1970 and Eric, born on February 12, 1972; the deceased Rolando Francisco was an employee of the respondent with an average weekly earning of P56.00; that at 11:30 in the evening of October 28, 1974 the deceased died as a result of a vehicular accident at Tetuan, Zamboanga City due to cerebral hemorrhage, as shown in the death certificate attached to the records of this case; that the Ford Fiera Jeepney bearing plate No. OK-766 belong to a certain Ko Tec So which was garaged at Caltex Station, Zamboanga City on that evening; investigation of the Zamboanga City Police show that the deceased had borrowed a key from the watchman identified as Enrico Legasos and he drove the said Ford Fiera jeepney together with a certain companion Ricardo Perez without the consent or knowledge of the respondent, Mr. Joseph Lu; the respondent proved that the schedule of work of the deceased was from 7:00 o'clock in the morning to 4:00 o'clock in the afternoon and that he has no more working schedule in the evening; that he did not file an Employer's Report in this case because he knew that the deceased died not in the course of his employment and that he is not required under the law.

"Based on the foregoing facts and evidence, it is clear that at the time of the accident on October 28, 1974 the deceased was no longer working with the respondent, aside from this the deceased used a vehicle which was garaged at the Caltex Service Station and without the consent of the owner as well as the incharge of the Caltex Service Station who is the respondent in this case.

"WHEREFORE, for lack of sufficient evidence, the above-entitled case is hereby ordered DISMISSED and CLOSED for all legal intents and purposes."

On appeal, however, respondent Workmen's Compensation Commission reversed the foregoing Decision, reasoning thus:

"xxx xxx xxx

"Respondent did not file its Employer's Report of Accident nor controvert the right of the claimant to compensation allegedly because it knew that the deceased did not die in the course of employment. It just happens that the act does not vest the employer the power to decide which accident occurred in the course of employment. That is the job of the implementors of the Act, and this means, this Commission. Due to this failure, under the law and jurisprudence, respondent is deemed to have waived its right to controvert the right of the claimant to compensation and to avail of all the defenses allowed by law including the issue of the compensability of the claim. x x x

"As it is of public knowledge that gasoline stations usually operate even during the night time in order to serve its customers, the record does not show that samples of the daily time record of the decedent was submitted in order to show that his time of work was just from 7:00 o'clock in the morning until 4:00 o'clock in the afternoon as adverted to by the Acting Referee. The subtle question which raises an eyebrow was how the decedent was able to get the key to the Ford Fiera and drive it out of the gasoline station. Why the decedent was at the gasoline station before the accident. If the watchman at the gasoline station gave the key to the vehicle and allowed the decedent to drive it out of the premises, the driving of the vehicle must have been with the prior authority of the respondent, otherwise, the watchman, as indicated in the Police Report, would not

have parted with the key to the vehicle and allowed the vehicle to be driven out. All these doubtful circumstance could have easily been clarified by the respondent, who had at his disposal all the available evidences. But respondent in this case chose to remain silent and allowed the Acting Referee to resolve the doubts in its favor despite its omission to do its obligation under the law. The watchman who gave the car key to the decedent holds the solution to the puzzle why the key was delivered to the decedent and allowed the vehicle to be brought out. Had the laborer not met his untimely end he could have enlightened why he was allowed to drive the vehicle out but since his lips has been closed with the seal of death, all doubts should have been resolved in favor of the worker or its dependent. The obligation to rebut the presumption is laid before the employer. But the employer has lost this privilege for failure to controvert the claim within the period required by Section 45 of the Act.

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"WHEREFORE, the decision under review should be, as it is hereby Reversed. Another decision is entered ordering the respondent to pay the following:

"1. To the claimant, the sum of FIVE THOUSAND TWO HUNDRED PESOS (P5,200.00) as death compensation plus an additional amount of P200.00 as reimbursement of burial expenses.

"2. To pay Attorney's fee to Atty. Eduardo Atilano, the sum of P520.00 as counsel for the claimant;

"and

"3. To the Workmen's Compensation Fund, the sum of P53.00, pursuant to Section 55 of the Act.

"SO ORDERED."

Hence, this petition by the petitioner-operator anchored on the ground that the Decision of respondent Commission is contrary to the facts on record.

The threshold issue is whether or not Rolando was in the performance of his duties at the time of his death to entitle him to death benefits under the Workmen's Compensation Act entitled "An Act Prescribing the Compensation To Be Received by Employees for Personal Injuries, Death or Illness Contracted in the Performance Of their Duties" (Emphasis supplied).

The facts extant on the record call for a negative answer.

The incident occurred at 11:30 P.M. when Rolando was no longer on duty. He drove out the vehicle garaged at the gasoline station without permission of the owner thereof nor of the watchman. He was not the authorized driver thereof much less did he have a driver's license. Driving that jeepney was not part of his duties as a gasoline attendant. And what is more, he drove it at "top speed" and when he was "tipsy", thus prompting the police to book the case as "Homicide, Damage to Property thru Reckless Imprudence."

Additionally, Section 4 of the Workmen's Compensation Act excludes from its coverage the following:

"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; and (3) by notorious negligence of the same."

The foregoing provision should be construed to cover deaths caused by any of the three enumerated conditions. Rolando was drunk, was "recklessly imprudent", and was trying to inflict harm on his drinking companion, Ricardo Perez, when the incident, resulting in his death, occurred.

Death not having occurred while in the performance of his duties as a gasoline attendant, Rolando cannot be extended the benefits of the Workmen's Compensation Act. As a consequence, the forfeiture of the right to controvert imposed by statute as a sanction for the employer's failure to file the notice of controversion does not

result. Otherwise, even if an injury or death were not sustained in the course of employment and, therefore, not validly compensable, it would be deemed compensable just because his employer failed to controvert a claim filed in an employee's behalf. While it is the duty of the employer to file its controversion within the prescribed period, the absence of controversion should be deemed fatal to any defense that an employer could interpose only if the injury, death, or illness is compensable under the Workmen's Compensation Act.

WHEREFORE, the Decision of respondent Workmen's Compensation Commission in WCC Case No. ROX-005-72, dated January 27, 1976, is hereby SET ASIDE, and that of the Workmen's Compensation Unit, Regional Office No. 9, Zamboanga City, dated November 28, 1975, dismissing private respondent's claim is hereby reinstated. No costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

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