

**ILOILO DOCK & ENGINEERING CO., PETITIONER, VS.
WORKMEN’S COMPENSATION COMMISSION AND IRENEA M.
PABLO, FOR HERSELF AND IN BEHALF OF HER MINOR CHILDREN
EDWIN AND EDNA, ALL SURNAME...**

G.R. No. L-26341. November 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal by the Iloilo Dock and Engineering Company (hereinafter referred to as the IDECO) from the decision dated February 28, 1966 of the Workmen's Compensation Commission (hereinafter referred to as the Commission) affirming the decision of the Regional Office VII in Iloilo City, and ordering the IDECO to pay to the widow and children of Teodoro G. Pablo (Irene M. Pablo and the minors Edwin, Edgar and Edna, all surnamed Pablo) the sum of P4,000, to pay to the widow P89 as reimbursement for burial expenses and P300 as attorney's fees, and to pay to the Commission the amount of P46 as fees pursuant to section 55 of the Workmen's Compensation Act, as amended.

At about 5:02 o'clock in the afternoon of January 29, 1960, Pablo, who was employed as a mechanic of the IDECO, while walking on his way home, was shot to death in front of, and about 20 meters away from, the main IDECO gate, on a private road commonly called the IDECO road. The slayer, Martin Cordero, was not heard to say anything before or after the killing. The motive for the crime was and still is unknown as Cordero was himself killed before he could be tried for Pablo's death. At the time of the killing, Pablo's companion was, Rodolfo Galopez, another employee, who, like Pablo, had finished overtime work at 5:00 p.m. and was going home. From the main IDECO gate to the spot where Pablo was killed, there were four "carinderias" the left side of the road and two "carinderias" and a residential house on the right side. The entire length of the road is nowhere stated in the record.

According to the IDECO, the Commission erred (1) in holding that Pablo's death occurred in the course of employment and in presuming that it arose out of the employment; (2) in applying the "proximity rule;" and (3) in holding that Pablo's death was an accident within the purview of the Workmen's Compensation Act.

The principal issue is whether Pablo's death comes within the meaning and intent of that "deceptively simple and litigiously prolific"[1] phrase "arising out of and in the course of employment." [2] The two components of the coverage formula - "arising out of" and "in the course of employment" - are said to be separate tests which must be independently satisfied; [3] however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. [4] The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place, and circumstances under which the accident takes place. [5]

As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of their employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.[6]

The general rule in workmen's compensation law known as the "going & coming rule," simply stated, is that "in the absence of special circumstances, an employee injured in, going to, or coming from his place of work is excluded from the benefits of workmen's compensation acts." [7] This rule, however, admits of four well recognized exceptions, to wit: (1) where the employee is proceeding to or from his work on the premises of his employer; (2) where the employee is about to enter or about to leave the premises of his employer by way of the exclusive or customary means of ingress and egress; (3) where the employee is charged, while on his way to or from his place of employment or at his home, or during his employment, with some duty or special errand connected with his employment; and (4) where the employer, as an incident of the employment, provides the means of transportation to and from the place of employment.[8]

We address ourselves particularly to an examination and consideration of the second exception, i.e., injuries sustained off the premises of the employer, but while using a customary means of ingress and egress.

This exception, known as the "proximity rule," was applied in *Philippine Fiber Processing Co., Inc. vs. Ampil*. [9] There, the employee, at about 5:15 a.m., while proceeding to his place of work and running to avoid the rain, slipped and fell into a ditch fronting the main gate of the employer's factory, as a result of which he died the next day. The sole question was whether or not the accident which caused the employee's death arose out of and in the course of his employment. This Court ruled in favor of the claimant, thus:

"The very case of *Afable vs. Singer Sewing Machine Co.* invoked by the petitioner intimated that we do not of course mean to imply that an employee can never recover for injuries suffered while on his way to or from work. That depends on the nature of his employment.' Considering the facts found by the Commission, namely, that the deceased Angel was not under any shift routine; that his assignment covered the entire working hours of the factory; that the first working hour starts at 6:00 o'clock in the morning; that it takes at least thirty minutes before the machine operates at full Speed or load; that the spot where he fell (ditch fronting petitioner's factory or sidewalk of its premises), is immediately proximate this place of work, the accident in question must be deemed to have occurred within the zone of his employment and therefore arose out of and in the course thereof. In *Sailing vs. Insular Lumber Co.*, G.R. No. 28951, September 10, 1928, referred to in the Comments on the Workmen's Compensation Commission Act by Morabe and Inton, 1955 edition, compensation was allowed for injury received by a laborer from an accident in going to his place of work, along a path or way owned by his employer and commonly used by the latter's laborers."

In contrast is *Pampanga Sugar Development Co., Inc. vs. Quiroz*, [10] which concerned injuries sustained by a centrifugal operator. He had reported for work at 9:30 p.m. (March 7, 1958) and was dismissed at 5:30 the following morning. Soon "after he stepped out of the company gate, and while standing about 2 1/2 meters from it between the shoulder of the highway and a railroad that came from inside the compound and intersected the highway, waiting for a ride home, he was bumped by a jeepney, as a result of which he sustained" injuries. In holding that these injuries were "not produced by an accident arising out of and in the course of employment," this Court reasoned thus:

"The compensability of an injury suffered by an employee proceeding to or coming from his work depends upon whether or not it is 'work connected.' As Chief Justice Kenison of New Hampshire has put it, 'the fact that the employee is travelling to or from work on a public highway does not necessarily exclude coverage (*Brousseau vs. Blackstone Mills*, 130 A 2d 543, 545). Conversely, it is not enough to say, that the employee would not have been on the public highway had it not been for his job, since the same can usually be said of the general public (*Payne & Dolan vs. Industrial Commission*, 46 NE 2d 925). The law, in effect, insures the

employee against losses: arising from the perils of his work. In other words, the Workmen's Compensation Act covers occupational injuries, which, as such, must have a causative connection with something, not merely in common with the public, but peculiar to the employment. In order to warrant recovery for off-the-premises injuries, it must be shown that there has been a very special danger, some particular risk which the employer could have caused or allowed to exist. Hence,

'It is significant that practically all successful off-the-premises cases have involved normal route of access to the plant, or an icy sidewalk adjacent to the premises and therefore identified with the premises in the sense that the employer should have removed the ice.' (Underscoring ours.)

"It is true that in *Philippine Fiber Processing Co. v. Ampil*, G.R. No. L-8130 (June 30, 1956), We held the employer liable for an injury sustained by an employee who, as he was running to his place of work to avoid the rain, slipped and fell into a ditch in front of the factory's main gate and near the same. The ditch was, however, in itself an obvious hazard which, owing to its proximity to the gate, the employer should have taken measures to remove. Thus, thru his inaction, he had, contributed, in a special way, to the occurrence of the accident.

"In the case at bar, no such special circumstance appears to exist. There is no particular causative connection between the injury sustained by the employee and either his work or his employer. Although, as stated in the decision appealed from, the record does not show that the company 'had taken measures to make the waiting place safe for the employees, neither does the record show either that the accident occurred at the usual waiting place of the employees, or that said place was particularly unsafe."

Our Workmen's Compensation Act being essentially American in origin and text, it is not amiss to pay deference to pertinent American jurisprudence. In the precise area of law here involved, we can draw guidance from an affluence of Federal and State precedents.

From Samuel B. Horowitz' *Injury and Death under Workmen's Compensation Laws* (1944), pp. 159 to 165, we glean the following observations:

"Suppose, however, that the injury occurs on the way to work or on the way home from work. Injuries going to or from work have caused many judicial upheavals.

"The question here is limited to whether the injuries are 'in the course of' and not 'out of' the employment. How the injury occurred is not in point. Street risks, whether the employee was walking or driving, and all other similar questions deal with the risk of injury or 'out of' the employment. 'In the course of' deals mainly with the element of time and space, or 'time, place and circumstances.'

"Thus, if the injury occurred fifteen minutes before working hours and within one hundred feet of the employer's premises, on sidewalks or public roads, the question of 'in the course of' the employment is flatly raised.

"Some of our states refuse to extend this definition of 'in the course of' to include these 'injuries. Most of the states will protect the employee from the moment his foot or person reaches the employer's premises, whether he arrives early or late. These states find 'something sacred about the employment premises and define 'premises' very broadly, not only to include premises owned by the employer, but also premises leased, hired, supplied or used by him, even private alleyways merely used by the employer. Adjacent private premises are protected many states, and a few protect the employee even on adjacent public sidewalks and streets. Where a city or any employer owns or controls an island, all its streets are protected premises.

"There is no reason in principle why states should not protect employees for a reasonable period of time prior to or after working hours and for a reasonable distance before reaching or after leaving the employer's premises. The Supreme Court of the United States has declared that it will not overturn any state decision that

so enlarges the scope of its act. Hence, a deaf worker, trespassing on rail-road tracks adjacent to his employer's brick-making premises (but shown by his superintendent the specific short crossing over the track), and killed by a train, was held to be in the course of his employment when hit by an on-coming train fifteen minutes before his day would have begun. So long as a causal relation to the employment is discernible, no federal question arises.

"The narrow rule that a worker is not in the course of his employment until he crosses the employment threshold is itself subject to many exceptions. Off-premises injuries to or from work, in both liberal and narrow states, are compensable (1) if the employee is on the way to or from work in a vehicle owned or supplied by the employer, whether in a public (e.g., the employer's street car) or private conveyance; (2) if the employee is subject to call at all house or at the moment of injury; (3) if the employee is traveling for the employer, i.e. traveling workers; (4) if the employer pays for the employee's time from the moment he leaves his home to his return home; (5) if the employee is on his way to do further work at home, even though on a fixed salary; (6) where the employee is required to bring his automobile to his place of business for use there. Other exceptions undoubtedly are equally justified, dependent on their own peculiar circumstances."

Schneider (supra, at p. 117) makes this significant statement:

"The proximity rule exception to the general going and coming rule is that an employee is generally considered to be in the course of his employment while coming to or going from his work, when, through off the actual premises of his employer, he is still in close proximity thereto, is proceeding diligently at an appropriate time, by reasonable means, over the natural, practical, customary, convenient and recognized way of ingress, or egress, either on land under the control of the employer, or on adjacent property with the express or implied consent of the employer."

On pp. 98 to 99 of 85 ALR we find the following disquisition:

"The compensation acts have been very generally held not to authorize an award in case of an injury or death from a peril which is common to all mankind, or to which the public at large is exposed. 28 R.C.L. 804. And they do not as a general rule cover injuries received while going to or from so work on public streets, where the employee has not reached, or has left the employer's premises. The question whether an injury arises out of and in the course of the employment, however, is one depending upon the facts of each case, and in some cases, where an injury occurred while the employee was going to or from work, but was in the street in front of the employer's premises, it has been held compensable.

"Thus, in the reported case (BARNETT V BRTILING CAFETERIA CO., ante, 85) the injury was held to have arisen out of and in the course of the employment, where the employee slipped on ice on the sidewalk immediately in front of the employer's place of business, while on her way to report for duty, and just before entering by the only entrance to her place of employment. The court here recognized the general rule that, if an employee is injured while going to or from his work to his house, or to or from some point not visited for the discharge of a duty arising out of the employment, or while in the use of a public highway, he does not come within the protection of the Workmen's Compensation Act, but stated that there is an exception to this rule and that the employment is not limited by the actual time when the workman reaches the scene of his labor and begins it, or when he ceases, but includes a reasonable time and opportunity before and after, while he is at or near his place of employment. The court reasoned that in the case at bar, although the employee had not entered the employer's place of business, and the sidewalk was a public highway so much therefore as was in front of the employer's place of business was a necessary adjunct, used in connection with the business, and that the sidewalk was to a limited degree and purpose a part of the employer's premises.

"In *Industrial Commission v Barber* (1927) 117 Ohio St 373, 159 NE 363, the injury was held to have arisen in the course of the employment where an employee, about five minutes before the hour when he was to go on duty, was struck by an automobile owned and driven by another employee, within a short distance from the employer's plant, which was located at the dead end of a street maintained by the employer from its plant the

intersection with another street, and, although the street was a public one, it led nowhere except player's plant, and all of its employees were obliged to use it in going to and from their work. The court stated that where the conditions under the control of an industrial plant are such that the employee has no option but to pursue a given course with reference to such conditions and environments, the pursuance of such course is an implied obligation of the employer in his contract with such employee, and that when he, for the purpose of entering his employment, has entered into the sphere or zone controlled by his employer and is pursuing a course with reference to which he has no option, he is then not only within the conditions and environments of the plant of his employer, but is then in the course of his employment; and that, when he receives an injury attributable to such conditions and environments, there is a direct causal connection between his employment and his injury, and the injury falls within the class of industrial injuries for which compensation has been provided by the Workmen's Compensation Law."

99 C. J. S. at pp. 807-814, has this to say:

"It is laid down as a general rule, known as the 'going and coming rule, that, in the absence of special circumstances, and except in certain unusual circumstances, and where nothing else appears, harm or injury sustained by an employee while going to or from his work is not compensable. Such injury, or accident, is regarded by the weight of authority of many courts as not arising out of his employment, and as not being, or not occurring, in the course thereof.

"However, this rule is not inflexible, is not of inevitable application, and is subject to qualifications, and to exceptions which depend on the nature, circumstances, and conditions of the particular employment, the circumstances of the particular case, and the cause of the injury."

Jaynes vs. Potlatch Forests[11] expresses with enlightening clarity the rationale for extending the scope of "course of employment" to certain "off-premises" injuries:

"We are urged here to again recognize and apply the distinction between off-premises injuries which occur on private property and those which occur on public streets and highways. The extension of the course of employment to off-premises injuries is not based upon the principle which would justify a distinction upon the narrow ground of private and public property; it is not sound to say that while an employee is on a public highway he is always there as a member of the public and in nowise in the exercise of any right conferred by his contract of employment; nor is it a complete answer to say that while he is on his employer's premises his presence there is by contract right, otherwise he would be a trespasser. The question of whether or not one is a covered employee should not be resolved by the application of the law relating to rights to enter upon lands, or by the law of trespass, licensee, invitee or otherwise.

"A substantial and fair ground to justify the extension of the course of employment beyond the premises of the employer is to extend its scope to the necessary risks and hazards associated with the employment. These risks may or may not be on the premises of the employer and for this reason there is no justification to distinguish between extended risks on public highways and private pathways. In fact it is at most a distinction without a difference. Under the better reasoned cases the technical status as public or private is obviously of no moment or in any event in and of itself is not conclusive."

Likewise enlightening is the following explanation of the premises rule exceptions:

"We have, then a workable explanation of the exception to the premises rule: it is not nearness, or even reasonable distance, or even the identifying or surrounding areas with the premises; it is simply that, when a court has satisfied itself that there is a distinct 'arising out of' or causal connection between the conditions under which claimant must approach and leave the premises and the occurrence of the injury, it may hold that the course of employment extends as far as those conditions extend." (Larson's Workmen's Compensation Law, 1965 ed, vol. 1, pp. 210-211)

We now direct our attention to the cause of the employee's death: assault.

An "assault," although resulting from a deliberate act of the slayer, is considered an "accident" within the meaning of sec. 2 of the Workmen's Compensation Act, since the word "accident", is intended to indicate that "the act causing the injury shall be casual or unforeseen, an act for which the injured party is not legally responsible." [12]

In the cases where the assault was proven to have been work-connected, compensation was awarded. In *Nava*, supra, the helmsman of a boat was engaged in hauling the ship's cable and in coiling it on the deck of the boat preparatory to passing it down a hatchway. He found the space necessary for coiling the cable partly occupied by a folding bed of one of the passengers. This passenger, upon being asked, declared his ownership of the bed. Nava expressed his intention of pushing it out of the way and proceeded to do so. Angered by this, the passenger exchanged hot words with Nava, and then, with a piece of wood, jabbed Nava at the pit of the stomach. At this point, the passenger's brother ran up to Nava and stabbed him to death. The death was adjudged compensable.

In *Bohol Land Transportation Co. vs. Vda. de Mandaguit*, [13] the truck which Mandaguit was driving collided with a cyclist going in the opposite direction. The latter fumed around and immediately pursued the bus. He overtook it a few minutes later when it stopped to take on passengers. The driver then disembarked from the bus to wash his hands at a drugstore nearby. The cyclist followed him there and knifed him to death. We affirmed the grant of compensation upon the finding that the death arose out of and in the course of employment.

In *Galicia vs. Dy Pac*, [14] the employee, Pablo Carla, was asked to work in lieu of another employee who had been suspended from work upon request of his labor union; while Carla was working, the suspended employee asked him to intercede for him, but Carla refused; an altercation resulted; shortly thereafter the suspended employee stabbed Carla to death. The death was held compensable because "the injury sustained by the deceased was caused by an accident arising out of his employment since the evidence is clear that the fight which resulted in the killing of the deceased had its origin or cause in the fact that he was placed in the job previously occupied by the assailant."

In the three cases above-cited, there was evidence as to the motive of the assailant.

In *A.P. Santos, Inc. vs. Dabacol*, [15] the death of an employee-driver who, while driving a cab, was killed by an unidentified passenger, was held compensable by the Commission. However, the question of whether the assault arose out of the employment, was not raised on appeal to this Court.

In *Batangas Transportation Company vs. Vda. de Rivera*, [16] that question was raised. While the employee-driver was driving the bus, a passenger boarded it and sat directly behind the driver. After about thirty minutes, during which the passenger and the driver never so much as exchanged a word, the passenger shot the driver to death and then fled. There was no competent proof as to the cause of the assault, although there were intimations that the incident arose from a personal grudge. The majority decision [17] ruled the death compensable. The bases: (1) Once it is proved that the employee died in the course of the employment, the legal presumption, in the absence of substantial evidence to the contrary, is that the claim "comes within the provisions of the compensation law" (sec. 43), in other words, that the incident arose out of the workman's employment. (2) Doubts as to rights to compensation are resolved in favor of the employee and his dependents. (3) The Commissioner's declaration on the work-connection might be binding on the Court. (4) There are employments which increase the risk of assault on the person of the employee and it is in that sense that an injury or harm, sustained by the assaulted worker arises out of the employment, because the increased risk to assault supplies the link or connection between the injury and the employment. Among the jobs enumerated as increasing the risk of assault are (a) jobs having to do with keeping the peace or guarding property; (b) jobs having to do with keeping or carrying of money which

subject the employee to the risk of assault because of the increased temptation to robbery; (c) jobs which expose the employee to direct contact with lawless and irresponsible members of the community, like that of a bartender; and (d) work as bus driver, taxi driver or street car conductor.

It has been said that an employment may either increase risk of assault because of its nature or be the subject-matter of a dispute leading to the assault. The first kind of employment, the so-called "increased risk" jobs comprehend (1) jobs involving dangerous duties, such as that of guarding the employer's property, that of carrying or keeping money, that where the employee is exposed to lawless or irresponsible members of the public, or that which subjects him to increased or indiscriminate contact with the public, such as the job of a street car conductor or taxi-driver;"[18] (2) jobs where the employee is placed in a dangerous environment;[19] and (3) jobs of employees whose work takes them on the highway. On the other hand, the employment itself may be the subject-matter of a dispute leading to the assault as where a supervisor is assaulted by a workmen he has fired, or where the argument was over the performance of work or possession of tools or the like, or where the violence was due to labor disputes.[20]

In *Rivera*, supra, the unexplained assault on the employee was considered to have arisen out of the employment because it occurred in the course of employment. This Court relied on the presumption of law that in any proceeding for the enforcement of a claim, the claim is presumed to come within the provisions of the Act.[21] According to this Court, "this statutory presumption was copied from New York." Concerning the corresponding New York provision of law, *Larson* has this to say:

"In a few jurisdictions, notably New York and Massachusetts, a statutory presumption in coverage has figured in unexplained accident cases. The Massachusetts statute pro-vides:

'In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of this chapter, that sufficient notice of the injury has been given, and that the injury or death was not occasioned by the wilful intention of the employee to injure or kill himself or another.'

"This provision was largely copied from the New York section on presumptions, except that the New York act creates the presumption in all cases, not merely those involving an employee's death or inability to testify.

"The sweeping inclusiveness of this lan-guage might seem at first glance to mean that the mere making of a claim is also the making of a prima facie case, as long as death or injury is shown to have occurred. The New York and Massachusetts courts have not so interpreted these sta-tutes, however. It seems to be necessary to esta-blish some kind of preliminary link with the employ-ment before the presumption can attach. Otherwise the claimant widow would have merely to say, 'My husband, who was one of your employee, has died, and I therefore claim death benefits,' whereupon the affirmative burden would devolve upon the em-ployer to prove that there was no connection between the death and the environment.

"It is not yet entirely clear what initial demonstration of employment-connection will give the presumption a foothold. Apparently, the idea is to rule out cases in which claimant can show neither, that the injury occurred in the course of employment nor that it arose out of it, as where he contracted a disease but has no evidence to show where he got it. If there is evidence that the injury occurred in the course of employment, the presumption will usually supply the arising out-of-employment factor." *Larson's Workmen's Compensation Law* (1965) vol. 1, pp. 123-124

We also quote from the decision of the Court of Appeals of New York in *Daus vs. Gunderman & Sons*:[22]

"The statute is not intended to relieve completely an employee from the burden of showing that accidental injuries suffered by him actually, were sustained in the course of his employment. 'It is not the law that mere

proof of an accident, without other evidence, creates the presumption under section 21 of the Workmen's Compensation Law (Consol Laws, c. 67) that the accident arose out of and in the course of the employment. On the contrary, it has been frequently held, directly and indirectly, that there must be some evidence from which the conclusion can be drawn that the injuries did arise out of and in the course of the employment. Proof of the accident will give rise to the statutory presumption only where some connection appears between the accident and the employment."

Likewise of relevance is the following treatise:

"The discussion of the coverage formula, 'arising out of and in the course of employment,' was opened with the suggestion that, while 'course' and 'arising' were put under separate headings for convenience, some interplay between the two factors should be observed in the various categories discussed.

"A few examples may now be reviewed to show that the two tests, in practice, have not been kept in air-tight compartments, but have to some extent merged into a single concept of work-connection. One is almost tempted to formulate a sort of quantum theory of work-connection must be shown, and if the 'course' quantity is very small, but the 'arising' quantity is large, the quantum will add up to the necessary minimum, as it will also when the 'arising' quantity is very small but the, 'course' quantity is relatively large.

"But if both the 'course' and 'arising' quantities are small, the minimum quantum will not be met.

"As an example of the first, a strong 'aris-ing' factor but weak 'course' factor, one may cite the cases in which recoveries have been allowed off the employment premises, outside business hours, when an employee going to or coming from work is injured by a hazard distinctly traceable to the employment, such as a traffic jam overflowing from the employment premises, or a rock flying through the air from a blast on the premises. Here, by normal course of employment standards, there would be no award, since the employee was not on the 'premises while coming or going. Yet the unmistakable character of the causal relation of the injury to the employment has been sufficient to make up for the weakness of the 'course' factor. Another example of the same kind of balancing-out is seen in the line of cases dealing with injury to traveling men or loggers while sleeping in hotels or bunk-houses. It was shown in the analysis of these cases that, although the 'course' factor is on the borderline when the employee is sound asleep at the time of injury, a strong causal relation of the injury to the conditions of employment - as where a fellow-logger runs amok, or a straw falls into the bunk-house-inmate's throat from the mattress above, or the employee is trapped in a burning hotel - will boost the case over the line to success; while a weak causal connection, as where the salesman merely slips in a hotel bath, coupled with a weak 'course' factor due to the absence of any direct service performed for the employer at the time, will under present decisions add up to a quantum of work-connection too small to support an award. It was also shown that when the 'course' element is strengthened by the fact that the employee is at all times on call, the range of compensable sources of injury is broader than when the employee, although living on the premises is not on call.

"A somewhat similar balancing-out process is seen in the holding that a borderline course-of-employment activity like seeking personal comfort or going to and from work falls short of compensability if the method adopted is unusual, unreasonable and dangerous, while no such restriction applies to the direct performance of the work.

"As an example of the reverse situation, a strong 'course' element and a weak 'arising' element, one may recall the 'positional' cases discussed in section 10, as well as the unexplained-fall and other 'neutral-cause' cases. Here the course of employment test is satisfied beyond the slightest doubt: the employee is in the midst of performing the active duties of his job. But the causal connection is very weak, since the source of the injury - whether a stray bullet, a wandering lunatic, an unexplained fall or death, or a mistaken assault by a stranger is not distinctly associated with employment conditions as such, and is tied to the employment only by the argument that the injury would not have occurred to this employee but for the obligation of the employment which placed him in the position to be hurt. Yet, since the 'course' element is so strong, awards are becoming

increasingly common on these facts.

"Incidentally, it may be observed that this 'quantum' idea forms a useful yardstick for measuring just how generous a court has become in expanding compensation coverage; for if a court makes an award when a case, by the above standards, is weak both on course of employment and on causal connection, one can conclude that the court is capable of giving the act a broad construction. Thus, an award was made in *Puffin v. General Electric*, where the course element was weak (rest period) and the causal element was weak (setting fire to own sweater while smoking). Both factors were likewise very weak in *O'Leary v. Brown Pacific-Maxon Inc.*, where the course of employment consisted of a recreation period interrupted by a rescue of a stranger, and the arising factor consisted of drowning in a channel where decedent was prohibited from going. And, in *Martin v. Plaut*, the course of employment factor was weak (a cook dressing in the morning) and the causal factor was also weak (an unexplained fall); yet an award was made in New York.

"But another New York case shows that the simultaneous weakness of course and arising factors may reach the point where the requisite quantum is not found. In *Shultz v. Nation Associates*, compensation was denied to an employee who while combing her hair preparatory to going to lunch negligently struck her eye with the comb. Here we see thinness on all fronts: as to course of employment time factor, we have a lunch period; as to the course of employment activity factor, we have care of personal appearance; and as to the causal factor, we have negligence of the employee. Each weakness standing alone -- lunch period, care of appearance, negligence -- would not be fatal; there are many awards in which one or another of these is present. But when all are present, while an award is not impossible and could be defended on a point by point basis, it can not be relied upon in most jurisdictions by the prudent lawyer." *Larson's Workmen's Compensation Law*, 1965 ed. Vol. 1, pp. 452.97 to 452.100.

In resume:

1. Workmen's compensation is granted if the injuries result from an accident which arise out of and in the course of employment.
2. Both the "arising" factor and the "course" factor must be present. If one factor is weak and the other is strong, the injury is compensable, but not where both factors are weak. Ultimately, the question is whether the accident is work-connected.
3. In a proceeding for the enforcement of a claim, the same is presumed to come within the provisions of the Workmen's Compensation Act. But a preliminary link must first be shown to exist between the injury and the employment. Thus if the injury occurred in the course of employment, it is presumed to have arisen out of the employment.
4. The "course" factor applies to time, place and circumstances. This factor is present if the injury takes place within the period of employment, at a place where the employee may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.
5. The rule is that an injury sustained while the employee goes to or comes from his place of work, is not of the employment.
6. The exception to the rule is an injury sustained off the employee's premises, but while in close proximity thereto and while using a customary means of ingress and egress. The reason for extending the scope of "course of employment" to off-premises injuries is that there is a causal connection between the work and the hazard.
7. An "assault" may be considered an "accident" within the meaning of the Workmen's Compensation Act. The employment may either increase risk of assault because of its nature or be the subject-matter of a dispute leading to the assault.

From these milestones, we now proceed to take our bearings in the case at bar, having in mind always that no cover-all formula can be spelled out with specificity, that the particular facts and circumstances of each case must be inquired into, and that in any perceptive inquiry, the question as to where the line should be drawn beyond which the liability of the employer cannot continue has been held to be usually one of fact.

We shall first dwell on the question of ownership of the private road where Pablo was killed. In granting compensation, the Commission said that "the road where the deceased was shot was of private ownership, was called the IDECO road, and led straight to the main IDECO gate, thus raising the reasonable assumption that it belonged" to the IDECO. The Commission reasoned out that "even if the ownership of the road were open to question, there was no doubt that its private character was obviously exploited by the respondent for the purpose of its own business to such an extent as to make it to all intents and purposes an extension of its premises," so that "the shooting of the deceased may be considered to have taken place on the premises, and therefore within the employment;" and that "while respondent allowed its name to be used in connection, with the private road for the ingress and egress of the employees it did not apparently take the necessary precaution to make it safe for its employees by employing security guard."

But the IDECO denies ownership of the road. In its memorandum filed with the Regional Office, IDECO averred that Pablo's death did not originate from his work as to time, place and circumstances. This, in effect, is a denial of ownership of the road. The decision of the Regional Office does not state that the road belongs to the IDECO. All that it says is that Pablo was shot "barely two minutes after he was dismissed from work and while walking along the IDECO road about twenty (20) meters from the gate." In its "motion for reconsideration and/or review," the IDECO emphasized that "the place where the incident happened was a public road, not less than (20) meters away from the main gate of the compound, and therefore not proximate to or in the immediate vicinity of the place of work." Again, the ownership of the road was implicitly denied. And in its "motion for reconsideration and/or appeal to the Commission en banc," the IDECO alleged outright that the "road where the incident took place, although of private ownership, does not belong to IDECO. There is absolutely no evidence on record that shows IDECO owns the road." If the road were owned by the IDECO, there would have been no question that the assault arose "in the course of employment."^[23] But if it did indeed own the road, then the IDECO would have fenced it, and placed its main gate at the other end of the road where it meets the public highway.

But while the IDECO does not own the private road, it cannot be denied that it was using the same as the principal means of ingress and egress. The private road leads directly to its main gate.^[24] Its right to use the road must then perforce proceed from either an easement of right of way or a lease. Its right, therefore, is either a legal one or a contractual one. In either case the IDECO should logically and properly be charged with security control of the road. The IDECO owed its employees a safe passage to its premises. In compliance with such duty, the IDECO should have seen it not only that the road was properly paved and did not have holes or ditches, but should also have instituted measures for the proper policing of the immediate area. The point where Pablo was shot was barely twenty meters away from the main IDECO gate, certainly nearer than a stone's throw therefrom. The spot is immediately proximate to the IDECO's premises. Considering this fact, and the further facts that Pablo had just finished overtime work at the time, and was killed barely two minutes after dismissal from work, the Ampil case is squarely applicable here. We may say, as we did in Ampil, that the place where the employee was injured being "immediately proximate to his place of work, the accident in question must be deemed to have occurred within the zone of his employment and therefore arose out of and in the course thereof." Our principal question is whether the injury was sustained in the course of employment. We find that it was and so conclude that the assault arose out of the employment, even though the said assault is unexplained.

American jurisprudence supports this view.

In *Bountiful Brick Company vs. Giles*,^[25] the U.S. Supreme Court ruled:

"Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached. Probably, as a general rule, employment may be said to begin when the employee reaches the entrance to the employer's premises where the work is to be done; but it is clear that in some cases the rule extends to include adjacent premises used by the employee as a means of ingress and egress with the express or implied consent of the employer."

The above ruling is on all fours with our facts. Two minutes from dismissal and twenty meters from the main IDECO gate are "a reasonable margin of time and space necessary to be used in passing to and from" the IDECO's premises. The IDECO employees used the private road with its consent, express or implied. Twenty meters on that road from the main gate is in close proximity to the IDECO's premises. It follows that Pablo's death was in the course of employment.

In *Carter vs. Lanzetta*,^[26] it was held that "such statutes envision extension a coverage to employees from the time they reach the employer's premises until, they depart therefrom and that hours of service include a period when this might be accomplished within a reasonable interval;" and that "under exceptional circumstances, a continuance of the course of employment may be extended by allowing the employee a reasonable time not only to enter or leave the premises but also to surmount certain hazards adjacent thereto."

The private road led directly to the main IDECO gate. From this description, it would appear that the road is a dead-end street. In *Singer vs. Rich Marine Sales*,^[27] it was held that, where the employee, while returning to work at the end of the lunch period, fell at the curb of the sidewalk immediately adjacent to the employer's premises and one other located thereon, and the general public used the street only in connection with those premises, and the employer actually stored boats on the sidewalk, the sidewalk was within the precincts of employment. In that case there were even two business establishments on the dead-end street. Here, it is exclusively the IDECO premises which appear to be at the end of the private road.

We find in *Jean vs. Chrysler Corporation*^[28] a meaningful statement of the obligation of the employer to its employees: "That the employer owes, so to speak, a duty of 'safe passage' to an employee to the point where he can reach the proper arrival or departure from his work seems without question."

We next quote extensively from *Kelty vs. Travellers Insurance Company*.^[29]

"The rule has been repeatedly announced in Texas that an injury received by an employee while using the public streets and highways in going to or returning from the place of employment is not compensable, the rationale of the rule being that in most instances such an injury is suffered as a consequence of risk and hazards to which all members of the travelling public are subject rather than risk and hazards having to do with and originating in the work or business of the employer. x x x

"Another exception, however, which is applicable is found in the so-called 'access' cases. In these cases a workman who has been injured at a place intended by the employer for use as a means of ingress and egress to and from the actual place of the employee's work has been held to be in the course of his employment. The courts have said that these access areas are so closely related to the employer's premises as to be fairly treated as a part of the employer's premises. We shall discuss the principal authorities dealing with this exception to

the general rule.

"The leading cases in Texas dealing with the 'access' exception, and one which we think controlling of this appeal, is *Lumberman's Reciprocal Ass'n v. Behnken*, 112 Tex. 103, 246 S.W. 72, 23 A.L.R. 1402. In that case the employee was employed by Hartburg Lumber Company, which company operated and owned a sawmill in Hartburg, Texas, which was a lumber town, consisting solely of the employer's facilities. A railroad track ran through the town and a part of the lumber company's facilities was situated on either side of the right-of-way. A public road ran parallel to the railroad tracks which led to the various buildings on the property of the lumber company. This crossing was used by any member of the public desiring to go to any part of the lumber company facilities. On the day in question the decedent quit work at noon, went home for lunch and while returning to the lumber company plant for the purpose of resuming his employment, was struck and killed by a train at the crossing in question. The insurance company contended (as it does here) that the decedent's death did not originate in the work or business of his employer and that at the time of his fatal injuries he was not in or about the furtherance of the affairs or business of his employer. The Supreme Court, in an extensive opinion, reviewed the authorities from other states and especially *Latter's Case* 238 Mass. 326, 130 N.E. 637, 638, and arrived at the conclusion that the injury and death under such circumstances were compensable under the Texas Act. The court held that the railroad crossing bore so intimate a relation to the lumber company's premises that it could hardly be treated otherwise than as a part of the premises. The court pointed out that the lumber company had rights in and to the crossing which was used in connection with the lumber company's business, whether by employees or by members of the public. In announcing the 'access' doctrine Justice Greenwood said:

'Was Behnken engaged in or about the furtherance of the affairs or business of his employer when he received the injury causing his death? He was upon the crossing provided as the means of access to his work solely because he was an employee. He encountered, the dangers inci-dent to use of the crossing in order that he might perform the duties imposed by his, contract of service. Without subjecting himself to such dangers he could not do what was required of him in the conduct of the lumber company's business. He had reached a place provided and used only as an adjunct to that business, and was injured from a risk created by the conditions under which the business was carried on, To hold that he was not acting in furtherance of the affairs or business of the lumber company would be to give a strict interpretation to this remedial statute, which should be liberally construed with a view to accomplish its purpose and to promote justice.'

x x x

"In *Texas Employer's Ins. Ass'n v. Anderon*, Tex. Civ. App., 125 S.W. 2d 674, wr. ref., this court followed the rule announced in *Behnken*, supra. In that case the employee was killed while crossing the railroad track near his place of employment. In discussing the question of the situs of the injury Justice Looney said:

'Its use as a means of ingress to and exit from his place of work not only conduced to his safety and convenience, but contributed to the promises and efficiency with which he was enabled to discharge the duties owing his employer; hence the reason and necessity for his presence upon the railroad track (that portion of the pathway leading over the railroad right of way) when injured, in our opinion, had to do with, originated in and grew out of the work of the employer; and that, the injury received at the time, place, and under the circumstances, necessarily was in furtherance of the affairs or business of the employer.'

"Again, in *Texas Employers' Ins. Ass'n v. Boecker*, Tex. Civ. App., 53 S.W. 2d 327, err. ref., this court had occasion to follow the 'access' doctrine. In that case Chief Justice Jones quoted from the Supreme Court of the United States in the case of *Bountiful Brick Company et al v. Giles*, 276 U.S. 154, 48 S.Ct. 221, 72 L.Ed. 507, 66 A.L.R. 1402, as follows:

'An employment includes not only the actual doing of the work, but a reasonable margin of time and space

necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached."

The ruling enunciated above is applicable in the case at bar. That part of the road where Pablo was killed is in very close proximity to the employer's premises. It is an "access area" "so clearly related to the employer's premises as to be fairly treated as a part of the employer's premises." That portion of the road bears "so intimate a relation" to the company's premises. It is the chief means of entering the IDECO premises, either for the public or for its employees. The IDECO uses it extensively in pursuit of its business. It has rights of passage over the road, either legal, if by virtue of easement, or contractual, if by reason of lease. Pablo was using the road as a means of access to his work solely because he was an employee. For this reason, the IDECO was under obligation to keep the place safe for its employees. Safe, that is, against dangers that the employees might encounter therein, one of these dangers being assault by third persons. Having failed to take the proper security measures over the said area which it controls, the IDECO is liable for the injuries suffered by Pablo resulting in his death.

As heretofore stated, the assault on Pablo is unexplained. The murderer was himself killed before he could be brought to trial. It is true there is authority for the statement that before the "proximity" rule may be applied it must first be shown that there is a causal connection between the employment and the hazard which resulted in the injury.[30] The following more modern view was expressed in *Lewis Wood Preserving Company vs. Jones*:^[31]

"While some earlier cases seem to indicate that the causative danger must be peculiar to the work and not common to the neighborhood for the injuries to arise out of and in the course of the employment (see *Maryland Casualty Co. v. Peek*, 36 Ga. App. 557 [137 S.E. 121], *Hartford Accident and Indemnity Co. v. Cox*, 61 Ga. App. 420, 6 S.E. 2d 189), later cases have been somewhat more liberal, saying that, 'to be compensable, injuries do not have to arise from something peculiar to the employment.' *Fidelity & Casualty Co. of N. Y. v. Bardon*, 79 Ga. App. 260, 262, 54 S.E. 2d 443, 444. 'Where the duties of an employee entail his presence (at a place and a time) the claim for an injury there occurring is not to be barred because it results from a risk common to all others x x x unless it is also common to the general public without regard to such conditions, and independently of place, employment, or pursuit.' *New Amsterdam Casualty Co. v. Sumrell*, 30 Ga. App. 682, 118 S. E. 786, cited in *Globe Indemnity Co. v. MacKendree*, 39 Ga. App. 58, 146 S.E. 46, 47. *McKinney v. Reynolds & Manley Lumber Co.*, 79 Ga. App. 826, 829, 54 S.E. 2d 471, 473."

But even without the foregoing pronouncement, the employer should still be held liable in view of our conclusion that that portion of the road where Pablo was killed, because of its proximity, should be considered part of the IDECO's premises. Hence, the injury was in the course of employment, and there automatically arises the presumption - invoked in *Rivera* - that the injury by assault arose out of the employment, i.e., there is a causal relation between the assault and the employment.

We do say here that the circumstances of time, two minutes after dismissal from overtime work, and space, twenty meters from the employer's main gate, bring Pablo's death within the scope of the course factor. But it may logically be asked: Suppose it were three minutes after and thirty meters from, or five minutes after and fifty meters from, would the "proximity" rule still apply? In answer, we need but quote that portion of the decision in *Jean vs. Chrysler Corporation*, *supra*, which answered a question arising from an ingenious hypothetical situation put forth by the defendant therein:

"We could, of course, say 'this is not the case before us' and utilize the old saw, 'that which is not before us we do not decide.' Instead, we prefer to utilize the considerably older law: 'Sufficient unto the day is the evil thereof' (Matthew 1:34), appending, however, this admonition: no statute is static; it must remain constantly viable to meet new challenges placed to it. Recovery in a proper case should not be suppressed because of a conjectural posture which may never arise and which if it does, will be decided in the light of then-existing law."

Since the Workmen's Compensation Act is basically a so-cial legislation designed to afford relief to workmen, it must be liberally construed to attain the purpose for which it was enacted.[32] Liberally construed, sec. 2 of the Act comprehends Pablo's death. The Commission did not err in granting compensation.

ACCORDINGLY, the decision appealed from is affirmed, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.
Makalintal, J., reserves his vote.

[1] Description used by Justice Frank Murphy in *Cardillo vs. Liberty Mutual Insurance Co.*, 330 US 469 (1947), 91 Led 1028.

[2] Sec. 2, Workmen's Compensation Act.

[3] Arthur Larson's Workmen's Compensation Law (1952 ed. with 1959 supplement), vol. 1, p. 41; see also 1965 ed., vol. 1, p. 42.

[4] See note 3, at pp. 42-& 43.

[5] *Afable vs. Singer Sewing Machine Co.*, 58 Phil. 42, citing *Fitzgerald vs. Clarke & Sons*, 1 LWCC 197, *Dretzen Co. vs. Industrial Board*, 279 III, 11, 116 NE 684.

[6] *PHHC vs. WCC & Alba Titong*, L-18246, Oct. 30, 1964, citing *Murillo vs. Mendoza*, 66 Phil. 689, & Larson's Workmen's, Compensation Law, 1952 ed., p. 153.

[7] Vol. 8, William R. Schneider, Workmen's Compensation Text, Permanent Edition (1951), p. 3.

[8] See note 7, at pp. 7 and 8.

[9] L-8130, June 30, 1956, 99 Phil. 1050.

[10] L-22117, April 29, 1966.

[11] 50 ALR 2d. 356, Idaho Supreme Court, June 15, 1954.

[12] *Taller vda. de Nava vs. Ynchausti Steamship Co.*, 57 Phil. 751.

[13] 70 Phil. 685.

[14] G.R. No. 7402, March 25, 1941, 40 OG No. 1, p. 83 (Court of Appeals case, decision of a special division of five Justices, Justice Alex Reyes, ponente).

[15] L-19051, Nov. 23, 1966.

[16] L-7658, May 8, 1956.

[17] Five Justices dissented.

[18] The jobs of the employees in the Nava, Rivera, Madanguit and Dabacol cases are within this class.

[19] The injuries resulting from assault on the manager of a building used as a rooming house by unsavory characters, was adjudged compensable in *Israel vs. Ramble Properties, Inc.*, 58 NYS 2d 388.

[20] The *Galiccia* case probably comes under this category. For a discussion of assaults as a work hazard, see *Larson's Workmen's Compensation Law* (1965 ed.), vol. 1, pp. 132-144.

[21] Sec. 43(1), Workmen's Compensation Act.

[22] 28 NE 2d 914.

[23] The presumption that the injury arises out of and in the course of employment prevails where the injury occurs on the employer's premises. The injuries were sustained by the employee when she was struck by an automobile while walking from the processing plant where she worked to her automobile which was parked in the adjoining parking area maintained for employees. *Forest v. Birds Eye Division of General Foods Corporation*, 422 P2d 616, Supreme Court of Idaho, Jan. 17, 1967.

Where a state vehicle being driven with consent of the state and under its direction and upon its business struck a state hospital employee on the premises of the state hospital after she had completed her shift, the injuries sustained were declared covered by workmen's compensation law in *Nichols v. Godfrey*, 411 P2d 763, March 4, 1966.

[24] "Main" means principal, chief, first in size, rank, importance. 26 Words & Phrases 60, citing *Evers v. Flanagan*, 61 NYS 2d 496, 499, 186 Misc. 101. It may be reasonably assumed to then that the main gate, although the natural tendency of employees and customers is to pass through the main gate.

[25] 72 L. ed. 507, Feb. 20, 1928.

[26] 193 SO 2d 259, Supreme Court of Louisiana, December 12, 1966. Here, the Court held that the accident when the employee, fell on the step adjoining the employer's front door, as the employee was leaving, occurred during the course of employment although the employee had been engaged for one day and had already been paid, and although the employee had lingered for from 20 to 30 minutes talking to the employer.

[27] 271 NYS 2d 514, New York Supreme Court, Appellate Division, Third Department, April 29, 1966.

[28] 140 NW 2d 756, Court of Appeals of Michigan, March 22, 1966.

[29] 391 SW 2d 558, Court of Civil Appeals of Texas, May 21, 1965.

[30] *Jaynes vs. Potlatch Forests*, *supra*.

[31] 140 SE 2d 113, Court of Appeals of Georgia, Nov. 24, 1964.

[32] *Abana vs. Quisumbing*, L-23439, March 27, 1963, 22 SCRA 1278, 1968A PHILD 997; *Manila Railroad Co. vs. WCC*, L-21504, Sept. 15, 1967, 21 SCRA 98, 1967 PHILD 676; *ITEMCOP vs. Reyes-Florzo*, L-21969, August 31, 1966 17 SCRA 1104.

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