

PERFECTO S. FLORESCA, IN HIS OWN BEHALF AND ON BEHALF OF THE MINORS ROMULO AND NESTOR S. FLORESCA; AND ERLINDA FLORESCA-GABUYO, PEDRO S. FLORESCA, JR., CELSOS. FLORESCA, MELBA S...

G.R. No. L-30642. April 30, 1985

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition to review the order of the former Court of First Instance of Manila, Branch XIII, dated December 16, 1968 dismissing petitioners' complaint for damages on the ground of lack of jurisdiction.

Petitioners are the heirs of the deceased employees of Philex Mining Corporation (hereinafter referred to as Philex), who, while working at its copper mines underground operations at Tuba, Benguet on June 28, 1967, died as a result of the cave-in that buried them in the runnels of the mine. Specifically, the complaint alleges that Philex, in violation of government rules and regulations, negligently and deliberately failed to take the required precautions for the protection of the lives of its men working underground. Portion of the complaint reads:

"x x x xxx x x x.

"9. That for sometime prior arid up to June 28, 1967, the defendant PHILEX, with gross and reckless negligence and imprudence and deliberate failure to take the required precautions for the due protection of the lives of its men working underground at the time, and in utter violation of the laws and the rules and regulations duly promulgated by the Government pursuant thereto, allowed great amount of water and mud to accumulate in an open pit area at the mine above Block 43-S-I which seeped through and saturated the 600 ft. column of broken ore and rock below it, thereby exerting tremendous pressure on the working spaces at its 4300 level, with the result that, on the said date, at about 4 o'clock in the afternoon, with the collapse of all underground supports due to such enormous pressure, approximately 500,000 cubic feet of broken ores, rocks, mud and water, accompanied by surface boulders, blasted through the runnels and flowed out and filled in, in a matter of approximately five (5) minutes, the underground workings, ripped timber supports and carried off materials; machines and equipment which blocked all avenues of exit, thereby trapping within its tunnels all of its men above referred to, including those named in the next preceding paragraph represented by the plaintiffs herein;

"10. That out of the 48 mine workers who were then working at defendant PHILEX's mine on the said date, five (5) were able to escape from the terrifying holocaust; 22 were rescued within the next 7 days; and the rest, 21 in number, including those referred to in paragraph 7 hereinabove, were left mercilessly to their fate, notwithstanding the fact that up to then, a great many of them were still alive, entombed in the tunnels of the mine, but were not rescued due to defendant PHELEX's decision to abandon rescue operations, in utter disregard of its bounden legal and moral duties in the premises;

"x x x xxx x x x.

"13. That defendant PHILEX not only violated the law and the rules and regulations duly promulgated by the duly constituted authorities as set out by the Special Committee above referred to, in their Report of

Investigation, pages 7-13, Annex 'B' hereof, but also failed completely to provide its men working underground the necessary security for the protection of their lives notwithstanding the fact that it had vast financial resources, it having made, during the year 1966 alone, a total operating income of P38,220,254.00, or net earnings, after taxes of P19,117,394.00, as per its 11th Annual Report for the year ended December 31, 1966, and with aggregate assets totalling P45,794,103.00 as of December 31, 1966;

"x x x xxx x x x."

A motion to dismiss dated May 14, 1968 was filed by Philex alleging that the causes of action of petitioners based on an industrial accident are covered by the provisions of the Workmen's Compensation Act (Act 3428, as amended by RA 772) and that the former Court of First Instance has no jurisdiction over the case. Petitioners filed an opposition dated May 27, 1968 to the said motion to dismiss claiming that the causes of action are not based on the provisions of the Workmen's Compensation Act but on the provisions of the Civil Code allowing the award of actual, moral and exemplary damages, particularly:

"Art. 2176 - Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

"Art. 2178. The provisions of Articles 1172 to 1174 are also applicable to a quasi-delict.

"(b) Art. 1173 - The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2 shall apply.

"Art. 2201. xx xx xx.

"In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

"Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence."

After a reply and a rejoinder thereto were filed, respondent Judge issued an order dated June 27, 1968 dismissing the case on the ground that it falls within the exclusive jurisdiction of the Workmen's Compensation Commission. On petitioners' motion for reconsideration of the said order, respondent Judge, on September 23, 1968, reconsidered and set aside his order of June 27, 1968 and allowed Philex to file an answer to the complaint. Philex moved to reconsider the aforesaid order which was opposed by petitioners.

On December 16, 1968, respondent Judge dismissed the case for lack of jurisdiction and ruled that in accordance with the established jurisprudence, the Workmen's Compensation has exclusive original jurisdiction over damage or compensation claims for work-connected deaths or injuries of workmen or employees, irrespective of whether or not the employer was negligent, adding that if the employer's negligence result in work-connected deaths or injuries, the employer shall, pursuant to Section 4-A of the Workmen's Compensation Act, pay additional compensation equal to 50% of the compensation fixed in the Act.

Petitioners thus filed the present petition.

In their brief, petitioners raised the following assignment of errors:

I

"THE LOWER COURT ERRED IN DISMISSING THE PLAINTIFFS-PETITIONERS' COMPLAINT FOR LACK OF JURISDICTION.

II

"THE LOWER COURT ERRED IN FAILING TO CONSIDER THE CLEAR DISTINCTION BETWEEN CLAIMS FOR DAMAGES UNDER THE CIVIL CODE AND CLAIMS FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT."

A

In the first assignment of error, petitioners argue that the lower court has jurisdiction over the cause of action since the complaint is based on the provisions of the Civil Code on damages, particularly Articles 2176, 2178, 1173, 2201 and 2231, and not on the provisions of the Workmen's Compensation Act. They point out that the complaint alleges gross and brazen negligence on the part of Philex in failing to take the necessary security for the protection of the lives of its employees working underground. They also assert that since Philex opted to file a motion to dismiss in the court a quo, the allegations in their complaint including those contained in the annexes are deemed admitted.

In the second assignment of error, petitioners asseverate that respondent Judge failed to see the distinction between the claims for compensation under the Workmen's Compensation Act and the claims for damages based on gross negligence of Philex under the Civil Code. They point out that workmen's compensation refers to liability for compensation for loss resulting from injury, disability or death of the working man through industrial accident or disease, without regard to the fault or negligence of the employer, while the claim for damages under the Civil Code which petitioner pursued in the regular court, refers to the employer's liability for reckless and wanton negligence resulting in the death of the employees and for which the regular court has jurisdiction to adjudicate the same.

On the other hand, Philex asserts that work-connected injuries are compensable exclusively under the provisions of Sections 5 and 46 of the Workmen's Compensation Act, which read:

"SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer Under the Civil Code and other laws because of said injury x x x.

"SEC. 46. Jurisdiction.— The Workmen's Compensation Commissioner shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court, x x x ."

Philex cites the case of *Manalo vs. Foster Wheeler* (98 Phil. 855 [1956]) where it was held that "all claims of workmen against their employer for damages due to accident suffered in the course of employment shall be investigated and adjudicated by the Workmen's Compensation Commission," subject to appeal to the Supreme Court.

Philex maintains that the fact that an employer was negligent, does not remove the case from the exclusive character of recoveries under the Workmen's Compensation Act; because Section 4-A of the Act provides an additional compensation in case the employer fails to comply with the requirements of safety as imposed by law to prevent accidents. In fact, it points out that Philex voluntarily paid the compensation due the petitioners and all the payments have been accepted in behalf of the deceased miners, except the heirs of Nazarito Floresca who insisted that they are entitled to a greater amount of damages under the Civil Code.

In the hearing of this case, then Undersecretary of Labor Israel Bocobo, then Arty. Edgardo Angara, now President of the University of the Philippines, Justice Manuel Lazaro, as corporate counsel and Assistant General Manager of the GSIS Legal Affairs Department, and Commissioner on Elections, formerly UP Law Center

Director Froilan Bacungan, appeared as amici curiae and thereafter, submitted their respective memoranda.

The issue to be resolved as WE stated in the resolution of November 26, 1976, is:

"Whether the action of an injured employee or worker or that of his heirs in case of his death under the Workmen's Compensation Act is exclusive, selective or cumulative, that is to say, whether his or his heirs' action is exclusively restricted to seeking the limited compensation provided under the Workmen's Compensation Act or whether they have a right of selection or choice of action between availing of the worker's right under the Workmen's Compensation Act and suing in the regular courts under the Civil Code for higher damages (actual, moral and/or exemplary) from the employer by virtue of negligence (or fault) of the employer or of his other employees or whether they may avail cumulatively of both actions, i.e., collect the limited compensation under the Workmen's Compensation Act and sue in addition for damages in the regular courts."

There are divergent opinions in this case. Justice Lazaro is of the opinion that an injured employee or worker, or the heirs in case of his death, may initiate a complaint to recover damages (not compensation under the Workmen's Compensation Act) with the regular court on the basis of negligence of an employer pursuant to the Civil Code provisions. Atty. Angara believes otherwise. He submits that the remedy of an injured employee for work-connected injury or accident is exclusive in accordance with Section 5 of the Workmen's Compensation Act, while Atty. Bacungan's position is that the action is selective. He opines that the heirs of the employee in case of his death have a right of choice to avail themselves of the benefits provided under the Workmen's Compensation Act or to sue in the regular court under the Civil Code for higher damages from the employer by virtue of negligence of the latter. Atty. Bocobo's stand is the same as that of Atty. Bacungan and adds that once the heirs elect the remedy provided for under the Act, they are no longer entitled to avail themselves of the remedy provided for under the Civil Code by filing an action for higher damages in the regular court, and vice versa.

On August 3, 1978, petitioners-heirs of deceased employee Nazarito Floresca filed a motion to dismiss on the ground that they have amicably settled their claim with respondent Philex. In the resolution of September 7, 1978, WE dismissed the petition only insofar as the aforesaid petitioners are concerned, it appearing that there are other petitioners in this case.

WE hold that the former Court of First Instance has jurisdiction to try the case.

It should be underscored that petitioners' complaint is not for compensation based on the Workmen's Compensation Act but a complaint for damages (actual, exemplary and moral) in the total amount of eight hundred twenty-five thousand (P825,000.00) pesos. Petitioners did not invoke the provisions of the Workmen's Compensation Act to entitle them to compensation thereunder. In fact, no allegation appeared in the complaint that the employees died from accident arising out of and in the course of their employments. The complaint instead alleges gross and reckless negligence and deliberate failure on the part of Philex to protect the lives of its workers as a consequence of which a cave-in occurred resulting in the death of the employees working underground. Settled is the rule that in ascertaining whether or not the cause of action is in the nature of workmen's compensation claim or a claim for damages pursuant to the provisions of the Civil Code, the test is the averments or allegations in the complaint (*Belandres vs. Lopez Sugar Mill Co., Inc.*, 97 Phil. 100).

In the present case, there exists between Philex and the deceased employees a contractual relationship. The alleged gross and reckless negligence and deliberate failure that amount to bad faith on the part of Philex, constitute a breach of contract for which it may be held liable for damages. The provisions of the Civil Code on cases of breach of contract when there is fraud or bad faith, read:

"Art. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

"Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"In cases of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

Furthermore, Articles 2216 et seq., Civil Code, allow the payment of all kinds of damages, as assessed by the court.

The rationale in awarding compensation under the Workmen's Compensation Act differs from that in giving damages under the Civil Code. The compensation acts are based on a theory of compensation distinct from the existing theories of damages, payments under the acts being made as compensation and not as damages (99 C.J.S. 53). Compensation is given to mitigate the harshness and insecurity of industrial life for the workman and his family. Hence, an employer is liable whether negligence exists or not since liability is created by law. Recovery under the Act is not based on any theory of actionable wrong on the part of the employer (99 C.J.S. 36).

In other words, under the compensation acts, the employer is liable to pay compensation benefits for loss of income, as long as the death, sickness or injury is work-connected or work-aggravated, even if the death or injury is not due to the fault of the employer (Murillo vs. Mendoza, 66 Phil. 689). On the other hand, damages are awarded to one as a vindication of the wrongful invasion of his rights. It is the indemnity recoverable by a person who has sustained injury either in his person, property or relative rights, through the act or default of another (25 C.J.S. 452).

The claimant for damages under the Civil Code has the burden of proving the causal relation between the defendant's negligence and the resulting injury as well as the damages suffered. While under the Workmen's Compensation Act, there is a presumption in favor of the deceased or injured employee that the death or injury work-connected or work-aggravated; and the employer has the burden to prove otherwise (De los Angeles vs. GSIS, 94 SCRA 308; Carino vs. WCC, 93 SCRA 551; Maria Cristina Fertilizer Corp. vs. WCC, 60 SCRA 228).

The claim of petitioners that the case is not cognizable by the Workmen's Compensation Commission then, now Employees Compensation Commission, is strengthened by the fact that unlike in the Civil Code, the Workmen's Compensation Act did not contain any provision for an award of actual, moral and exemplary damages. What the Act provided was merely the right of the heirs to claim limited compensation for the death in the amount of six thousand (P6,000.00) pesos plus burial expenses of two hundred (P200.00) pesos, and medical expenses when incurred (Sections 8, 12 and 13, Workmen's Compensation Act), and an additional compensation of only 50% if the complaint alleges failure on the part of the employer to "install and maintain safety appliances or to take other precautions for the prevention of accident or occupational disease" (Section 4-A, Ibid). In the case at bar, the amount sought to be recovered is over and above that which was provided under the Workmen's Compensation Act and which cannot be granted by the Commission.

Moreover, under the Workmen's Compensation Act, compensation benefits should be paid to an employee who suffered an accident not due to the facilities or lack of facilities in the industry of his employer but caused by factors outside the industrial plant of his employer. Under the Civil Code, the liability of the employer depends on breach of contract or tort. The Workmen's Compensation Act was specifically enacted to afford protection to the employees or workmen. It is a social legislation designed to give relief to the workman who has been the victim of an accident causing his death or ailment or injury in the pursuit of his employment (Abong vs. WCC, 54 SCRA

379).

WE now come to the query as to whether or not the injured employee or his heirs in case of death have a right of selection or choice of action between availing themselves of the worker's right under the Workmen's Compensation Act and suing in the regular courts under the Civil Code for higher damages (actual, moral and exemplary) from the employers by virtue of the negligence or fault of the employers or whether they may avail themselves cumulatively of both actions, i.e., collect the limited compensation under the Workmen's Compensation Act and sue in addition for damages in the regular courts.

In disposing of a similar issue, this Court in *Pacafia vs. Cebu Autobus Company*, 32 SCRA 442, ruled that an injured worker has a choice of either to recover from the employer the fixed amounts set by the Workmen's Compensation Act or to prosecute an ordinary civil action against the tortfeasor for higher damages but he cannot pursue both courses of action simultaneously.

In *Pacafia* WE said:

"In the analogous case of *Esguerra vs. Mufioz Palma*, involving the application of Section 6 of the Workmen's Compensation Act on the injured workers' right to sue third-party tortfeasors in the regular courts, Mr. Justice J.B.L. Reyes, again speaking for the Court, pointed out that the injured worker has the choice of remedies but cannot pursue both courses of action simultaneously and thus balanced the relative advantage of recourse under the Workmen's Compensation Act as against an ordinary action.

"As applied to this case, petitioner *Esguerra* cannot maintain his action for damages against the respondents (defendants below), because he has elected to seek compensation under the Workmen's Compensation Law, and his claim (case No. 44549 of the Compensation Commission) was being processed at the time he filed this action in the Court of First Instance. It is argued for petitioner that as the damages recoverable under the Civil Code are much more extensive than the amounts that may be awarded under the Workmen's Compensation Act, they should not be deemed incompatible. As already indicated, the injured laborer was initially free to choose either to recover from the employer the fixed amounts set by the Compensation Law or else, to prosecute an ordinary civil action against the tortfeasor for higher damages. While perhaps not as profitable, the smaller indemnity obtainable by the first course is balanced by the claimant's being relieved of the burden of proving the causal connection between the defendant's negligence and the resulting injury, and of having to establish the extent of the damage suffered; issues that are apt to be troublesome to establish satisfactorily. Having staked his fortunes on particular remedy, petitioner is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission. Anyway, under the proviso of Section 6 aforequoted, if the employer *Franklin Baker Company* recovers, by derivative action against the alleged tortfeasors, a sum greater than the compensation he may have paid the herein petitioner, the excess accrues to the latter."

Although the doctrine in the case of *Esguerra vs. Mufioz Palma* (104 Phil. 582), applies to third-party tortfeasor, said rule should likewise apply to the employer-tortfeasor.

Insofar as the heirs of *Nazarito Floresca* are concerned, as already stated, the petition has been dismissed in the resolution of September 7, 1978 in view of the amicable settlement reached by *Philex* and the said heirs.

With regard to the other petitioners, it was alleged by *Philex* in its motion to dismiss dated May 14, 1968 before the court a quo, that the heirs of the deceased employees, namely *Emerito Obra*, *Larry Villar, Jr.*, *Aurelio Lanuza*, *Lorenzo Isla* and *Satumino Martinez* submitted notices and claims for compensation to the Regional Office No. 1 of the then Department of Labor and all of them have been paid in full as of August 25, 1967, except *Saturnino Martinez* whose heirs decided that they be paid in installments (pp. 106-107, rec). Such allegation was admitted by herein petitioners in their opposition to the motion to dismiss dated May 27, 1968 (pp. 121-122, rec.) in the lower court, but they set up the defense that the claims were filed under the Workmen's Compensation Act before

they learned of the official report of the committee created to investigate the accident which established the criminal negligence and violation of law by Philex, and which report was forwarded by the Director of Mines to the then Executive Secretary Rafael Salas in a letter dated October 19, 1967 only (p. 76, rec).

WE hold that although the other petitioners had received the benefits under the Workmen's Compensation Act, such may not preclude them from bringing an action before the regular court because they became cognizant of the fact that Philex has been remiss in its contractual obligations with the deceased miners only after receiving compensation under the Act. Had petitioners been aware of said violation of government rules and regulations by Philex, and of its negligence, they would not have sought redress under the Workmen's Compensation Commission which awarded a lesser amount for compensation. The choice of the first remedy was based on ignorance or a mistake of fact, which nullifies the choice as it was not an intelligent choice. The case should therefore be remanded to the lower court for further proceedings. However, should the petitioners be successful in their bid before the lower court, the payments made under the Workmen's Compensation Act should be deducted from the damages that may be decreed in their favor.

B

Contrary to the perception of the dissenting opinion, the Court does not legislate in the instant case. The Court merely applies and gives effect to the constitutional guarantees of social justice then secured by Section 5 of Article II and Section 6 of Article XIV of the 1935 Constitution, and now by Sections 6, 7, and 9 of Article II of the DECLARATION OF PRINCIPLES AND STATE POLICIES of the 1973 Constitution, as amended, and as implemented by Articles 2176, 2177, 2178, 1173, 2201, 2216, 2231, and 2232 of the New Civil Code of 1950.

To emphasize, the 1935 Constitution declares that:

"SEC. 5. The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State" (Art. II).

"SEC. 6. The State shall afford protection to labor, especially to working women, and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration" (Art. XIV).

The 1973 Constitution likewise commands the State to "promote social justice to insure the dignity, welfare, and security of all the people; " "x x x regulate the use x x x and disposition of private property, and equitably diffuse property ownership and profits;" "establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare and social security to guarantee the enjoyment by the people of a decent standard of living" (Sections 6 and 7, Art. II, 1973 Constitution); "x x x afford protection to labor, x x x and regulate the relations between workers and employers x x x, and assure the rights of workers to x x x just and humane conditions of work" (Sec. 9, Art. II, 1973 Constitution, italics supplied).

The foregoing constitutional guarantees in favor of labor institutionalized in Section 9 of Article II of the 1973 Constitution and re-stated as a declaration of basic policy in Article 3 of the New Labor Code, thus:

"ART. 3. Declaration of basic policy.— The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work" (Italics supplied).

The aforesaid constitutional principles as implemented by the aforementioned articles of the New Civil Code cannot be impliedly repealed by the restrictive provisions of Article 173 of the New Labor Code. Section 5 of the Workmen's Compensation Act (before it was amended by RA. No. 772 on June 20, 1952), predecessor of Article

173 of the New Labor Code, has been superseded by the aforestated provisions of the New Civil Code, a subsequent law, which took effect on August 30, 1950, which obey the constitutional mandates of social justice enhancing as they do the rights of the workers as against their employers. Article 173 of the New Labor Code seems to diminish the rights of the workers and therefore collides with the social justice guarantee of the Constitution and the liberal provisions of the New Civil Code.

The guarantees of social justice embodied in Sections 6, 7 and 9 of Article II of the 1973 Constitution are statements of legal principles to be applied and enforced by the courts. Mr. Justice Robert Jackson in the case of *West Virginia State Board of Education vs. Barnette*, with characteristic eloquence, enunciated:

"The very purpose of a Bill of Rights was to withdraw certain Subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections" (319 U.S. 625, 638, 87 L.ed. 1638, italics supplied).

In case of any doubt which may be engendered by Article 173 of the New Labor Code, both the New Labor Code and the Civil Code direct that the doubts should be resolved in favor of the workers and employees.

Thus, Article 4 of the New Labor Code, otherwise known as Presidential Decree No. 442, as amended, promulgated on May 1, 1974, but which took effect six months thereafter, provides that "all doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor" (Art. 2, Labor Code).

Article 10 of the New Civil Code states: "In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail."

More specifically, Article 1702 of the New Civil Code likewise directs that: "In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living of the laborer."

Before it was amended by Commonwealth Act No. 772 on June 20, 1952, Section 5 of the Workmen's Compensation Act provided:

"SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury (italics supplied).

"Employers contracting laborers in the Philippine Islands for work outside the same may stipulate with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of the employment; and all service contracts made in the manner prescribed in this section shall be presumed to include such agreement."

Only the second paragraph of Section 5 of the Workmen's Compensation Act No. 3428, was amended by Commonwealth Act No. 772 on June 20, 1952, thus:

"SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury.

"Employers contracting laborers in the Philippine Islands for work outside the same shall stipulate with such laborers that the remedies prescribed by this Act shall apply to injuries received outside the Island through

accidents happening in and during the performance of the duties of the employment. Such stipulation shall not prejudice the right of the laborers to the benefits of the Workmen's Compensation Law of the place where the accident occurs, should such law be more favorable to them (As amended by Section 5 of Republic Act No. 772)."

Article 173 of the New Labor Code does not repeal expressly nor impliedly the applicable provisions of the New Civil Code, because said Article 173 provides:

"Art. 173. Excludibility of liability.— Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven hundred sixty-one, as amended, Commonwealth Act Numbered One hundred eighty-six, as amended, Republic Act Numbered Six hundred ten, as amended, Republic Act Numbered Forty-eight hundred Sixty-four, as amended, and other laws whose benefits are administered by the System, during the period of such payment for the same disability or death, and conversely" (italics supplied).

As above-quoted, Article 173 of the New Labor Code expressly repealed only Section 699 of the Revised Administrative Code, R.A. No. 1161, as amended, C. A. No. 186, as amended, R. A. No. 610, as amended, R. A. No. 4864, as amended, and all other laws whose benefits are administered by the System (referring to the GSIS or SSS).

Unlike Section 5 of the Workmen's Compensation Act as afore-quoted, Article 173 of the New Labor Code does not even remotely, much less expressly, repeal the New Civil Code provisions heretofore quoted.

It is patent, therefore, that recovery under the New Civil Code for damages arising from negligence, is not barred by Article 173 of the New Labor Code. And the damages recoverable under the New Civil Code are not administered by the System provided for by the New Labor Code, which defines the "System" as referring to the Government Service Insurance System or the Social Security System (Art. 167 [c], [d], and [e] of the New Labor Code).

Furthermore, under Article 8 of the New Civil Code, decisions of the Supreme Court form part of the law of the land.

Article 8 of the New Civil Code provides:

"Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

The Court, through the late Chief Justice Fred Ruiz Castro, in *People vs. Licera*, ruled:

"Article 8 of the Civil Code of the Philippines decrees that judicial decisions applying or interpreting the laws or the Constitution form part of this jurisdiction's legal system. These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Court upon a law is part of the law as of the date of the enactment of the said law since the Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect" (65 SCRA 270, 272-273, [1975]).

WE ruled that judicial decisions of the Supreme Court assume the same authority as the statute itself (*Caltex vs. Palomer*, 18 SCRA 247; 124 Phil. 763).

The afore-quoted provisions of Section 5 of the Workmen's Compensation Act, before and after it was amended

by Commonwealth Act No. 772 on June 20, 1952, limited the right of recovery in favor of the deceased, ailing or injured employee to the compensation provided for therein. Said Section 5 was not accorded controlling application by the Supreme Court in the 1970 case of *Pacafia vs. Cebu Autobus Company* (32 SCRA 442) when WE ruled that an injured worker has a choice of either to recover from the employer the fixed amount set by the Workmen's Compensation Act or to prosecute an ordinary civil action against the tortfeasor for greater damages; but he cannot pursue both courses of action simultaneously. Said *Pacafia* case penned by Mr. Justice Teehankee, applied Article 1711 of the Civil Code as against the Workmen's Compensation Act, reiterating the 1969 ruling in the case of *Valencia vs. Manila Yacht Club* (28 SCRA 724. June 30, 1969) and the 1958 case of *Esguerra vs. Munoz Palma* (104 Phil 582), both penned by Justice J.B.L. Reyes. Said *Pacafia* case was concurred in by Justices J.B.L. Reyes, Dizon, Makalintal, Zaldivar, Castro, Fernando and Villamor.

Since the first sentence of Article 173 of the New Labor Code is merely a re-statement of the first paragraph of Section 5 of the Workmen's Compensation Act, as amended, and does not even refer, neither expressly nor impliedly, to the Civil Code as Section 5 of the Workmen's Compensation Act did, with greater reason said Article 173 must be subject to the same interpretation adopted in the cases of *Pacafia*, *Valencia* and *Esguerra* aforementioned as the doctrine in the aforesaid three (3) cases is faithful to and advances the social justice guarantees enshrined in both the 1935 and 1973 Constitutions.

It should be stressed likewise that there is no similar provision on social justice in the American Federal Constitution, nor in the various state constitutions of the American Union. Consequently, the restrictive nature of the American decisions on the Workmen's Compensation Act cannot limit the range and compass of OUR interpretation of our own laws, especially Article 1711 of the New Civil Code, vis-a-vis Article 173 of the New Labor Code in relation to Section 5 of Article II and Section 6 of Article XIV of the 1935 Constitution then, and now Sections 6, 7 and 9 of the Declaration of Principles and State Policies of Article U of the 1973 Constitution.

The dissent seems to subordinate the life of the laborer to the property rights of the employer. The right to life is guaranteed specifically by the due process clause of the Constitution. To relieve the employer from liability for the death of his workers arising from his gross or wanton fault or failure to provide safety devices for the protection of his employees or workers against the dangers which are inherent in underground mining, is to deprive the deceased worker and his heirs of the right to recover indemnity for the loss of the life of the worker and the consequent loss to his family without due process of law. The dissent in effect condones and therefore encourages such gross or wanton neglect on the part of the employer to comply with his legal obligation to provide safety measures for the protection of the life, limb and health of his worker. Even from the moral viewpoint alone, such attitude is un-Christian.

It is therefore patent that giving effect to the social justice guarantees of the Constitution, as implemented by the provisions' of the New Civil Code, is not an exercise of the power of law-making, but is rendering obedience to the mandates of the fundamental law and the implementing legislation aforementioned.

The Court, to repeat, is not legislating in the instant case.

It is axiomatic that no ordinary statute can override a constitutional provision.

The words of Section 5 of the Workmen's Compensation Act and of Article 173 of the New Labor Code subvert the rights of the petitioners as surviving heirs of the deceased mining employees. Section 5 of the Workmen's Compensation Act and Article 173 of the New Labor Code are retrogressive; because they are a throwback to the absolute laissez-faire doctrine of Adam Smith enunciated in 1776 in his treatise *Wealth of Nations* (*Collier's Encyclopedia*, Vol. 21, p. 93, 1964), which has been discarded soon after the close of the 18th century due to the Industrial Revolution that generated the machines and other mechanical devices (beginning with Eli Whitney's

cotton gin of 1793 and Robert Fulton's steamboat of 1807) for production and transportation which are dangerous to life, limb and health. The old socio-political-economic philosophy of live-and-let-live is now superseded by the benign Christian shibboleth of live-and-help others to live. Those who profess to be Christians should not adhere to Cain's selfish affirmation that he is not his brother's keeper. In this our civilization, each one of us is our brother's keeper. No man is an island. To assert otherwise is to be as atavistic and ante-deluvian as the 1837 case of *Prisley vs. Fowler* (3 MN 1, 150 reprint 1030) invoked by the dissent. The *Prisley* case was decided in 1837 during the era of economic royalists and robber barons of America. Only ruthless, unfeeling capitalists and egoistic reactionaries continue to pay obeisance to such un-Christian doctrine. The *Prisley* rule humiliates man and debases him; because the decision derisively refers to the lowly worker as "servant" and utilizes with aristocratic arrogance "master" for "employer." It robs man of his inherent dignity and dehumanizes him. To stress this affront to human dignity, WE only have to restate the quotation from *Prisley*, thus: "The mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do himself." This is the very selfish doctrine that provoked the American Civil War which generated so much hatred and drew so much precious blood on American plains and valleys from 1861 to 1864.

"Idolatrous reverence" for the letter of the law sacrifices the human being. The spirit of the law insures man's survival and ennobles him. In the words of Shakespeare, "the letter of the law killeth; its spirit giveth life."

C

It is curious that the dissenting opinion clings to the myth that the courts cannot legislate.

That myth had been exploded by Article 9 of the New Civil Code, which provides that "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws."

Hence, even the legislator himself, through Article 9 of the New Civil Code, recognizes that in certain instances, the court, in the language of Justice Holmes, "do and must legislate" to fill in the gaps in the law; because the mind of the legislator, like all human beings, is finite and therefore cannot envisage all possible cases to which the law may apply. Nor has the human mind the infinite capacity to anticipate all situations.

But about two centuries before Article 9 of the New Civil Code, the founding fathers of the American Constitution foresaw and recognized the eventuality that the courts may have to legislate to supply the omissions or to clarify the ambiguities in the American Constitution and the statutes.

Thus, Alexander Hamilton pragmatically admits that judicial legislation may be justified but denies that the power of the Judiciary to nullify statutes may give rise to Judicial tyranny (*The Federalist*, Modern Library, pp. 503-511, 1937 ed.). Thomas Jefferson went farther to concede that the court is even independent of the Nation itself (*A.F.L. vs. American Sash Company*, 1949 335 US 538).

Many of the great expounders of the American Constitution likewise share the same view. Chief Justice Marshall pronounced: "It is emphatically the province and duty of the Judicial department to say what the law is" (*Marbury vs. Madison* 1 Cranch 127 1803), which was re-stated by Chief Justice Hughes when he said that "the Constitution is what the judge says it is" (Address on May 3, 1907, quoted by President Franklin Delano Roosevelt on March 9, 1937). This was reiterated by Justice Cardozo who pronounced that "No doubt the limits for the judge are narrower. He legislates only between gaps. He fills the open spaces in the law." (*The Nature of the Judicial Process*, p. 113). In the language of Chief Justice Harlan F. Stone, "The only limit to the judicial legislation is the restraint of the judge" (*U.S. vs. Butler* 297 U.S. 1 Dissenting Opinion, p. 79), which view is also entertained by Justice Frankfurter and Justice Robert Jackson. In the rhetoric of Justice Frankfurter, "the courts breathe life, feeble or strong, into the inert pages of the Constitution and all statute books."

It should be stressed that the liability of the employer under Section 5 of the Workmen's Compensation Act or Article 173 of the New Labor Code is limited to death, ailment or injury caused by the nature of the work, without any fault on the part of the employers. It is correctly termed no-fault liability.

Section 5 of the Workmen's Compensation Act, as amended, or Article 173 of the New Labor Code, does not cover the tortious liability of the employer occasioned by his fault or culpable negligence in failing to provide the safety devices required by the law for the protection of the life, limb and health of the workers. Under either Section 5 or Article 173, the employer remains liable to pay compensation benefits to the employee, whose death, ailment or injury is work-connected, even if the employer has faithfully and diligently furnished all the safety measures and contrivances decreed by the law to protect the employee.

The written word is no longer the "sovereign talisman." In the epigrammatic language of Mr. Justice Cardozo, "the law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal" (Wood vs. Duff Gordon 222 NW 88; Cardozo, The Nature of the Judicial Process 100). Justice Cardozo warned that: "Sometimes the conservatism of judges has threatened for an interval to rob the legislation of its efficacy, x x x Precedents established in those times exert an unhappy influence even now" (citing Pound, Common Law and Legislation 21 Harvard Law Review 383, 387).

Finally, Justice Holmes delivered the coup de grace when he pragmatically admitted, although with a cautionary undertone: "that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions" (Southern Pacific Company vs. Jensen, 244 US 204 1917). And in the subsequent case of Springer vs. Government (277 US 188, 210-212, 72 L.ed. 845, 852-853), Justice Holmes pronounced:

"The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other, x x x. When we come to the fundamental distinctions it is still more obvious that they must be received with, a certain latitude or our government could not go on.

"To make a rule conduct applicable to an individual who but for such action would be free from it is to legislate - yet it is what the judges do whenever they determine which of two competing principles of policy shall prevail.

"x xx.

"It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments, were it ever so desirable to do so, which I am far from believing that it is, or that the Constitution requires."

True, there are jurists and legal writers who affirm that judges should not legislate, but grudgingly concede that in certain cases judges do legislate. They criticize the assumption by the courts of such law-making power as dangerous for it may degenerate into Judicial tyranny. They include Blackstone, Jeremy Bentham, Justice Black, Justice Harlan, Justice Roberts, Justice David Brewer, Ronald Dworkin, Rolf Sartorius, Macklin Fleming and Beryl Harold Levy. But said Justices, jurists or legal commentators, who either deny the power of the courts to legislate in-between gaps of the law, or decry the exercise of such power, have not pointed to examples of the exercise by the courts of such law-making authority in the interpretation and application of the laws in specific cases that gave rise to judicial tyranny or oppression or that such judicial legislation has not protected public interest or individual welfare, particularly the lowly workers or the underprivileged.

On the other hand, there are numerous decisions interpreting the Bill of Rights and statutory enactments expanding the scope of such provisions to protect human rights. Foremost among them is the doctrine in the cases

of *Miranda vs. Arizona* (384 US 436 1964), *Gideon vs. Wainright* (372 US 335), *Escubedo vs. Illinois* (378 US 478), which guaranteed the accused under custodial investigation his rights to remain silent and to counsel and to be informed of such rights as even as it protects him against the use of force or intimidation to extort confession from him. These rights are not found in the American Bill of Rights. These rights are now institutionalized in Section 20, Article IV of the 1973 Constitution. Only the peace-and-order adherents were critical of the activism of the American Supreme Court led by Chief Justice Earl Warren.

Even the definition of identical offenses for purposes of the double jeopardy provision was developed by American judicial decisions, not by amendment to the Bill of Rights on double jeopardy (see Justice Laurel in *People vs. Tarok*, 73 Phil. 260, 261-268). And these judicial decisions have been re-stated in Section 7 of Rule 117 of the 1985 Rules on Criminal Procedure, as well as in Section 9 of Rule 117 of the 1964 Revised Rules of Court. In both provisions, the second is the same as the first offense if the second offense is an attempt to commit the first or frustration thereof or necessarily included or is necessarily included in the first offense.

The requisites of double jeopardy are not spelled out in the Bill of Rights. They were also developed by judicial decisions in the United States and in the Philippines even before *People vs. Ylagan* (58 Phil. 851-853).

Again, the equal protection clause was interpreted in the case of *Plessy vs. Ferguson* (163 US 537) as securing to the Negroes equal but separate facilities, which doctrine was revoked in the case of *Brown vs. Maryland Board of Education* (349 US 294), holding that the equal protection clause means that the Negroes are entitled to attend the same schools attended by the whites — equal facilities in the same school which was extended to public parks and public buses. De-segregation, not segregation, is now the governing principle.

Among other examples, the due process clause was interpreted in the case of *People vs. Pomar* (46 Phil. 440) by a conservative, capitalistic court to invalidate a law granting maternity leave to working women — according primacy to property rights over human rights. The case of *People vs. Pomar* is no longer the rule.

As early as 1904, in the case of *Lochner vs. New York* (198 US 45, 76, 49 L. ed. 937, 949), Justice Holmes had been railing against the conservatism of Judges perverting the guarantee of due process to protect property rights as against human rights or social justice for the working man. The law fixing maximum hours of labor was invalidated. Justice Holmes was vindicated finally in 1936 in the case of *West Coast Hotel, vs. Parish* (300 US 377-79; 81 L. ed. 703) where the American Supreme Court upheld the rights of workers to social justice in the form of guaranteed minimum wage for women and minors, working hours not exceeding eight (8) daily, and maternity leave for women employees.

The power of judicial review and the principle of separation of powers as well as the rule on political questions have been evolved and grafted into the American Constitution by judicial decisions (*Marbury vs. Madison*, supra; *Coleman vs. Miller*, 307 US 433, 83 L. ed. 1385; *Springer vs. Government*, 277 US 210-212, 72 L. ed. 852, 853).

It is noteworthy that Justice Black, who seems to be against judicial legislation, penned a separate concurring opinion in the case of *Coleman vs. Miller*, supra, affirming the doctrine of political question as beyond the ambit of judicial review. There is nothing in both the American and Philippine Constitutions expressly providing that the power of the courts is limited by the principle of separation of powers and the doctrine on political questions. There are numerous cases in Philippine jurisprudence applying the doctrines of separation of powers and political questions and invoking American precedents.

Unlike the American Constitution, both the 1935 and 1973 Philippine Constitutions, expressly vest in the Supreme Court the power to review the validity or constitutionality of any legislative enactment or executive act.

WHEREFORE, THE TRIAL COURT'S ORDER OF DISMISSAL IS HEREBY REVERSED AND SET ASIDE

AND THE CASE IS REMANDED TO IT FOR FURTHER PROCEEDINGS. SHOULD A GREATER AMOUNT OF DAMAGES BE DECREED IN FAVOR OF HEREIN PETITIONERS, THE PAYMENTS ALREADY MADE TO THEM PURSUANT TO THE WORKMEN'S COMPENSATION ACT SHALL BE DEDUCTED. NO COSTS.

SO ORDERED.

Fernando, C.J., Teehankee, Plana, Escolin, de la Fuente, Cuevas, and Alampay, JJ., concur.

Aquino, J., I concur in the dissent of Justice Gutierrez.

, on leave. Abad Santos and Relova, JJ., took no part.

Melencio-Herrera, J., dissents in a separate opinion.

Gutierrez, J., Please see attached dissenting opinion.

DISSENTING OPINION

MELENCIO-HERRERA, J., :

A

This case involves a complaint for damages for the death of five employees of PHILEX Mining Corporation under the general provisions of the Civil Code. The Civil Code itself, however, provides for its non-applicability to the complaint. It is specifically provided in Article 2196 of the Code, found in Title XVm - Damages, that:

"COMPENSATION FOR WORKMEN AND OTHER EMPLOYEES IN CASE OF DEATH, INJURY OR ILLNESS IS REGULATED BY SPECIAL LAWS."

Compensation and damages are synonymous. In *Esguerra vs. Mufioz Palma, etc., et al.*, 104 Phil. 582, 586, Justice J.B.L. Reyes had said:

"Petitioner also avers that compensation is not damages. This argument is but a play on words. The term 'compensation' is used in the law (Act 3812 and Republic Act 772) in the sense of indemnity for damages suffered, being awarded for a personal injury caused or aggravated by or in the course of employment, x x x."

By the very provisions of the Civil Code, it is a "special law," not the Code itself, which has to apply to the complaint involved in the instant case. That "special law," in reference to the complaint, can be no other than the Workmen's Compensation Law.

Even assuming, without conceding, that an employee is entitled to an election of remedies, as the majority rules, both options cannot be exercised simultaneously, and the exercise of one will preclude the exercise of the other. The petitioners had already exercised their option to come under the Workmen's Compensation Act, and they have already received compensation payable to them under that Act. Stated differently, the remedy under the Workmen's Compensation Act had already become a "finished transaction."

There are two considerations why it is believed petitioners should no longer be allowed to exercise the option to sue under the Civil Code. In the first place, the proceedings under the Workmen's Compensation Act have already become the law in regards to the "election of remedies," because those proceedings had become a "finished transaction."

In the second place, it should be plainly equitable that, if a person entitled to an "election of remedies" makes a first election and accepts the benefits thereof, he should no longer be allowed to avail himself of the second option. At the very least, if he wants to make a second election, in disregard of the first election he has made, when he makes the second election he should surrender the benefits he had obtained under the first election. This

was not done in the case before the Court.

B.

There is full concurrence on my part with the dissenting opinion of Mr. Justice Gutierrez upholding "the exclusory provision of the Workmen's Compensation Act." I may further add:

1. The Workmen's Compensation Act (Act No. 3428) was approved on December 10, 1927 and took effect on June 10, 1928. It was patterned from Minnesota and Hawaii statutes.

"Act No. 3428 was adopted by the Philippine legislature, in Spanish and some sections of the law were taken from the statutes of Minnesota and Hawaii, (Chapter 209 of the Revised Laws of Hawaii, 1925)." [Morabe & niton, Workmen's Compensation Act, p. 2]

Under the Workmen's Compensation Act of Hawaii, when the Act is applicable, the remedy under the Act is exclusive. The following is stated in 1 Schneider, Workmen's Compensation Text, pp. 266, 267.

"Sec. 112. Hawaii

Statutory Synopsis - The act is compulsory as to employees in 'all industrial employment' and employees of the territory and its political subdivisions. (Sections 7480-7481, S.S., Vol. 1, p. 713.)

Compensation is not payable when injury is due to employee's wilful intention to injure himself or another or to his intoxication. (Sec. 7482, S.S., p. 713.)

When the act is applicable the remedy thereunder is exclusive. (Sec. 7483, S.S., p. 714.)"

2. In providing for exclusiveness of the remedy under our Workmen's Compensation Act, the Philippine Legislature worded the first paragraph of Section 5 of the Act as follows:

"SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation

shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer

under the Civil Code and other laws, because of said injury." (Paragraphing and italics supplied)

In regards to the intent of the Legislature under the foregoing provisions:

"A cardinal rule in the interpretation of statutes is that the meaning and intention of the law-making body must be sought, first of all, in the words of the statute itself, read and considered in their natural, ordinary, commonly-accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction. Courts, therefore, as a rule, cannot presume that the law-making body does not know the meaning of words and the rules of grammar. Consequently, the grammatical reading of a statute must be presumed to yield its correct sense." (Espino vs. Cleofe, 52 SCRA 92, 98) [Italics supplied]

3. The original second paragraph of Section 5 provided:

"Employers contracting laborers in the Philippine Islands for work outside the same shall stipulate with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of the employment." (Italics supplied)

The use of the word "exclusively" is a further confirmation of the exclusory provision of the Act, subject only to exceptions which may be provided in the Act itself.

4. It might be mentioned that, within the Act itself, provision is made for remedies other than within the Act itself. Thus, Section 6, in part, provides:

"SEC. 6. Liability of third parties.— In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; x x x" (*Italics supplied*)

If the legislative intent under the first paragraph of Section 6 were to allow the injured employee to sue his employer under the Civil Code, the legislator could very easily have formulated the said first paragraph of Section 5 according to the pattern of Section 6. That that was not done shows the legislative intent not to allow any option to an employee to sue the employer under the Civil Code for injuries compensable under the Act.

5. There should be no question but that the original first paragraph of Section 5 of the Workmen's Compensation Act, formulated in 1927, provided that an injured worker or employee, or his heirs, if entitled to compensation under the Act, cannot have independent recourse neither to the Civil Code nor to any other law relative to the liability of the employer. After 1927, there were occasions when the legislator had the opportunity to amend the first paragraph of Section 5 such that the remedies under the Act would not be exclusive; yet, the legislator refrained from doing so. That shows the legislative's continuing intent to maintain the exclusory provision of the first paragraph of Section 5 unless otherwise provided in the Act itself.

(a) The original second paragraph of Section 5 provided:,

"Employers contracting laborers in the Philippine Islands for work outside the same shall stipulate with such laborers that the remedies prescribed by this Act shall apply (exclusively) to injuries received outside the Islands through accidents happening in and during the performance of the duties of the employment (and all service contracts made in the manner prescribed in this section be presumed to include such agreement.)"

On June 20, 1952, through RA 772, the foregoing second paragraph was amended with the elimination of the italicized words in parentheses, and the addition of this sentence at the end of the paragraph:

"Such stipulation shall not prejudice the right of the laborers to the benefits of the Workmen's Compensation Law of the place where the accident occurs, should such law be more favorable to them." (*Italics supplied*)

It will be seen that, within the Act itself, the exclusory character of the Act was amended. At that time, if he had so desired, the legislator could have amended the first paragraph of Section 5 so that the employee would have the option to sue the employer under the Act, or under the Civil Code, should the latter be more favorable to him.

(b) The Workmen's Compensation Act, which took effect in 1927, grants compensation to an injured employee without regard to the presence or absence of negligence on the part of the employer. The compensation is deemed an expense chargeable to the industry (*Murillo vs. Mendoza*, 66 Phil. 689 [1938]).

In time, it must have been thought that it was inequitable to have the amount of compensation, caused by negligence on the part of the employer, to be the same amount payable when the employer was not negligent. Based on that thinking, Section 4-A[1] was included into the Act, on June 20, 1952, through RA 772. Said Section 4-A increased the compensation payable by 50% in case there was negligence on the part of the employer. That additional section evidenced the intent of the legislator not to give an option to an employee, injured with negligence on the part of the employer, to sue the latter under the provisions of the Civil Code.

On June 20, 1964, Section 4-A was amended (insubstantially) by RA 4119. The legislator was again given the opportunity to provide, but he did not, the option to an employee to sue under the Act or under the Civil Code.

When a Court gives effect to a statute not in accordance with the intent of the lawmaker, the Court is unjustifiably legislating.

It is in view of the foregoing that I vote for affirmation of the trial Court's dismissal of the Complaint.

[1] SEC. 4-A. Right to additional compensation.— In case of the employee's death, injury or sickness due to the failure of the employer to comply with any law, or with any order, rule or regulation of the Workmen's Compensation Commission or the Bureau of Labor Standards or should the employer violate the provisions of Republic Act Numbered Six hundred seventy-nine and its amendments or fail to install and maintain safety appliances, or take other precautions for the prevention of accidents or occupational disease, he shall be liable to pay an additional compensation equal to fifty per centum of the compensation fixed in this Act.

DISSENTING OPINION

GUTIERREZ, JR., J., :

To grant the petition and allow the victims of industrial accidents to file damage suits based on torts would be a radical innovation not only contrary to the express provisions of the Workmen's Compensation Act but a departure from the principles evolved in the long history of workmen's compensation. At the very least, it should be the legislature and not this Court which should remove the exclusory provision of the Workmen's Compensation Act, a provision reiterated in the present Labor Code on employees' compensation.

Workmen's compensation evolved to remedy the evils associated with the situation in the early years of the industrial revolution when injured workingmen had to rely on damage suits to get recompense.

Before workmen's compensation, an injured worker seeking damages would have to prove in a tort suit that his employer was either negligent or in bad faith, that his injury was caused by the employer and not a fellow worker, and that he was not guilty of contributory negligence. The employer could employ not only his wealth in defeating the claim for damages but a host of common law defenses available to him as well. The worker was supposed to know what he entered into when he accepted employment. As stated in the leading case of *Priestley v. Fowler* (3 M. & W. 1, 150 Reprint 1030) decided in 1837 "the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself." By entering into a contract of employment, the worker was deemed to accept the risk of employment that he should discover and guard against himself.

The problems associated with the application of the fellow servant rule, the assumption of risk doctrine, the principle of contributory negligence, and the many other defenses so easily raised in protracted damage suits illustrated the need for a system whereby workers had only to prove the fact of covered employment and the fact of injury arising from employment in order to be compensated.

The need for a compensation scheme where liability is created solely by statute and made compulsory and where the element of fault - either the fault of the employer or the fault of the employee - is disregarded became obvious. Another objective was to have simplified, expeditious, inexpensive, and non-litigious procedures so that victims of industrial accidents could more readily, if not automatically, receive compensation for work-related injuries.

In spite of common law defenses to defeat a claim being recognized, employer's liability acts were a major step in the desired direction. However, employers liability legislation proved inadequate. Legislative reform led to workmen's compensation.

I cite the above familiar background because workmen's compensation represents a compromise. In return for the near certainty of receiving a sum of money fixed by law, the injured worker gives up the right to subject the employer to a tort suit for huge amounts of damages. Thus, liability not only disregards the element of fault but it is also a pre-determined amount based on the wages of the injured worker and in certain cases, the actual cost of rehabilitation. The worker does not receive the total damages for his pain and suffering which he could otherwise claim in a civil suit. The employer is required to act swiftly on compensation claims. An administrative agency supervises the program. And because the overwhelming mass of workingmen are benefited by the compensation system, individual workers who may want to sue for big amounts of damages must yield to the interests of their entire working class.

The nature of the compensation principle is explained as follows:

"An appreciation of the nature of the compensation principle is essential to an understanding of the acts and the cases interpreting them.

"By the turn of the century it was apparent that the toll of industrial accidents of both the avoidable and unavoidable variety had become enormous, and government was faced with the problem of who was to pay for the human wreckage wrought by the dangers of modern industry. If the accident was avoidable and could be attributed to the carelessness of the employer, existing tort principles offered some measure of redress. Even here, however, the woeful inadequacy of the fault principle was manifest. The uncertainty of the outcome of torts litigation in court placed the employee at a substantial disadvantage. So long as liability depended on fault there could be no recovery until the finger of blame had been pointed officially at the employer or his agents. In most cases both the facts and the law were uncertain. The witnesses, who were usually fellow workers of the victim, were torn between friendship or loyalty to their class, on the one hand, and fear of reprisal by the employer, on the other. The expense and delay of litigation often prompted the injured employee to accept a compromise settlement for a fraction of the full value of his claim. Even if suit were successfully prosecuted, a large share of the proceeds of the judgment were exacted as contingent fees by counsel. Thus the employer against whom judgment was cast often paid a substantial damage bill, while only a part of this enured to the benefit of the injured employee or his dependents. The employee's judgment was nearly always too little and too late.

xxx xxx xxx

"Workmen's Compensation rests upon the economic principle that those persons who enjoy the product of a business—whether it be in the form of goods or services — should ultimately bear the cost of the injuries or deaths that are incident to the manufacture, preparation and distribution of the product x x.

xxx xxx xxx

"Under this approach the element of personal fault either disappears entirely or is subordinated to broader economic considerations. The employer absorbs the cost of accident loss only initially; it is expected that this cost will eventually pass down the stream of commerce in the form of increased price until it is spread in dilution among the ultimate consumers. So long as each competing unit in a given industry is uniformly affected, no producer can gain any substantial competitive advantage or suffer any appreciable loss by reason of the general adoption of the compensation principle.

"In order that the compensation principle may operate properly and with fairness to all parties it is essential that the anticipated accident cost be predictable and that it be fixed at a figure that will not disrupt too violently the traffic in the product of the industry affected. Thus predictability and moderateness of cost are necessary from the broad economic viewpoint, x x x.

"Compensation, then, differs from the conventional damage suit in two important respects: Fault on the part of either employer or employee is eliminated; and compensation payable according to a definitely limited schedule is substituted for damages. All compensation acts alike work these two major changes, irrespective of

how they may differ in other particulars.

"Compensation, when regarded from the viewpoint of employer and employee represents a compromise in which each party surrenders certain advantages in order to gain others which are of more importance both to him and to society. The employer give up the immunity he otherwise would enjoy in cases where he is not at fault, and the employee surrenders his former right to full damages and accepts instead a more modest claim for bare essentials, represented by compensation.

"The importance of the compromise character of compensation cannot be overemphasized. The statutes vary a great deal with reference to the proper point of balance. The amount of weekly compensation payments and the length of the period during which compensation is to be paid are matters concerning which the acts differ considerably. The interpretation of any compensation statute will be influenced greatly by the court's reaction to the basic point of compromise established in the Act. If the court feels that the basic compromise unduly favors the employer, it will be tempted to restore what it regards as a proper balance by adopting an interpretation that favors the worker. In this way, a compensation act drawn in a spirit of extreme conservatism may be transformed by a sympathetic court into a fairly liberal instrument; and conversely, an act that greatly favors the laborer may be so interpreted by the courts that employers can have little reason to complain. Much of the unevenness and apparent conflict in compensation decisions throughout the various jurisdictions must be attributed to this."

(Malone & Plant, Workmen's Compensation, American Casebook Series, pp. 63-65).

The schedule of compensation, the rates of payments, the compensable injuries and diseases, the premiums paid by employers to the present system, the actuarial stability of the trust fund and many other interrelated parts have all been carefully studied before the integrated scheme was enacted into law. We have a system whose parts must mesh harmoniously with one another if it is to succeed. The basic theory has to be followed.

If this Court disregards this totality of the scheme and in a spirit of generosity recasts some parts of the system without touching the related others, the entire structure is endangered. For instance, I am personally against stretching the law and allowing payment of compensation for contingencies never envisioned to be compensable when the law was formulated. Certainly, only harmful results to the principle of workmen's compensation can arise if workmen, whom the law allows to receive employment compensation, can still elect to file damage suits for industrial accidents, (industrial accidents.) It was precisely for this reason that Section 5 of the Workmen's Compensation Act, which reads:

"SEC. 5. Exclusive right to compensation.— The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws because of said injury x x x."

Article 173 of the Labor Code also provides:

"ART. 173. Exclusiveness of liability.— Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents."

I am against the Court assuming the role of legislator in a matter calling for actuarial studies and public hearings. If employers already required to contribute to the State Insurance Fund will still have to bear the cost of damage suits or ge! insurance for that purpose, a major study will be necessary. The issue before us is more far reaching than the interests of the poor victims and their families. All workers covered by workmen's compensation and all employers who employ covered employees are affected. Even as I have deepest sympathies for the victims, I regret that I am constrained to dissent from the majority opinion.

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