

PASCUALA LOMBO, PETITIONER VS. STANDARD CIGARETTE MANUFACTURING CO. AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-35531. August 30, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

The present petition for Certiorari seeks a review of the decision as well as the resolution of the Workmen's Compensation Commission denying the petitioner's claim for compensation.

On November 27, 1967, herein petitioner filed a claim for compensation with Regional Office No. 4 of the Department of Labor, which claim was docketed as RO4-WC-Case No. 6921. The claim alleged, among other things, that herein petitioner Pascuala Lombo worked as a laborer with respondent company from 1951 to June 5, 1967, when she last reported for work by reason of her physical disability (PTB minimal, heart disease and high blood pressure) allegedly contracted in the course of her employment with the respondent company; that she first felt pains in the chest in 1965; that this was aggravated by the nature of her work and the working conditions in the company; that she has incurred expenses more or less in the amount of P500.00 for medical treatment and medicines, and that her illness was brought to the attention of the company. The respondent company in due time filed its answer controverting the claim. Issues were joined and trial ensued. During the trial it was shown^[1] that petitioner worked as "poucher", and as such she made Ben Hur cigarette packs; that for this purpose she used a small iron bar mold (around 3 inches in length and 2 inches in width with 3 small holes on one side and 2 small holes on the other side), paste and the Ben Hur labels; it was also shown that she finished from 3,000 to 4,000 packs a day working from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. daily; that the finished products were placed in an empty cardboard box to be taken by the "kahista" later on, contrary to her testimony during the direct examination that she used to carry boxes containing empty cigarette packs to the second floor of the office; that she made the cigarette packs while seated and that they were also provided with tables; that during the trial, specifically during the cross-examination, information as to the working conditions in the company was elicited; that petitioner declared that there were about forty of them in the working area with windows and electric fans in the ceiling (again contrary to her previous testimony that the room they were working in was hot and stuffy); that she took her lunch at twelve noon but could take her merienda any time; that she was paid weekly — sometimes P30.00 a week or even more; that she became aware of her illness sometime in 1965 and consulted the company physician but the latter was out; that she had herself treated by Dr. Vargas, the Municipal Health Officer of Malabon and one Dr. Buenaventura whose medical certificates she presented and marked as Exhibits "A" and "B"; that she did not file any claim with the SSS before 1967; that she could not present receipts of medicines allegedly purchased by her and included in the amount claimed as she lost all of them; that her SSS claim was allegedly not approved for her failure to procure separation papers from the respondent company; that she filed a claim for separation pay with damages with the Municipal Court of Malabon but the case was dismissed^[2] upon findings that the material allegations therein were not substantiated with evidence. Likewise the Union President

and Supervisor were presented during the trial. As found by the Hearing Officer:

"Witness for the respondent, Florino Santiago, testified under oath on direct examination that he is employed with the respondent; that he knew Pascuala Lombo because she is a laborer doing the job of a poucher; that he is the president of the Union and as such he knew claimant Pascuala Lombo was involved in the loss of Ben Hur Labels; that on June 5, 1967, Antonio Go, Romeo Chua and himself conducted an inspection of the tables of the employees including that of claimant herein regarding the loss of the Ben Hur labels; that they found 20,000 labels under the table of Pascuala Lombo and 14,000 labels under the table of one Julieta Macias; that they advised Pascuala and Julieta to ask for an apology from the management so that no drastic action would be taken against them; that Julieta did as told and was accordingly suspended from work for ten days while Pascuala from then on did not return to work; that he does not know of any claim filed by Pascuala in the SSS in 1965 or in 1967; that all claims of such nature passed his hands as he was in charge of following up the same; on cross examination the same witness testified that he knew Pascuala Lombo since she started working with the respondent and he also knew that she stopped working with the respondent on June 5, 1967; that he knew that the company has a physician and clinic of its own and that he knew the immediate supervisor of Lombo; that they found the Ben Hur labels under the table of Pascuala Lombo and Julieta Macias but did not see the same actually taken by the claimant.

Another witness of the respondent in the person of Romeo Chua testified under oath that he is a supervisor in the respondent company since 1962 up to the present; his duties consists in making the summary of the finished products of the pouchers giving them cigarette wrappers and computing their salary; that he knew Pascuala Lombo because he was the one supervising the pouchers who were paid by the so-called pakyaw system; that the claimant signed payrolls upon receipt of their salaries and has identified the signature of the claimant in Exhibits "I" to "L"; that for the last twelve week period Pascuala Lombo received P212.00 a month; that on June 5, 1967 due to the report of the loss of Ben Hur labels, he, together with Antonio Go and Florino Santiago, conducted an investigation of the tables of the pouchers including Pascuala Lombo and Julieta Macias where they found 20,000 labels under the table of Pascuala Lombo and 14,000 labels under the table of Julieta Macias; that the latter admitted her guilt and was given 10 days leave while Pascuala Lombo denied it and instead did not report for work any more; that aside from claimant's claim for compensation, she also filed a claim for separation pay and this was terminated (sic) dismissed and became final and executory due to the failure of Pascuala Lombo to appeal the same as evidenced by Exhibit "4" for the respondent; that claimant never filed any SSS claim; that after June 5, 1967 claimant did not return to work but instead worked with another company — the La Ilustre Cigar and Cigarette Factory as evidenced by Exhibit "5" which is a certification from Mr. Maximo Salazar, the accountant of said company, to the effect that claimant is employed with the same since December 3, 1967 up to the present x x x"

On January 17, 1969, the Hearing Officer decided for the respondent company and dismissed the claim on the ground that the same was not substantially proven to be within the compensatory provisions of the Act as "claimant failed to prove that her ailment PTB and high blood pressure was directly caused or due to her employment nor was it aggravated thereby and in fact claimant was not disabled to perform her work." (Decision p. 105 Record) A Motion for Reconsideration based on the ground that the decision was contrary to law and to the facts and evidences adduced was filed but this was denied in a decision rendered on April 27, 1972. The Commission, speaking through Commissioner Arellano, held:

"x x x Evidences adduced by the parties pose two issues, and they are: First, what caused the claimants separation from her employment; and Second, if her cessation from work was due to a personal injury (which includes sickness or death, see Sec. 39 (c), Act 3428, as amended) was the same causally connected with her work?

"In connection with the first issue the parties offered two different versions. The claimant insisted that her employment with the respondent which started way back in 1951 was severed on June 5, 1967, when she

stopped working due to chest pain vomiting and generally debility which she had been feeling even as early as 1965. On the other hand, respondent maintains that the claimant was caught in possession of 20,000 Ben Hur labels and because of this, she together with the other co-employee who had committed the same offense, was admonished to make an apology. According to the respondent, unlike the other co-employee who heeded the manager's advice, the claimant did not apologize and did not return to work anymore. On this particular factual question, we are inclined to discredit the theory advanced by the claimant. During her examination in chief, (t.s.n. pp. 7, 8 Session of Sept. 27, 1968) the claimant was very categorical in her statement that she stopped working on June 5, 1967, because of chest pain, vomiting, dizziness and was trembling, clearly implying that her separation from work on said date was at her own volition. However, during the hearing held on November 12, 1968, she declared that she stopped working because she was told to do so by the manager, a certain Cosan. "They told me to stop working", this was the answer of the claimant when she was asked how her employment with the respondent was terminated (t.s.n. p. 4). Likewise the claimant openly stated that from June 5, 1967 when she stopped working up to the present (at least up to September 27, 1968 which was the date of hearing) she did not work with any office (t.s.n. p. 9 session of Sept. 27, 1968). This was, however strongly belied by the un rebutted certification from the La Ilustre Cigar and Cigarette Factory, marked as Exhibit "5", to the effect that since December 3, 1967, she was already employed therein. Comparatively speaking, the degree of falsehood in the second circumstance is more serious than the first, enough to cast suspicion upon the truth and accuracy of the claimant's declarations. The seriousness of this self-contradiction becomes more apparent if we were to consider the fact that the misstatement was made at the time when she was already employed, at a time she was least expected to have poor memory because, in truth and in fact, she was already employed with the La Ilustre Cigar and Cigarette Factory since December 3, 1967. With these contradictions and inconsistencies, this Commission regrets its inability to give credence to the version offered by the claimant. x x x"

"There is no need to discuss the merit of the respondent's version as a matter of defense, because as can readily be gleaned from the foregoing dissertation, the claimant failed to make out a prima facie case."

"Similarly, discussion of the second and last issue above stated is believed superfluous in view of the conclusion reached in connection with the first question. x x x"

Again claimant filed a motion for reconsideration of the denial and the commission en banc on May 31, 1972, denied the same. Hence this petition for review, with the petitioner-claimant assigning as errors committed by respondent Workmen's Compensation Commission the following:

1. The Honorable Workmen's Compensation Commission erred in failing to give life and meaning to Sec. 45 of Act 3428, as amended, relative to the filing of a reasonable controversion by respondent company and hence the doctrines enunciated by the Honorable Supreme Court in a litany of cases concerning the effect on the respondent-company's failure to controvert on time the claimant's right to compensation had altogether been completely ignored and violated;
2. The Honorable Workmen's Compensation Commission erred in not finding the respondent company to have failed to comply with Section 37 of the aforesaid Act by filing its employers report either with the regional office of the Department of Labor or with the Workmen's Compensation Commission after three days from claimant Pascuala Lombo's absence from work;
3. The Honorable Workmen's Compensation Commission erred in not giving life and meaning to the legal provision under Section 44 of the aforementioned Act, on the presumption of the compensability of claims in the absence of evidence to the contrary;
4. The Honorable Workmen's Compensation Commission erred in not taking into consideration that the claimant's illness have supervened in the course of her employment with the respondent company and thus said illness are presumed compensable under the benevolent provisions of the aforesaid act;

5. The Honorable Workmen's Compensation Commission erred in giving due credence and importance to the respondent company's contentions that herein-claimant-appellant had resigned and/or abandoned her job with the respondent company allegedly in view of the purported loss of some 20,000 labels of Ben Hur cigarettes despite lack of concrete evidence to that effect;

6. The Honorable Workmen's Compensation Commission erred in finding that the herein--claimant-appellant had left and/or abandoned her work with herein respondent company and allegedly had worked with the La Ilustre Cigar and Cigarette Factory despite of lack of concrete evidence to that effect;

7. The Honorable Workmen's Compensation Commission also erred in not considering the claimant-appellant Pascuala Lombo's Pulmonary Tuberculosis Minimal and Hypertension to have been contracted in the course of employment and aggravated thereby and thus compensable under the benevolent provisions of the aforementioned act;

8. The Honorable Workmen's Compensation Commission likewise erred in not applying the well-settled principles in workmen's compensation cases to the effect that all doubts in the interpretation of the benevolent provisions of the Act, if any, should be resolved in favor of claimants and their legal dependents.

As regards the first error assigned, We have held in a host of decisions,[3] in compliance with the clear and express language of the Workmen's Compensation Act, that failure to controvert is "fatal to any defense that the company can interpose, and any assertion to the contrary is doomed to futility." [4] However We have perused the record and found that the company did controvert the claim of petitioner when it filed in due time its answer (after an extension had been granted) to the claim for compensation of the petitioner. In the case of *Evans vs. WCC* [5] this Court held:

"x x x when the claim was transmitted to the company and a seasonable answer was filed thereto, in which liability was denied on certain grounds, said answer is considered as a sufficient controversion of the claim."
(Italics supplied)

In the case at bar there is no evidence on record that claimant's illness ever reached the knowledge or attention of the management before the claim for compensation was filed and subsequently, in due time, controverted. The offer of Exhibits "A" and "B" manifesting the fact that claimant was under medical treatment by Drs. Buenaventura and Vargas is, therefore, of no moment as the fact of illness was never conveyed to respondent company nor did the latter gain knowledge that complainant became ill as she was never absent from work and did not consult the company physician and stopped working only on June 5, 1967, after the investigation of the lost Ben Hur labels was conducted. Because respondent company was never notified nor acquired knowledge of claimant's alleged illness, no employer's report required under Sec. 37 of the Act was ever submitted. Authorities on the Workmen's Compensation Act [6] are of the view that where the employer is not aware of the occurrence of the disability or death of its employee, it is not obliged by law to submit the required report or notice, not until it gains knowledge thereof. And one such way of gaining knowledge is when the employee concerned submits the notice of injury or sickness as required under Section 24 of the Act, which claimant-petitioner never complied with. Section 24 of the Act establishes a condition precedent to the maintenance of any compensation proceeding under the Act. It requires previous notice of the injury or sickness as well as previous claim for compensation within the period fixed in either case. Non-compliance with the requirement bars recovery for compensation (*Luzon Stevedoring Co. vs. De Leon* L--9521 November 28, 1959).

Noticeable too is the fact that the question of non-controversion was raised for the first time only in the motion for reconsideration en banc. In compensation cases as in other cases the rule is that matters of defense including affirmative defenses must be specifically pleaded as soon as opportunity permits, otherwise such defenses will be deemed waived (*Rebodos vs. WCC* L--18737 November 29, 1962, 6 SCRA 717). The first assigned error of

claimant petitioner is, therefore, without basis.

Likewise the question as to whether the illness of claimant herein falls within the ambit of the Workmen's Compensation Act is answered in the negative. We have tried to consider the presumptions[7] under Section 44 of the Act as contended by claimant and to view with sympathy the fact that claimant was allegedly in the pink of health when she first joined the company and, therefore, the alleged illness must have supervened at the time of employment. But these considerations have to fail in the light of the evidence presented. Workmen's compensation refers to liability for compensation for loss resulting from injury, disability or death of the workingman through industrial accident or disease. It is based on incapacity or disability for work, and hence on the loss or impairment of the employee's earning capacity in the employment at which he was engaged when injured, the compensation payments being in lieu of wages or based on the loss thereof and on the idea of providing means of subsistence to the employees during the time when his earning capacity has been partially or entirely destroyed. In other words as long as the employee is able to work and receives his pay even if he is suffering from illness, he is not entitled to compensation.[8] This is so because in compensation unlike in tort, the only injuries compensated for are those affecting earning power.

In the instant case, claimant never incurred loss of earning power as she stopped working only after June 5, 1967, after which she worked with La Ilustre Cigar and Cigarette Factory as evidenced by the Certificate of Employment issued by none other than the latter's Accountant. Her claim that her illness arose out of her work and that her supposed pulmonary tuberculosis and high blood pressure had started in 1965 also was not substantiated. In fact during the trial she declared the working conditions of the company to be alright — "with windows as big as the windows in the hearing office of the WCC building; with electric fans in the ceiling; with tables and chairs, with regular meal schedules and most significant of all — her work as poucher was demonstrated and found to be light." These findings of fact are binding upon Us as no grave abuse of discretion has been shown in arriving at them.

In *Pampanga Sugar Development Co. Inc. vs. Quiroz*[9] the phrases "in the course of" and "arises out of" have clearly been elucidated, thus:

"x x x it is sufficient to say that an injury is received "in the course of" employment when it comes while the workman is doing the duty which he is employed to perform. It "arises out of" the employment when there is apparent in the rational mind x x x causal connection between the conditions under which the work is required to be performed and the resulting injury.x x x "

But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work, and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event, it must appear to have had its origin on a risk connected with the employment, to have flowed from that source as a rational consequence."

The aforementioned discussion bolsters up respondent's stand that the illness of claimant does not come within the purview of the Act. It is well-settled that the Act should be interpreted so as to accomplish and not defeat the purposes for which it was enacted by the Legislature; that it is a social legislation designed to give relief to the workingman who has been a victim of an accident in the pursuit of employment and that it should be construed fairly, reasonably and liberally in favor of and for the benefit of the employees and their dependents, and that all doubts as to right of compensation should be resolved in their favor.[10] The liberal rules of interpretation, however, are unavailing where the facts of record clearly show that the injury or sickness is not compensable or that the claim does not come within the purview of the Act. As found by the Hearing Officer whose decision was

affirmed by the Commission and now subject of this review:

"The work of the claimant was only light job that do not require an extra physical effort causing lowering of body resistance. Neither could the aggravation of the illness be considered favorably because claimant's illness is just in its inception stage and there was no evidence presented by the claimant that the illness was caused or aggravated by the nature of work with the respondent."

Again, this is a finding of fact which We are not inclined to disturb especially because it is supported by substantial evidence — a well-settled principle which We have upheld time and again.[11] Being supported by substantial evidence and without any showing that there was grave abuse of discretion committed by the Workmen's Commission in making it, We see no cogent reason for overturning its verdict.

WHEREFORE, finding no error in the decision and resolution denying compensation to petitioner, the same are hereby affirmed.

Costs against the petitioner.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] TSN pp. 171-218 Record.

[2] Decision Civil Case 2363 Municipal Court of Malabon, Rizal p. 161 Record

[3] La Mallorca vs. WCC L-293, November 28, 1969; Pioneer Ceramics vs. Samia 33 SCRA 487; Manila Surety & Fidelity Co. vs. WCC July 31, 1970; Camotes Shipping Corp. vs. Otadera L-27699, October 24, 1970; Philippine Graphic Arts, Inc. vs. Dionisio Mariano & WCC L-30979 October 26, 1973.

[4] National Development Co. vs. Galamgam 38 SCRA 499.

[5] L-17015 April 29, 1961, 1 SCRA 1347, 1354.

[6] Comments and Annotation on the Workmen's Compensation Act by Severo Pucan and Cornelio Besinga 1971 ed. p. 390.

[7] Section 44. Presumptions — In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary —

- That the claim comes within the provisions of this Act;

- That sufficient notice thereof was given;

- x x x.

[8] Central Azucarera Don Pedro vs. De Leon L-9449 July 24, 1959, 105 Phil. 1141, 1146.

[9] L-22117 April 29, 1966 citing an American case In re Mc Nicol 102 NE 697.

[10] Caro vs. Rilloraza 102 Phil. 61; Bautista vs. Murillo L-13374 January 31, 1962.

[11] Victorias Milling Co. Inc. vs. WCC May 22, 1969; Northwest Orient Airlines vs. Louise Mateu & WCC L-25274 July 29, 1969; Operators Inc. vs. Ricardo Bacatian & WCC 30 SCRA 219; Abong vs. WCC L-32347-53 December 26, 1973.

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