

HEIRS OF MARCELO GENEROSO, REPRESENTED BY THE WIDOW, NORMA D. GENEROSO, PLAINTIFFS-APPELLEES, VS. UNIVERSAL TEXTILE MILLS, INC., DEFENDANT-APPELLANT.

G.R. No. L-28586. January 22, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

The legal issue in this case is whether an employer who had already paid workmen's compensation to the heirs of an employee, who was killed by his fellow employee, still liable to pay to the same heirs the subsidiary civil liability provided for in article 103 of the Revised Penal Code in view of the insolvency of the killer.

Universal Textile Mills, Inc. appealed from the decision of the Court of First Instance of Manila dated September 8, 1967, ordering it to pay the heirs of Marcelo Generoso the indemnity of six thousand pesos plus one thousand pesos as attorney's fees (Civil Case No. 69214).

According to the stipulation of facts, Marcelo Generoso, who worked in the weaving department of the corporation from November 1, 1956 to May 22, 1965, was stabbed to death on May 22, 1965 by his fellow employee, Antonio Lebantino, while he (Lebantino) was performing his duties. Lebantino was convicted of homicide and sentenced to pay an indemnity of six thousand pesos to the heirs of Generoso.

Lebantino was not able to pay the indemnity. The writ of execution issued against him was returned unsatisfied due to his insolvency.

On the other hand, the corporation paid to the heirs of Generoso the sum of five thousand two hundred seventy-nine pesos and thirty-six centavos as workmen's compensation.

The corporation or employer refused to pay the indemnity on the ground that its payment of workmen's compensation to the deceased employee's heirs is a bar to any further claim against the employer.

In holding the corporation liable for the civil indemnity adjudged against Lebantino, in spite of the fact that the corporation had already paid workmen's compensation to Generoso's heirs, the trial court relied on the ruling that "the circumstance that in a criminal prosecution the slayer of an industrial employee has been required to indemnify the heirs of the deceased does not affect the liability of the employer to pay compensation under the Workmen's Compensation Act" (Syllabus, *Taller Viuda de Nava vs. Ynchausti Steamship Co.*, 57 Phil. 751. Same holding in *Martha Lumber Mill, Inc. vs. Lagradante*, 99 Phil. 434; *Marinduque Iron Mines Agents, Inc. vs. Workmen's Compensation*, 99 Phil. 480).

This Court in the Nava case reasoned out that the obligation to pay the civil indemnity in the criminal case "is wholly distinct from the obligation imposed by the Workmen's Compensation Act and the latter is in no sense subsidiary to the former".

The situation in the Nava case is the reverse of that obtaining in this case. In the Nava case, the slayer was

required to pay civil indemnity in the criminal case (the record does not show that it was paid) and thereafter the deceased employee's heirs sought to claim workmen's compensation from the employer.

In the instant case, the employer paid workmen's compensation and thereafter the heirs of the deceased employee, relying on article 103 of the Revised Penal Code, sought to claim from the employer the civil indemnity which the slayer was not able to pay.

The corporation or employer contends that its payment of workmen's compensation is a bar to the claim for the civil indemnity because it was subrogated to the right of the deceased employee's heirs to claim damages from the killer of the employee. The corporation bases its contention on the following provisions of the Workmen's Compensation Law:

"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." (2nd paragraph is omitted.)

"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; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid:

"Provided, That in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings.

"The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of this Act, shall not be admissible as evidence in any damage suit or action."

On the other hand, the Revised Penal Code provides:

"ART. 102. Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments. - In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees" (2nd paragraph is omitted.)

"ART. 103. Subsidiary civil liability of other persons. - The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

Sections 5 and 6 of the Workmen's Compensation Law and articles 102 and 103 of the Revised Penal Code are statutes in pari materia. They should be construed together.

Compensation for workmen and other employees in case of death, injury or illness is regulated by special laws" (Art. 2196, Civil Code) which used to be Act No. 3428 as amended but which are now found in the Labor Code. (See Art. 1712 of the Civil Code which modified the fellow-servant rule in section 2 of the Workmen's Compensation Law as amended by Act No. 3812.)

The question is whether the employer's payment of workmen's compensation to Generoso's heirs bars them from claiming from the employer the civil indemnity due to the same heirs under the Revised Penal Code since Generoso's killer failed to pay it.

We hold that in view of the textile corporation's payment of workmen's compensation, its obligation to pay, in a subsidiary capacity (or in default of the killer), the civil indemnity adjudged against him in the criminal case, was extinguished. The instant case is an exception to the rule in article 103 of the Revised Penal Code.

Generoso's heirs could have chosen to claim workmen's compensation or any other remedy under the Civil Code or other laws. Their remedies were alternative and could not be claimed simultaneously. Having opted for workmen's compensation, they are bound by that election of remedy and are estopped to claim other remedies (*Manalo vs. Foster Wheeler Corp. and Capital Ins. and Surety Co., Inc.*, 98 Phil. 855). "Election of remedies is the adoption of one of two or more coexisting remedies, with the effect of precluding a resort to the others" (28 C.J.S. 1057 and 101 C.J.S. 492-3. See rulings under arts. 1191 and 1484, Civil Code and sec. 7, Rule 86, Rules of Court).

This holding is based on the unambiguous provisions of sections 5 and 6 of the Workmen's Compensation Law. The meaning of those provisions is beyond the pale of controversy. It is clearly provided in section 5 that the payment of workmen's compensation precludes "the employee, his personal representatives, dependents or nearest of kin" from resorting to "all other rights and remedies" which he might have "under the Civil Code and other laws" by reason of the personal injury on which the claim for workmen's compensation is based. There can be no doubt that the Revised Penal Code is included in the "other laws" mentioned in section 5.

Section 6 complements section 5 by providing that the injured employee who sustains a compensable personal injury has the option (1) to claim workmen's compensation or (2) to sue for damages the person responsible for the personal injury. In case the employee chooses to claim workmen's compensation, then, he cannot avail himself of any other remedy by reason of the personal injury.

And in case he is paid workmen's compensation, there is the further consequence that the employer succeeds the injured employee to the right to recover from the person responsible for the personal injury what the employer paid to the injured employee, subject to the proviso that any excess in the recovery would be paid by the employer to the "injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings".

The expression "injured employees or any other person entitled thereto" implies that the term "personal injury" includes death and that the deceased employee's heirs or the legal representative of his estate may choose either of the two options granted by section 6. Indeed, under the Workmen's Compensation Law, the term "injury" "includes death produced by the injury or sickness" (Sec. 39[c]).

Evidently, the law intends that the employee is not entitled to a double recovery based on his personal injury: from the third party and from the employer (*Alba vs. Bulaong*, 101 Phil. 434, 437). A similar intention pervades article 2177 of the Civil Code which provides that, while "responsibility for fault or negligence" under article 2176 (regarding quasi-delicts) "is entirely separate and distinct from the civil liability arising from negligence under the Penal Code", the plaintiff, however, "cannot recover damages twice for the same act or omission of the defendant".

Where, as in this case, it is the employer who is being required to pay twice for the same injury, there is all the more reason why the double indemnity should not be countenanced.

The legal issue in the instant case was touched upon in *Esguerra vs. Muñoz Palma*, 104 Phil. 582, where an

employee of the Franklin Baker Company, who experienced some pain in the waist while working, was not properly treated by the company physician. The treatment resulted in the partial loss of the use of his right arm. The employee filed a claim for workmen's compensation. While that claim was pending, he filed an action for damages against his employer, its physician and nurse.

It was held that the Court of First Instance had no jurisdiction to entertain that action because the employee had already elected to claim workmen's compensation. The syllabi in that case are quoted below:

"Workmen's Compensation Act; Claims for Injury; Liability of Third Parties; Election of Remedy under Act Bars Claim for Same Injury under Other Laws. - In case an employee suffers an injury for which compensation is due under the Workmen's Compensation Act, the injured employee has a choice to either look to his employer for compensation or proceed against the tortfeasor by ordinary action for damages.

"Then, following the ordinary rules of election of remedies, he cannot pursue both courses of action simultaneously. Thus, where, as in the present case, the claim for compensation had already been filed with the Workmen's Compensation Commission, no further claim for the same injury may be filed under either the new Civil Code or other laws.

"Same; Subrogation of Employer to Claimant's Rights. - If compensation is claimed and awarded, and the employer pays it, the employer becomes subrogated to and acquires, by operation of law, the worker's rights against the tortfeasor; thereafter, the worker can no longer proceed against the latter."

The injured worker cannot maintain concurrently the action for workmen's compensation and the ordinary civil action against the tortfeasor for damages (*Pacaña vs. Cebu Autobus Company*, L-25382, April 30, 1970, 32 SCRA 442).

In the instant case, the trial court erred in enforcing against the employer, defendant-appellant Universal Textile Mills, Inc., the subsidiary civil liability provided for in article 103 of the Revised Penal Code. The employer is not liable for such civil indemnity because it had already paid workmen's compensation to the victim of the homicide. It cannot be subjected to a double liability. Having paid workmen's compensation, the employer is subrogated ipso jure to the right of the heirs to claim civil liability from the author of the homicide.

Instead of being liable for the indemnity, the employer, as subrogee, is entitled to recover it from the convicted killer of the employee.

Following section 6 of the Workmen's Compensation Law, it was held that the payment of workmen's compensation to the employee who was separated from the service because of his blindness was a bar to his claim for separation pay (*Horario vs. Fernandez*, L-29882, May 26, 1977, 77 SCRA 125).

Under section 6, it was also held by the prewar Court of Appeals, speaking through Justice Tuason (later a member of this Court) that the injured employee has a right to elect whether he will seek compensation or damages. He cannot recover both damages and compensation. He cannot elect to take compensation and also bring an action against a third person for damages (*Lobrin vs. Singer Sewing Machine Company*, 40 O.G. 12th Supplement, p. 176, citing 71 C.J. 1533-4. Justices Bengzon, Padilla, Lopez Vito and Alex Reyes concurred in Justice Tuason's opinion).

The Lobrin case cites the ruling that "an employee, by his election to take damages without action and to release the third person, exercises his option to proceed against the third person, and his claim for compensation is barred" (71 C.J. 928; 5 *Labatt's Master and Servant*, 2nd Ed., p. 5441).

In the Lobrin case, it appears that one Brigido Lobrin, a supervising agent of the Singer Sewing Machine Company in Nueva Ecija, was injured while riding in a bus in the course of the performance of his duties. He was

hospitalized. Bachrach Motor Co., Inc., the bus operator, paid him two thousand pesos as full settlement of his claim based on his injuries.

Later, Lobrin sued his employer for workmen's compensation. It was held that Lobrin's election to accept damages was a bar to his claim for workmen's compensation.

The instant case is different from *Vda. de Clemente vs. Workmen's Compensation Commission*, L-43219, January 15, 1979, 88 SCRA 68, where it was held that the payment of damages to the heirs of a policeman who died in a vehicular accident, which payment was an amicable settlement of the criminal action, did not preclude the heirs from asking for workmen's compensation from the City of Manila, the policeman's employer. That claim did not make the employer liable for any double indemnity.

WHEREFORE, the trial court's judgment is reversed and set aside. The claim of the heirs of Marcelo Generoso for civil indemnity against Universal Textile Mills, Inc. (Civil Case No. 69214) is dismissed. No costs.

SO ORDERED.

Barredo, (Chairman), Antonio, Concepcion, Jr., Santos, and Abad Santos, JJ., concur.

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