

CRISPINIANO BLANCO, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION, TOMAS DRAGON AND ERLINDA DOMULOT, RESPONDENTS.

G.R. Nos. L-21385-86. August 22, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal from a decision of the Workmen's Compensation Commission in WC cases Nos. RO-1-981 and RO-1-1010-A, of the following tenor:

"WHEREFORE, the decisions appealed from should be, as they are hereby, set aside and respondent ordered:

(1) To pay claimants Sebastian Dragon and Bonifacia Dumlao the amount of THREE THOUSAND FIVE HUNDRED PESOS (P3,500.00), as death benefits; and the amount of TWO HUNDRED PESOS (P200.00), as burial expenses;

(2) To pay claimants Erlinda Domulot and Remedios Basa the amount of THREE THOUSAND FIVE HUNDRED PESOS (P3,500.00), as death benefits; and the amount of TWO HUNDRED PESOS (P200.00), as burial expenses;

(3) To pay this Commission the amount of SEVENTY TWO PESOS (P72.00), = as decision fees, pursuant to Section 55 of the Workmen's Compensation Act, as amended; and

(4) To pay the fees of claimants' (Dragon's and Domulot's) legal counsel in the total amount of FIVE HUNDRED TWENTY FIVE PESOS (P525.00) which represents 7.5% of the total compensation (P3,500.00 + P3,500.00 = P7,000.00) due both claimants in these two cases, pursuant to Section 6, Rule 26 of the Rules of WCC and Article 2208 (8) of the new Civil Code."

At about 3:30 in the morning of June 18, 1956, a six--by-six truck loaded with around sixty pieces of logs and with six men on board, turned turtle at Masinloc, Zambales. Four of said persons named Tomas Dragon, Diomedes Basa, An-tonio Panis and Wilfredo de la Cruz died instantaneously, while the other two, Amador Macaspac, driver of the truck, and Dominador Domulot, were spared. The owner of the truck was herein petitioner Crispiniano Blanco who had been engaged in the logging business since the year 1948. Basa, De la Cruz and Domulot were employed by him as wood cutters and were on board the truck upon his orders, to help the driver, Macaspac, in making the delivery of the logs. Panis acted as their foreman.

According to the evidence, Dragon and Basa, during their lifetime, earned an average weekly wage of P50.00 in addition to the food and cigarettes they used to receive. The former was survived by his parents, Sebastian Dragon and Bonifacia Dumlao, who were both totally dependent upon him for support, while the latter was survived by his wife, Erlinda Domulot, and an only daughter named Remedios, both of whom were also wholly dependent upon him for support.

Upon the death of Dragon and Basa, petitioner paid the latter's widow, Erlinda Domulot, the amount of P500.00.

A similar amount was paid to Sebastian Dragon, Tomas' father, and Rosario Dragon, the widow of Wilfredo de la Cruz. These sums of money were paid allegedly as consideration for the dismissal of the charges filed against the driver, Macaspac, who had also bound himself to pay the same amount to the three parties already named.

Notwithstanding the money paid to them as mentioned above, Sebastian Dragon and Erlinda Domulot filed their respective claims for death compensation. Petitioner denied liability, alleging that no employer-employee relation existed between him and the deceased Tomas Dragon and Diomedes Basa, and alleging further that he did not know that they were on board the truck that met the accident already referred to.

After due hearing, both claims were denied: that of Tomas Dragon in a decision rendered on August 28, 1961 by Hearing Officer Pedro A. de Leon, and that of Erlinda Domulot in a decision dated August 31 of the same year rendered by Hearing Officer Hipolito H. Nagui, both decisions holding that the claimants had failed to prove the existence of the employer-employee relation between petitioner Crispiniano Blanco, on the one hand, and the deceased Tomas Dragon and Diomedes Basa, on the other. The claimants appealed to the Commission who on November 20, 1962, through Chairman Nieves Baens del Rosario, rendered judgment setting aside both decisions and awarding compensation as provided in the decision appealed from. Petitioner's motion for reconsideration was denied by the Commission en banc on May 17 of the following year.

Thereafter and within the time provided by law, Blanco filed with this Court the Petition for Certiorari now under consideration relying in support thereof on the following:

"A. The right of the respondent Commission to decide the principal case after the Petition for Review had been withdrawn by the party filing the same;

"B. The right of the respondent Workmen's Compensation Commission to act upon a claim that has already prescribed pursuant to Section 24 of the Workmen's Compensation Act, as amended;

"C. The extent of the right of the respondent Workmen's Compensation Commission to admit hearsay evidence;

"D. The serious error of the respondent Workmen's Compensation Commission in considering the Amicable Settlement in a criminal case as proof of the employer-employee relationship between the petitioner and the deceased;

"E. The serious error of the respondent Workmen's Compensation Commission in holding that there is an employer-employee relationship between the petitioner and the deceased although no evidence was presented to prove this point;

"F. The serious error of the respondent Workmen's Compensation Commission in awarding burial expenses and attorney's fees to the claimants although the same has not been demanded and no proof whatsoever was presented by the claimants that they are entitled to these items awarded by the Workmen's Compensation Commission."

The contention that the Wage Compensation Commission lost its jurisdiction to act upon the petitions for review filed by the heirs of Tomas Dragon and of Erlinda Domulot upon the withdrawal thereof by them is without merit.

We agree with the Commission's finding that the alleged withdrawal of the petitions for review was not sufficiently established. It was denied by the claimant who allegedly signed the Motion to Withdraw who further stated in an affidavit filed with the Commission in connection with the alleged withdrawal that, if he, in fact, did sign the motion, his signature was obtained through fraud and misrepresentation because the only documents he remembers having signed were presented to him by petitioner, accompanied by a certain Justice of the Peace, the former having assured him that they were a mere certificate of the dismissal of the criminal case filed against the

driver, Macaspac.

It can not be denied that the Commission had jurisdiction to decide the question of whether or not the signature appearing on the motion to withdraw was obtained through fraud and misrepresentation. Having arrived at the conclusion that the claimant who was supposed to have signed it never intended to withdraw his claim and that his signature was obtained "through fraud and misrepresentation", said Commission was right in considering the petitions for review and in rendering thereafter the corresponding judgment.

Petitioner's contention that the claims had already prescribed is likewise untenable. Suffice it to say in this connection that he raised this defense not during the trial but only when the claimants appealed to the Commission. It is already well-settled in this jurisdiction that such defense cannot be raised for the first time on appeal, it being presumed that it was waived upon the employer's failure to plead it as a defense before or during the trial. (*Regalado vs. Visayan Shipping Co.*, G. R. L-42856, May 21, 1954; *Martha Lumber Mill vs. Lagrante*, G. R. L-7599, June 27, 1956; *Victorias Milling Co. vs. Wage Compensation Commission, et al.*, G. R. L-10533, May 15, 1957).

Moreover, petitioner is barred from invoking the defense of prescription for the reason that he had failed to controvert the claims now in question within the period provided by law. (Sec. 45, Workmen's Compensation Act, as amended). Petitioner says, however, that he could not have done so in view of his contention that no employer-employee relation existed between him, on the one hand, and the deceased Dragon and Basa, on the other. This is not legally sufficient to place him beyond the reach of the rule that the employer's failure to controvert a claim for compensation entitles the claimant to compensation as a matter of law, because petitioner herein had the right to choose between two defenses, and having chosen to stand on one, he must necessarily be deemed to have waived the other. Moreover, he could have alleged prescription as an alternative defense, but failed to do so.

Petitioner's last contention is that the Commission committed a grave abuse of discretion in taking into consideration and in giving probative value to the affidavit of Amador Macaspac, thus depriving him of the right to cross-examine him.

It is to be observed that while the affidavit aforesaid was admitted and apparently given some weight to prove the existence of the employer-employee relation, it was not the only evidence on this point. In reality, the Commission considered it merely as corroborating the following competent evidence presented upon the same issue: the evidence showing that the truck that figured in the fatal accident was owned by petitioner who had been engaged in the logging business since 1948; the evidence on the payment of the sum of P500.00 to each claimant in consideration of the dismissal of the criminal case filed against the driver, Amador Macaspac; and the testimonies of Sebastian Dragon (father of the deceased Tomas), Rosario Dragon, (wife of the deceased Wilfredo de la Cruz), Erlinda Domulot (wife of the deceased Diomedes Basa), and Sergio Domulot, Andres and Vedasto Dragon, all of them ex-wood cutters of the petitioner), clearly pointing to him as the employer of the two deceased from 1948 to 1956.

With what has been said heretofore, petitioner's remaining contentions have been sufficiently answered. We only wish to add that even if we were to disregard the payment of P500.00 made by petitioner to the heirs of the two persons mentioned heretofore, there would still be sufficiently substantial evidence in the record to support the findings of fact of the Commission.

WHEREFORE, the appealed joint decision is affirmed, with costs.

Concepcion, C.J., Makalintal, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Reyes, J.B.L., and Zaldivar, JJ., are on leave.

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