

COMPAÑIA MARITIMA, PETITIONER, VS. ERNESTA CABAGNOT VDA. DE HIO, FOR HERSELF AND AS GUARDIAN-AD-LITEM OF HER MINOR CHILDREN, DIONISIO, JR., ERNESTO, RAUL, AND ESTER, ALL SURNAME...*G.R. No. 10675. April 29, 1960*

Ponente: GUTIERREZ DAVID, J.

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Appeal by certiorari from a decision of the Workmen's Compensation Commission.

The petitioner, Compañia Maritima, is a domestic corporation organized under Philippine laws for the purpose of engaging in interisland trade, while the respondent Pablo Velez Special Watchmen's Agency is a single proprietorship owned and operated by Mr. Pablo Velez, engaged in the business of supplying watchmen and protective services to shipping companies requesting such services. The watchmen supplied by the said agency are recruited from the Manila Bay Watchmen's Association, a duly registered labor organization with whom Velez had a collective bargaining contract under which fifteen per cent (15%) of the total wages of the watchmen are collected by the latter as commission. The members of the Manila Bay Watchmen's Association compose the membership of the Pablo Velez Watchmen's Agency.

On or about the later part of August, 1954, a strike was staged by the Marine Officer's Guild and the petitioner contracted with the Pablo Velez Special Watchmen's Agency for the latter to give security to the officers of the said petitioner who did not join the strike. Among the members of the Pablo Velez Watchmen's Agency detailed with the company was the late Dionisio Hio. On September 4, 1954, the said Dionisio Hio was on a night shift duty as gangwayman of the M/V BASILAN, a vessel owned by petitioner. At about 8:30 o'clock in the evening of that same day, the said Dionisio Hio and several others were picked on a jeep by the Chief Engineer of the vessel in order to escort him to his home at Perla, Harrison, Pasay City. Upon their arrival at his residence, the said engineer offered some drinks to the deceased and the other watchmen who accompanied him home. After having several rounds of liquor, the watchmen left the engineer's house and they arrived at their respective posts at about 2:00 a.m. the following day, September 5. At about 6 o'clock that morning, the body of Dionisio Hio was found floating near the side of the M/V BASILAN along the gangway of which he was assigned for duty.

The deceased is survived by his wife Ernesta Cabagnet Hio and three minor children all of whom were dependent on his wages at the time of his death.

Upon a claim for compensation made by the widow, in her behalf, and in behalf of her children, the Workmen's Compensation Commission, finding that Dionisio Hio died of an accident that occurred in the course of his employment, and declaring the Compañia Maritima as employer thereof, ordered that company to pay these survivors the sum of P4,000.00 as death compensation, P200.00 as reimbursement for burial expenses and P41.00 as fees required under section 55 of the Workmen's Compensation Act, as amended.

In this appeal, we are asked to rule on (1) whether or not the deceased was an employee of the Compañia Maritima, entitled to compensation under the Workmen's Compensation Act; and (2) whether or not the deceased was intoxicated while performing his duty as watchman at the time of his death.

The petitioner claims that it never had any employer-employee relationship with the deceased. The claim is without merit. While it is true that no written employment contract between the petitioner and the deceased was presented in evidence, it is not disputed that the petitioner company owns the vessel where the deceased was assigned as gangwayman, and it was found by the Commission that the salary of the deceased was paid directly from the funds of petitioner. From these circumstances, it would appear that at the time of the accident the deceased was under petitioner's employ.

There is nothing to the contention that the deceased was but a casual employee whose services were engaged only for the duration of the strike and, therefore, not entitled to compensation. The section of the law cited by the petitioner in support of this contention reads:

"SEC. 39 (b). 'Laborer' is used as a synonym of 'employee' and means every person who has entered the employment of, or works under a service or apprenticeship contract for an employer. It does not include a person whose employment is purely casual and is not for the purpose of the occupation or business of the employer. * * *."

It is clear from the above that for an employee to be excluded from the term "laborer" or "employee" under the Act, his employment must be "purely casual and is not for the purpose of the occupation or business of the employer". In a case (*Cajes vs. Philippine Manufacturing Co.*, 40 Off. Gaz., p. 1251), where this Court had occasion to interpret the above-quoted section, it was held that the casual service that the law speaks of must be construed, interpreted and concluded by the circumstance of whether or not the aforesaid service is related with the occupation or business of the employer. We have reason to believe that the work of the deceased in the case at bar was in connection with the business of petitioner. It has been shown that it was not only during the strike that the Compañia Maritima needed the services of watchmen. In fact, the petitioner admitted having its own permanently employed watchmen doing the same duties as that of the deceased. The duties referred to must be that of giving security not only to the cargo of the vessel but also to the lives of its officers and crew, and they are, undoubtedly, in connection with the business of the petitioner. Without security, any shipping company could not possibly go on with its maritime business.

In disclaiming liability, the petitioner further insists that the deceased was intoxicated while performing his duty as gangwayman in the early morning of September 5, 1954. The Workmen's Compensation Commission, however, upon, examination of the evidence on this point, noted serious contradictions in the testimony of the witnesses. While one witness for the Pablo Velez Watchmen's Agency testified that after the alleged drinking spree at the house of the Chief Engineer of the M/V BASILAN the deceased together with his companions proceeded to their respective posts at Pier 8, another witness averred that they went to other night spots in Pasay City. On the other hand, the testimony of the claimant widow that the deceased never got drunk while on duty, and the autopsy report and testimony of Dr. Cabreira of the Manila Police Department to the effect that there were no indications of alcohol in the body of the deceased would show that the deceased was not drunk at the time of his death. There is authority to the effect that where the testimony or evidence shows a conflict in the testimony as to whether or not the deceased was intoxicated at the time of the injury, it is not error to fail to find, that the deceased was intoxicated, for such ruling is necessarily included in a finding that the accident arose out of the employment (*Napoleon vs. McCullough*, 89 N.J.L. 716; 99 Atl. 385, cited in *Labor Laws* by Francisco, Vol. 2, p. 156). The defense of drunken ness in workmen's compensation cases must be supported by clear and convincing proof to the effect that such intoxication or drunkenness rendered the employee incapable of doing his work so

that he could not be said to be engaged in his employment. The accident or injury must be shown to have arisen out of his drunken condition and not out of the work. No such evidence was adduced in the present case.

It is worthy to note that the witnesses who testified on the alleged drunkenness of the deceased were witnesses for the Pablo Velez Watchmen's Agency, and not for petitioner. The latter could have presented as witness its Chief Engineer to bolster its defense of drunkenness, but it failed to do so. It has been ruled that the burden of establishing intoxication and that it caused the injury is on the employer (*Ruprecht vs. Red Lumber Co.*, 2 Cal. Ind. Acc. Comm. 860; 12 N.C.C.A. 79, cited in *The Workmen's Compensation Law* by Morabe and Inton, p. 115). Having failed in this case to prove that the deceased died in a state of drunkenness, the petitioner is not excused from its obligation as employer to pay compensation to the widow and children of the deceased.

Wherefore, the decision appealed from is affirmed at petitioner's costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

Padilla, J., took no part.

Montemayor, J., reserves his vote.

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