

HEIRS OF PATRICIO PABORES, PETITIONERS, VS. THE COMMISSIONER, WORKMEN'S COMPENSATION COMMISSION, UNION COSTRUCTION CO., AND LIBERTY OIL FACTORY, RESPONDENTS.

G. R. No. 12034. August 30, 1958

Ponente: FELIX, J.

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FELIX, J.:

From March 12, 1956, up to July 23, 1966, Patricio Pabores was a mason-carpenter helper in the employ of the Union Construction Co., Inc., with a daily wage of P4.50. During that time, the company was undertaking the construction of the building of the liberty Oil Factory at Highway 54, Quezon City.

On July 19, 1956, at about 12:10 p.m., while most of the workers were taking their noon-day meal, they heard an unusual sound from the direction of the unfinished toilet of the edifice under construction and upon investigation, they found Patricio Pabores unconscious, his body sprawled on the ground beside the shock absorber of an airplane which had been dug out of the compound by the workers the day before, and with a bleeding thigh. He was brought to the North General Hospital and was admitted into the Emergency Ward at 2:05 p.m. After his wound, which was about 1 1/2 inches long, was sutured and dressed, he was allowed to go home. On July 22, 1956, however, he was readmitted upon his complaint of pain in the injured part of his body, and at five o'clock in the afternoon of the following day, he expired. The cause of death was certified to as gas gangrene.

Upon his death, Pabores was survived by a legitimate daughter had with his deceased wife, a 12-year old girl named Magdalena, and 2 allegedly acknowledged natural children, i.e., a daughter named Prima, 1 year and 9 months old, and a son Jaime, age 9 months. Said heirs, represented by their guardians, filed a claim for compensation for the death of their father with the Workmen's Compensation Commission against the Union Construction Co., Inc., and the Liberty Gil Factory (W. C. case No. 44914). Hearing was duly held, and although there was no eyewitness to the occurrence, the referee who conducted the investigation, apparently relying on the report of the Quezon City Police Department which investigated the incident, rendered a decision dated December 12, 1956, finding that the deceased must have tried to tamper or tinker with the shock absorber of the airplane found in the scene of the mishap which caused the injury when the compressed air was released, and held that as the death did not arise out of his employment, it was not compensable.

From this decision, claimants appealed to the Commissioner who, on January 9, 1957, affirmed the decision of the referee declaring that he found no error in said decision to warrant a modification or reversal thereof. Hence, claimants filed the instant petition seeking to review and reverse the decision of the Commissioner denying their claim for compensation by reason of the death of Patricio Pabores.

Petitioners herein charged that the referee rendered the decision of December 12, 1956, before their memorandum was received by that Commission and thus failed to consider certain points stressed, therein. Respondents, on the other hand, contend that the memorandum was filed out of time. It can be gathered, from the record, that the

parties were really allowed to file their respective memoranda up to the morning of December 12, 1956, and as claimants mailed their memorandum in the afternoon of said day, it is understandable that the referee failed to receive the same at the time agreed upon. It cannot be denied, however, that claimants' memorandum brought about something which is conspicuously missing in the report of the investigator of the Quezon City Police Department and which was minimized in the referee's decision, i.e., the declaration of Patricio Pabores to the Physician who attended him at the hospital that he sustained the injury when he fell from a scaffolding of the building under construction. In this connection, it is significant to note that nobody actually saw the accident; that other than the deceased himself, no one knew what actually transpired. As between the statement of the injured laborer, who, at the time he made such declaration had no reason to state a falsehood as he even expressed his disinterestedness to take any action against his employer, and the report of the investigators based on mere conjectures and assumptions, the first version deserves and should be given more weight than the latter. However, it must be remembered that a memorandum is but a note to help the memory, the object of which frequently is to help the memory of another person other than the writer thereof (*Bissell vs. Beckwith*, 32 Conn. 509; *Words & Phrases*, Vol. 27, p; 29). The memorandum is not evidence and the court or body to whom a memorandum is directed may or may not consider the same.

There is, however, one point raised by respondents that merit prior consideration. They called the attention of the Court to the fact that although petitioners received a copy of the decision of the Workmen's Compensation Commissioner upholding the ruling of the referee on February 4, 1957, and while it is true that the petition for review of said decision was filed with the Supreme Court on February 14, 1957, the notice of appeal was filed with the Commission only on February 19, 1957. Rule 44 of the Rules of Court, which equally governs appeals from decisions of the Workmen's Compensation Commission, provides:

SECTION 1. How to Perfect an Appeal.—An appeal by certiorari from an award, order or decision of the Court of Industrial Relations (or Workmen's Compensation Commission), shall be perfected by filing with said court (or Commission) a notice of appeal and with the Supreme Court a petition for certiorari against the adverse party within ten (10) days from notice of the award, order or decision appealed from. (As amended by C. A. No. 559).

Under the aforequoted provision, the petition for review must be filed with the Supreme Court and a notice of appeal with the Commission within 10 days from receipt of the decision, order or award sought to be reviewed. And while to the petitioners goes Our sympathy, We cannot obviate the fact that although the petition for review was filed with this Court within the reglementary period, petitioners filed their notice of appeal with the Commission 5 days late or 15 days after they were notified of the decision. This is certainly an error fatal to the present action. (See *Martha Lumber Co., Inc., vs. Lagradante et al.*, 99 Phil., 434; 52 Off. Gaz., [9] 4230).

In view of the foregoing, We find it unnecessary to pass upon the question of whether or not the Commissioner's ruling is not supported by the evidence on record. Wherefore, the instant petition is hereby dismissed, without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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