

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. VIVENCIA ANDO PEPITO, AND THE MINORS, LOLITA, ALBERTO, NELSON, MARYLEN & MARIA, ALL SURNAMED PEPITO, REPRESENTED BY THEIR MOTHER, T...

G.R. No. 21335. December 17, 1966

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

Between the night of November 30 and the early morning of December 1, 1961, Demetrio Pepito, a crew member of m/v P. Aboitiz, disappeared therefrom while said vessel was on voyage.

On December 26, 1961, petitioner received from respondent Vivencia Ando Pepito a letter dated December 21, 1961, stating —

"You are hereby notified that one of your employees, Mr. Demetrio Pepito, a crew member of M/V P. Aboitiz, one of your vessels, was reported missing as per record of the Deck Log Book of the M/V P. Aboitiz while said vessel was navigating from Surigao to Tandag. It is our belief that Mr. Pepito is already dead. A diligent search has been made but the same is rendered futile."

On January 12, 1962, Vivencia Ando Pepito, for herself and in behalf of her children, the other respondents, filed with Regional Office No. 8, Department of Labor, Cebu City, a notice and claim for compensation, asking for death benefits, and describing the circumstances of the alleged death of Demetrio Pepito on the night of November 30, 1961 in the following manner, viz: "While the vessel was navigating from Surigao to Tandag, the herein deceased was lost or reported missing as per record of the deck log of the M/V P. Aboitiz".

Having received on February 15, 1962 from the chief, labor operations section of said regional office, a letter enclosing the foregoing claim, petitioner, on February 16, 1962, sent to that office the employer's report of accident or sickness, controverting the claim for compensation and alleging that Demetrio Pepito was found missing on December 1, 1961 and giving its own version of the incident as follows: "Pepito disappeared while off duty, and when the vessel was near Bucas Grande Island while the ship was in navigation on a calm sea arid good weather. We do not know if he purposely jumped and awam ashore".

On March 21, 1962, without hearing, the Regional Administrator issued an award for death benefits to respondents, planted upon the ground that "the right to compensation of the claimant has not been controverted by respondent within the period provided for by law".

Motion to reconsider was of no avail. Petitioner sought review from the Workmen's Compensation Commission. In a decision dated March 8, 1963, said Commission affirmed. The reconsideration sought was thwarted in the Commission's en banc resolution of April 5, 1963.

We are now called upon to review on certiorari the Commission's decision of March 8, 1963 and its resolution of April 5, 1963.

- There should be no quarrel as to the fact that petitioner came to know of the disappearance of Demetrio Pepito on December 1, 1961, Petitioner so admits in its report of accident or sickness. And then, on December 26, 1961 petitioner received from respondent Vivencia Ando Pepito a letter informing it of the fact that Demetrio Pepito was reported missing on December 1, 1961, as per record of the deck log book of m/v P. Aboitiz.

Decidedly, the purported controversion — filed on February 16, 1962 — was made beyond the periods set forth in the law and the rules and regulations of the Workmen's Compensation Commission, namely, 14 days from the date of accident or 10 days from knowledge thereof.[1]

- Logically, the next problem we face is the scope of the non-controversion which may be clamped upon petitioner.

By Section 2, Rule 7 of the Rules of the Workmen's Compensation Commission, "[A]ll the general rules of procedure in the Courts of First Instance shall be suppletory to the Rules of the Workmen's Compensation Commission but the commission shall not be bound by the technical rules of procedure".

We go deep into the recitals of the notice and claim for compensation. It simply says that while the vessel was navigating, "the herein deceased was lost or reported missing". This claim was filed on January 12, 1962, or barely 42 days after the event took place. At that time, no presumption existed that Demetrio Pepito was dead. The boat was not lost. This opens up a number of possibilities. Because nothing is certain. Nobody knows what has happened to him. He could have transferred to another vessel or watercraft. He could even have swam to safety. Or he could have died. Or worse, he could have taken his own life. Legal implications — such as right to compensation, succession, the legal status of the wife — are so important that courts should not so easily be carried to the conclusion that the man is dead.[2] The result is that death cannot be taken as a fact.

Non-controversion in compensation cases, as in the case of pleadings in ordinary civil cases,[3] simply means admission of facts, not conclusions of law.

As applied to the case before us, the mere failure to controvert the statement that Demetrio Pepito is believed to be "dead" or "deceased" because he "was lost" or was "reported missing", does not import an admission that the man is actually dead, but that he was just lost or missing.

We, therefore, rule that petitioner's non-controversion admits but the fact that Demetrio Pepito was lost or missing, but certainly is not an admission of the actual fact of death.

- But petitioner was directed to pay compensation without inquiry into the fact and circumstances of death. This trenches upon petitioner's right to due process enshrined in Section 1(1) of Article III of the Constitution that "[N]o person shall be deprived of life, liberty, or property without due process of law." The award having been made before petitioner was given an opportunity to be heard on the debatable fact and circumstances of death, that award has no leg to stand on. We nullify that award as a violation of a constitutional proscription.

- But the Commission would want to downgrade petitioner's cry of denial of due process by a reference to a certain investigation report dated January 12, 1962, made — barely 42 days after the incident — by one Anselmo M. Morales, a constabulary sergeant, to the effect that Demetrio Pepito was "on board said boat on her maiden voyage to Tandag, Surigao del Sur; that at about 2:00 o'clock a.m. on December 1, 1961, Francisco Ygot, a watchman on duty, noticed that Demetrio Pepito was not in the crews' sleeping quarters; that when a thorough search of the boat failed to locate the missing crew member, the boat's course was reversed upon instruction of its captain in order to look for him; that because no trace of Demetrio Pepito or his body could be found, the search was abandoned and the boat then proceeded to Tandag; and that no one knew what happened to Demetrio Pepito because he disappeared at midnight on a rough sea (big waves)".[4] This report does not prove death. At best, it

confirms a known fact — disappearance, with the circumstance that "no one knew what happened to Demetrio Pepito". Besides, said report was not brought up at any hearing. It was but the result of an investigation. Whatever the investigator said would not rise above the level of hearsay twice removed. By Section 7 of the Workmen's Compensation Law "[A]ll ex parte evidence received by the Commissioner shall be reduced to writing and any party in interest shall have the opportunity to examine and rebut the same". Petitioner was not afforded an opportunity to as much as examine or contradict this report. It thus results that said report is of no value as evidence.

- The employer-employee relationship is conceded. The event arose out of, and took place in the course of, employment. It matters not that the disappearance occurred, as alleged by petitioner, while Demetrio Pepito was off-duty. For, that incident happened while the boat was on a sea voyage. He had no choice. He had to be in the vessel.[5]

- From the time the event took place, i.e., from the night of November 30, 1961, to this date, more than 4 years have elapsed. It is because of this that we approach this problem with a practical end in view. By this time, it cannot be gainsaid that the case of the disappearance of Demetrio Pepito could come within the coverage of paragraph 3, Article 391 of the Civil Code, which reads:

"ART. 391. The following shall be presumed dead for all purposes, including the division of estate among the heirs: x x x x x (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years."[6]

With the known facts, namely, that Demetrio Pepito was lost or missing while the boat was navigating, he could have been in danger of death. But of course, evidence must be taken that his existence has not been known for four years or thereafter.

UPON THE VIEW WE TAKE OF THIS CASE, we vote to set aside the appealed decision of March 8, 1963 and the resolution of April 5, 1963, and to direct that the record hereof be returned to the Workmen's Compensation Commission with instructions —

- To hold a hearing, with notice to the parties, to determine (a) whether Demetrio Pepito is alive; or (b) whether he should be presumed dead, under the provisions of paragraph 3, Article 391 of the Civil Code; and (c) the circumstances of death if it be found or presumed that he died; and
- To render judgment accordingly. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Ruiz Castro, JJ., concur.

[1] Sec. 45, Workmen's Compensation Law; Sec. 2, Rule 5, Workmen's Compensation Commission Rules.

[2] Article 391, Civil Code; *Madrigal Shipping Co., Inc. vs. Del Rosario, et al.*, L-13130, October 31, 1959, citing *Joaquin vs. Navarro*, 93 Phil. 257, 265; *Victory Shipping Lines vs. Workmen's Compensation Commission, et al.*, L-9268, November 28, 1959.

[3] *Tec Bi & Co. vs. Chartered Bank of India, Australia & China*, 41 Phil. 596, 605-606; *Dalandan, et al., vs. Julio, et al.*, L-19101, February 29, 1964.

[4] Emphasis supplied.

[5] Martha Lumber Mill, Inc. vs. Lagradante, etc., et al., 99 Phil. 434, 437.

[6] Art. 391(3), Civil Code, is now Sec. 5(x), par. 3(3), Rule 131, Rules of Court.

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