

**A. D. SANTOS, INC., PETITIONER, VS. CONCHITA VDA. DE SAPON, IN HER OWN BEHALF AND GUARDIAN AD LITEM OF HER MINOR CHILDREN JOSE AND ANGELITA, BOTH SURNAMED SAPON, RESPONDENTS.**

*G.R. No. 22220. April 29, 1966*

Ponente: REYES, J.B.L., J.

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**REYES, J.B.L., J.:**

Appeal from an award of respondent Workmen's Compensation Commission requiring petitioner A. D. Santos, Inc., to pay to the widow and minor children of the late Gervacio Sapon P4,000.00 as death compensation benefits; P200 for the burial expenses; P80.00, medical expenses; P41.00 as Workmen's Compensation Commission fees; and P300.00 as counsel fees.

The Commission found that the late Gervacio Sapon had worked for years as a taxi driver of petitioner, which operated a transportation business under the trade name "CITY CAB". He earned a minimum of P10.00 a day, working 7 days a week. During the last five months of his employment, however, the deceased worked almost 24 hours a day. On September 21, 1961, Sapon, while driving one of petitioner's taxicabs, sideswiped a child; he was detained and investigated by the police but released later in the same day. The driver arrived home very pale and was taken to one Dr. J. C. Brigino, who had been treating him for a heart ailment since 1960. Despite taking the medicines prescribed, Sapon had to be taken to the Rizal Provincial Hospital on September 29, 1961; he was confined and treated, but died on October 3, 1961. The medical evidence was to the effect that the proximate cause of death was congestive heart failure due to arteriosclerosis. The employer gave the widow P50.00 for funeral expenses.

On January 8, 1962, a formal claim for death benefits was filed against the employer (petitioner herein). The latter answered on February 6, 1962. The hearing officer awarded compensation on a finding that Sapon's heart ailment was aggravated by the nature of his employment and by the emotional disturbance wrought by the vehicular accident in which he was involved. The findings and award were, upon appeal, affirmed in 1963 by the Commissioner in banc, which also overruled the employer's contention that the claim was barred due to filing of the death claim five (5) days beyond the 3 months period determined by section 24 of the Workmen's Compensation Law. The employer appealed to this Court.

The first issue posed by appellant is that, the claim having been filed beyond the 3-month limit fixed by the Compensation Act, the same can not prosper, citing our decisions in *Manila Railroad Company vs. Workmen's Compensation Commission*, L-18388, June 28, 1963, and *Pangasinan Transportation Co., Inc., vs. Workmen's Compensation Commission*, L-16490, Resolution of January 30, 1964. We find that the law and doctrines thus invoked are not applicable to this case: first, because it nowhere appears that the employer (though it had voluntarily contributed to the funeral expenses) had filed in due time with the Commission the notice or report of accident or disability required by section 45 of the Workmen's Compensation Act, and such failure, as therein

provided, constitutes a renunciation (or, more appropriately, a forfeiture) of the right to controvert the claim filed by the dependents of the deceased, including the defense that the claim for compensation was not filed within the statutory period, as ruled in *Manila Railroad Co., vs. Workmen's Compensation Commission*, L-19377, January 30, 1964, and in *National Development Co., vs. Workmen's Compensation Commission*, L-19863, April 29, 1964; *Malan Bros vs. Conanan*, L-19019, April 30, 1963; *Carlos vs. De la Rosa*, L-17939, May 20, 1962.

In the second place, the employer's voluntary contribution to the funeral expenses of the deceased constitutes part payment of death benefits or compensation (*Visayan Stevedore Transportation Co. vs. W. Compensation Commission*, L-22135, Dec. 27, 1963) that tolls the delay in the filing of the claim (*Workmen's Compensation Act*, section 24, in fine; *Visayan Stevedore Transportation vs. Workmen's Compensation Commission*, ante; *Plywood Industries, Inc. vs. Workmen's Compensation Commission*, L-18165, May 30, 1962).

Appellant's second issue, that the claim is barred because the accident of hitting a child was due to notorious negligence of the deceased, need not give pause. While section 4 of the Compensation Act declares that compensation is not to be allowed for injuries caused by notorious negligence of the employee, it plainly refers to injuries suffered by the laborer, not injuries caused by him to strangers. Anyway, the employer's failure to seasonably report the illness and death of the workman forfeits this right to set up these defenses (*Compensation Act*, section 45, *supra*; *Tan Lim vs. Workmen's Compensation Commission*, L-12324, August 30, 1958; *Republic vs. Workmen's Compensation Commission*, L-17813, April 30, 1963).

The third defense urged by appellant, that the accident did not arise out of and in the course of the employment, is, likewise, without merit. The decision under appeal was not predicated upon the heart disease of Sapon being caused by the nature of his work, but that it was aggravated by it, and common experience supports the Commission's conclusion that severe strain, such as by excessive hours of driving a taxicab, does aggravate a heart condition like that of the deceased. Appellant forgets that the statutory presumption of compensation, under section 44(1) of the Compensation Act, places upon the employer the burden of proving that the employee's injury was not, and could not be, caused or aggravated by the nature of his work (*Maira vs. Workmen's Compensation Commission*, L-18066, Oct. 30, 1962; *Pangasinan Transportation Co. vs. Workmen's Compensation Commission* and *Gatdula*, L-16490, June 29, 1963; *Iloilo Dock & Engineering Co. vs. Workmen's Compensation Commission*, L-16202, June 29, 1962). This burden has not been satisfactorily met by appellant employer.

The last error assigned by the employer is that the Commission should have made the award on the basis of weekly payments prescribed by section 10 of the Act, instead of requiring payment in a lump sum. Not only is there no showing in the record before us that this matter was opportunely brought to the attention of the Commission, but, the 208 weeks set by section 10 (equivalent to 4 years) having already elapsed since the death of Sapon in September of 1961, no actual injury to the appellant's rights has been caused.

Wherefore, the appealed decision of the Workmen's Compensation Commission is affirmed, with costs against appellant A. D. Santos, Inc.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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