

BENIGNA CAUNAN, PLAINTIFF AND APPELLANT, VS. COMPANIA GENERAL DE TABACOS DE FILIPINAS, DEFENDANT AND APPELLEE.

G.R. No. 34194. February 20, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Benigna Caunan, mother and next of kin to the deceased Gregorio Afable, brought this action under the Workmen's Compensation Act to recover a certain sum of money from the defendant, a commercial company duly organized and registered in accordance with law, by way of compensation for the death of said deceased, which took place while he was working for said company. The plaintiff appealed from the judgment of the Court of First Instance of Tayabas dismissing her complaint, without costs.

The facts proven have been summed up by the trial court as follows:

"Before the incident in question occurred, the defendant maintained a branch house where rice and cigarettes were sold. Ten years before, the branch had been closed, and since that time the company had engaged in Mauban exclusively in the purchase of copra. While the house was being so used, the ground floor served as the office and the first story as the dwelling place of the employees. The actual operations and transactions with regard to the purchase of copra took place in a shed situated about seven meters from the house. However, the employees did not live in the house by way of partial compensation for their services, but as caretakers of the building.

"Under these circumstances, the roof of the house required repairing. The defendant had its employee in Lucena, Alejandro Maralit, look for a carpenter to undertake the repairs. He engaged carpenter Esteban Madeja, who needed additional men, and, among others, secured the services of Gregorio Afable, the plaintiff's son. On October 3, 1929, Esteban Madeja, Gregorio Afable, and the other carpenters went over to Mauban, where they presented themselves to Quiterio Borgoiia, the defendant's head buyer in that town. These carpenters worked from the 3d to the 5th of October. In the afternoon of the latter day, Gregorio Afable was employed in nailing down the iron roof of the house, when, stepping on a sheet of galvanized iron not yet nailed, he slipped and fell seven meters to the ground, dying the following day as a result of the accident.

That afternoon it had rained, but Afable wore rubber-soled shoes."

Counsel for the appellant assigns the following alleged errors in his typewritten brief:

"1. The trial court erred in holding that laborer Gregorio Afable was guilty of notorious negligence.

"2. The trial court erred in not awarding to the plaintiff the compensation provided for in paragraph (d) of section 8 of Act No. 3428."

In our opinion the only point in controversy requiring a careful and serious consideration is whether the injured workman was guilty of notorious negligence, as this phrase is used in the law. This is so because, according to section 4 of Act No. 3428 of the Philippine Legislature, notorious negligence is one of the three grounds for denying indemnity or compensation to the workman for an accidental injury, incapacity, or death. In view of the

conclusions hereinafter stated, we deem it unnecessary to discuss the other aspects of the case, relative to the nature of the building where the accident occurred, and the capacity in which the injured workman was rendering services.

The record shows, as the trial court correctly held, that on that afternoon, before the accident occurred which proved fatal to Gregorio Afable, it had rained and the galvanized iron roof was slippery. The deceased workman, who could not have been inexperienced, inasmuch as he had been following his trade for a number of years and had been working on that building for a month, in spite of that condition, in itself dangerous, wore rubber-soled shoes, and without taking the necessary and proper precautions that a careful workman would take, stepped on an iron sheet not yet nailed down, and because of his own weight, the angle of the roof, and its slippery condition, the sheet slid down seven meters to the ground, taking him with it, as a result of which accident he died the following day.

However much the deceased may be deserving of our sympathy, we cannot but adhere to the conclusion at which the trial court arrived, that the accident was caused directly or immediately by his own notorious negligence, so that his legal representative is not entitled to any compensation.

The deceased had been working upon the roof of that building for some time, and he knew which sheets were loose and had to be nailed down; with the exercise of ordinary care and precaution he could have avoided the fatal step that cost him his life. The negligence thus evinced is something more than mere carelessness or lack of foresight, and falls under the designation of evident and manifest, or notorious, negligence.

The appealed judgment is affirmed, without pronouncement of costs in this instance. So ordered.

Johnson, Street, Ostrand, Rormuddez, and Villa-Real, JJ., concur.

DISSENTING

MALCOLM, J.

This is a case of a mother bringing action for the death of her son against the defendant corporation pursuant to the provisions of the Workmen's Compensation Act, to recover the amount provided in that Act. Standing alone, the case is not of great importance, but as it may be taken as indicative of the attitude of the courts toward the Workmen's Compensation Act, the case is of paramount importance. The primary questions are these: Will the courts give a liberal interpretation to the Workmen's Compensation Act and thus effectuate legislative intention, or will the courts give a strict interpretation to the Act and thus nullify the main purposes of the law?

As pointed out in the majority decision, one Gregorio Afable, a carpenter, while repairing the roof of a building belonging to the Compania General de Tabacos de Filipinas, situated in the municipality of Mauban, Tayabas, fell from the roof to the ground and received injuries which resulted in his death. The cause of the death, according to the testimony of a witness which was accepted by the trial court, was on account of a rain and the carpenter wearing shoes with rubber soles which made him slip and fall when he stepped on a piece of galvanized iron. On the other hand, according to counsel for the plaintiff, there was no way of accounting for the manner by which the carpenter was killed. For the purposes of the appeal, the findings of fact made by the trial judge should be respected, and so we should frankly concede that the death of the carpenter took place in the manner described in the portion of the decision of the trial judge which is quoted approvingly in the majority decision.

The Workmen's Compensation Act, No. 3428, became effective in 1928, and so is of recent origin with little interpretative jurisprudence. It authorizes certain dependent relatives to secure specified percentages for personal

injuries of employees. A ground for compensation is "any accident due to and in the pursuance of the employment." Compensation is not allowed for injuries caused by "notorious negligence" of the laborer who had the "accident."

The keywords in the law, it will be noted, are "accident" and "notorious negligence." None of the words are susceptible of technical definition. Yet, when we ordinarily speak of "accident," we think of something which is unforeseen—of injuries not expected or designed by the workman himself (*Heitz vs. Ruppert* [1916], 218 N. Y., 148). When we turn to the phrase "notorious negligence," we encounter more difficulties. The basic expression in the British Act was "serious or willful misconduct" which some American courts call "gross negligence." In the Philippines, an examination of legislative records discloses that the original draft of the Workmen's Compensation Act made use in English of the expression "gross negligence," that is, the want of any or slight care, which thereafter evolved into "notorious negligence," which is even stronger in significance.

With the facts as found by the trial judge, and with the meaning of the applicable provisions of Philippine law fairly plain, the inquiry should now be directed to determining if the occurrence was foreseen and if there was the want of slight care on the part of the laborer. In this connection, the majority opinion explains how the accident? which is admitted to be an accident, could have been avoided, but finds present "notorious negligence." We may perhaps concede that there was carelessness, even negligence, present, but to my mind it is difficult to conceive of the mishap being characterized by "notorious negligence." It is all very well at this later date to tell what the workman should have done, but if such extraordinary care was always used, there would be few accidents to be compensated by the Workmen's Compensation Act. Without permitting a refinement of definitions to obstruct the enforcement of the spirit of the law, it may be safely asserted that when the laborer fell from the roof there was an "accident," and that because he happened to use rubber soled shoes, which was customary, and inadvertently stepped on a piece of galvanized iron, which the elements had made slippery, he did not disclose thereby "notorious negligence" or, to use equivalent although possibly less emphatic phrases of other jurisdictions, "serious or willful misconduct" or "gross negligence."

After all, the attitude of the judiciary towards the Workmen's Compensation Act is decisive. The authorities tell us that a plain hostility to statutes of this class was remarked in some of the earlier opinions of the United States, and constructions were sometimes adopted which defeated in a measure the salutary purpose of the enactment. We are told further that fortunately the judicial attitude changed with more than usual celerity, and that the law is now generally approved in all jurisdictions. The courts look to the purposes sought to be accomplished, and they are inclined to a fair, indeed a liberal, construction of the law in favor of the employee. (See generally 28 R. C. L., pp. 739, 755, 759, 787, and 789.)

In this respect the Supreme Court of Wisconsin has said:

"The conditions giving rise to a law, the faults to be remedied, the aspirations evidently intended to be efficiently embodied in the enactment, and the effects and consequences as regards responding to the prevailing conceptions of the necessities of public welfare, play an important part in shaping the proper administration of the legislation. In the aggregate, they sometimes shed very efficient light in aid of clearing up obscurities as to the legislative intent. The administrative commission and the courts should fully appreciate that and be imbued with and guided by the manifest intent of the law to eradicate, utterly, the injustice to employers and employees, and the public as well, of the old Bystem, and to substitute in its place an entirely new one based on the highest conception of man's humanity to man and obligation to industry upon which all depend; recognizing the aggregate of its attending accidents as an element of cost to be liquidated and balanced in money in the course of consumption,—a system dealing with employees, employers, and the public as necessarily mutual participants in bearing the burdens of such accidents, displacing the one dealing only with the class of injuries happening through inadvertent failure, without real moral turpitude, to exercise average

human care, and placing employee and employer, whose interests are economically the same, in the false position of adversaries, to the misfortune of both and the public, intensified by opportunity for those concerned as judicial assistants to profit by such misfortunes. Most lamentable it will be, if this new system—so freighted with hopes for the minimizing of human burdens and their equitable distribution—shall not endure and be perfected to the best that human wisdom can attain." (Milwaukee vs. Miller [1913], 154 Wis., 652.)

As recently as 1929, the United States Supreme Court in speaking of the Federal Employer's Liability Act said:

"The act is not to be narrowed by refined reasoning or for the sake of giving 'negligence' a technically restricted meaning. It is to be construed liberally to fulfill the purposes for which it was enacted and to that end the word may be read to include all the meanings given to it by courts and within the word as ordinarily used." (Jamison vs. Encarnacion [1929], 281 U. S., 635.)

The writer has gone to the trouble to scan the reports and debates in the Philippine Legislature when the Workmen's Compensation Act was under consideration. Naturally there were divergencies of opinion. One representative prophesied truly that the use of the clause "notorious negligence" was unfortunate and would give rise to needless litigation. However, running all through the reports and debates, there is patently evident a sincere desire on the part of the legislators to strengthen the bill before them, to provide a method to avoid industrial disputes, to abolish certain principles of the old law relative to negligence, and to safeguard the rights of the working class. Just as certainly should a spirit of liberality characterize the interpretation of the Workmen's Compensation Act by the courts in order to give effect to the very laudable purposes of the Legislature.

Accepting the findings of fact and giving to the Workmen's Compensation Act a liberal interpretation to reflect its purposes, it is my firm conviction that death resulted from an "accident," and that "notorious negligence" on the part of the laborer was not disclosed. I must register my strong dissent and vote for the reversal of the judgment appealed from.

VILLAMOR, J.:

I agree with the dissenting opinion of Justice Malcolm.

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