

GLORIA ENCISO, PLAINTIFF AND APPELLEE, VS. MARIANO DY-LIACCO, DEFENDANT AND APPELLANT.

G. R. No. 35584. November 03, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant, Mariano Dy-Liacco, from the decision of the Court of First Instance of Camarines Sur by virtue of which he was sentenced to pay the plaintiff, Gloria Enciso, the sum of P4.20 a week, until the day of her death or until she marries again, the whole period not to exceed 208 weeks, and to pay the costs.

The plaintiff, as widow of Meliton Dimamay, instituted the action to recover of the defendant a certain compensation for the death of her husband, in accordance with the provisions of Act No. 3428 of the Philippine Legislature.

Meliton Dimamay had been employed by the appellant as master of his launch, the Aloneros. At the time referred to in this action, the appellant was a business man engaged as a contractor for the construction of the municipal building and the public school-house of the town of Caramoan, Province of Camarines Sur, for the price of P18,500 and P21,250 respectively, making a total of P39,750.

On September 2, 1929 while the Aloneros rode at anchor behind the warehouse belonging to Li Seng Giap & Co., in the Bay of Nato, of the aforementioned province, a pretty strong hurricane burst out, and as said master Dimamay thought the boat was not safe where it was, because if the wind veered to the west, the waves would make it impossible to save the boat, he decided to bring it into a river, there considered as a shelter from rough weather, further up the Nato Bay. At 9 o'clock that night and while the wind was gaining in intensity he made for that point, but as he came out into the sea, the anchor stuck somewhere, possibly at a rock, and the launch could not get out. The big waves filled the boat, and it went down with its master and a crew of four or five men, the only survivor being Domingo Manuel San Gaspar.

At the trial the parties agreed upon the following facts:

"The parties agree that Meliton Dimamay died on September 2, 1929 in Nato Bay, municipality of Sagnay, Province of Camarines Sur, while in the service of the defendant Mariano Dy-Liacco, as master of motor boat Aloneros, belonging to said defendant; that the plaintiff, Gloria Enciso is the widow of Meliton Dimamay, and was living with him at the time he died; that as master of said launch, Meliton Dimamay had the absolute and exclusive control thereof; that upon the aforesaid date, September 2, 1929, a storm broke out in the Province of Camarines Sur; that to date the widow aforementioned has not contracted marriage."

The appellant assigns the following errors in his brief:

"FIRST ASSIGNMENT OF ERROR

"The trial court erred in holding that this case comes under the Workmen's Compensation Act (Act No. 3428),

for the following reasons:

"(a) Because it is not shown that the gross income of the employer (the defendant) in the trade, occupation or profession in which the accident occurred was P40,000 or more during the next preceding year.

"(b) Because the Workmen's Compensation Act does not apply to marine accidents.

"(c) Because the death of the deceased was due to force majeure, or to a fortuitous event.

"SECOND ASSIGNMENT OF ERROR

"The trial court erred in rendering judgment against the defendant in favor of the plaintiff in accordance with the Workmen's Compensation Act.

"THIRD ASSIGNMENT OF ERROR

"The trial court erred in denying the motion for new trial."

The first point discussed by the first assignment of error is that the appellee failed to show that the appellant had a gross income of not less than P40,000 during the year immediately preceding that when her husband died, that is, 1928.

It cannot be denied that counsel for the appellee failed to adduce the available evidence upon this relevant and important fact. We note that counsel attempted to establish this gross income by putting a question to the defendant himself, which the court ruled out upon objection by counsel for the defendant. And counsel neither excepted to the ruling of the court, nor insisted upon presenting evidence on this wholly relevant and essential matter. Nevertheless, we are of opinion that Exhibit D-1, introduced without any objection from counsel for the appellant, is sufficient. This public document is a certificate issued by the Deputy Collector of Internal Revenue, stating that the appellant's gross income during the year 1928 exceeded P40,000.

The appellant contends that such evidence is insufficient because it does not show that the business he was engaged in as contractor, in the pursuit of which he acquired the launch, brought an income not less than the amount stated. The contention is untenable because the evidence shows he was not engaged in any other business, and so the gross income must be presumed to have been obtained in the sole business in which he was engaged, namely, the contracting business. If he wanted to show that the income had nothing to do with his business as contractor, the burden of proof fell upon him.

The next point the appellant takes up is whether Act No. 3428 applies to the accident we are considering, and he contends that the provisions of this law do not cover the present case. It would be enough, to refute this contention, to cite section 38 of the Act in question, which reads as follows:

"SEC. 38. Interisland trade.—This Act shall cover the liability of the employers towards employees engaged in the interisland trade, and also in the foreign trade when such is permissible under the laws of the United States and the Philippine Islands."

A casual reading of this section will show that the sea accident in which Dimamay died comes under it, since the Aloneros was then engaged in the interisland trade.

It is also argued that the accident was due to force majeure and therefore the appellant cannot be made responsible for it according to law. It has been repeatedly stated that the Workmen's Compensation Law was enacted to abrogate the common law and our Civil Code upon culpable acts and omissions, and that the employer need not be guilty of neglect or fault, in order that responsibility may attach to him. Bearing in mind this purpose, the appellant's contention is evidently untenable.

"The compensation acts, especially the pioneer enactments differ considerably, one from another, in many essential aspects. While the purpose sought to be accomplished is the same, the legislatures of the various

states chose diverse means for its attainment. One thing is characteristic of all of the acts; the common law doctrines of negligence are abrogated, and in place of the common law procedure is substituted a scheme for achieving cheap, speedy justice." (28 R. C. L., p, 714.)

"* * * Admitting, however, that the compensation acts do create liability without fault, the courts have uniformly held this to be no objection to their validity. It is pointed out that our jurisprudence affords numerous examples of liability without fault and the deprivation of property without fault being attributable to its owner. Statutes making railroad corporations absolutely liable, without regard to negligence, for injuries to property caused by fire escaping from their locomotive engines, are clearly statutes creating liability without fault, yet these statutes have been upheld by all the courts of the states in which they have been enacted, as well as by the Supreme Court of the United States. As a matter of fact, the workmen's compensation act does exactly the same thing as the safety appliance acts; it imposes new duties of care on the employer—the difference being that in one case the duty is announced in definite terms, whereas in the other it rests in implication. As expressed by the United States Supreme Court, 'the common law bases the employer's liability for injuries to the employee upon the ground of negligence; but negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence.' * * * " (28 R. C. L., pp. 752, 753.)

The last two assignments of error are mere corollaries of the preceding ones, and do not call for further discussion.

The judgment appealed from being in accordance with the law, is hereby affirmed, with costs against the appellant. So ordered.

Street, Malcolm, Villamor, Ostrand, Abad Santos, Vickers, and Butte, JJ., concur.

DISSENTING

VILLA-REAL, J.:

I regret I am constrained to dissent. The plaintiff alleged that in 1928 the defendant had a gross income of P40,000, and more, as contractor and business man. She was therefore obliged, according to the law, to prove that in the contracting business where the launch was employed, the defendant obtained an income of over P40,000, and this she has failed to do. The first assignment of error, then, is well-founded.

DISSENTING

HULL, J.:

I dissent, assignment 1-A of error is well-founded. Judgment affirmed.

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