

**VICTORIA TALLER VIUDA DE NAVA, PLAINTIFF AND APPELLANT,
VS. YNCHAUSTI STEAMSHIP CO., DEFENDANT AND APPELLEE.***G. R. No. 35741. December 20, 1932*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Iloilo by Victoria Taller Vda. de Nava, for the purpose of recovering the sum of P1,000.92 from the Ynchausti Steamship Co., it being alleged that said amount is due to the plaintiff under the Workmen's Compensation Act, No. 3428 of the Philippine Legislature, by reason of the death of her husband in the course of his duty, while serving as helmsman (timonel) on the inter-island steamer Vizcaya, under the circumstances stated in the complaint. Upon hearing the cause the trial court absolved the defendant from the complaint, and the plaintiff appealed.

The case was submitted upon an agreed statement of facts from which it appears that the Ynchausti Steamship Co. is engaged in the business of operating vessels in the coastwise and inter-island trade, and on April 2, 1930, the steamer Vizcaya, one of its vessels, was being maneuvered in the mouth of the Iloilo River, at Iloilo. At this time Valentin Nava held the position of helmsman (timonel) on said boat, receiving a monthly compensation of P35. In connection with moving the boat Nava, in charge of other members of the crew, was engaged in hauling in the ship's cable and in coiling the cable on the deck of the boat preparatory to passing it down a hatchway and bestowing it in its proper place in the vessel. While thus engaged Nava found the space which they required for coiling the cable partly occupied by a folding bed belonging to one of the third-class passengers. Nava asked whose bed it was, and Dalmacio Villanueva, one of the passengers, answered that he was the owner of the bed. Thereupon Nava said that he (Nava) would push it to another place because it interfered with the work. Suiting the action to the word, he pushed the bed with his foot towards the other side of the ship. This act aroused the anger of the owner of the bed, and hot words were exchanged, in the course of which Villanueva, using one of the wooden bars of the bed, gave Nava a jab in the pit of the stomach. Under the impact of this blow Nava leaned back, and at this moment Vicente Villanueva, a brother of Dalmacio Villanueva, ran up to Nava and stabbed him with a fan knife just above the left nipple. The blade penetrated Nava's heart and he died almost instantly. For the crime of homicide thus committed Vicente Villanueva was later sentenced to imprisonment for fourteen years, eight months and one day, reclusion temporal, with accessories, and was required to indemnify the family of the deceased in the amount of P1,000, with costs. The deceased left a wife and seven children, and this action for compensation was instituted by the widow, under Act No. 3428 of the Philippine Legislature, as amended.

The answer of the defendant raises several questions all of which were decided in favor of the plaintiff by the trial court with the exception of the most vital one which will chiefly engage our attention in the course of this opinion. But as the defendant relies in its brief upon the various points decided against it in the appealed decision, it is advisable to notice these points as a preliminary to the discussion of what we consider to be the main question.

Among other things, it is insisted that the death of Valentin Nava was not an accident within the meaning of the Workmen's Compensation Act, No. 3428. Under section 2 of Act No. 3428, as it stood when this incident

occurred, compensation is demandable for "a personal injury from any accident due to and in the pursuance of the employment". By the word "accident" as here used it is intended to indicate that the act causing the injury shall be casual, in the sense of being unforeseen, and one for which the injured party is not legally responsible. Now, in the case before us, the death of Valentin Nava, was not, at least as regards the perpetrator of the deed, any accident whatever. The death was caused by the criminal and intentional act of Vicente Villanueva. But an act may be an accident as regards one person or from one point of view and not an accident as regards another person and from another point of view. This homicide was not attributable to the act of the deceased himself and was not capable of being foreseen as a likely consequence of the discharge of his duties. The trial court therefore correctly held that the death of Nava was due to an accident within the meaning of section 2 of Act No. 3428.

Again, it is insisted that Nava was not an "industrial employee", within the meaning of the Workmen's Compensation Act, inasmuch as he was employed as a helmsman (timonel) and his duties were not of an industrial nature. This contention takes too narrow a view of the meaning of the phrase "industrial employee" as used in the Act cited. As helmsman on the boat Nava was charged with the performance of duties connected with piloting of the boat and controlling its movements when in motion. Duties of this character are clearly of an industrial nature, since they are concerned with effecting the ends and purposes of industry. The definition, of "industrial employment", as given in subsection (d) of section 39, Act No. 3428, covers all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain, subject only to the limitation of yearly gross income. Nava was therefore an industrial employee and entitled to compensation under the Act, provided the other circumstances attendant upon the accident which caused his death were of such nature as to bring him within the purview of the Act.

It is further insisted that Act No. 3428, as amended, does not cover the case of an employee upon a coastwise vessel. In this connection attention is directed to the fact that, under section 38, Act No. 3428 extends to the cases of "employees engaged in the inter-island trade"; and it was only by Act No. 3812 (section 12) that the provision was amended so as to include employees engaged in the "coastwise and interisland trade". From this it is supposed that the case in question does not fall under section 38 of Act No. 3428. The suggestion is in our opinion without merit. In the first place, the word "inter-island", as originally used in section 38, was apparently used in a broad sense, to include all shipping in and among the islands, in vessels of Philippine registration, and it is not limited to shipping from a port of one island to a port of another island. The expression "the coastwise and" was therefore inserted in the amendatory Act merely for the purpose of clarifying a possible ambiguity and to bring the phraseology of the Act more into harmony with the technical terms commonly used in the Customs laws and regulations. Even supposing, therefore, that the Vizcaya was only engaged in the carrying of trade between different ports of the same island—a fact which does not appear—the "accident" with which we are here concerned should be considered within the purview of the law. It is not apparent that the meaning of the law was changed in any essential feature by this amendment.

Still, again, it is insisted that the case does not come under Act No. 3428 for the reason that it does not appear that the defendant had a gross income during the year immediately preceding the one during which the accident occurred of not less than P40,000. But we note that in the agreed statement of facts it is stated that during the last twelve months anterior to the month of April of 1930, the defendant had a gross income of more than P40,000 as a result of its business. This was evidently intended to cover the requirement expressed in subsection (d) of section 39 of Act No. 3428, and although the stipulation does not technically cover the gross earning for the full calendar year anterior to the calendar year in which the accident occurred, we are of the opinion that the trial judge committed no error in interpreting the stipulation in that sense.

Finally, it is supposed that the circumstance that the criminal court imposed the civil obligation on Vicente

Villanueva to indemnify the family of the deceased in the amount of one thousand pesos makes it improper to allow additional compensation in this case. As the trial court properly held, the suggestion is without merit. In the first place, it does not appear that the criminal indemnity has been paid and, in the second place, that obligation is wholly distinct from the obligation imposed by the Workmen's Compensation Act and the latter is in no sense subsidiary to the former.

This brings us to consider the most important question in the case, namely, whether the death of Valentin Nava occurred in the course of his employment, or was the result of the nature of such employment. In this connection we quote section 2 of Act No. 3428, which runs as follows:

"SEC. 2. Grounds for compensation.—When any employee receives a personal injury from any accident due to and in the pursuance of the employment, or contracts any illness directly caused by such employment or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified."

This provision was amended by section 1 of Act No. 3812 so as to read as follows:

"SEC. 2. Grounds for compensation—When any employee receives a personal injury from any accident arising out of and in the course of the employment, or contracts any illness directly caused by such employment, or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified."

This last provision, having been enacted since the death of Valentin Nava, is not directly applicable to the case before us, but it may properly be quoted for purposes of comparison and interpretation. Fixing our attention then more particularly upon section 2 of Act No. 3428, it is quite clear that the death of Valentin Nava was not due to any illness directly caused by his employment or the result of the nature of such employment. We are of the opinion, however, that it occurred in the course of his employment and "in pursuance of the employment", as this expression is used in the provision cited. The attorneys for the appellee presents a narrow view of Nava's employment and insists that, inasmuch as he was employed as helmsman, he was acting within the scope of his duties only when his hand was on the helm of the vessel and he was engaged in actually guiding its motions. We are of the opinion that his duties should be considered as having greater latitude. It is true that the term indicative of his employment was that of helmsman, but we think that his duties should be considered as comprehending acts done by him in helping to guide the ship. In maneuvering a vessel, in entering and leaving ports, it is necessary for the ship's officers in charge of the motions of the vessel to avail themselves of cables; and the taking in of a cable and the coiling of it upon the deck are acts properly incident to controlling the motion of the vessel. It results that, when Nava found that one of the third-class passengers had placed his bed on the deck in a position where it was in his way, he acted within the scope of his duty when he pushed the bed back; and when the fatal assault was made upon him because of that act, it must be considered that his death resulted from an act done in the line of his duty.

At this juncture it may be well to give a few words of explanation concerning the verbiage of section 2 of Act No. 3428 and of the amendment effected in this section by Act No. 3812, and particularly in the substitution, in the latter Act, of the expression "arising out of and in the course of the employment" for the expression "due to and in the pursuance of the employment" used in Act No. 3428. Upon this point we note that Act No. 3428 was adopted by the Philippine Legislature in Spanish, and the original of the section is taken from the statutes of the Territory of Hawaii (section 3604, Chapter 209 of the Revised Laws of Hawaii, 1925). Our English version here is the official translation into English of the Spanish version as adopted by the Philippine Legislature. In the Hawaiian law the expression used in the part of the statute here under consideration is "arising out of and in the course of such employment". These words, after passing through the Spanish version, and upon being turned back into

English, appeared as "due to and in the pursuance of the employment". It follows that the expression found in the amendatory provision (section 1 of Act No. 3812) is merely a reversion to the English wording of the Hawaiian statute, which corresponds, we may add, to the wording commonly used in the American statutes. It is clear therefore that the amendment introduced by the last named Act was merely intended to bring the English version of our statute into verbal conformity with the Hawaiian and other American laws. No change whatever in the meaning of the provision was intended to be effected by said amendment.

The attorneys for the appellee have called our attention to some American decisions, which, it is insisted, support the conclusion of the trial court that the homicide which resulted in the death of Valentin Nava was not an accident due to and in the pursuance of his employment, as this expression runs in section 2 of Act No. 3428. The cases most emphatically urged upon us in this connection by the appellee are *State of Minnesota ex rel. Common School Dist. No. 1, in Itasca County vs. District Court* (140 Minn., 470; 15 A. L. R., 579), and *Schmoll vs. Weisbrod & Hess Brewing Co.* (89 N. J. L., 150; 97 Atl., 732). In the first of these cases the facts were as follows:

The school district employed a young woman to teach in the Round Lake school, some 35 miles from Deer River in Itasca County and 25 miles from Black Duck in Beltrami County, these two places being the nearest railway points. The country was densely wooded and sparsely settled. The school was a one-room school and fifteen pupils attended. The nearest house was a half mile away, and the boarding house was a mile or a mile and a quarter. On the morning of September 20, 1916, an unknown man asked for food at the boarding place of the teacher. On the evening of that day, when her work at the school house was finished, she started for her boarding house, taking a short cut through the woods. She had some papers which she intended to correct at home in the evening, and a book to study. As she was on her way, and when just off the school grounds, she was criminally assaulted by this for the gratification of his passions, and as a part of the transaction he shot her, destroying the sight of her left eye. She filed a claim for compensation against the school district, under the Compensation Act, which required an employer to pay compensation "in every case of personal injury or death of his employee, caused by accident, arising out of and in the course of the employment". The District Court for Itasca County awarded the compensation prayed for, and the School District brought an action for certiorari in the Supreme Court of Minnesota, claiming that the injury suffered by the employee did not arise out of and in the course of the employment. The Supreme Court reversed the judgment of the lower court, and held that the injury for which compensation had been awarded by the district court did not arise out of the employment.

In the second case it appeared that the deceased was a route foreman in the employ of the respondent. His duties were to look after the various beer delivery routes and see that they were properly conducted, and on Saturdays he had a beer delivery where he delivered beer and collected the moneys therefor. On the 19th day of December, 1914, on a Saturday night, at about 8 o'clock, the deceased made a delivery of beer at some dwelling house in Atlantic City leaving his wagon in the street, a little distance away, and while returning to his wagon he was assaulted and shot by some person unknown. The deceased mounted his wagon and returned to brewery and accounted to his employer for the moneys intrusted to and collected by him and then went to a hospital where he, ten days later, died from the effects of the gunshot wound.

In the first of these cases it is quite evident that there was no casual relation between the service which the plaintiff, as a teacher, had rendered and the assault which was committed upon her. In the second case the motive of the assault was evidently robbery, and there was no direct connection between the work done by the victim of the robbery and the assault. If it had appeared, in the first case, that the teacher had been attacked while in the act of properly disciplining one of her pupils, and because of that fact, it would, we think, have been held that the injury had been incurred in the course of her employment. The second case brings us perhaps into more debatable ground, but the casual relation between the performance of duty and the assault was not as manifest as in the case

now before us. The following decisions, gleaned from American jurisprudence, shed further light upon the situation before us:

In *In re Wooley vs. Minneapolis Equipment Co. and Globe Indemnity Co.* (157 Minn., 428; 196 N. W., 477), where a salesman was shot and killed in a street brawl brought on by himself and for his own purposes, even though he was engaged in his employee's business just before the fracas, and intended to resume it afterwards, the court held that the injury did not arise out of the employment.

In *Scholtzhauer vs. C. & L. Lunch Co.* (233 N. Y., 12; 134 N. E., 701), it was held that the injury did not arise out of the employment, where a waitress in a restaurant was shot by a negro dish-washer because she had declined an invitation to go out with him and had stated that she would not go out with a negro.

In the case now in hand it seems clear to us that the plaintiff is entitled to the compensation demanded and no question has been made as to the amount thereof.

The judgment appealed from will therefore be reversed, and the plaintiff will recover of the defendant the sum of P1,000.92, with interest from the date of the filing of the complaint, and with costs. So ordered.

Villa-Real, Hull, Vickers, and Imperial, JJ., concur.

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