

JAHARA ET AL., PLAINTIFFS AND APPELLANTS, VS. THE MINDANAO LUMBER COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 36830. February 16, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an action commenced in the Court of First Instance of Zamboanga by the plaintiffs for the recovery of compensation from the defendant company for the death of the workman, Moro Sapturani, in accordance with the provisions of Act No. 3428, otherwise known as the "Workmen's Compensation Act".

The above-mentioned plaintiffs appealed from the judgment rendered by the trial court absolving the defendant from the complaint, without special pronouncement as to costs.

Prior to the date of the accident, the late Moro Kingan was engaged in the business of cutting timber within the defendant's concession, employing laborers for that purpose, among them Moro Sapturani. Kingan paid his cutters' wages and delivered the timber and firewood to the defendant company which paid him the corresponding value thereof. On the morning of February 12, 1930, between 6 and 6.30 o'clock, Sapturani, who was about to go to the place where he was engaged in cutting timber, by means of the defendant's train operating in that place, was run over by the last car of the train as it was moving backwards, and died almost instantly as a result of injuries received on different parts of his body.

Mora Jahara, the divorced wife of the deceased, his daughters, Albaya and Mandasiang, and their respective husbands, Ladya and Bachaja, are the plaintiffs and appellants in this case.

Such are the undisputed facts of record. We shall discuss later how the accident occurred.

The appellants assign the following alleged errors in the trial court's decision:

"I. The trial court erred in not granting the plaintiffs the period of three days prayed for, within which to file and introduce as evidence a document showing the gross annual income for the year 1929 of the defendant corporation, of over P40,000.

"II. The court a quo erred in holding that the accident causing the death of Moro Sapturani was due to his negligence in trying to embark on the rear platform of the train of the defendant corporation at the Chinkang Sawmill, Naga-Naga, which was moving backwards at the time of the accident, and not holding that Moro Sapturani was overrun and killed by the train of the defendant corporation thru the negligence and carelessness of the employees of the latter.

"III. The trial court erred in holding that the preponderance of the weight of evidence is in favor of the defendant and against that of the plaintiffs.

"IV. The trial court erred in holding that in view of the negligence of Moro Sapturani, the defendant can not be made liable for the payment of compensation to the plaintiffs under the Workmen's Compensation Act No. 3428 as amended by Act No. 3812, and in not holding that even admitting the facts stated in the decision, the

paupers-appellants are still entitled to their claim under the law.

"V. The trial court erred in denying plaintiffs' motion for new trial."

We shall refrain from considering all of the errors assigned by the appellants, limiting ourselves to the discussion and solution of the questions relating to the manner in which the accident happened and whether the accident or Sapturani's death was the result of his own notorious negligence. Proceeding thus, we shall decide the appeal on its merits.

The trial court declared that the deceased was notoriously negligent in connection with the accident, because the evidence shows that he tried to board the rear platform of the car as it was moving backwards; that he succeeded in getting a foothold but failing to obtain a hold of the car, he fell to the ground and was run over by the train.

We have reviewed all the evidence presented and find that the conclusions reached by the trial court are supported by a preponderance thereof. We note that the plaintiffs' witnesses named Bachaja and Mandasiang gave a different version of the accident stating that the deceased, who was between the rails at that time, was knocked down and run over by the train as it was moving backwards, without the engineer noticing him, but we agree with the trial court that this story is improbable and inaccurate. As stated by the trial court, it was difficult for the accident to happen in this manner because, even without the warning of the whistles, Sapturani should have been aware of the proximity of the train and could easily have avoided it by only getting off the rails.

Turning to the legal aspect of the case, we likewise agree with the lower court that Sapturani acted with notorious negligence in attempting to board the train in the manner in which he did and, consequently, the action cannot be maintained in accordance with subdivision 3 of section 4 of Act No. 3428 which provides that no action for the recovery of compensation shall prosper when the accident upon which it is based is due to the notorious negligence of the workman.

The judgment appealed from should be, as it is hereby, affirmed without costs, inasmuch as the appellants are paupers. So ordered.

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

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