

PAZ, ANTONIO, GUILLERMO, BELEN, AND GERONIMO, SURNAMED DE LOS SANTOS, ALL MINORS, BY FELIX DE LOS SANTOS AS GUARDIAN AD LITEM, PLAINTIFFS AND APPELLEES, VS. GREGORIO C. JAVIER, ...

G.R. No. 37019. March 08, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the defendant from the following decision of Judge Francisco Santamaria of the Court of First Instance of Manila:

"El Juzgado encuentra probado, que Bonifacio de los Santos, empleado como carpintero por Fructuoso Esquillo, contratista en la construccion de un corral para cerdos y una oficina para el encargado de dicho corral, ambos de la propiedad del demandado Gregorio C. Javier, se encontraba el 15 de junio de este año encaramado sobre un andamio, ocupado en la colocacion de un quilo o viga en el alero de la referida oficina en construccion, y hallandose ocupado enesa obra dicho carpintero Bonifacio de los Santos cayo al suelo desde una altura de 5 ó 6 metros y muriendo al dia siguiente 16 de junio, siendo la causa de la muerte la fractura de la base del craneo con hemorragia, segun consta en el certificado de defuncion Exhibit D. En la fecha del accidente el carpintero Bonifacio de los Santos ganaba un jornal o salario de P2 diarios.

"Estos son los hechos que el Juzgado encuentra probados y sobre los cuales no existe discusion.

"Arguye el demandado, que habiendose probado que el obrero Bonifacio de los Santos cayo mientras estaba ocupado en la construccion de un edificio y no siendo industrial el dueño del edificio, no es responsable de la muerte del obrero.

"El abogado de los demandantes en contestation cita el parrafo (d) del articulo 39 de la Ley No. 3428 enmendada por la Ley No. 3812. En efecto, la disposicion citada dice:

" '(d) "Empleo industrial" en el caso de patronos particulares, incluye todo empleo o trabajo en un edificio, ocupacion o profesion ejercida por un patrono con fines de lucro, excepto la agricultura, las instituciones de caridad y la servidumbre domestica, pero en cuanto a la agricultura, los empleados para la operacion de implementos mecanicos tendran derecho a los beneficios de esta Ley.'

"Declara el Juzgado, que dados los hechos probados en esta causa y admitidos por el demandado, este queda sujeto a los preceptos de las Leyes Nos. 3428 y 3812, cuando como en el caso de autos muere por accidente del trabajo y mientras esta ocupado en la construccion de la obra encomendada al obrero o empleado que resulto victima del accidente. La condition exigida en la ley, a saber, el trabajo en un oficio u ocupacion con fines de lucro, esta no solo probada en esta causa, sino admitida por el demandado, constituyendo pruebas acerca de este particular no solo las declaraciones de los testigos prestadas en la vista de esta causa y mediante deposiciones, sino tambien el hecho de haber el demandado solicitado en junio de 1931 las licencias Nos. 232588 y 232589 para la manufactura de jamon y cria de cerdos, expedidas por el Municipio de Caloocan en cuyo municipio estaba

situado el negocio del demandado (Exhibit A-1) y los exhibits 4 y 5 del demandado.

"En cuanto a la accion ejercitada por los demandantes en esta causa, el Juzgado encuentra probado y admitida por el demandado, que el obrero Bonifacio de los Santos a su fallecimiento dejo como hijos suyos a los cinco demandantes, todos ellos dependiendo para su subsistencia de su padre el ahora finado Bonifacio de los Santos, y siendo el mayor de los hijos Paz de los Santos que, declarando en la vista de esta causa en el presente mes, dijo tener 18 años de edad y hallarse casada.

"El finado Bonifacio de los Santos no dejo viuda a su fallecimiento y de acuerdo con el articulo 8 de la Ley No. 3428, parrafo (c), los hijos tienen derecho a la compensacion fijada en dicho articulo en relacion con lo dispuesto en el articulo 10 donde aparece excluido de la compensacion el hijo casado que haya cumplido 18 años de edad como asi ocurre en esta causa con respecto a la demandante Paz de los Santos; pero los cuatro hijos restantes llamados Antonio, Guillermo, Belen y Geronimo, menores de 18 años de edad tienen derecho a una compensacion total del 50 por ciento del promedio del salario semanal del difunto obrero Bonifacio de los Santos y por un periodo que no exceda de 208 semanas en total, y ademas a gastos de entierro por una suma que no exceda de P100. Como en la presente causa no se ha ofrecido por los demandantes prueba acerca de la cantidad gastada en el entierro del finado Bonifacio de los Santos, el Juzgado fija en la suma de P30 como cantidad razonable para gastos de entierro y a la que tienen derecho los demandantes en esta causa.

"Habiendose probado por los demandantes, sin discusion por el demandado, que el finado ganaba un jornal de P2 diarios en la fecha de su fallecimiento o sean P12, semanales, los cuatro demandantes Antonio, Guillermo, Belen y Geronimo, de apellidos De los Santos, hijos del finado Bonifacio de los Santos, tienen derecho a cobrar del demandado una compensacion equivalente a la mitad del salario semanal de su padre y por un periodo de 208 semanas, o sea un total de P1,248.

"Por lo que, se dicta sentencia a favor de los demandantes Antonio, Guillermo, Belen y Geronimo, de apellidos De los Santos, menores de edad, condenando al demandado a pagar a dichos demandantes las indicadas sumas de P30 y P1,248 mas las costas."

The appellant makes the following assignments of error:

"1. El Juzgado inferior erro al admitir las deposiciones presentadas por la parte demandante exhibits A, A-1 y A-2.

"2. El Juzgado a quo cometio error al perder de vista que el apelante al tiempo del accidente, no tenia aun el negocio de cerdos ni menos la Fabrica de Jamones.

"3. El Juzgado inferior erro al no apreciar que el accidente de autos se debio a la notoria negligencia del difunto Bonifacio de los Santos.

"4. El Juzgado a quo cometio error al declarar que se ha probado que el salario de Bonifacio de los Santos, en vida, eran P2 diarios.

"5. El Juzgado inferior erro al no tener en cuenta que el obrero accidentado no ha sido contratado ni pagado por el apelante sino por el contratista, Fructuoso Esquillo.

"6. El Juzgado a quo cometio error al condenar al demandado a la luz de los hechos probados."

We do not find it necessary to consider appellant's assignments of error separately. The principal question is that raised by the fifth assignment of error, that is, whether or not the defendant was the employer of the deceased. According to subsection (a) of section 39 of Act No. 3428, as amended by Act No. 3812, "employer" comprises every association of persons, incorporated or not, public or private, and the legal representative of the deceased

employer. It comprises the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there.

It appears from the evidence that the defendant was going to buy and sell hogs and to establish a plant for curing hams, and that through Carmen Javier de la Rea he engaged a contractor by the name of Fructuoso Esquillo to construct a corral for hogs and an office for the person in charge of the corral. The price agreed upon was P500. The contractor was to furnish the labor. The work was to be finished within fifteen days. The deceased Bonifacio de los Santos was one of the workmen engaged by the contractor. He was paid by the contractor and was subject to the contractor's orders. The defendant had no direct intervention in the work. On June 15, 1931, while Bonifacio de los Santos was engaged in placing a beam, he fell from a scaffold and received injuries which caused his death the next day.

Under these circumstances, we are constrained to hold that Bonifacio de los Santos was not an employee of the defendant. As already indicated, the business which the defendant was going to establish was that of buying and selling hogs and curing hams. The defendant was not a building contractor, and it was not a part, of his business to construct buildings. If we refer again to the definition of employer, we shall see that it comprises the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there. We take this to mean that although the owner of the factory is not the direct employer of the laborers employed therein because there is an independent contractor in the factory, the owner of the factory is nevertheless to be considered for the purposes of the Workmen's Compensation Act as the employer of the laborers working under the independent contractor, but that is true only with respect to laborers doing work which is in the usual course of the owner's business. In the case at bar, for example, if the defendant had made a contract with Esquillo to take the hogs from the corral to the slaughterhouse, and the deceased as one of the employees of Esquillo had been fatally injured while engaged in that work, the defendant would have been liable to the heirs of the deceased, although Esquillo was an independent contractor and the deceased his employee.

"Most of the compensation acts expressly or impliedly provide that any person who has work done under contract on or about his premises, which is an operation of the usual business which he there carries on, shall be deemed an employer and shall be liable under the act to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

"These provisions as a rule are not held to apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor, nor to a contract made by the owner of the premises with an independent contractor. Such contractor is deemed to be the employer of the employees of his subcontractors and their subcontractors unless the act specifically otherwise provides, as some of them do. It has been held that the owner of the premises owes the contractor's employees the duty of reasonable care; and the owner of steam boilers who allows the contractor's employee to be scalded during his work is guilty of negligence and liable at law for damages to the injured workman." (Schneider on Workmen's Compensation Law, Second Edition, pages 310 to 312, and cases there cited.)

In other words, when the law makes the owner of the factory the employer of the laborers employed therein notwithstanding the intervention of an independent contractor, it refers to laborers engaged in carrying on the usual business of the factory, and not to the laborers of an independent contractor doing work separate and distinct from the usual business of the owner of the factory.

The reason for the distinction and the rule is easy to understand. If the owner of a factory were not liable for the injuries sustained by the employees of an independent contractor engaged in the usual business of the owner, the owner of the factory by the mere subterfuge of an independent contractor could relieve himself of all liability and completely defeat the purposes of the law. On the other hand, to make the owner of the factory liable for injuries to the employees of an independent contractor not engaged in the usual business of the owner would be to make him liable for injuries to workmen, over whom he has no control.

The case of *Packett vs. Moretown Creamery Co.* (91 Vt., 97; 99 Atlantic, 638), is in point. The language of the Vermont statute in question is practically the same as that of Act No. 3812, and the facts of the case are similar to the facts of the case at bar. For convenience, we quote the headnote: "Workmen's Compensation Act, section 4, provides that the act shall apply to all industrial employment. Section 58a defines 'employer' as including any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, together with the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who by reason of there being an independent contractor, or for any reason is not the direct employer of the workmen employed, and declares that if the employer is insured, the term includes his insurer so far as applicable. Section 586 defines a 'workman' as synonymous with 'employee', and meaning any person who has entered into the employment of, or works under a contract of service or apprenticeship with, an employer, but not including a person whose employment is purely casual or not for the employer's trade or business. A creamery company entered into a contract with a builder for the erection of a new creamery building, and one hired by the builder was injured. Held, that such person could not, despite section 63a, declaring that the act should be liberally construed, be treated as a workman of the creamery company and entitled to demand compensation from it, the company not being engaged in the business of erecting buildings, this being particularly true as the liability of the creamery company's insurance carrier would be extended to an unthought of length."

For the foregoing reasons, the decision appealed from is reversed, and the defendant is absolved from the complaint, with the costs against the plaintiffs.

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

Imperial, J.; I concur in the result.

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