

EUSEBIA FLORES ET AL., PLAINTIFFS AND APPELLANTS, VS. LA COMPAÑIA MARITIMA, DEFENDANT AND APPELLEE.

G.R. No. 37074. February 25, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Eusebia Flores, in her own capacity and as guardian ad litem of her four minor children, instituted this action in the Court of First Instance of Cebu to recover from the defendant corporation, Compañia Maritima, compensation for the death of her husband, Graciano Paninsoro, in accordance with Act No. 3428.

This is an appeal taken by her from the judgment rendered by the Court of First Instance of Cebu, dismissing the complaint, with costs.

About the last week of the month of October, 1929, the defendant's boat, Albay, dropped anchor in the port of Cebu where the captain thereof, through a contractor or agent, recruited laborers who were to board the ship for the purpose of unloading her cargo upon arrival at the next port of call, Davao, and loading cargo for the various ports of call on her return trip. Among those laborers was the appellant Eusebia Flores' husband, Graciano Paninsoro, who was earning a daily wage of P1.50 including subsistence.

On the 25th of the same month, while the boat was at anchor in the port of Davao unloading her rice cargo, Paninsoro received a severe blow on the head from a bundle of sacks of rice which were being hauled from the hold by means of the ship's crane, with the result that he fell into the hold fracturing his skull and receiving injuries on different parts of his body. He was brought to the Davao Provincial Hospital where he died on October 27, 1929, after receiving the proper medical treatment.

The captain, as well as the ship's officers, were aware of the accident, but neither the former nor the appellee notified the Bureau of Labor of the accident until November 24, 1930, when they sent the written notice, Exhibit C.

The appellant reported her husband's accident to the Bureau of Labor, and on November 22, 1929, she sent a written notice prepared in accordance with the official form of said bureau, Exhibit B. This document was received by the Bureau of Labor on November 26, 1929, and the director thereof, acting as arbitrator in conformity with the law, proceeded to make the necessary investigation.

The appellant, or rather the provincial fiscal of Cebu who represents her, assigns in his typewritten brief the following alleged errors:

"I. That the lower court erred in sustaining objections of appellee's attorneys to questions propounded by appellants tending to prove that a notice of injury or sickness and claim for compensation was sent to the appellee.

"II. That the lower court erred in rejecting Exhibits B, C and D as evidence of the appellants.

"III. That the lower court erred in not holding that the appellants have complied with the provisions of section 24 of Act No. 3428.

"IV. That the lower court erred in not declaring that the appellants should have been exempted from filing a notice of injury or sickness by virtue of section 27 of Act No. 3428.

"V. That the lower court erred in admitting the defense of the appellee for supposed failure on the part of the appellants to comply with section 24 of Act No. 3428, without this matter being specially pleaded in the answer.

"VI. That the lower court erred in not holding that Graciano Paninsoro was an employee of the defendant-appellee under the Workmen's Compensation Act.

"VII. That the lower court erred in not awarding compensation due from the defendant-appellee to the appellants as heirs of the deceased, Graciano Paninsoro.

"VIII. That the lower court erred in overruling the motion for a new trial."

We shall begin by saying that the appeal is well founded and should prosper. Without endeavoring to discuss separately the eight errors assigned, we are of the opinion that the trial court should have admitted Exhibits B, C and D which prove that the Director of the Bureau of Labor intervened as investigator in the accident and that the defendant-appellee, through its representative the captain of the steamship Albay, had knowledge thereof and that, for this reason, the appellant, together with her four children, were relieved of the duty to serve a written notice as required by section 24 of Act No. 3428.

The trial court, in denying the admission of such documents and in not permitting the attorney for the appellant to ask questions tending to prove service of notice required by law, based its resolution on the alleged lack of allegation of such an important fact in the complaint. We admit that really there is no express allegation that the appellant notified the appellee of the accident and presented her claim within three months immediately following the accident, but, it having been alleged in the complaint that the Bureau of Labor investigated the case and that the director thereof acted as arbitrator, evidence offered to that effect should have been admitted inasmuch as the defect of ambiguity of the complaint was not raised or submitted to the court by demurrer.

However, even disregarding the purely technical basis on which the judgment appealed from is based, we hold that, according to the facts, the appellant was relieved of the obligation to serve written notice of the accident in view of the fact that the captain of the steamship Albay was immediately informed thereof. This knowledge constitutes one of the exceptions mentioned in section 27 of Act No. 3428.

With respect to the claim for compensation, we take for granted that it was presented on time inasmuch as the documentary evidence which was not admitted proves that the Bureau of Labor investigated the accident, and the law requires that the claim for compensation should be included in these proceedings. Furthermore, Exhibit B proves to be the same claim prepared in accordance with the form of said office.

There is not the least shadow of a doubt that the deceased was a laborer in the legal sense. He had been recruited by order of the captain of the ship and he was engaged in the task of unloading the ship's cargo at the time of the accident. There can be no dispute that this kind of work is included in the business in which the appellee is engaged. That the deceased had been recruited or engaged by a contractor is of no moment because the latter, for purposes of the law, was an agent or representative of the ship's captain who, in turn, represented the appellee.

The deceased Paninsoro was earning a daily wage of P1.50 and, according to sections 8 and 10 of the aforementioned Act, his wife and four children who were entirely dependent upon his work, are entitled to compensation equivalent to 60 per cent of his weekly wages for a period of not more than 208 weeks, or until the

death of the beneficiaries thereof, or until the widow contracts another marriage, or until his children arrive at the age of 18 years, and to the sum of P100 for funeral expenses. Such compensation, excluding the sum of P100, amounts to P1,310.40 which the appellee may pay in a lump sum to the appellant if it so prefers, provided the discount on the same shall not exceed 20 per cent.

The judgment appealed from is hereby reversed and it is ordered that the appellee pay the appellant and her four children the sum of P6.30 a week from November 1, 1929, for 208 consecutive weeks, the aliquot part corresponding to the widow to be paid her until her death or until she contracts another marriage, and that corresponding to her four children, until their death or until they arrive at the age of 18 years, and the sum of P100 for funeral expenses, with costs of both instances.

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

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