

JACINTO CAÑETE, PLAINTIFF AND APPELLANT, VS. INSULAR LUMBER CO., INC., DEFENDANT AND APPELLANT.

G.R. No. 42175. July 10, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal from a decision of the Court of First Instance of Occidental Negros, the dispositive part of which reads:

"Por todo lo expuesto, el Juzgado dicta sentencia en esta causa condenando a la demandada Insular Lumber Company a pagar al demandante Jacinto Cañete la suma de seis pesos (P6) semanales, por espacio de 82½ semanas consecutivas, en concepto de compensacion, asi como a pagar las costas del juicio."

From the above decision both parties appealed.

The defendant-appellant makes the following assignments of error:

"I. The trial court erred in declaring that plaintiff's claim for compensation was filed within the time limit fixed by law.

"II. The trial court likewise erred in not holding and decreeing that plaintiff did not receive the injury in the pursuance of his employment and that said injury was caused by notorious negligence of the same.

"III. The trial court finally erred in denying defendant's motion for new trial."

The plaintiff-appellant's assignments of error read as follows :

"I. The court a quo erred in awarding the plaintiff-appellant compensation under section 17 of Act No. 3423, as amended by Act No. 3812, without allowing compensation under section 14 of the said Act according to the evidence and the complaint.

"II. The court a quo erred in holding that the amount of compensation under Act No. 3428 should be paid on weekly installments which, according to the said court, the plaintiff should be paid, under section 17, P6 weekly for a period of 82½ weeks."

The plaintiff in this case is a carpenter who had been in the employ of the defendant for a period of six years with a salary, at the time of the accident, of T2 a day, equivalent to T12 a week. His work consisted in making wood patterns which were used in the foundry department of defendant's sawmill. Among the machines in defendant's foundry was an electric one used in planing the wood to be used in making these patterns. On the morning of March 13, 1931, while the plaintiff Jacinto Cañete was using this machine, the piece of wood he was holding slipped and his right hand contacted the sharp edge of the machine, as a result of which he lost his thumb and first finger and the first phalange of his middle finger. He therefore filed this action to recover compensation under Act No. 3428, commonly known as the Workmen's Compensation Act, as amended by Act No. 3812.

Under its first assignment of error the defendant-appellant contends that the claim for compensation was filed

beyond the two months' period fixed by section 24 of the Workmen's Compensation Act and hence plaintiff's claim is barred. The accident took place on March 13, 1931, in defendant's place of business in the municipality of Sagay, Province of Occidental Negros. The claim for compensation was mailed in the City of Manila on May 14, 1931, just within the specified period. Defendant, however, contends that the claim for compensation must be filed with the employer within two months.

One of the rules of this court is that the date of the mailing of motions, pleadings, or any other papers, as shown by the post-office registry receipt, shall be considered as the date of their filing in this court. Applying this principle to the facts in this case it is held that the admitted mailing date of the claim for compensation should be and is hereby considered as the date of its filing with the defendant, in view of the further fact that the defendant admits having received the claim.

As to the defendant's second assignment of error the evidence fully sustains the following finding of the trial court:

"Examinando detenidamente las pruebas practicadas por ambas partes en la vista de esta causa, este Juzgado cree que las del demandante son mas preponderantes que las de la entidad demandada. No hay cuestion alguna que Jacinto Cañete sufrio el accidente a que se contrae la presente causa en el momento en que estaba haciendo un trabajo que correspondia a su deber como carpintero de la entidad demandada, y, si file a usar dicha maquina, fue con el objeto de terminar pronto el trabajo que tenia entonces, porque asi se lo habia ordenado Inocentes Añebe, que era el capataz encargado designado por el entonces capataz mayor Mr, Franz. * * *"

The defendant-appellant's assignments of error are overruled.

The plaintiff-appellant, under his first assignment of error, contends that the trial court erred in not awarding him compensation, for temporary total disability, provided for in section 14 of the Workmen's Compensation Act, in addition to the compensation he is entitled to receive, under section 17 of said Act, for the permanent partial disability that he has suffered as a result of the accident. It is admitted that the plaintiff was confined for forty-one days in the hospital immediately after the accident and that he had been receiving a weekly salary of P12.

The question raised by this assignment of error has never been passed upon by this court.

Temporary total disability is defined as "the healing time, or that period of time in which the claimant employee, by reason of the injury, is unable to perform any kind of labor and is totally disabled."

An examination of sections 14, 16, and 17 of Act No. 3428, as amended by Act No. 3812, will show that section 14 provides for compensation for temporary as well as permanent total disability; section 16 provides for compensation for temporary partial disability and section 17 provides for compensation for permanent partial disability. The compensation provided in any one of these sections is not exclusive of that provided in the others. The object of the law in allowing compensation during temporary disability is to compensate the laborer for what he might have earned during the period of the treatment of his injury. On the other hand the object of the law in granting compensation for a permanent disability is to compensate the injured laborer for the actual and permanent loss of a member of the body. There may be cases wherein a laborer is injured and treated without any resulting partial or total permanent disability. In such cases the laborer would be entitled only to the compensation provided for in sections 14 or 16 depending on whether or not he was totally or partially disabled temporarily. In cases, however, where a laborer is injured and is treated with a resulting permanent partial disability, after a period of temporary total disability, aside from the compensation to which he is entitled under section 17 by reason of his permanent partial disability, he is undoubtedly entitled to receive compensation during the period he was totally disabled temporarily subject to the limitations prescribed in the Workmen's Compensation Act.

In other jurisdictions where the workmen's compensation acts provide compensation for different disabilities resulting from an injury, covered by said acts, the courts have consistently held that the injured workman is entitled to the compensation provided for each disability. The following citations are typical:

"Temporary, as distinguished from permanent, disability, under the Workmen's Compensation Act, is a condition that exists until the injured workman is as far restored as the permanent character of the injuries will permit. So, where, after the period of temporary total disability had ceased, an employee was found to be suffering from a permanent partial disability, he was entitled to an award based upon partial disability permanent in character." (*Vishney vs. Empire Steel & Iron Co.*, 87 N. J. L., 481; 95 Atl., 143.)

"Compensation for the loss of the member will not compensate him for the period of incapacity preceding the loss of the member. The just rule of compensation will give compensation for the period of total incapacity as well as for the loss of the member. Our Act is uniformly fair in its theory of compensation. We cannot assume a legislative intent in these instances of partial incapacity at variance with this theory. Under the respondent's theory, if the payments for the total incapacity preceding the loss of the member exceeded that provided for the loss of the member, the employee must return the excess and go without compensation for the larger part of his loss. We do not need to multiply these instances. If the theory of these sections of our act be disability, as the respondent insists, it is impossible to justify awards for specific injury, which in many cases will be far less than the incapacity preceding the loss of a member. If the theory of compensation for the loss of a member is because of the handicap resulting from the loss, it is at once logical and understandable and in no wise conflicts with the award of compensation for incapacity antedating this loss." (*Franko vs. William Schollhorn Co.*, 93 Conn., 13; 104 Atl., 485; 2 W. C. J., 770; 18 N. C. [C. A.], 449.)

"The claimant was awarded compensation for temporary total disability, based upon loss of earning capacity. Later an award was made for permanent partial disability as provided in 'other cases', based upon loss of earning capacity. The employer contended that since both awards were based upon a loss of earning capacity, he should be given credit for the compensation paid under the temporary total disability award. The court held the intent of the compensation law was that the claimant was entitled to the prior award for temporary total disability in addition to any sum paid for permanent partial disability. (*Simpson Fell Oil Co. vs. Tucker* [Old.], 12 P. [2d], 529 [June, 1932].)

"It was stated in a California case: Permanent disability is a new and further disability within the provisions of the Workmen's Compensation Act. Many times the seriousness of the injury is not at first apparent, and from its very nature cannot be detected until considerable time has elapsed after its infliction. The clear intent of the statute in such cases is that the injured employee shall be entitled to compensation for his permanent disability notwithstanding the fact that he may in the early stages of his injury have been granted an award only for temporary disability, or may have been paid compensation voluntarily by his employer; * * *." (*Union Lbr. Co. vs. Ind. Ace. Com.*, 12 P. [2d], 1047 [June, 1932].)

It is apparent from the above that the trial court erred in not awarding the plaintiff compensation during the time he was confined in the hospital by reason of his injury, exclusive of the first seven days. Therefore for the five and six-sevenths weeks during which the plaintiff was so confined, exclusive of the first week, he is entitled to receive the sum of P7.20 per week or a total of P34.97.

As to the second assignment of error of the plaintiff-appellant we are also of the opinion that the trial court erred in not ordering the payment of the whole amount of the compensation due under section 17 of the Workmen's Compensation Act. The demand for payment of compensation was made on May 14, 1932, and on February 26, 1934, the date of the decision of the lower court, the 82 weeks, during which the plaintiff was entitled to collect weekly the amount of P6, had elapsed and had the defendant been willing to pay said compensation the entire amount due would have been fully paid by February 26, 1934. Apart from the above, section 22 of the Workmen's Compensation Act provides in, part as follows:

"Sec. 22.

"Any failure on the part of the employer to comply with his obligation to pay any of the sums due to the injured laborer or his dependents in accordance with this Act, shall entitle the beneficiary to claim the entire balance of the compensation at one time."

In view of the foregoing, the judgment of the trial court is modified and let judgment be entered against the defendant and in favor of the plaintiff for the sum of P34.97 and for the further sum of P495, a total of P529.97 with legal interest thereon from the date of the filing of the complaint in this case until said sum is fully paid with costs in both instances against the defendant-appellant.

Malcolm, Abad Santos, Hull, and Butte, JJ., concur.

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