

MOISES ROLAN, PLAINTIFF AND APPELLANT, VS. ANTONIO PEREZ (ALIAS ABOODY PEREZ), DEFENDANT AND APPELLEE.*G.R. No. 44352. March 28, 1936*

Ponente: IMPERIAL, J.

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The plaintiff brought this action to recover from the defendant the sum of P155.57 as compensation for a permanent partial injury suffered by him as a result of an accident. He appealed from the judgment of the Court of First Instance of Rizal dismissing his complaint, without costs.

From November, 1933, the plaintiff was a laborer of the defendant, with a daily wage of P1, in the latter's La Loma Dairy Farm in the barrio of La Loma, municipality of Caloocan, Province of Rizal. He was employed directly by the defendant, and his work consisted in fixing the barbed wire fence around the land occupied by the dairy farm, weeding the land, and cutting the tall branches of the trees, mostly acacia trees, found therein. He also did any other work given to him by the defendant, for which reason he sometimes served as carpenter and tinman, but always within the dairy farm. The branches of the trees were chopped to give way to shorter ones affording more shade to the cows which were being taken care of in the corral.

One afternoon in April, 1934, at about three o'clock, while the plaintiff was cutting the branch of an acacia tree growing on the border of the dairy farm, and as there was a strong wind and a heavy downpour, the branch gave way and fell on the electric wire found on that side of the road. The impact produced electric sparks and cut the wire and brought it down on the barbed wire fence which was there supported by the trunk of the acacia tree with metal nails or hooks. The contact of the wire fence, thus charged with electricity, with the tree trunk transmitted the electric current to the branches where the plaintiff was. The electric shocks which he received thereby caused him to fall on the wire fence, from a height of about six meters, receiving injuries on different parts of his body, principally in his right leg, dislocating his spinal column and eventually losing his consciousness. He was taken to the Chinese General Hospital and later to the St. Luke's Hospital, but notwithstanding the medical treatment to which he was submitted, he remained sick for several weeks. He was still sick when he appeared at the trial, and he had been unable to work from the time of the accident. According to Dr. Santillan, one of his attending physicians, the plaintiff lost 25 per cent of the use of his right leg and foot. All the hospital and medical expenses were defrayed by the defendant.

The appealed decision rules that, under the facts, the plaintiff was not legally a laborer, but a servant, and consequently he cannot avail himself of the provisions of Act No. 3428, as amended by Act No. 3812. The plaintiff assigns this ruling as the first error in the decision. We are of the opinion that the error assigned is real. It is said that the plaintiff was not a laborer because his work had nothing to do with the milch cows and that he was not engaged in milking them. According to subsection (b) of section 39 of Act No. 3428, as amended by section 13 of Act No. 3812, "laborer" is the synonym of "employee" and means every person who has entered the employment of, or works under a service or apprenticeship contract for an employer. Undoubtedly the plaintiff falls under this definition because he worked under a contract, although verbal, had with the defendant. According

to the evidence, the latter was the one who employed him directly. What section 2 of the same law provides is, that the accident suffered by the laborer be in the course of his employment or arose therefrom. This connection between the accident and the employment or work has likewise been present in this case because for its existence it was not necessary that the plaintiff should directly attend to the milch cows or should milk them, proof of which was apparently required by the court. It is evident that the plaintiff cut the weeds, fixed the barbed wire fence, and chopped the branches of the trees for the benefit and care of the cows in order that the latter may produce more milk and yield greater profits to their owner, the herein defendant. In the light of these facts, it cannot be denied that the plaintiff was a laborer of the dairy farm and that the accident which he suffered arose out of the nature of his work or employment and occurred in the course thereof. It is not important that, aside from this work, the plaintiff occasionally did carpentry and tin work which, if it had been specified, would probably have shown that it was all necessary for the maintenance of the dairy farm and its accessories or utensils. We conclude, therefore, that the first assigned error is well founded.

To establish that the defendant had obtained a gross income of not less than P20,000 from his business in 1933, plaintiff's attorney offered Exhibit E as a part of his evidence. This was a letter addressed by the Deputy Collector of Internal Revenue to the Director of the Bureau of Labor, stating that the gross income of the San Miguel Dairy Farm and the La Loma Dairy Farm for the year 1933, immediately prior to that when the accident occurred, had been included in the income tax return filed by the defendant and which exceeded P20,000. Defendant's attorney objected to the admission of the document on the ground that it was incompetent, and the court sustained the objection and rejected the exhibit. The plaintiff assigns this ruling as the second error committed by the court. We agree with the court that the evidence was incompetent and that it was properly rejected. But we dissent from its ruling dismissing plaintiff's action in the absence of such evidence. The court dismissed the complaint, in addition to the above ground, because in its opinion the plaintiff had failed to establish that the gross income of the dairy farm in 1933 was not less than P20,000. We hold that this was error. The law, as it now stands, does not require the plaintiff to allege and prove this fact. It is a defense favorable to the defendant and the burden is on him to establish it. Subsection (d) of section 39 of Act No. 3428 originally read:

"Sec. 39. * * * * *

"(d) 'Industrial employment' in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain, the gross income of which in the year immediately preceding the one during which the accident occurred was not less than forty thousand pesos, except agriculture, charitable institutions, and domestic service."

As amended by section 13 of Act No. 3812, said subsection (d) is couched in this wise:

"(d) 'Industrial employment' in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain, except agriculture, charitable institutions, and domestic service, but as to agriculture, employees for the operation of mechanical implements shall be entitled to the benefits of this Act."

It will be noted that when the said subsection was amended, the Legislature omitted the phrase "the gross income of which in the year immediately preceding the one during which the accident occurred was not less than forty thousand pesos." This omission simply means that from the taking effect of the amendment, December 8, 1930, the necessity to allege and prove the amount of the gross income ceased.

It is true that section 42, as amended by section 14 of Act No. 3812, provides that when the gross income of any trade or occupation exercised by the employer during the year next preceding the one in which the accident occurred, is less than P20,000, the claim for compensation shall be governed by the provisions of Act No. 1874; but the only purpose of this provision is to introduce a defense in favor of the employer so that, in the event his

gross income does not reach said amount, he may invoke his right to be sued under the provisions of Act No. 1874; and being a defense favorable to the defendant, upon him, and not upon the plaintiff, rests the burden of alleging and proving it.

Consequently plaintiff's action was not prejudiced by the rejection of Exhibit E, wherefore, the court erred in dismissing the complaint due to plaintiff's failure to establish that the gross income of defendant's business for the year 1933 was not less than P20,000. We repeat that it was incumbent upon the defendant to prove that his gross income for said year was less than P20,000, had he taken the position that plaintiff's claim should have been decided under the provisions of Act No. 1874, but as the defendant elected not to present any evidence, plaintiff's action lies.

Plaintiff's last two assigned errors are equally well founded. Having made out his case, plaintiff was entitled to a judgment for the amount claimed, and an erroneous judgment having been entered, he was also entitled to have it corrected by the presentation of his motion for a new trial.

The amount of the compensation claimed by the plaintiff is not disputed.

Wherefore, the appealed judgment is reversed, and the defendant Antonio Perez (alias Aboody Perez) is ordered to pay the plaintiff the amount of P155.57, with legal interest thereon from the filing of the complaint and the costs of both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Recto, and Laurel, JJ., concur.

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