

ADORACION FRANCISCO ET AL., PLAINTIFFS AND APPELLEES, VS. FELICIANO CONSING, DEFENDANT AND APPELLANT.

G. R. No. 44753. August 26, 1936

Ponente: RECTO, J.

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RECTO, J.:

This is a case arising from the operation of Act No. 3428, commonly known as "The Workmen's Compensation Act", as amended by Act No. 3812. The trial court gave judgment for the plaintiffs, who are the legal heirs of the deceased Antonio Francisco, sentencing the defendant to pay to them the amount of P299.52, with interest and costs. From this judgment the defendant appealed.

The case was submitted to the trial court for decision on the following agreed statement of facts:

- "(1) That the defendant admits the allegations of paragraphs 1 and 5 of the plaintiffs' complaint;
- "(2) That the defendant admits that for the years 1929 and 1930, he was engaged in farming in the planting of sugarcane crop, and that he admits the allegations of paragraph 3 of the plaintiffs' complaint;
- "(3) That the defendant admits the allegations of paragraph 4 of the plaintiffs' complaint subject to the modification that instead of the words 'caña-dulce y puntas de la semilla de caña-dulce', they should only be understood as 'puntas de la semilla de caña-dulce', and that instead of P4 a week, it should only be P3.60 a week;
- "(4) That, as to how the accident occurred, the parties hereby made as part of this agreed statement of facts the ante-mortem affidavit of the deceased Antonio Francisco before the municipal president of Sagay on August 2, 1930, which ante-mortem affidavit is hereby attached as Annex A;
- "(5) That the aforesaid 'puntas de la semilla de caña-dulce' were being carried to Hda. Leonor de Escalante, Occidental Negros, to be planted in said hacienda;
- "(6) Medical treatment had been given the deceased Antonio Francisco by Dr. Vicente Gustilo at the expense of the defendant; and funeral expenses of the deceased had also been paid by the defendant.

"Wherefore, the parties respectfully pray this Hon. Court to render judgment in the above entitled case in accordance with the foregoing agreed statement of facts." (Bill of Exceptions, pp. 7, 8.)

Paragraphs I, II, III and IV of the complaint referred to in the above agreed statement of facts as admitted (paragraph IV with qualifications) by the defendant, read as follows:

- "I. That the plaintiffs Adoration Francisco, Leonila Francisco and Antonio Francisco, jr. are all of minor age, residents of the municipality of Escalante, Province of Negros Occidental, P. I., and represented in these proceedings by Policarpio Carballo as guardian ad litem, and that the defendant Feliciano Consing is of legal age and resident of the municipality of Escalante, Province of Negros Occidental, P. I.
- "II. That the above entitled action was filed in accordance with and by virtue of the provisions of Act No. 3428, as amended by Act No. 3812, commonly known as the Workmen's Compensation Law.
- "III. That the defendant, Feliciano Consing, during the year 1929, was engaged in the planting of sugar cane

and used to have a net income of more than P20,000 during the year 1929.

"IV. That on August 2, 1930 and for 25 days before said month of August, Antonio Francisco was employed by the defendant as laborer, detailed to load and unload sugar cane and sugar cane seedling nibs to and from one of the trucks of the defendant, at a wage of P4 a week."

The affidavit of the deceased Antonio Francisco, referred to in paragraph (4) of the aforesaid agreed statement of facts, reads as follows:

"I, Antonio Francisco, married, 25 years old, native of the municipality of Sagay, Province of Negros Occidental, and residing at barrio Buyog of said municipality, after having been duly sworn to declare the following:

"That at about 4 p. m. on August 2, 1930 we came from Ca-anibungan, within the jurisdiction of the municipality of Cadiz, that I was riding in a truck No. T-5171 loaded with sugar-cane points (patdan) to be brought to Central Leonor at Escalante, because I was working on the same truck T-5171 as a cargador of the said sugar-cane points (patdan), and when we were approaching Buyog we saw a carabao tied by the side of the road, and when we were right at the spot near where the said carabao was tied said carabao at a sudden ran at the middle of the road, and the said truck collided with it and for which I jumped out from the truck for fear. Immediately after I reached the ground' the truck fell catching my left leg. In my own opinion the chauffeur was not at fault because of the immediate appearance of the carabao on the middle of the road. I recognized it to be my fault because I jumped, and had I not jumped I might not have been injured. And for this reason whatever will happen to me I have no right to take action because I acknowledge it to be my fault." (Bill of Exceptions, p. 9.)

The only question raised in this appeal is whether the deceased Antonio Francisco was a farm laborer, or otherwise an employee entitled to the benefit of the Act. Appellant contends that the said deceased was a farm laborer; the plaintiffs, however, maintain that he was not.

According to paragraph (3) of the agreed statement of facts in connection with paragraph IV of the complaint, Antonio Francisco, at the time of his death, was working for the defendant as laborer, engaged in loading and unloading points of cane in the defendant's trucks, at a salary of P3.60 a week. This, according to the appellant, does not mean that the deceased was engaged in the operation of any mechanical implements as he was not the driver of the truck where the sugar-cane points of the defendant were loaded at the time of the accident. We find no merit in this contention.

Section 39 (d) of Act No. 3428, otherwise known as the Workmen's Compensation Act, reads, as amended by Act No. 3812, as follows:

"(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."

The foregoing enactment is substantially identical to that contained in section 1 of Act No. 20, 1914 of Louisiana, otherwise known as the Employers' Liability Act (now Chapter 11, section 4391, of the General Statutes of the State of Louisiana, 1932) which provides as follows:

Application of act—Definitions.—This act shall apply only to the following:

* * * * *

"2. Every person performing services arising out of and incidental to his employment in the course of his employer's trade, business or occupation in the following hazardous trades, businesses and occupations:

"(a) * * * Any occupation entailing * * * operation of boilers, furnaces, engines and other forms of machinery."

If there is any difference between the local statute and that of Louisiana it is that the former appears to be, on this particular point under consideration, more liberal than the latter in favor of the employee, inasmuch as while the Louisiana law contemplates the "operation of engines and other forms of machinery" our law includes that of "mechanical implements".

The case of an employee engaged in loading or unloading a motor vehicle and in no way concerned with its operation, was held by the Court of Appeal of Louisiana as falling within the operation of the above quoted provision of Employers' Liability Act of that State. In the case of *Snear vs. Eiserloh* (144 Southern Reporter, 265), the said court said:

"That work on or in connection with a motor-driven vehicle is a hazardous employment within the contemplation of the compensation laws has already been decided. It has several times been held that the driver of a motortruck is within the protection of these statutes (*Haddad vs. Commercial Motor Truck Co.*, 146 La., 897; 84 So., 197; 9 A. L. R., 1380; *Labostrie vs. Weber*, 15 La. App., 241; 130 So., 885; *Plick et al. vs. Toye Bros. Auto & Taxicab Co.*, 13 La. App., 525; 127 So., 59; *Beebe vs. McKeithen Construction Co.*, 5 La. App., 179), but the applicability of the statutes to an employee engaged in loading or unloading a motor vehicle and in no way concerned with its operation had not been judicially discussed in this State, so far as we are able to ascertain, until there was presented to this court the case of *Richardson vs. Crescent Forwarding & Transportation Company* (17 La. App., 428; 135 So., 688). However, in that case, there was presented the exact question which we are now asked to decide, and we held that 'a member of a crew of four men, who went with the trucks for the purpose of loading and unloading the freight from them, * * *' is within the coverage of the statute. Inasmuch as the Supreme Court refused to grant a writ of review in this case, and because we are of the same opinion still, we cannot sustain defendant's first contention."

In *Richardson vs. Crescent Forwarding & Transportation Co.* (135 Southern Reporter, 688), the same court in deciding a previous similar case, had held:

"But counsel for defendant say this authority is not in point because plaintiff in this case was not employed as a truck driver. It is quite true that he was not employed as a truck driver, but his duties brought him necessarily into frequent contact with trucks and on many occasions required that he ride on them. In this way it was necessary for him to work in and around machinery, and whether or not he himself operated the machinery is of no great importance."

These two Louisiana cases appear reported in 71 Corpus Juris, 384.

It is not suggested that the death of Antonio Francisco was produced by any of those causes enumerated in section 4 of the Act, namely (a) voluntary intent of inflicting the injury, (b) drunkenness, and (c) notorious negligence. On the other hand "in addition to cases holding that workmen's compensation acts should be given interpretation in favor of the employee, a number of cases hold that the acts should or must be construed fairly, reasonably, or liberally, in favor, or for the benefit, of employees or their dependents, all doubts as to the right to compensation being resolved in their favor, and all presumptions indulged being in their favor; and there are statutory provisions for a liberal construction in favor of employees injured." (71 C. J., 351-353.) "The intention of the legislature is to be gathered from the necessity or reason of the act and the meaning of words is to be derived from consideration of the whole act, and doubts respecting the rights to compensation should be resolved in favor of the employee or his dependents." (*Schneider, The Law of Workmen's Compensation*, 2132, 2133.)

In view of the foregoing the decision appealed from is affirmed, the costs of this appeal to be paid by the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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