

CONCEPCION MURILLO, IN HER OWN BEHALF AND AS GUARDIAN AD LITEM OF ANTONIO, CARMEN, FLAVIO AND JOSE LUIS, SURNAMED MADRID, PLAINTIFFS AND APPELLEES, VS. ALFREDO MENDOZA, DOING BU...

G.R. No. 46020, December 08, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

As widow and children of the deceased Octavio Madrid, the former being the guardian ad litem of her minor children Antonio, Carmen, Flavio and Jose Luis, surnamed Madrid, the herein plaintiffs brought this action to recover from the defendant the compensation allegedly granted them by the Workmen's Compensation Act by reason of the death of said deceased.

The parties submitted the case upon the following stipulation of facts:

"1. That the plaintiffs are the dependents of Octavio Madrid, now deceased, and the defendant is the owner and operator of the S. S. 'Marie', the said defendant conducting his business under the name and style of 'Manila Steamship Navigation Company'.

"2. That on or about July 8, 1936, the said Octavio Madrid was employed by the defendant as first officer of the S. S. 'Marie', with a salary of P110 a month plus board during the last 12 weeks immediately preceding his death or an average weekly wage of P28.29.

"3. That on or about the date mentioned in the preceding paragraph, while the said vessel was plying off the coast of the Province of Isabela, at Palanan Point, and while Octavio Madrid was performing his duties as first officer, the vessel was struck by a heavy typhoon, as a result of which it sank with all the officers and members of the crew perishing in the disaster.

"4. That the plaintiffs are totally dependent upon the deceased Octavio Madrid, and in accordance with the provisions of the Workmen's Compensation Act, they are entitled to the maximum compensation of P3,000, if the accident is compensable.

"5. That notice of injury and claim for compensation was filed on time by the plaintiffs despite which said defendant refused and still refuses to pay the compensation due.

"6. That there are nineteen (19) other cases (Cases Nos. 50632-50636; 50638-50640; 50710, 50746, 50973, 51004, 51016, 51187, 51189 and 51191-51194, of identical nature now pending in this court, all of which were brought against the same defendant by the dependents of the other officers and members of the crew who died in the sinking of the S. S. 'Marie'.

"7. That the defendant accepts all the facts alleged in the complaints filed in the other nineteen (19) cases, and specially those relating to questions of the occurrence of the accident, dependency, wages, and the amounts of compensation claimed in each and every case.

"8. That the parties plaintiffs and defendant agree that whatever decision is rendered by the court in the present case shall apply to the other nineteen (19) cases.

"9. That the parties also agree to submit this case on the above stipulation of facts without any hearing, and to this end, the respective counsel pray that they be given ten (10) days from this date to present a memorandum."

Upon the foregoing stipulation of facts the court rendered judgment on November 16, 1937, ordering the defendant to pay to the plaintiffs the sum of P3,000 with legal interest thereon from November 23, 1936, and the costs. The court, believing that the stipulation likewise submitted for decision the other 19 cases mentioned therein, also ordered the defendant, in the decision rendered by it in this case, to pay to the other plaintiffs the sums of money claimed as compensation in the other complaints filed by them. The defendant appealed from the decision so rendered, but in this appeal and in the decision rendered by this court, only the appeal taken in this case G. R. No. 46020 will be considered and decided. The reason is because in this appeal the plaintiffs in the other cases have neither appeared nor been heard.

According to the stipulation of facts, it is admitted that on July 8, 1936, Octavio Madrid was employed by the defendant as first officer of the S. S. "Marie", with a salary of P110 a month; that on said date, while the vessel in question was plying off Palanan Point, Province of Isabela, and while Octavio Madrid was performing his duties as first officer, it was caught in a severe storm, as a result of which it sank with all the officers and members of the crew, including Octavio Madrid, perishing in the disaster.

- It is admitted that the defendant was the owner and operator of the S. S. Marie and that he was doing business under the name of "Manila Steamship Navigation Company"; but the plaintiffs did not prove that the gross income of his business during the year next preceding the one in which the accident occurred amounted to P20,000 or more. In the first assignment of error, it is contended that the court should have dismissed the action for failure to prove such fact, inasmuch as the Workmen's Compensation Act requires that the gross income of the employer during the year next preceding the one in which the accident occurred should have amounted to P20,000 or more, because otherwise the claim should be presented in accordance with the provisions of Act No. 1874. In the case of Rolan vs. Perez (34 Off. Gaz., 1593), this court held that under the law, as amended, the fact that the gross income of the employer during the year next preceding the one in which the accident occurred was P20,000 or more, as required by law, need not be alleged or proven by the plaintiff, but that, it being a defense of the defendant, the burden is on the latter to allege and establish it. In the above-cited case, it was said:

" * * * 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 diary 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."

The doctrine laid down in said case directly disposes of the first assignment of error which should be overruled for being unfounded.

- In second assignment of error it is contended that the accident is not compensate under Act No. 3428, as amended, on the ground that the immediate cause thereof was a force majeure or a fortuitous event for which nobody should be responsible.

The first point raised by the assignment of error is whether or not the Workmen's Compensation Act covers maritime accidents occurring in the Philippine waters. Unlike legislations existing in the United States of America wherein, aside from the workmen's compensation laws adopted by the different States, the federal admiralty laws and the Longshoremen's and Harbor Workers' Compensation Act are in force, our Legislature has deemed it advisable to include in the Workmen's Compensation Act all accidents that may occur to workmen or employees in factories, shops and other industrial and agricultural workplaces as well as in the interisland seas of the archipelago. In this wise, section 38 of Act No. 3428, as amended by section 12 of Act No. 3812, provides:

"Sec. 38. Interisland trade.—This Act shall cover the liability of the employers towards employees engaged in the coastwise and interisland trade, and also in the foreign trade when such is permissible under the laws of the United States and the Philippine Islands."

The applicability of the Workmen's Compensation Act to accidents occurring in the Philippine seas has been discussed for the first time in the case of *Enciso vs. Dy-Liacco* (57 Phil., 446 et seq.), where the question was decided affirmatively. In said case it was stated:

"The next point the appellant takes up is whether Act No. 3428 applies to the accident we are considering, and he contends that the provisions of this law do not cover the present case. It would be enough, to refute this contention, to cite section 38 of the Act in question, which reads as follows:

"Sec. 38. Interisland trade.—This Act shall cover the liability of the employers towards employees engaged in the interisland trade, and also in the foreign trade when such is permissible under the laws of the United States and the Philippine Islands.

"A casual reading of this section will show that the sea accident in which Dimamay died comes under it, since the Aloneros was then engaged in the interisland trade."

The next question raised is whether or not Octavio Madrid's death is compensable under the law, it appearing that it was caused by the typhoon which is a force majeure or fortuitous event, being an act of God unforeseen and

imputable to nobody. Stated in other words, the question submitted, which this court is called upon to decide, is whether or not Act No. 3428, as amended by Act No. 3812, includes responsibilities for damages arising from unforeseen acts wherein no fault or negligence not punishable by law has intervened (articles 1105, 1902, 1903, 1905, 1906, 1907, 1908, 1909 and 1910 of the Civil Code).

In the case of *Enciso vs. Dy-Liacco*, supra, this court stated that the consensus of opinion and of the decisions of the courts of various States of the Union is that workmen's compensation acts have been enacted to abrogate the common law and the Civil Code relative to obligations arising from nonpunishable fault or negligence. To that effect it was said:

"It is also argued that the accident was due to force majeure and therefore the appellant cannot be made responsible for it according to law. It has been repeatedly stated that the Workmen's Compensation Law was enacted to abrogate the common law and our Civil Code upon culpable acts and omissions, and that the employer need not be guilty of neglect or fault, in order that responsibility may attach to him. Bearing in mind this purpose, the appellant's contention is evidently untenable.

"The compensation acts, especially the pioneer enactments differ considerably, one from another, in many essential aspects. While the purpose sought to be accomplished is the same, the legislatures of the various states chose diverse means for its attainment. One thing is characteristic of all of the acts; the common law doctrines of negligence are abrogated, and in place of the common law procedure is substituted a scheme for achieving cheap, speedy justice. (28 R. C. L., p. 714.)

" * * * Admitting, however, that the compensation acts do create liability without fault, the courts have uniformly held this to be no objection to their validity. It is pointed out that our jurisprudence affords numerous examples of liability without fault and the deprivation of property without fault being attributable to its owner. Statutes making railroad corporations absolutely liable, without regard to negligence, for injuries to property caused by fire escaping from their locomotive engines, are clearly statutes creating liability without fault, yet these statutes have been upheld by all the courts of the states in which they have been enacted, as well as by the Supreme Court of the United States. As a matter of fact, the workmen's compensation act does exactly the same thing as the safety appliance acts; it imposes new duties of care on the employer—the difference being that in one case the duty is announced in definite terms, whereas in the other it rests in implication. As expressed by the United States Supreme Court, 'the common law bases the employer's liability for injuries to the employee upon the ground of negligence; but negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence.' * * *" (28 R. C. L., pp. 752, 753.)

The workmen's compensation acts are based on a new theory of compensation distinct from the theories of damages, payments under the acts being made as compensation, not as indemnity (71 C. J., 232; *Mobile & O. R. Co. vs. Industrial Commission of Illinois*, 28 F. [2d] 228; *Martin vs. Kennecott Copper Corporation*, 252 F., 207; *Devine's Case*, 129 N. E., 414; *Duart vs. Simmons*, 121 N. E., 10; 251 U. S., 547; *Kenney vs. Boston*, 111 N. E., 47; *Erie R. Co. vs. Linnekogel*, 248 F., 389; *De Biasi vs. Normandy Water Co.*, 228 F., 234; *Schlickemayer vs. City of Highland Park*, 235 N. W., 156; *Andrejwski vs. Wolverine Coal Co.*, 148 N. W., 684; *Flanigan vs. Hines*, 193 P., 1077).

The intention of the Legislature in enacting the Workmen's Compensation Act was to secure workmen and their dependents against becoming objects of charity, by making a reasonable compensation for such accidental calamities as are incidental to the employment. Under such Act injuries to workmen and employees are to be considered no longer as results of fault or negligence, but as the products of the industry in which the employee is

concerned. Compensation for such injuries is, under the theory of such statute, like any other item in the cost of production or transportation, and ultimately charged to the consumer. The law substitutes for liability for negligence an entirely new conception; that is, that if the injury arises out of and in the course of the employment, under the doctrine of man's humanity to man, the cost of compensation must be one of the elements to be liquidated and balanced in the course of consumption. In other words, the theory of the law is that, if the industry produces an injury, the cost of that injury shall be included in the cost of the product of the industry. Hence the provision that the injury must arise out of and in the course of the employment (*Mobile & O. R. Co. vs. Industrial Commission of Illinois*, 28 F. [2d], 228, 229).

Under Act No. 3428, as amended by Act No. 3812, accidents are compensated independently of whether or not the employer has incurred fault or negligence, and the only exceptions thereto are the accidents arising from the voluntary act of the injured person, those resulting from the drunkenness of the employee who had the accident, and those caused by the notorious negligence thereof (section 4, Act No. 3428).

Lastly, it is contended by the appellant and by the attorneys for the Philippine Shipowners' Association, Inc., who have appeared as amici curiæ, that the accident is not compensable under the law because it did not arise out of the employment of the deceased. Section 2 of Act No. 3428, as amended by section 1 of Act No. 3812, provides that in order that an accident may be compensated, it is necessary that it has arisen out of and in the course of the employment. A definition of the phrase arising out of the employment that has received wide favor is the one stating that this element required by law exists when there is apparent to the rational mind, upon consideration of all of the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury (71 C. J., 648; *Michigan Transit Corporation vs. Brown*, 56 F. [2d], 200, 202; *In re Employers' Liability Assur. Corporation*, 102 N. E., 697; *Industrial Commission of Colorado vs. Enyeart*, 256 P., 314, 315; *Mann vs. Glastonbury Knitting Co.*, 96 A., 368; 90 Conn., 116; *Vincennes Bridge Co. vs. Industrial Commission*, 184 N. E., 603, 605; *Triangle Auto Painting & Trimming Co. vs. Industrial Commission*, 178 N. E., 886, 889; *Landon vs. Industrial Commission*, 173 N. E., 49, 50; *Franklin Coal & Coke Co. vs. Industrial Commission*, 152 N. E., 498, 500; *Edelweiss Gardens vs. Industrial Commission*, 125 N. E., 260; *Texas Indemnity Ins. Co. vs. McLaury*, 54 S. W. [2d], 862, 863). It is said that an accident has arisen in the course of the employment when it has occurred within the period of the employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of his employment (71 6. J., 659; *Stakonis vs. United Advertising Co.*, 148 A., 334; *Taylor vs. St. Paul's Universalist Church*, 145 A., 887; *Flanagan vs. Webster & Webster*, 142 A., 201; *Larke vs. John Hancock Mut. L. Ins. Co.*, 97 A., 320). The defendant and the amici curiæ admit that the deceased met his death in the course of his employment and while he was fulfilling his duties as first officer, but they emphatically deny that his death has arisen out of his employment. We can neither adhere to nor uphold this theory on the ground that it is contrary to the liberal interpretation of the law and to the spirit underlying the same. In investigating whether or not the death of said official arose out of his employment, all of the circumstances present in the case should be taken into consideration in order to be able to determine whether or not a causal connection exists between his said death and the conditions under which he necessarily had to fulfill his duties. The deceased was contracted and employed to direct and render services in the vessel. When he accepted the employment, he knew that he was in duty bound to render services in good weather as well as when the vessel encountered a storm or typhoon, as it so happened, and it may be stated that he must have been aware that in case of a typhoon his services had to be rendered in a higher degree, because in such event it was part of his duties to save the vessel. Taking into consideration all of these circumstances, it is clear that his death is compensable under the law on the ground that a causal relation existed between such death and the conditions under which he had to perform his employment. It is obvious that the typhoon was the immediate cause of the sinking of the vessel and that there existed no causal relation between it and the employment of the deceased. It is

evident, however, that between the conditions and circumstances under which the deceased discharged his employment and his death, there existed the causal connection which makes the accident compensable.

The doctrine is generally accepted that the employer is not responsible for accidents arising from force majeure or an act of God, as it is usually called, when the employee has not been exposed to a greater danger than usual. However, in the case of the deceased and in that of a sailor, it cannot be denied that upon contracting their services to navigate in the waters of the archipelago, having to render extraordinary services in cases of typhoon, they are exposed to greater risk than usual, in comparison with other employees working on land.

"Injuries resulting from exposure to the elements are generally classed as risks to which the general public is exposed. As shown by the earlier annotations, however, the rule is generally recognized that if an employee, by reason of his duties, is exposed to a special or peculiar danger from the elements,—that is, one greater than that to which other persons in the community are exposed,—and an unexpected injury is sustained by reason of the elements, the injury constitutes an accident arising out of and in the course of the employment within the meaning of the workmen's compensation acts. And this rule has been recognized and applied in later cases." (83 A. L. R. Annotation, page 234).

"An assistant engineer on a dredge was drowned while attempting to save the dredge from destruction during a storm. The trial court found that the sinking of the dredge was due to the violence of the storm, and that the death of the engineer was due to an accident arising out of the employment. In affirming the decision, the court said: 'The nature of the employment, the conditions under which it was to be and was pursued, the exposure to probable injury from reasonably to be expected storms of similar character were all matters incident to such a risk as was here underwritten, and therefore an injury maturing such a risk, we think, could well be said to have been incidental to and to have arisen out of that employment.' " (Workmen's Compensation Law, Schneider, vol. I, pp. 1076, 1077.)

The court, in granting the compensation to the plaintiffs, based its opinion mostly on the doctrine laid down by this court in the case of *Enciso vs. Dy-Liacco*, supra. The attorney for the defendant and the amici curiae insist that there is no parity between the facts of the above-cited case and those of the case under consideration. In said case the motor boat "Aloneros" sank on its way to a river to seek shelter, because a hurricane was raging. Upon reaching the sea, the anchor stuck to a rock and the launch could not get out of the place. The big waves therein dashed against the launch until it was filled with water, and a little later it sank with the master. It is contended that there is no similarity in the facts because the sinking of the launch "Aloneros" was due to the waves. This court sees no substantial difference between the facts of one and those of the other case. In the *Enciso* case the immediate cause of the master's death was the sinking of the launch, but there is no doubt that said accident was due to the typhoon then raging. In both cases the mediate cause of death was the typhoon.

There is similarity between an accident caused by lightning and one caused by a typhoon because both are fortuitous-events and of the so-called acts of God. By reason of such similarity some cases decided by the courts in connection with accidents caused by lightning may be cited to better illustrate the doctrine laid down by this court.

In the case of *Aetna Life Ins. Co. vs. Industrial Commission of Colorado* (254 P., 995), the Supreme Court of said State held that the death of a farm hand, who was struck by lightning while driving a team of horses across a hill near a wire fence, was compensable as an accident which arose out of his employment.

In the case of *Moody vs. Tillman* (163 S. E., 521), the Supreme Court of Georgia held that burns received by a workman employed to sound a turpentine still, where burns resulted from the still's catching fire by lightning, had arisen out of the employment and were compensable.

In the case of *Mathis vs. Ash Grove Lime & Portland Cement Co.* (272 P., 183), the Supreme Court of Kansas held that the death of the employee of some quarries, by lightning, while he was walking along the railroad track on his way from one quarry to another, was compensable and that such death arose out of the employment.

In the cases of *Lebourgeois vs. Lyon Lumber Co.* (6 La. App., 216); *Fontenot vs. Lyon Lumber Co.* (6 La. App., 162), and *Gasca vs. Texas Pipe Line Co.* (2 La. App., 483), the Supreme Court of Louisiana held that an employee killed by lightning while eating his launch near a tree at the noon hour, was killed by an accident arising out of his employment and was compensable.

The attorneys who appeared as amici curiæ call this court's attention to articles 643 and 837 of the Code of Commerce and contend that it was not the intention of the legislature to repeal the above-cited articles with the enactment of the Workmen's Compensation Act. The pertinent parts of said articles read as follows;

"Art. 643. If the vessel and her freight should be totally lost, by reason of capture or wreck, all rights of the crew to demand any wages whatsoever shall be extinguished, as well as that of the agent for the recovery of the advances made."

"Art. 837. The civil liability contracted by the shipowners in the cases prescribed in this section, shall be understood as limited to the value of the vessel with all her appurtenances and all the freight earned during the voyage."

This court is of the opinion that the Legislature, in enacting the Workmen's Compensation Act and the amendments thereto, intended to create a new source of compensation in favor of workmen and employees, by granting them the right to the compensation, in the cases provided therein, independently of the fault or negligence incurred by the employers. The rights and responsibilities defined in said Act must be governed by its own peculiar provisions in complete disregard of other similar provisions of the civil as well as the mercantile law. If an accident is compensable under the Workmen's Compensation Act, it must be compensated even when the workman's right is not recognized by or is in conflict with other provisions of the Civil Code or of the Code of Commerce. The reason behind this principle is that the Workmen's Compensation Act was enacted by the Legislature in abrogation of the other existing laws. Workmen's compensation acts follow the natural and logical evolution of society and the theory upon which they are based is that each time an employee is killed or injured, there is an economic loss which must be made up or compensated in some way. The burden of this economic loss should be borne by the industry rather than by society as a whole. A fund should be provided by the industry from which a fixed sum should be set apart as every accident occurs to compensate the person injured, or his dependents, for his or their loss (*State vs. Industrial Commission*, 111 N. E., 299; L. R. A. 1916D, 944).

This court is aware of the fact that the practical application of the doctrine laid down herein will perhaps occasion great losses to the shipowners doing business in this country, but humanity and civilization demand protection for the workman in every line of labor, and to fulfill this social objective and at the same time avoid ruin, employers and shipowners should employ means to insure the stability of their business.

- In his last assignment of error the defendant contends that the court erred in ordering him to pay to the plaintiffs the sum of P3,000, with legal interest thereon from November 23, 1936, and the costs. Such contention is without merit. It has been stipulated that in case the plaintiffs are entitled to the compensation sought by them, such compensation would consist in the amount of money in question. On the other hand, it having been decided that the death of Octavio Madrid is compensable under the law, the court did not commit the error so assigned.

For all the foregoing reasons, the decision rendered by the lower court in this case, which is the only one appealed from, is affirmed, with the costs of this instance to the defendant-appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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