

SANTIAGO RAMOS, PETITIONER, VS. PEDRO POBLETE AND JACOB A. JARIN, RESPONDENTS.

G.R. No. 47829. October 08, 1941

Ponente: OZAETA, J.

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OZAETA, J.:

This is an action for compensation under the Workmen's Compensation Act. It was commenced in the Court of First Instance of Cavite by the above-named respondents, who are the parents of Agripino Poblete. The latter died as a result of an accident that occurred under the following circumstances:

While riding as a laborer in a freight truck owned and driven by the petitioner, en route from Silang, Cavite, to Manila, in the early morning of January 26, 1937, Agripino Poblete noticed that a buri sack fell from the vehicle, and shouted for the driver to stop. Before the truck came to a full stop, Poblete got off in an effort to retrieve the sack. In so doing he was caught and run over by the rear right wheel of the vehicle and died shortly thereafter.

The petitioner (defendant below) resisted the action, setting up two defenses: (a) that the deceased was never employed by him in any capacity; and (b) that his death was caused by his notorious negligence. Both defenses were overruled by the trial court, which sustained the action and rendered judgment in favor of the plaintiffs for the sum of P724, including P100 for burial expenses.

Defendant appealed to the Court of Appeals, where he insisted and relied upon his two defenses. The Court of Appeals affirmed the judgment appealed from. It found from the evidence that the deceased was employed by the defendant as a laborer.

Without adducing any further argument in this Court, the petitioner (who did not file any brief) asks us to review the ruling of the Court of Appeals (1) on the alleged notorious negligence of the deceased and (2) on the alleged nonapplicability of the Workmen's Compensation Act to this case.

1. Upon the first question the Court of Appeals said:

"* * * We do not believe that Agripino Poblete was guilty of notorious negligence. Granting that Poblete was not free from blame in alighting from the truck before it was brought to a stop, yet his fault did not amount to a notorious negligence. The speed of the truck had slackened and in his excitement Poblete very likely forgot that by getting off he ran the risk of being injured or killed. There was no time to reflect, and in his mind there was no time to wait. It was dark and a little more delay might spell the loss of the article that had fallen, picked up and carried away by someone who might happen to pass or be near by. Then the deceased was spurred in his eagerness to recover the sack not by any thought of personal benefit but by a desire to protect his employer's property, an unselfish attitude that should deserve commendation rather than condemnation from the defendant.

"The Workmen's Compensation Act is a social legislation designed to give relief to the workman who has been the victim of an accident in the pursuit of his employment and must be liberally construed to attain the purposes for which it has been enacted. (71 C. J. 341-352; *Perfecto Eneria vs. Atlantic Gulf & Pacific*

Company of Manila, C. A.-G. R. No. 2874.) In line with this principle 'the correct presumption to be followed is that * * * the laborer by his instinct of self-preservation takes precaution to avoid such danger unless an intention is attributed to him to end his life.' (Eugenio de la Cruz et al. vs. Compañía Marítima, G. R. No. 38236; Macaria S. Curbito vs. Atlantic Gulf & Pacific Company of Manila, C. A.-G. R. No. 2873.) The same idea was expressed by the Supreme Court in the case of Flores vs. Mindanao Lumber Company, G. R. No. 43096, saying: 'As is well known, the Workmen's Compensation Law is given a liberal interpretation and construction by the courts. Pursuant to such interpretation and construction, notorious negligence is something more than simple or contributory negligence. As a result, failure to avoid a known danger by a laborer engrossed in his work who momentarily forgets it is not negligence. Also, failure to exercise incessant vigilance in avoiding a known danger is not negligence. The reason for such holdings is the very obvious deduction that no man in his senses would deliberately court death.'

"It is said that the deceased owned the sack which was thrown off the truck, and the defendant argues that if that is the case Agripino Poblete's death did not arise out of and in the course of his employment. The premise of this argument is wrong. The fact that the sack was not given to the relatives of the deceased leads us to believe that the same belonged to the defendant. But even if the defendant's contention as to the ownership of the sack be correct, it would not follow that the deceased did not die in the line of duty. In a similar case, 'where a workman who, in the course of his employment, was sitting on a wagon which was being drawn by a traction engine, fell from the wagon in an attempt to recover his pipe which he had dropped (M'Lauchlan v. Anderson, S. C. 529), the lord president said: "He had a right to be at the place, riding on or walking beside the wagons; he was within the time during which he was employed, because the accident happened during the actual period of transit; and he was doing a thing which a man while working may reasonably do—a workman of his sort may reasonably smoke, he may reasonably drop his pipe, and he may reasonably pick it up again." ' (Labatt's Master and Servant, Vol. 5, p. 5420.)"

We affirm the foregoing ruling of the Court of Appeals as a correct exposition of the law.

2. The second question was raised by the petitioner for the first time in his motion for reconsideration before the Court of Appeals.

The trial court (Judge Arsenio C. Roldan, presiding), without any basis whatsoever either in the pleadings or in the evidence, inserted the following statements in its decision :

"* * * A todas luces, el negocio del demandado no puede tener un ingreso bruto mayor de veinte mil pesos.

"* * * * *"

* * * El demandado tiene un negocio bruto que no asciende a veinte mil pesos."

Invoking those statements of the trial judge, the petitioner, in his motion for reconsideration before the Court of Appeals, contended for the first time that the Employer's Liability Act, and not the Workmen's Compensation Act, should govern this case, because section 42 of the Workmen's Compensation Act (Act No. 3428, as amended by Act No. 3812) provides as follows:

"SEC. 42. Law applicable to small industries.—All claims for accidents occurring in a trade, occupation or profession exercised by an employer for the purpose of gain, the gross income of which during the year next preceding the one in which the accident occurred was less than twenty thousand pesos, shall be governed by the provisions of Act Numbered Eighteen hundred and seventy-four and its amendments."

He alleged that under the Employer's Liability Act (Act No. 1874, as amended) contributory negligence of the employee is a bar to recovery; and that altho the employee in this case may not have been guilty of notorious negligence, as found by the Court of Appeals, he was guilty of contributory negligence, for which reason his heirs cannot recover.

The Court of Appeals denied the motion for reconsideration for three reasons: (a) the alleged error was not assigned by the appellant in his brief nor discussed during the trial in both instances, and therefore could not be considered in finally deciding the appeal, citing *Hernaez vs. Montelibano*, 34 Phil. 954; (b) the contention constitute a change of theory not permissible on appeal, citing *Toribio vs. Decasa*, 55 Phil. 461; and (c) the statements of the trial judge invoked were absolutely out of place.

We think the Court of Appeals was right in refusing to permit appellant to change his theory of the case after it had been submitted to and decided by that court. The defense of "notorious negligence" was alleged and insisted upon by the appellant in the trial court as well as in the Court of Appeals under the provisions of the Workmen's Compensation Act, which was the statute invoked by the plaintiffs. The defendant should have alleged and proved in the trial court that his gross income during the year next preceding the one in which the accident occurred, was less than twenty thousand pesos, if that was the fact and if he wanted to avail thereof as a defense. After the case had been tried and decided in two instances on issues properly joined under the theory that the Workmen's Compensation Act is applicable, the defendant cannot be permitted to change the issue and adopt another theory, namely, that the Employer's Liability Act, and not the Workmen's Compensation Act, is the statute applicable.

The statement of the trial judge in his decision to the effect that defendant's business could not have a gross annual income of more than twenty thousand pesos, was uncalled for and stultifying because it was entirely beside the point and tended to contradict his judgment. It cannot be availed of by either of the parties for any purpose; it must be deemed not written.

Judgment is affirmed with costs. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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