

**ANDRES VILLAVILLA AND ESTER GADIENTE VILLAVILLA,
PETITIONERS, VS. COURT OF APPEALS, SOCIAL SECURITY
COMMISSION, REYNALDO MERCADO, AND MARCELO COSUCO,
RESPONDENTS, SOCIAL SECURIT...**

G.R. No. 79664. August 11, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated April 10, 1987, affirming the Order[2] of the Social Security Commission dated November 28, 1984, dismissing the complaint of herein petitioners for lack of cause of action, as well as the Resolution[3] of respondent court denying the motion of petitioners for reconsideration.

The antecedents: Arturo Villavilla, son of petitioners, was employed as "tripulante" (crew member) of the fishing boat "F/B Saint Theresa" from 1974 until September 11, 1977, when the boat sank off Isla Binatikan, Taytay, Palawan. Arturo was not among the known survivors of that sinking and had been missing since then.[4]

On November 20, 1979, petitioners Andres Villavilla and Ester Gadienite Villavilla, parents of Arturo, filed a petition with the Social Security Commission against Reynaldo Mercado and Marcelino Cosuco, owners of the ill-fated fishing boat, for death compensation benefits of Arturo whom respondents failed to register as their employee.[5]

On May 29, 1981, the Social Security System (SSS) filed a petition in intervention alleging that records from the SSS Production Department showed that "F/B Saint Theresa", owned by Marcelino Cosuco and operated by Reynaldo Mercado, was a registered member-employer, and that in the event petitioners succeeded in proving the employment of Arturo with private respondents, the latter should be held liable in damages equivalent to the benefits due the petitioners for failure to report Arturo for coverage pursuant to Sec. 24 (a) of the Social Security Act, as amended.[6]

Respondent Cosuco filed his answer denying all allegations in the petition and claiming that he already sold the fishing boat to respondent Mercado on December 10, 1975, and from then on he did not participate anymore in the operation and management of the boat nor in the hiring of its crewmembers.[7]

Meanwhile respondent Mercado was declared in default for failure to file his answer.

After petitioners had presented their evidence and rested their case, respondent Cosuco filed a motion to dismiss (demurrer to evidence) on the ground of res judicata and lack of cause of action.[8]

On November 28, 1984, respondent Social Security Commission issued an Order dismissing the petition for lack of cause of action.[9]

On appeal, respondent Court of Appeals in its decision of April 10, 1987, affirmed the questioned Order of

respondent Commission there being no reversible error.[10]

Petitioners are before Us predicated their petition for review on the following issues: whether there was an employer-employee relationship between petitioners' deceased son, Arturo Villavilla, and herein private respondents; whether private respondents are liable for death compensation benefits of Arturo Villavilla; and, whether there was a violation of the Social Security Act, as amended, by private respondents for not registering Arturo Villavilla with the System as their employee as mandated by law.

Petitioners argue that it was private respondent Reynaldo Mercado who recruited Arturo Villavilla sometime in 1974 to be a crew member of the fishing boat "F/B Saint Theresa" with a daily wage of P20.00. The boat was then owned by private respondent Marcelino Cosuco and operated by Reynaldo Mercado. On December 10, 1975, Cosuco sold the fishing boat to Mercado.

Invoking *Negre vs. Workmen's Compensation Commission*,[11] petitioners assert that "fishermen-crew members are individual employees and not industrial partners as in the case at bar" so that the "mere presence of Arturo Villavilla in the fishing boat of Mercado makes him an employee of the employer, Mercado." Further citing *RJL Martinez Fishing Corporation vs. NLRC*,[12] petitioners posit that "the main factor that determines whether a person is an employee of the employer is the kind of work being performed by that person. If the work of the laborer is part of the regular business or occupation of the employer, the said laborer is a regular employee of the employer." Petitioners thus contend that since Arturo was recruited by Mercado himself sometime in 1974 as one of his fishermen-crew members and that the crew members were uniformly paid by Mercado, there can be no other conclusion but that Arturo was an employee of Mercado at the time his fishing boat sank.

A careful and assiduous review of the records, however, completely undermines the base of petitioners' position. The records disclose that the relationship between Mercado and the crew members of the ship headed by its skipper, Capt. Pedro Matibag, is one positively showing the existence of a joint venture. This is clearly revealed in the testimonies of Capt. Pedro Matibag and Gil Chua, a crew member, both witnesses for petitioners, to wit:

"Atty. Aganan (to witness Pedro Matibag):

Q. Mr. Witness, will you tell us who your employer is?

A. Mr. Cosuco, Ma'am.

x x x x

Q. Who pays your salary?

A. The procedure is sharing. If we have a catch, we share the catch.

Q. What is the nature of 'partihan' or sharing?

A. Upon selling the fish to the market, a certain portion will be deducted for the expenses and taken by the checker and the remaining amount will be shared by the crew-members.

Q. By crew-members, you mean, those who are fishing or who catch fish?

A. Yes, Ma'am.

x x x x

Q. Is the checker also paid and also included in the sharing?

A. Yes, Ma'am.[13]

x x x x

Atty. Riva:

Q. Mr. Captain, is Arturo Villavilla a member of the crew?

A. A fisherman.

Q. As a fisherman, what is his duty?

A. His duty is, he will ride the fishing boat and he will 'mangangawil.'

Q. By the way, who hired him?

A. There was a master whom we talked to.

Q. And this master is the one who hired him and gave him the share for fishing?

A. Yes, Sir.

Q. So, assuming that Marcelino Cosuco is the owner, he has nothing to do with Arturo Villavilla?

A. Yes, Sir, it was the master.

Q. And the same was through (true) with Reynaldo Mercado that he has nothing to do with the hiring of Arturo Villavilla because it is the master fisherman who hired him, is that right?

A. Yes, Sir.

Q. And Mr. Mercado only buys fish from them?

A. Yes, Sir.[14]

x x x x

Hearing Officer:

Q. Do you want to convey to this Honorable Commission Mr. Matibag, that you went to fishing venture to fish?

A. Yes, Sir.

Q. In this fishing venture, do you have any agreement to (with) the owner of the fishing boat?

A. Our agreement with the owner was to go to high seas for fishing.

Q. Do you receive monthly salary from the owner of the fishing boat?

A. None, Sir, because it was a sharing basis.

Q. So, what is the contribution of the owner of the fishing boat to your fishing venture?

A. Food and other equipment.

Q. Mr. Matibag, who supplied you the gasoline?

A. The owner of the fishing boat, Sir.

Q. Who gave you provisions or food in your fishing or during the duration of your fishing?

A. The owner.

Q. While you were in high seas, was there anybody who supervised you?

A. None, Sir, there was no radio. I gave the order.

Q. Before you go (sic) to the high seas for fishing purposes, did you receive any instruction from the owner?

A. There was no instruction given.[15]

x x x x

Atty. Agana (to witness Gil Chua):

Q. Will you please inform the Honorable Investigator how much is your salary and where did you get your salary?

A. It was given to us by the captain when there is (sic) a sale.

Q. So, I understand from you, Mr. witness, that whenever there is a sale of fish, you get a share?

A. We received P200 or P300, not the same always.

x x x x

Atty. Riva:

Q. Depending on the volume of sale of fish, is it not?

A. That is all I know.[16]

x x x x

Hearing Officer:

Q. Was there a time that you did not receive any share?

A. If we have a trip, we usually receive.

Q. How about if there is no trip, did you receive any salary from Mr. Mercado as owner of fishing boat St. Theresa?

A. No., Sir.

x x x x

Q. So, you are sure Mister Witness, that when your fishing boat has no catch, you did (sic) not receive any share?

A. Yes, Sir."[17]

It is thus clear that the arrangement between the boat owner and the crew members, one of whom was petitioners' -son, partook of the nature of a joint venture: the crew members did not receive fixed compensation as they only shared in their catch; they ventured to the sea irrespective of the instructions of the boat owners, i.e., upon their own best judgment as to when, how long, and where to go fishing; the boat owners did not hire them but simply joined the fishing expedition upon invitation of the ship master, even without the knowledge of the boat owner. In short, there was neither right of control nor actual exercise of such right on the part of the boat owner over his crew members.

Consequently, respondent Court of Appeals is correct in upholding the application by respondent Social Security

Commission of the ruling in *Pajarillo v. Social Security System*[18] where We held:

"x x x an employee is defined as a 'person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship' (Sec. 8[d], Rep. Act 1161 as amended by Rep. Act 2658). In the present case, neither the pilots nor the crew-members receive compensation from boat-owners. They only share in their own catch produced by their own efforts. There is no showing that outside of their one third share, the boat-owners have anything to do with the distribution of the rest of the catch among the pilots and the crew-members. The latter perform no service for the boat-owners, but mainly for their own benefit.

"In the undertaking in question, the boat-owners obviously are not responsible for the wage, salary, or fee of the pilot and crew-members. Their sole participation in the venture is the furnishing or delivery of the equipment used for fishing, after which, they merely wait for the boat's return and receive their share in the catch, if there is any. For his part, a person who joins the outfit is entitled to a share or participation in the fruit of the fishing trip. If it gives no return, the men get nothing. It appears to us therefore that the undertaking is in the nature of a joint venture, with the boat-owner supplying the boat and its equipments (sic), and the pilot and crew-members contributing the necessary labor, and the parties getting specific shares for their respective contributions.

x x x x

"Add to this extreme difficulty, if not impossibility of determining the monthly wage or earning of these fishermen for the purpose of fixing the amount of their and the supposed-employer's contributions (See Secs. 18 and 19, *Ibid.*), and there in every reason to exempt the parties to this kind of undertaking from compulsory registration with the Social Security System."

Certainly, petitioners' reliance on *Negre v. Workmen's Compensation Commission*, *supra*, and *RJL Fishing Corp. v. NLRC*, *supra*, is misplaced. The observations of respondent Social Security Commission are more persuasive and correct. Thus -

"The case of *Jose Negre vs. Workmen's Compensation, et. al.*, 135 SCRA 651, invoked by the petitioners-appellants in support of their claim that there existed an employer-employee relationship between their son Arturo Villavilla and private respondent Reynaldo Mercado cannot be applied to the instant case for the simple reason that the facts in the aforesaid case are different from those in the case at bar. A look at the *Jose Negre* case will show that it made referral to the case of *Abong vs. Workmen's Compensation Commission*, 54 SCRA 379, wherein this Honorable Court stated, and we beg to quote:

x x x x

'In *Abong vs. Workmen's Compensation Commission* (54 SCRA 379) we held that fisherman crew-members Manuel and Miguel are employees and not industrial partners.'

x x x x

"It is to be noted, however, that in the case of *Abong vs. Workmen's Compensation Commission*, this Honorable Court stated and we again beg to quote:

x x x x

'As pointed by the Commissions finding, the fundamental bases showing that petitioner Dr. Agustin R. Abong is the employer, are present, namely, the selection and engagement of the employee; the payment of wages; the power of dismissal and the employer's a power to control the employees conduct. These powers were lodged in petitioner Abong, thru his agent, Simplicio Panganiban, whom he alleges to be his partner. On this score alone, the petition for review must fail. It is well-settled that employer-employee relationship involves findings of facts

which are conclusive and binding and not subject to review by this Court. (underscoring supplied).’

x x x x

"Interestingly, the aforementioned fundamental bases for the existence of employer-employee relationship are not present in the case at bar. As mentioned earlier, private respondent Reynaldo Mercado had no connection with the selection and engagement of Arturo Villavilla (pp. 38-39, T.S.N. 12-6-83); exercised no power of dismissal over Arturo Villavilla; neither had he any power of control or had reserved the right to control Arturo Villavilla as to the result of the work to be done as well as the means and methods by which the same is to be accomplished, and there was no such uniform salary involved (pp. 41-43, T.S.N. 12-6-83)."

In the case before Us, it is clear that there was no employer-employee relationship between petitioners's son Arturo and private respondent Mercado, much less private respondent Cosuco. As such, Arturo could not be made subject of compulsory coverage under the Social Security Act; hence, private respondents cannot be said to have violated said law when they did not register him with the Social Security System. A fortiori, respondents as well as intervenor are not answerable to petitioners for any death benefits under the law.

Culled from the foregoing, the inexorable conclusion is that respondent Court of Appeals did not err in sustaining the judgment of respondent Social Security Commission.

It may not be amiss to mention that while petitioners merely raise factual questions which are not proper under Rule 45 of the Rules of Court, We nevertheless went to great lengths in dissecting the facts of this case if only to convince Us that petitioners, who are pauper litigants and seeking claims under a social legislation, have not been denied its benefits. For, We are not unaware that in this jurisdiction all doubts in the implementation and interpretation of provisions of social legislations should be resolved in favor of the working class. But, alas, justice is not fully served by sustaining the contention of the poor simply because he is poor. Justice is done by properly applying the law regardless of the station in life of the contending parties.

WHEREFORE, finding no reversible error in the questioned judgment of the appellate court, the same is AFFIRMED. No costs.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] CA-G.R. No. SP-05668, per Justice Nicolas P. Lapeña, Jr; Justice Bienvenido C. Ejercito and Justice Segundino G. Chua, concurring.

[2] Annex "E", Petition, Rollo, pp. 40-42.

[3] Annex "I", Petition, Rollo, pp. 57-58.

[4] Petition, p. 1; Rollo, p. 11.

[5] Annex "A", Rollo, pp. 20-21.

[6] Annex "C", Rollo, pp. 24-25.

[7] Annex "B", Rollo, pp. 22-23.

[8] Annex "D", Rollo, pp. 26-38.

[9] Annex "E", Rollo, pp. 40-41.

- [10] Annex "C", Rollo, pp. 50-53.
- [11] No. L-43795, April 5, 1985; 135 SCRA 651.
- [12] G.R. Nos. 63550-51, January 31, 1984; 127 SCRA 455.
- [13] T.S.N., pp. 29-31, December 6, 1983.
- [14] T.S.N., pp. 37-39, December 6, 1983.
- [15] T.S.N., pp. 41-43, December 6, 1983.
- [16] T.S.N., pp. 23-24, January 6, 1984.
- [17] T.S.N., pp. 37-38, January 6, 1984.
- [18] No. L-21930, August 30, 1966; 17 SCRA 1014, 1016-1017.

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