

**MA-AO SUGAR CENTRAL CO., INC. AND GUILLERMO ARANETA,
PETITIONERS, VS. HON. COURT OF APPEALS AND HERMINIA
FAMOSO, RESPONDENTS.**

G.R. No. 83491. August 27, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

To say the least, the Court views with regret the adamant refusal of petitioner Ma-ao Sugar Central to recompense the private respondent for the death of Julio Famoso, their main source of support, who was killed in line of duty while in its employ. It is not only a matter of law but also of compassion on which we are called upon to rule today. We shall state at the outset that on both counts the petition must fail.

On March 22, 1980, Famoso was riding with a co-employee in the caboose or "carbonera" of Plymouth No. 12, a cargo train of the petitioner, when the locomotive was suddenly derailed. He and his companion jumped off to escape injury, but the train fell on its side, caught his legs by its wheels and pinned him down. He was declared dead on the spot.[1]

The claims for death and other benefits having been denied by the petitioner, the herein private respondent filed suit in the Regional Trial Court of Bago City. Judge Marietta Hobilla-Alinio ruled in her favor but deducted from the total damages awarded 25% thereof for the decedent's contributory negligence and the total pension of P41,367.60 private respondent and her children would be receiving from the SSS for the next five years. The dispositive portion of the decision read:

WHEREFORE, in view of the foregoing facts and circumstances present in this case, the Court orders as it does hereby order the defendant Ma-ao Sugar Central thru its Manager Mr. Guillermo Y. Araneta to pay plaintiff the following amount:

P30,000.00 - for the death of plaintiff's husband, the late Julio Famoso

P30,000.00 - for actual, exemplary and moral damages

P10,000.00 - loss of earnings for twenty (20) years

P 3,000.00 - funeral expenses

P73,000.00 - Total Damages

Less: P18,250.00 - 25% for the deceased's contributory negligence

Less: P41,367.60 - pension plaintiff and her minor children would be receiving for five (5) years from the SSS

_____ -

P13,382.40

Plus: P 3,000.00 - Attorney's fees and cost of this suit

P16,382.40 - Total amount payable to the plaintiff

SO ORDERED.

The widow appealed, claiming that the deductions were illegal. So did the petitioner, but on the ground that it was not negligent and therefore not liable at all.

In its own decision, the Court of Appeals² sustained the rulings of the trial court except as to the contributory negligence of the deceased and disallowed the deductions protested by the private respondent. Thus, the respondent court declared:

WHEREFORE, the decision appealed from is MODIFIED by ordering the defendant-appellant to pay the plaintiff-appellee the following amounts:

P30,000.00, for the death of Julio Famoso

P30,000.00, for actual, exemplary and moral damages

P10,000.00, for loss of earnings for twenty (20) years

P 3,000.00, for funeral expenses

P 3,000.00, for attorney's fees

P76,000.00 Total Amount

In this petition, the respondent court is faulted for finding the petitioner guilty of negligence notwithstanding its defense of due diligence under Article 2176 of the Civil Code and for disallowing the deductions made by the trial court.

Investigation of the accident revealed that the derailment of the locomotive was caused by protruding rails which had come loose because they were not connected and fixed in place by fish plates. Fish plates are described as strips of iron 8" to 12" long and 3 1/2" thick which are attached to the rails by 4 bolts, two on each side, to keep the rails aligned. Although they could be removed only with special equipment, the fish plates that should have kept the rails aligned could not be found at the scene of the accident.

There is no question that the maintenance of the rails, for the purpose inter alia of preventing derailments, was the responsibility of the petitioner, and that this responsibility was not discharged. According to Jose Treyes, its own witness, who was in charge of the control and supervision of its train operations, cases of derailment in the milling district were frequent and there were even times when such derailments were reported every hour.³ The petitioner should therefore have taken more prudent steps to prevent such accidents instead of waiting until a life was finally lost because of its negligence.

The argument that no one had been hurt before because of such derailments is of course not acceptable. And neither are we impressed by the claim that the brakemen and the conductors were required to report any defect in the condition of the railways and to fill out prescribed forms for the purpose. For what is important is that the petitioner should act on these reports and not merely receive and file them. The fact that it is not easy to detect if the fish plates are missing is no excuse either. Indeed, it should stress all the more the need for the responsible employees of the petitioner to make periodic checks and actually go down to the railroad tracks and see if the fish plates were in place.

It is argued that the locomotive that was derailed was on its way back and that it had passed the same rails earlier without accident. The suggestion is that the rails were properly aligned then, but that does not necessarily mean they were still aligned afterwards. It is possible that the fish plates were loosened and detached during its first trip and the rails were as a result already mis-aligned during the return trip. But the Court feels that even this was unlikely, for, as earlier noted, the fish plates were supposed to have been bolted to the rails and could be removed only with special tools. The fact that the fish plates were not found later at the scene of the mishap may show they were never there at all to begin with or had been removed long before.

At any rate, the absence of the fish plates - whatever the cause or reason - is by itself alone proof of the negligence of the petitioner. *Res ipsa loquitur*. The doctrine was described recently in *Layugan v. Intermediate Appellate Court*,⁴ thus:

Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care.

The petitioner also disclaims liability on the ground of Article 2176 of the Civil Code, contending it has exercised due diligence in the selection and supervision of its employees. The Court cannot agree. The record shows it was in fact lax in requiring them to exercise the necessary vigilance in maintaining the rails in good condition to prevent the derailments that sometimes happened "every hour." Obviously, merely ordering the brakemen and conductors to fill out prescribed forms reporting derailments - which reports have not been acted upon as shown by the hourly derailments - is not the kind of supervision envisioned by the Civil Code.

We also do not see how the decedent can be held guilty of contributory negligence from the mere fact that he was not at his assigned station when the train was derailed. That might have been a violation of company rules but could not have directly contributed to his injury, as the petitioner suggests. It is pure speculation to suppose that he would not have been injured if he had stayed in the front car rather than at the back and that he had been killed because he chose to ride in the caboose.

Contributory negligence has been defined as "the act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the the injury."⁵ It has been held that "to hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warnings or signs of an impending danger to health and body."⁶ There is no showing that the caboose where Famoso was riding was a dangerous place and that he recklessly dared to stay there despite warnings or signs of impending danger.

The last point raised by the petitioner is easily resolved. Citing the case of *Floresca v. Philex Mining Corporation*,⁷ it argues that the respondent court erred in disauthorizing the deduction from the total damages awarded the private respondent of the amount of P41,367.60, representing the pension to be received by the private respondent from the Social Security System for a period of five years. The argument is that such deduction was quite proper because of Art. 173 of the Labor Code, as amended. This article provides that any amount received by the heirs of a deceased employee from the Employees Compensation Commission, whose funds are administered by the SSS, shall be exclusive of all other amounts that may otherwise be claimed under the Civil Code and other pertinent laws.

The amount to be paid by the SSS represents the usual pension received by the heirs of a deceased employee who was a member of the SSS at the time of his death and had regularly contributed his premiums as required by the System. The pension is the benefit derivable from such contributions. It does not represent the death benefits

payable under the Workmen's Compensation Act to an employee who dies as a result of a work-connected injury. Indeed, the certification from the SSS8 submitted by the petitioner is simply to the effect that:

TO WHOM IT MAY CONCERN:

This is to certify that Mrs. Herminia Vda. de Famoso is a recipient of a monthly pension from the Social Security System arising from the death of her late husband, Julio Famoso, an SSS member with SSS No. 07-018173-1.

This certification is issued to Ma-ao Sugar Central for whatever legal purpose it may serve best.

Issued this 8th day of April 1983 in Bacolod City, Philippines.

GODOFREDO S. SISON

Regional Manager

By: (SGD.) COSME Q. BERMEO, JR.

Chief, Benefits Branch

It does not indicate that the pension is to be taken from the funds of the ECC. The certification would have said so if the pension represented the death benefits accruing to the heirs under the Workmen's Compensation Act.

This conclusion is supported by the express provision of Art. 173 as amended, which categorically states that:

Art. 173. Exclusiveness of liability. - Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall not bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven hundred sixty-one, as amended, Commonwealth Act Numbered One hundred eighty-six, as amended, Republic Act Numbered Six hundred ten, as amended, Republic Act Numbered Forty-eight hundred sixty-four, as amended and other laws whose benefits are administered by the System or by other agencies of the government. (Emphasis supplied).

Rep. Act No. 1161, as amended, is the Social Security Law.

As observed by Justice J.B.L. Reyes in the case of *Valencia v. Manila Yacht Club*,⁹ which is still controlling:

. . . By their nature and purpose, the sickness or disability benefits to which a member of the System may be entitled under the Social Security law (Rep. Act No. 1161, as amended by Rep. Acts Nos. 1792 and 2658) are not the same as the compensation that may be claimed against the employer under the Workmen's Compensation Act or the Civil Code, so that payment to the member employee of social security benefits would not wipe out or extinguish the employer's liability for the injury or illness contracted by his employee in the course of or during the employment. It must be realized that, under the Workmen's Compensation Act (or the Civil Code, in a proper case), the employer is required to compensate the employee for the sickness or injury arising in the course of the employment because the industry is supposed to be responsible therefore; whereas, under the Social Security Act, payment is being made because the hazard specifically covered by the membership, and for which the employee had put up his own money, had taken place. As this Court had said:

. . . To deny payment of social security benefits because the death or injury or confinement is compensable under the Workmen's Compensation Act would be to deprive the employees members of the System of the statutory benefits bought and paid for by them, since they contributed their money to the general common fund out of which benefits are paid. In other words, the benefits provided for in the Workmen's Compensation Act accrues to the employees concerned due to the hazards involved in their employment and is made a burden on the

employment itself. However, social security benefits are paid to the System's members, by reason of their membership therein for which they contribute their money to a general common fund. . . .

It may be added that whereas social security benefits are intended to provide insurance or protection against the hazards or risks for which they are established, e.g., disability, sickness, old age or death, irrespective of whether they arose from or in the course of the employment or not, the compensation receivable under the Workmen's Compensation law is in the nature of indemnity for the injury or damage suffered by the employee or his dependents on account of the employment. (*Rural Transit Employees Asso. vs. Bachrach Trans. Co.*, 21 SCRA 1263 [1967])

And according to Justice Jesus G. Barrera in *Benguet Consolidated, Inc. v. Social Security System*:¹⁰

The philosophy underlying the Workmen's Compensation Act is to make the payment of the benefits provided for therein as a responsibility of the industry, on the ground that it is industry which should bear the resulting death or injury to employees engaged in the said industry. On the other hand, social security sickness benefits are not paid as a burden on the industry, but are paid to the members of the System as a matter of right, whenever the hazards provided for in the law occurs. To deny payment of social security benefits because the death or injury or confinement is compensable under the Workmen's Compensation Act would be to deprive the employees-members of the System of the statutory benefits bought and paid for by them, since they contribute their money to the general common fund out of which benefits are paid. In other words, the benefits provided for in the Workmen's Compensation Act accrues to the employees concerned, due to the hazards involved in their employment and is made a burden on the employment itself. However, social security benefits are paid to the System's members, by reason of their membership therein for which they contributed their money to a general common fund.

Famoso's widow and nine minor children have since his death sought to recover the just recompense they need for their support. Instead of lending a sympathetic hand, the petitioner has sought to frustrate their efforts and has even come to this Court to seek our assistance in defeating their claim. That relief - and we are happy to say this - must be withheld.

WHEREFORE, the appealed decision is AFFIRMED in toto. The petition is DENIED, with costs against the petitioner.

SO ORDERED.

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

Original Record, p. 122.

2 Penned by Justice Vicente V. Mendoza, and concurred in by Justices Gloria C. Paras and Conrado T. Limcaoco.

3 TSN, October 31, 1984, p. 27.

4 167 SCRA 376.

5 Moreno, *Philippine Law Dictionary*, 3rd Ed., p. 210.

6 *Ocampo v. Capistrano*, CA-G.R. No. 47067-R, January 24, 1980.

7 136 SCRA 141.

8 Exhibit “4,” Original Record, p. 92.

9 28 SCRA 724.

10 10 SCRA 616.

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