

MARIA PAZ S, ALBA, ETC., ET AL., PETITIONERS, VS. DR. HORACIO BULAONG, ET AL., ETC., RESPONDENTS.*G. R. Nos. 10308 and 10385-8. April 30, 1957*

Ponente: BENGZON, J.

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This is a petition to reverse the decision of the Commissioner of the Workmen's Compensation Commission in five cases denying the claims for compensation, against Dr. Horacio Bulaong, of herein petitioners, who were his employees and dependents of his employees.

On March 12, 1955, petitioners Gregorio de la Cruz, Pedro C. Bulaong and Pacifico Bulaong were employees of Dr. Horacio Bulaong in his business of threshing palay. Other employees were Engracio Alba (husband of petitioner Maria Paz S. Alba) and Vicente A. Sebastian (husband of petitioner Elisea S. Sebastian). Early in the morning of that day said five employees were, upon specific orders of Dr. Bulaong, on their way to Barrio Baringan, Malolos, Bulacan, to thresh palay, riding on a tractor which was pulling a threshing machine. Suddenly a speeding bus of the Victory Liner Inc. collided with the thresher which in turn hit the tractor, and as a result those on board were violently thrown out. Engracio Alba and Vicente Sebastian died; Gregorio de la Cruz, Pedro C. Bulaong and Pacifico Bulaong sustained physical injuries.

WHEREFORE, five separate claims were filed before the Workmen's Compensation Commission against the employer Dr. Bulaong. Three defenses were set up by him: (a) claimants were not his employees, but industrial partners, (b) the injuries were not sustained in the course of employment and (c) the claims, if any, had been extinguished by virtue of the monetary settlements which petitioners had concluded with the Victory Liner Inc.

The referee overruled the defenses, having found the five men to be employees who had died or were injured in the course of employment. Consequently he required the employer to make compensation in the amounts specified in his award. However on appeal, the Workmen's Compensation Commissioner absolved Dr. Bulaong from all liability, because he found that the claimants had received, after the mishap, various amounts of money from the owner of the colliding bus, the Victory Liner Inc., each of them having executed a written release or waiver in favor of said Liner, the pertinent part of which reads as follows:

"And I likewise freely and completely cede and transfer into said Company (Victory Liner Inc.) any right given to me by law against any person or company that should be liable for the said accident except my right to claim against Dr. Horacio Bulaong in accordance with and under the Workmen's Compensation Act (Rep. Act 772)."

Claimants, the Commissioner declared, had elected to hold the Liner responsible for the accident, and could not thereafter turn around to recover compensation from their employer. He cited section 6 of the Workmen's Compensation Law, which for convenience is quoted:

"Sec. 6. Liability of third parties.—In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to

claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed tho injured employee to the right of recovering from such person what he paid: Provided, That in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other , person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings. The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of this Act, shall not be admissible as evidence in any damage suit or action." (As amended.)

Naturally the argument before this Court dwelt mostly on the interpretation of the above section and its application to the circumstances of record. There was no election, petitioners contend, to recover from the Liner to the exclusion of Dr. Bulaong, because the document itself signed by petitioners reserved their right to claim against Dr. Horacio Bulaong under the Workmen's Compensation Act." Such reservation, counter the respondents, besides being void and against the law, cannot bind Dr. Bulaong who was not a party to the instrument.

There is no question that the Liner was a "third party" within the meaning of section 6. There is also no question that petitioner have not sued the Liner for damages. Wherefore they are not deemed to have made the election specified in section 6. However, the plain intent of the law is that they shall not receive payment twice for the same injuries (from the third party and from the employer) . Hence if without suing they receive full damages from the third party, they should be deemed to have practically made the election under the law, and should be prevented from thereafter suing the employer. Pull damages means, of course what they would have demanded in a suit against the third party or what they would receive in a compensation as complete settlement. Needless to say, where the injured employee is offered, by the third party, compensation which he deems insufficient, he may reject it and thereafter litigate with such third party. Or choose instead to complain against his employer.

Nevertheless there is nothing in the law to prevent him from accepting such insufficient compensation but expressly reserving at the same time his right' to recover additional damages from his employer. If the third party agrees to the reservation, such partial payment may legally be made and accepted. We say "if", because the reservation necessarily entails some disadvantage to the third party, inasmuch as pursuant to legal principles when the employer subsequently pays, he may in turn recover from the third party (See sec. 6). The employer can not validly object to such reservation by the employee, because in effect the settlement helps to reduce the amount he will afterwards have to disgorge.

As we see it, the five employees' acceptance of the Victory Liner's offer of compensation, under the circumstances disclosed by this record, especially the written" acknowledgments, showed they were not content with the amount received—they did not consider it sufficient—so they reserved their right to require additional compensation from their employer. Hence their action against Dr. Bulaong is not barred by section 6. He may in turn demand reimbursement from Victory Liner Inc.

The implied reservation of Dr. Bulaong's right against Victory Liner Inc. is not unprecedented in the realm of jurisprudence. When a promissory note is dishonored for non-payment, the holder may recover its value either from the maker or from the indorser. If he sues the indorser and recovers, the latter may in turn recoup from the maker. The statute expressly permits him to renounce his right against the maker and reserve his right to recover from the indorser (Sec. 120 (e) Negotiable Instruments Law). When that happens, the courts say the indorser's right to recover from the maker is also reserved. (Bootman's Sav. Bank vs. Johnson, 24 Mo. App. 317; Tolentino Commercial Laws Vol. I (7th Ed.) p. 361.[1])

In the situation resulting after the collision, we could regard the five employees, the Victory Liner and Dr. Bulaong in the same juridical position, respectively, of holder, maker and indorser. The release with express reservation produced the implied reservation already stated.

What then, it may be asked, was the advantage accruing to the Liner from the settlement it had worked to accomplish? For one thing its driver would not be prosecuted by petitioners; besides earning such driver's gratitude, the Liner thereby avoided losses in time and services. For another, even if afterwards it should be liable to the employer for whatever the latter might have to satisfy, the Liner could expect the settlement between employer and employees to be reasonable considering their relationship, more reasonable perhaps than a settlement between itself and the injured employees.

It is therefore our view that the moneys received from Victory Liner Inc. did not necessarily have the effect of releasing Dr. Bulaong. Inasmuch as the five men were his employees, and they were injured by reason of and in the course of their employment, he must pay compensation to be fixed in accordance with law. Bearing in mind, however, the law's intention not to give double compensation, the amounts they have received from the Victory Liner shall be deducted from the sums so determined.

In this connection we notice that the referee who has investigated the matter has made some calculations of monetary award. However they were not passed upon by the Commissioner.

Wherefore, for the purpose of ascertaining and awarding such compensation to petitioners, the record will be remanded to the Workmen's Compensation Commission for further action in accordance with this opinion. No costs; So ordered.

Padilla, Reyes, A., Bautista Angelo, Labrador, Conception, Endencia, and Felix, JJ., concur.

Montemayor, J., concurs in the result. Case remanded to Workmen's Compensation Commission for further action.

[1] The same implied reservation is admitted where holder of negotiable instrument waives right against first indorser but reserves his right to sue the second indorser. The latter's right against first indorser is impliedly reserved.

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