

THIRD DIVISION

[G.R. NO. 163212, March 13, 2007]

**CANDANO SHIPPING LINES, INC., PETITIONER, VS. FLORENTINA
J. SUGATA-ON, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking to reverse and set aside the Court of Appeals Decision^[1] dated 23 May 2003 and its Resolution dated 1 April 2004, affirming with modification the Decision of the Regional Trial Court (RTC) of Manila, Branch 20, finding Candano Shipping Lines, Inc. (Candano Shipping) liable for the death of Melquiades Sugata-on. The dispositive portion of the assailed decision of the appellate court reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is **AFFIRMED**, with the **MODIFICATION** that: (1) the awarded compensation for the death of Melquiades Sugata-on is reduced to P608,400.00; and, (2) the award of moral and exemplary damages as well as attorney's fees is **deleted**. No pronouncement as to costs.^[2]

The factual and procedural antecedents of this instant petition are as follows:

Candano Shipping is a domestic corporation engaged in the business of coastwise trading within the Philippines.^[3] On 7 March 1994, Melquiades Sugata-on was employed by Candano Shipping as Third Marine Engineer on board its cargo vessel, M/V David, Jr., with the monthly salary of P7,800.00.^[4]

On 25 March 1996, M/V David, Jr. left the port of Davao City with its cargo and 20 crew members. The voyage was initially uneventful until around seven o'clock in the evening of 27 March 1996 when the vessel encountered rough seas and strong winds while traversing the waters of Lianga Bay, Surigao del Sur, causing her to tilt at three degrees on its starboard side. Due to the violent waves which continuously hammered the tilting vessel, the seawaters slowly swallowed up the main deck causing the tilting to worsen up to 30 degrees. In an effort to salvage the vessel, the ship captain changed its course from the north to the south but the tilting continued to grow to a dangerously high level, rendering the vessel beyond control. It was at this point when the ship captain ordered the crew members to abandon the vessel. Despite the efforts exerted by the crew members to save the vessel, M/V David, Jr. sank together with her cargo at around eleven o'clock in the evening at Bakulin Point, Lianga Bay, Surigao del Sur. Among the 20 crew members, twelve survived, one died and seven were missing. One of those who were missing was Melquiades Sugata-on (Melquiades), the husband of herein respondent, Florentina Sugata-on, (Florentina) as shown in the List of Surviving Crew of the Ill-Fated David, Jr., prepared by Candano Shipping.^[5]

Upon learning of Melquiades' fate, Florentina immediately went to the office of Candano Shipping in Manila to claim the death benefits of her husband but it refused to pay.^[6]

Such refusal prompted Florentina to institute on 31 January 1997, an action seeking indemnity for the death of her husband against Candano Shipping before the RTC of Manila, Branch 20. She grounded her case on the provision of Article 1711^[7] of the New Civil Code, which imposes upon the employer liability for the death of his employee in the course of employment, even if the death is caused by a fortuitous event. Accordingly, Florentina prayed that actual, moral and exemplary damages including attorney's fees, be awarded in her favor.^[8]

In its Answer,^[9] Candano Shipping countered that Florentina had no cause of action against it because the death of Melquiades was not yet an established fact since he was merely reported missing upon the sinking of M/V David, Jr. The filing of the case before the RTC therefore was premature for she should have waited until the body of Melquiades could be recovered or until the lapse of time which would render the provision of Article 391 of the New Civil Code^[10] on presumptive death operative.

The RTC resolved the controversy in favor of Florentina and ratiocinated that the provision of Article 391 of the New Civil Code on presumptive death had become operative since the period of four years had already elapsed since Melquiades was reported missing upon the sinking incident which occurred on 27 March 1996. In a Decision^[11] promulgated on 15 February 2001, the RTC ordered Candano Shipping to indemnify Florentina for the death of her husband, in the following amounts:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Candano Shipping Lines, Inc. to indemnify plaintiff Forentina J. Sugata-on the amount of P988,400.00 as actual damages, P100,000.00 as moral damages P50,000.00 as exemplary damages and 10% of the amount due as and for attorney's fees plus the cost of suit.

The award for actual damages amounting to P988,400.00 was computed by the lower court by adopting the formula in the computation of loss of earning capacity enunciated in the case of *Villa Rey Transit, Inc. v. Court of Appeals*,^[12] wherein the annual expenses of the deceased are deducted from his gross annual income and multiplied by life expectancy (gross annual income - annual expense x life expectancy).^[13]

The Motion for Reconsideration interposed by Candano Shipping was denied by the RTC for lack of cogent reason to disturb or reconsider its decision.^[14]

Aggrieved, Candano Shipping elevated the adverse RTC decision to the Court of Appeals, which in turn, affirmed with modification the judgment of the lower court. The award for actual damages was reduced from P998,400.00 to P608,400.00, while the awards for moral and exemplary damages including attorney's fees were deleted for lack of sufficient basis for their allowance.^[15]

In arriving at the sum of P608,400.00, the appellate court applied the standard prescribed by Article 194 of the Labor Code of the Philippines, as amended, to wit:

ART. 194. DEATH. - (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 hereof; Provided, however, That the monthly income benefit shall be guaranteed for five years: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit not to exceed sixty months; Provided, finally, That the minimum monthly death benefit shall not be less than fifteen thousand pesos.

In a Resolution^[16] issued on 1 April 2004, the Court of Appeals denied the Motion for Reconsideration filed by Candano Shipping for failure to offer any justifiable ground to modify, reverse or reconsider the questioned decision.

Hence, this instant Petition for Review on *Certiorari* filed by Candano Shipping raising the following issues:

WHETHER OR NOT THE FORMULA FOR FIXING THE AMOUNT OF DEATH COMPENSATION IN ARTICLE 194 OF THE LABOR CODE APPLIES IN DETERMINING THE COMPENSATION CLAIMED BY THE HEIR OF THE DECEASED EMPLOYEE AGAINST THE EMPLOYER UNDER ARTICLE 1711?

WHETHER OR NOT IT IS PERMITTED FOR THE COURT OF APPEALS, ON ORDINARY APPEAL, TO APPLY ART. 194 OF THE LABOR CODE ON A CLAIM FOR DEATH COMPENSATION OF AN EMPLOYEE AGAINST THE EMPLOYER FILED AND TRIED BEFORE THE REGULAR COURTS ON THE BASIS OF ARTICLE 1711 OF THE CIVIL CODE AND THE DOCTRINE ENUNCIATED IN THE VILLA REY TRANSIT CASE?

WHETHER OR NOT APPLICATION OF ARTICLE 194 OF THE LABOR CODE ON THE CLAIM FOR DEATH COMPENSATION OF RESPONDENT OUSTS THE REGULAR COURTS, INCLUDING THE COURT OF APPEALS OF JURISDICTION OVER THE CASE?

IN THE EVENT THAT THE SUPREME COURT RULES THAT THE COURT OF APPEALS APPLICATION OF ARTICLE 194 OF THE LABOR CODE IN THIS CASE SHOULD BE SET ASIDE, IS RESPONDENT ENTITLED TO RECOVER DEATH COMPENSATION FROM PETITIONER IN ACCORDANCE WITH HER THEORY OF THE CASE AS ALLEGED, ARGUED AND TRIED BEFORE THE TRIAL COURT.^[17]

Since the factual findings of the RTC and the Court of Appeals that the non-recovery of Melquiades' body for the period of four (4) years from 27 March 1996 creates a presumption that he is already dead and that his death was caused by a fortuitous event, were already settled, and considering that these findings were not controverted by the parties in this instant petition, we find no compelling reason to disturb the same. Henceforth, we will limit our discussion to the computation of the amount of indemnification.

In its Petition, Candano Shipping argues that the application of the measure stipulated under Article 194 of the Labor Code is erroneous since it applies only to death compensation to be paid by the Social Security System to the beneficiaries of a deceased member, to which proposition Florentina concedes. We agree. The remedy availed by Sugata-on in filing the claim under the New Civil Code has been validly recognized by the prevailing jurisprudence on the matter.

In the case of *Floresca v. Philex Mining Company*,^[18] we declared that the employees may invoke either the Workmen's Compensation Act or the provisions of the Civil Code, subject to the consequence that the choice of one remedy will exclude the other and that the acceptance of the compensation under the remedy chosen will exclude the other remedy. The exception is where the claimant who had already been paid under the Workmen's Compensation Act may still sue for damages under the Civil Code on the basis of supervening facts or developments occurring after he opted for the first remedy.^[19]

Stated differently, save for the recognized exception, an employee cannot pursue both remedies simultaneously but has the option to proceed by interposing one remedy and waiving his right over the other. As we have explained in *Floresca*, this doctrinal rule is rooted on the theory that the basis of the compensation under the Workmen's Compensation Act is separate and distinct from the award of damages under the Civil Code, thus:

The rationale in awarding compensation under the Workmen's Compensation Act differs from that in giving damages under the Civil Code. The compensation acts are based on a theory of compensation distinct from the existing theories of damages, payments under the acts being made as compensation and not as damages (99 C.J.S. 53). Compensation is given to mitigate harshness and insecurity of industrial life for the workman and his family. Hence, an employer is liable whether negligence exists or not since liability is created by law. Recovery under the Act is not based on any theory of actionable wrong on the part of the employer (99 D.J.S. 36).

In other words, under compensation acts, the employer is liable to pay compensation benefits for loss of income, as long as the death, sickness or injury is work-connected or work-aggravated, even if the death or injury is not due to the fault of the employer (*Murillo v. Mendoza*, 66 Phil. 689). On the other hand, damages are awarded to one as a vindication of the wrongful invasion of his rights. It is the indemnity recoverable by a person who has sustained injury either in his person, property or relative rights, through the act or default of another (25 C.J.S. 452).

The principle underscored in the case of *Floresca* was further affirmed in the later case of *Ysmael Maritime Corporation v. Avelino*,^[20] wherein we emphasized that once the claimant had already exercised his choice to pursue his right under one remedy, he is barred from proceeding with an alternative remedy. As eloquently laid down by Chief Justice Marcelo Fernan:

It is therefore clear that respondents had not only opted to recover under the Act but they had also been duly paid. At the very least, a sense of

fair play would demand that if a person entitled to a choice of remedies made a first election and accepted the benefits thereof, he should no longer be allowed to exercise the second option. **"Having staked his fortunes on a particular remedy, (he) is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission."**

In the case at bar, Florentina was forced to institute a civil suit for indemnity under the New Civil Code, after Candano Shipping refused to compensate her husband's death.

The pertinent provision of the New Civil Code reads:

Article 1711. Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of employment. The employer is also liable for compensation if the employee contracts any illness or diseases caused by such employment or as the result of the nature of employment. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.

In the case of *Philippine Air Lines, Inc. v. Court of Appeals*,^[21] this Court validated the strength of the aforementioned provision and made the employer liable for the injury suffered by its employee in the course of employment. We thus ruled:

Having affirmed the gross negligence of PAL in allowing Capt. Delfin Bustamante to fly the plane to Daet on January 8, 1951 whose slow reaction and poor judgment was the cause of the crash-landing of the plane which resulted in private respondent Samson hitting his head against the windshield and causing him injuries for which reason PAL terminated his services and employment as pilot after refusing to provide him with the necessary medical treatment of respondent's periodic spells, headache and general debility produced from said injuries, **We must necessarily affirm likewise the award of damages or compensation under the provisions of Art. 1711 and Art. 1712 of the New Civil Code.** x x x.

As early as the case of *Valencia v. Manila Yacht Club, Inc.*,^[22] this Court, speaking through the renowned civilist, Mr. Justice J.B.L. Reyes, made a pronouncement that Article 1711 of the Civil Code imposes upon the employer the obligation to compensate the employee for injury or sickness occasioned by his employment, and thus articulated:

Appellant's demand for compensation is predicated on employer's liability for the sickness of, or injury to, his employee imposed by Article 1711 of the Civil Code, which reads:

Article 1711. Owners of enterprises and other employers are obliged to