

## **THIRD DIVISION**

**[ G.R. No. 119121, August 14, 1998 ]**

**NATIONAL POWER CORPORATION, PETITIONER, VS. COURT OF APPEALS, FIFTEENTH DIVISION AND PHESCO INCORPORATED, RESPONDENTS.**

### **D E C I S I O N**

**ROMERO, J.:**

On July 22, 1979, a convoy of four (4) dump trucks owned by the National Power Corporation (NPC) left Marawi city bound for Iligan city. Unfortunately, enroute to its destination, one of the trucks with plate no. RFT-9-6-673 driven by a certain Gavino Ilumba figured in a head-on-collision with a Toyota Tamaraw. The incident resulted in the death of three (3) persons riding in the Toyota Tamaraw, as well as physical injuries to seventeen other passengers.

On June 10, 1980, the heirs of the victims filed a complaint for damages against National Power Corporation (NPC) and PHESCO Incorporated (PHESCO) before the then Court of First Instance of Lanao del Norte, Marawi City. When defendant PHESCO filed its answer to the complaint it contended that it was not the owner of the dump truck which collided with the Toyota Tamaraw but NPC. Moreover, it asserted that it was merely a contractor of NPC with the main duty of supplying workers and technicians for the latter's projects. On the other hand, NPC denied any liability and countered that the driver of the dump truck was the employee of PHESCO.

After trial on the merits, the trial court rendered a decision dated July 25, 1988 absolving NPC of any liability. The dispositive portion reads:

"Consequently, in view of the foregoing consideration, judgment is hereby rendered ordering PHESCO, Inc. and Gavino Ilumba upon receipt hereof:

1. To pay jointly and severally the plaintiffs thru the Dansalan College the sum of P954,154.55 representing the actual or compensatory damages incurred by the plaintiffs; and
2. To pay the sum of P50,000.00 representing Attorney's fees.

SO ORDERED."

Dissatisfied, PHESCO appealed to the Court of Appeals, which on November 10, 1994 reversed the trial court's judgment. We quote the pertinent portion of the decision:

"A 'labor only' contractor is considered merely as an agent of the employer (Deferia vs. National Labor Relations Commission, 194 SCRA 525). A finding that a contractor is a 'labor only' contractor is equivalent

to a finding that there is an employer-employee relationship between the owner of the project and the employees of the 'labor only' contractor (Industrial Timer Corporation vs. National Labor Relations Commission, 202 SCRA 465). So, even if Phesco hired driver Gavino Ilumba, as Phesco is admittedly a 'labor only' contractor of Napocor, the statute itself establishes an employer-employee relationship between the employer (Napocor) and the employee (driver Ilumba) of the labor only contractor (Phesco). (Ecal vs. National Labor Relations Commission, 195 SCRA 224).

Consequently, we hold Phesco not liable for the tort of driver Gavino Ilumba, as there was no employment relationship between Phesco and driver Gavino Ilumba. Under Article 2180 of the Civil Code, to hold the employer liable for torts committed by his employees within the scope of their assigned task, there must exist an employer-employee relationship. (Martin vs. Court of Appeals, 205 SCRA 591).

WHEREFORE, we REVERSE the appealed decision. In lieu thereof, the Court renders judgment sentencing defendant National Power Corporation to pay plaintiffs the sum of P174,889.20 plus P20,000.00 as attorney's fees and costs.

SO ORDERED."

Chagrined by the sudden turnaround, NPC filed a motion for reconsideration of said decision which was, however, denied on February 9, 1995.<sup>[1]</sup> Hence, this petition.

The principal query to be resolved is, as between NPC and PHESCO, who is the employer of Ilumba, driver of the dumptruck which figured in the accident and which should, therefore, would be liable for damages to the victims. Specifically, NPC assigns the sole error that:

"THE COURT OF APPEALS DECISION FINDING THAT PETITIONER NPC AS THE EMPLOYER OF THE DRIVER GAVINO ILUMBA, AND CONSEQUENTLY, SENTENCING IT TO PAY THE ACTUAL AND COMPENSATORY DAMAGES SUSTAINED BY COMPLAINANTS, IS NOT IN ACCORD WITH THE LAW OR WITH THE APPLICABLE RULINGS OF THIS HONORABLE COURT."<sup>[2]</sup>

As earlier stated, NPC denies that the driver of the dump truck was its employee. It alleges that it did not have the power of selection and dismissal nor the power of control over Ilumba.<sup>[3]</sup> PHESCO, meanwhile, argues that it merely acted as a "recruiter" of the necessary workers for and in behalf of NPC.<sup>[4]</sup>

Before we decide who is the employer of Ilumba, it is evidently necessary to ascertain the contractual relationship between NPC and PHESCO. Was the relationship one of employer and job (independent) contractor or one of employer and "labor only" contractor?

Job (independent) contracting is present if the following conditions are met: (a) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and (b) the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in

the conduct of his business.<sup>[5]</sup> Absent these requisites, what exists is a “labor only” contract under which the person acting as contractor is considered merely as an agent or intermediary of the principal who is responsible to the workers in the same manner and to the same extent as if they had been directly employed by him.<sup>[6]</sup> Taking into consideration the above distinction and the provisions of the “Memorandum of Understanding” entered into by PHESCO and NPC, we are convinced that PHESCO was engaged in “labor only” contracting.

It must be noted that under the Memorandum, NPC had mandate to approve the “critical path network and rate of expenditure to be undertaken by PHESCO.”<sup>[7]</sup> Likewise, the manning schedule and pay scale of the workers hired by PHESCO were subject to confirmation by NPC.<sup>[8]</sup> Then too, it cannot be ignored that if PHESCO enters into any sub-contract or lease, again NPC’s concurrence is needed.<sup>[9]</sup> Another consideration is that even in the procurement of tools and equipment that will be used by PHESCO, NPC’s favorable recommendation is still necessary before these tools and equipment can be purchased.<sup>[10]</sup> Notably, it is NPC that will provide the money or funding that will be used by PHESCO to undertake the project.<sup>[11]</sup> Furthermore, it must be emphasized that the project being undertaken by PHESCO, i.e., construction of power energy facilities, is related to NPC’s principal business of power generation. In sum, NPC’s control over PHESCO in matters concerning the performance of the latter’s work is evident. It is enough that NPC has the right to wield such power to be considered as the employer.<sup>[12]</sup>

Under this factual milieu, there is no doubt that PHESCO was engaged in “labor-only” contracting vis-à-vis NPC and as such, it is considered merely an agent of the latter. In labor-only contracting, an employer-employee relationship between the principal employer and the employees of the “labor-only” contractor is created. Accordingly, the principal employer is responsible to the employees of the “labor-only” contractor as if such employees had been directly employed by the principal employer.<sup>[13]</sup> Since PHESCO is only a “labor-only” contractor, the workers it supplied to NPC, including the driver of the ill-fated truck, should be considered as employees of NPC.<sup>[14]</sup> After all, it is axiomatic that any person (the principal employer) who enters into an agreement with a job contractor, either for the performance of a specified work or for the supply of manpower, assumes responsibility over the employees of the latter.<sup>[15]</sup>

However, NPC maintains that even assuming that a “labor only” contract exists between it and PHESCO, its liability will not extend to third persons who are injured due to the tortious acts of the employee of the “labor-only” contractor.<sup>[16]</sup> Stated otherwise, its liability shall only be limited to violations of the Labor Code and not quasi-delicts.

To bolster its position, NPC cites Section 9(b), Rule VII, Book III of the Omnibus Rules Implementing the Labor Code which reads:

“(b) Labor only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.”