Texto original en espanol

101 D.P.R. 781, 1973 WL 35602
(P.R.), 1 P.R. Offic. Trans. 1062

Pedro LEÓN ORTIZ, Petitioner,
v.
INDUSTRIAL COMMISSION OF PUERTO RICO, etc., Respondent.

Supreme Court of Puerto Rico.
No. O-71-75.
Decided October 31, 1973.

1. WORDS AND PHRASES.
Chauffeur.--For the effects of the definition contained in § 19-5(h)(3)(B) of Title 11 of R.&R.P.R.--which requires that the duty of a chauffeur be performed principally in motor vehicles or bicycles--the employee of the owner of a grocery store and bar who incidentally drives a motor vehicle owned by his employer, in an errand entrusted by the latter, during working hours, and suffers an accident in which he sustains injuries, is not a *chauffeur,* particularly when the evidence shows that the employer did not deliver merchandise house to house nor used chauffers in connection with his grocery store business and there is no evidence that the injured employee usually devoted any part of his time working as chauffeur.

2. WORKMEN'S COMPENSATION -- INJURIES FOR WHICH COMPENSATION MAY BE HAD -- CAUSES, CIRCUMSTANCES, AND CONDITION OF INJURY -- IN GENERAL -- INJURIES WHILE TAKING A TRIP.
Under the circumstances of the case at bar, the activity of the employee of a small grocery store-bar of transporting in a motor vehicle to her home a client of his employer (owner of the vehicle), activity carried out by said employee at the employer's commission for the benefit of the business--the employee having sustained injuries in an accident which occurred during the trip-- constituted an act or duty inherent in the workman's employment and it occurred during the course of said work and as a consequence thereof, labor accident which was covered under the classification of retail stores in the policy issued by the State Insurance Fund to the employer.

3. INSURANCE -- INSURANCE CONTRACT -- CONSTRUCTION AND EFFECT -- APPLICABLE RULES OF CONSTRUCTION -- STRICT CONSTRUCTION AGAINST INSURER.
If an insurance contract admits of two interpretations, a court should use the one which most favors the insured.

4. WORKMEN'S COMPENSATION -- NATURE AND GROUNDS OF MASTER'S LIABILITY -- NATURE AND THEORY OF THE LIABILITY.
If any doubts exist in the interpretation of an insurance contract issued by the State Insurance Fund, they shall be resolved so as to accomplish the purpose of the policy, and subtle interpretations are not to be favored to avoid the insurer's liability.

***1063** 5. ID. -- INJURIES FOR WHICH COMPENSATION MAY BE HAD -- CAUSES, CIRCUMSTANCES, AND CONDITION OF INJURY -- IN GENERAL -- INJURIES WHILE PERFORMING AN ACT INCIDENTAL TO EMPLOYMENT.
The injuries sustained by an employee in an accident when the activity carried out by him when the accident occurs is incidental to another business or enterprise in which the employer is engaged which was not included in the corresponding policy, are not compensable.

6. ID. -- NATURE AND GROUNDS OF MASTER'S LIABILITY -- IN GENERAL -- UNINSURED EMPLOYERS.
The evidence in the case at bar having been examined, the Court concludes that the injury sustained by the employee being covered--under the attendant circumstances in the case--by the retail stores policy issued by the State Insurance Fund, his employer is not an uninsured employer.

Synopsis
PROCEEDING to review an order of the Industrial Commission of Puerto Rico affirming a decision of the Manager of the State Insurance Fund declaring petitioner an uninsured employer and ordering him to pay the Fund certain sum of money. *Reversed, and case remanded for further proceedings consistent with the decision in this opinion.*

Pedro León Ortiz in his own right. *Leoncio Carrasquillo Suárez, Wilfredo Márquez Boneta, Miguel A. Guzmán Soto,* and *Jorge Márquez Gómez* for the Manager of the State Insurance Fund.

***1064 Review**

MR. JUSTICE MARTIN delivered the opinion of the Court.

The facts in this case are simple. The petitioner-employer is the owner of a small grocery store and bar in the rural zone of Maunabo. His employees are covered by a retail store policy issued by the State Insurance Fund (hereinafter called "the Fund"). A client who returned from the hospital with her small daughter who was sick bought some groceries in petitioner's grocery store. In view of the girl's health condition, the mother asked petitioner's help in getting somebody to take her to her house. Petitioner commissioned one of his employees to take her in a light truck, owned by petitioner, which he used in a construction he was carrying out next to the grocery store in question. On the way the employee had an accident where he suffered the injury of an arm, receiving medical treatment in the Fund. The Fund declared petitioner an "uninsured employer" [1] on the grounds that ***1065** the above-mentioned employee was working as chauffeur, and the policy under the classification of retail store issued to cover the employees of the grocery store and bar did not include the classification of "Chauffeurs." The Industrial Commission (hereinafter called "the Commission") affirmed the decision of the Fund, and ordered employer-petitioner to pay the Fund the sum of $840.39 for expenses incurred in the treatment and hospitalization of the injured employee. The employer, in his own right, appealed to this Court from that determination, alleging that he is not bound to include in his policy the classification of chauffeur because he does not employ chauffeurs in his business nor does he offer delivery service.

Article 2 of the Workmen's Accident Compensation Act (hereinafter called the Compensation Act) 11 L.P.R.A. § 2, prescribes that the provisions of the Act are applicable to all such workmen and employees who suffer injuries or are disabled, or lose their lives by reason of accidents caused ". . . by any act or function inherent in their work or employment, when such accidents happen in the course of said work or employment, and as a consequence thereof . . ." And, it expressly excepts the ". . . [w]orkmen and employees whose work is of an accidental or casual nature and is not included in the business, industry, profession, or occupation of their employer . . ." [2]

***1066** At the time of the accident the petitioner-employer was involved in two separate and distinct activities: (1) he operated a grocery store and bar as owner; and (2) carried out a construction in lands adjacent to the aforesaid business. Each activity was covered by a different policy issued by the Fund, one under Code 5213, group 273, connected with "concrete construction" and another under code 8017, group 343, connected with "retail stores." Both classifications appear in the "Manual of Classifications of Occupations and Industries and Types of Insurance in Force" (hereinafter called "Manual of Classifications") prepared by the Manager of the Fund as required by art. 23 of the Workmen's Accident Compensation Act. 11 L.P.R.A. § 24.

The classification of "retail stores" is described in the following manner in the Manual of Classifications in force at the time of the accident:

> "Retail Stores (N.O.C.) [3] . . . All kinds of ***1067** merchandise. Includes wholesale and retail jewelry business, department stores, milk stands, 5 and 10 cents stores, cooperatives and drugstores. This classification includes, also, soda fountains, bars, and saloons when operated as part of the business." *Manual of Classifications, supra.*

The aforecited classification, as it appears from its text, offers full cover for the activities of retail stores, as those of the business of the case at bar, subject to the limitations contained in the law, in the regulations, or in the policy. 11 R.&R.P.R. § 19-3. The regulations provide that the classification of the employer shall be the one which involves the largest payroll, excluding the "standard exceptions" they mention further on. *Id.* § 19-5. And, in the case of single enterprises, as that of the case at bar, the regulations provide that when the employer's activities consist of a single operation or a number of separate operations which normally prevail in the business or industry described by a single Manual classification, that single classification which most accurately describes the entire enterprise shall be applied. *Id.*

We have to decide whether the incidental activity of transporting a client under the attendant circumstances of this case is covered by the policy of retail stores which was issued to the petitioner-employer. None of the activities of said business were contained in the "Standard Exceptions and General Exclusions", [4] *infra.* If they were included therein, the payroll ***1068** would have to be divided according to the different activities in order to apply the premium which corresponds to the classification including those which are excluded. To that effect it is necessary to examine the rule provisions which cover the "standard exceptions" in the light of the situation raised by the case at bar.

The "standard exceptions," insofar as pertinent to this case, are the following:

"(3) Outside salesmen, collectors, or messengers are defined as those employees *engaged principally* in any such duties away from the premises of the employer. This definition does not apply to any such employee whose duties include the delivery of any merchandise handled, treated or sold. Such employees *whose duties include the delivery,* even though they may also collect or solicit, shall be rated:

"(A) Drivers, if they use horsedrawn vehicles,

"(B) *Chauffeurs, if they use motor vehicles or bicycles,*

"(C) Under the governing classification if they use public means of transportation or walk.

. . .

"(5) *Chauffeurs and their helpers* are defined as those employees whose *principal* duties are performed upon or in connection with motor vehicles in either capacity, and shall also include incidental garage employees or employees using bicycles in the service of the employer." (Italics ours.) *Id.* § 19-5.

?? The aforecited subsection (3) concerning the "standard exceptions" refers to the employees working as outside salesmen, ***1069** collectors, or messengers, whose *principal* duties are carried out away from the premises of the employer; unless their work includes the delivery of merchandise in which case they would be rated as "chauffeurs," if they drive motor vehicles or bicycles. Assuming that the workman in the case under our consideration is considered a chauffeur, because of the fact that he was driving a motor vehicle at the time when the accident occurred, he is not a chauffeur under the definition of "chauffeurs" which appears in the aforecited subsection (5), since it requires that the *principal* duty of the chauffeur be performed in motor vehicles or in bicycles.

?? The employer's uncontroverted evidence was to the effect that he did not deliver merchandise house to house nor did he use chauffeurs in connection with his grocery store business, reason why the work of the injured employee was principally that which ordinarily corresponds to a grocery-store employee and not that of a chauffeur which requires that the same be performed principally in motor vehicles or in bicycles. Said evidence was not rebutted by the Fund. Neither was there evidence to the effect that the injured employee usually employed part of his time working as chauffeur the classification of which involves a higher risk than the classification of retail-store employee. Under the circumstances of this case the activity of transporting the employer's client carried out by the employer's commission for the benefit of the business constituted an act or duty inherent in the workman's employment and it occurred during the course of said work and as a consequence thereof. In view of the foregoing there should be no doubt that the injured employee is adequately covered under the classification of retail ***1070** stores in the policy issued by the Fund to the petitioner-employer.

?? The case law has repeatedly established that when an insurance contract admits ?? of two interpretations, the one which most favors the insured should be used. See *Barreras v. Santana,* 87 P.R.R. 215, 218 (1963) citing 3 Richard's *On Insurance* 1314, 5th ed. 1952, and authorities cited therein; see also, II-II Puig Brutau, *Fundamentos de Derecho Civil* 486, 1956 ed., and III Castán, *Derecho Civil Español, Común v Foral* 332, 8th ed., 1954. The doubts shall be resolved so as to accomplish the purpose of the policy, and subtle interpretations are not to be favored in order to avoid liability. See *Barreras, supra,* p. 222 and authorities cited therein. The rule is not different when the State is the insurer.

?? The situation would be different if the duty performed by the employee when the accident occurred would have been incidental to another business or enterprise to which the employer was engaged and which was not included in the policy. A good example of this type of exclusion would be if the aforesaid employee of the grocery store was used in connection to an activity of the construction business of the same employer, enterprise which has a different classification from that of the grocery-store business. It is evident that the activity of the grocery store business is not incidental to that of the construction business. Both activities are separate and distinct. The provisions of art. 25 of the Workmen's Accident Compensation Act, 11 L.P.R.A. § 26, which orders the employer to cover under one sole policy all the activities in which he is engaged, and if he fails to do so, he would be considered an uninsured employer with regard ***1071** to the activity not included in that policy, would be applicable to the situation mentioned.

The case of *Atiles, Mgr. v. Industrial Commission,* 68 P.R.R. 415 (1948) illustrates the doctrine explained above. That case dealt with a domestic employee who was working as such when the accident which gave rise to the claim occurred and an employer whose policy covered an agricultural business. In said case it was concluded that the injured was not performing work incidental to the agricultural business of

the employer. Evidently the activity as domestic employee in which the injured woman was engaged was different from the agricultural activity of the employer. [5]

The case of *Calderone Lines, Inc. v. Industrial Commission,* 91 P.R.R. 510 (1964), supports the same principle as *Atiles, supra.* The evidence in said case showed that 70% of the employer's business consisted in the transportation of passengers and 30% in the transportation of merchandise. The work performed by the injured workman consisted in unloading merchandise from a barge. The policy of the employer covered the activity of "exploitation or operation of vessels" which did not include the "loading and unloading of ships" which constitutes another classification of the manual. The employer alleged that the unloading of merchandise was an incidental activity to the operation of vessels. We concluded that what was involved there was the handling of heavy load which was not incidental to the transportation of passengers. We held then that the tasks of loading and unloading were not ***1072** included in the classification covered by the policy, reason why we held that the employer was uninsured.

In the case at bar, contrary to the two aforementioned cases, the injured employee was engaged in the grocery store business of his employer, whose policy was executed according to the adequate classification for that business, and the activities carried out by the employee at the time of the accident were incidental to said business and for its benefit.

We are conscious of the actuarial factor upon which the insurance philosophy relies. Therefore, the law requires the employers to insure all the activities in which they are engaged. The clear intent thereof is to avoid excluding from the insurance any activity involving higher risks than those for which the employer requests cover. To that effect the Workmen's Accident Compensation Act requires the Manager to prepare annually a schedule of classifications according to the various occupations or industries. 11 L.P.R.A. § 24. The annual revision of the classifications is performed in accordance with the underwriting experience accumulated from the date on which the Workmen's Accident Compensation Act became effective and up to December 31, of the year prior to the revision, and according to "such other incidental experience and the available statistics in regard to the hazards and underwriting risks in the classifications to be revised." In revising the classifications the Manager should also revise the premium rates corresponding to the classifications in force as, in his judgment, should be revised. *Id.* We see then that the lawmaker designed carefully the underwriting actuarial mechanism which shall be revised every year in order not to risk the stability of the Fund and therefore to offer an adequate protection to the workmen and that which corresponds to the employers.

***1073** We can imagine the countless situations in which the employers are involved day in and day out without being sure as to the coverage offered them by the policy of the Fund, when at a given moment an employee carries out an activity which although isolated, occasional, and purely accidental is inherent in the activity in which the employer is involved. In the complexity of the business world, and from the practical point of view, we cannot impose upon the employers an unreasonable rule which interrupts the flow of the daily practical events in the commercial, industrial, or professional activity of the country. The employer, of course, will have the burden of proof to show that the activity carried out when the accident took place is incidental to the business covered by the insurance and purely accidental, isolated, and occasional, with regard to the type of work normally performed by the employee.

?? We conclude that the petitioner-employer is an insured employer and consequently, the injury sustained by the employee in the attendant circumstances of this case is covered by the retail-stores policy.

The conclusion we have reached does not only seem the most adequate at law but it also serves to give certainty to employers with regard to the coverage of their policies with the State Insurance Fund. This interpretation is the most reasonable within the obligatory principle which is the basis of the insurance for workmen's compensations.

The decision of the Industrial Commission will be reversed.

Footnotes

1 The Manager of the Fund is empowered to declare an employer uninsured in the event there occurs an accident to a workman or employee working for an employer who in violation of the law is not insured.11 L.P.R.A. § 28.

2 We have repeatedly stated, and we repeat it now, that the Industrial Commission up to this date (in the 37 years the law has been in force), has not determined by regulation, as prescribed by § 38 of the Act, what is understood by "accidental and casual nature."*Arraiza v. Industrial Commission,* 85 P.R.R. 13, 16 (1962); *Atiles, Mgr. v. Industrial Commission,*

63 P.R.R. 573, 576 (1944); *Montaner, Mgr. v. Industrial Commission,* 57 P.R.R. 263, 269 (1940). The inaction of the Industrial Commission in failing to define what is understood by "accidental and casual nature" has caused the Fund and the Commission to give it their own interpretation. The confusion arising from the exclusion of casual employees has been the reason why several states such as Massachusetts, Michigan, Missouri, New York, and Wisconsin, have eliminated it from their compensation laws. LA Larson's *Workmen's Compensation Law,* § 51.11, at footnote 92.

3 The abbreviation N.O.C. stands for the phrase "Not Otherwise Classified."With regard to the classification "Retail Stores" said abbreviation means that said classification shall not be applied in any case where any other classification more accurately describes the enterprise or industry of the employer. 11 R.&R.P.R. § 19-6.

4 The operations included under "General Exclusions" are not applicable to this case.

5 At the date of the aforecited case, domestic employees were not protected by the Workmen's Accident Compensation Act.