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SECOND DIVISION

[G.R. No. L-31982. March 14, 1979]

CARLOS CORDOVA, *petitioner, vs.* **THE PROVINCIAL SHERIFF OF ILOILO, WORKMEN'S COMPENSATION UNIT, REGIONAL OFFICE NO. VII, DEPARTMENT OF LABOR, ILOILO CITY, and ROSEMINDA VDA. DE DEJANDO in her behalf and in behalf of her minor son Jose Mari Dejando,** *respondents.*

SYLLABUS

1. **LEGAL AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION COMMISSION; SUMMONS DISTINGUISHED FROM NOTICE OF CLAIM.** — The fact that the notice of claim signed by claimant was sent to petitioner informing him of the notice for accident and sickness filed by the former and that no employer's report of accident was ever made by petitioner is of no moment to the issue of failure to serve summons on petitioner, because there certainly is a great difference between the Notice and Claim for Compensation *Death Cases executed* by the claimant and the summons issued by the Workmen's Compensation Unit.

2. **ID.; ID.; NOT ACQUIRED IF THERE IS FAILURE TO SERVE SUMMONS ON THE EMPLOYER; JURISDICTION.** — Where there is no evidence that petitioner received the summons by the Workmen's Compensation Unit, because the address given in the summons was not that of petitioner, so that petitioner never appeared before the Workmen's Compensation Unit, it was held that the Workmen's Compensation Unit never acquired jurisdiction over the person of petitioner for failure to serve the latter with the required summons.

APPEARANCES OF COUNSEL

Iglesias & Associates for petitioner.

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DECISION

CONCEPCION JR., *J.*:

Petition for *certiorari* with preliminary injunction raising as lone principal issue the alleged abuse of discretion committed by the Workmen's Compensation Unit, Regional Office No. VII, Department of Labor, Iloilo City (Acting Referee Demetrio P. Correa) in rendering a decision against petitioner Carlos Cordova, in WCU Case No. 12756, entitled: "Roseminda *Vda. de* Dejando, for herself and in behalf of her son, *Jose Mari Dejando,* claimants, *vs. Antero Edrosolano and Carlos Cordova,* respondents, (for the death of husband)," notwithstanding that said respondent Workmen's Compensation Unit never acquired jurisdiction over the person of petitioner for failure to serve the latter with summons in the aforementioned case.

This Court in its resolutions dated May 21, 1970, required respondents to answer the petition and issued a temporary restraining order enjoining the respondent Provincial Sheriff of Iloilo, *et al.*, from continuing with the sale at public auction scheduled on May 22, 1970, of the properties of petitioner described in the notice of sale at public auction dated April 28, 1970, issued in Workmen's Compensation Unit Case No. 12756. The private respondents Dejandos filed an urgent motion for extension of time to file answer on May 29, 1970 and filed their answer on June 16, 1970. The petitioner, on June 10, 1970, filed with this Court supplementary annexes consisting of three documents, to wit:

1. Annex "H", Certification issued by Transportation Inspector of Public Service Commission, Iloilo, showing that "Ame" Taxi Co. was formerly owned and operated by Antero Edrosolano, of Jaro, Iloilo City, had been transferred to Manuel Bellosillo of Iloilo city, up to the present, by virtue of a decision granted by the Honorable Public Service Commission in a Sale dated October 19, 1966, under Case No. 66-6073;[1]

[1] pp. 34-36, *rollo*.

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2. Annex "1", Certification issued by Land Transportation Commission Registrar, Iloilo City, showing that Mr. Manuel Bellosillo of Iloilo City is the registered owner of "Ame" Taxi for the current year 1970, and not the petitioner Carlos Cordova;[2]

3. Annex "J", Order of dismissal of Criminal Case No. 38903, against accused Luis Jimenea, a passenger of "Ame" Taxi who allegedly shot to death driver Demetrio Dejando, husband of claimant Roseminda *Vda. de* Dejando in WCU Case No. 12756.[3]

When this Court heard the case on June 10, 1970, only the counsel for petitioner appeared and was given 15 days to submit memorandum in lieu of oral argument, said memorandum was submitted on June 25, 1970. Respondent WCU, Region VII, Iloilo City, through counsel filed a motion for extension of time to file answer on June 17, 1970, but said answer is not in the rollo of the case. The private respondents filed their reply, to the memorandum filed by petitioner, on August 4, 1970.

Uncontroverted facts of record, are:

(1) Because Demetrio Dejando was shot by one Luis Jimenea, a passenger, in the early morning of February 16, 1967, while the former was driving a "Ame" taxi, private respondent Roseminda *Vda. de* Dejando, for herself and in behalf of her minor son, Jose Mari, filed a death compensation claim on February 20, 1967, against allegedly operator Antero Edrosolano and owner (petitioner) Carlos Cordova, respectively, with the respondent Workmen's Compensation Unit, Regional Office No. VII, Iloilo City, docketed as WCU Case No. 12756, entitled "Roseminda *Vda. de* Dejando, for herself and in behalf of her son, *Jose Mari Dejando*, claimants, *vs. Antero Edrosolano and Carlos Cordova*, respondents."[4]

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[2] pp. 34, 37, *rollo*.

[3] pp. 34, 39, *rollo*.

[4] pp. 1, 12, 14, *rollo*.

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(2) That respondent Workmen's Compensation Unit issued summons in WCU Case No. 12756, on April 11, 1967, directed to "Mr. Antero Edrosolano and/or Carlos Cordova, c/o Atty. Cirilo Y. Ganzon, Isnart Street, Iloilo city."[5]

(3) That petitioner claims that summons were not served on him as shown by the records of WCU Case No. 12756, and that respondent Workmen's Compensation Unit, through referee Atty. Demetrio P. Correa, assumed jurisdiction over the person of petitioner, proceeded with the hearing of the case and rendered decision therein adverse to petitioner.[6]

(4) That in October, 1968, petitioner was served with a copy of a writ of execution issued by Atty. Celerino Grecia II, Chief of the Workmen's Compensation Unit, Office No. VII, Department of Labor, Iloilo City, to enforce judgment in WCU Case No. 12756.[7]

(5) That on October 31, 1968, petitioner filed with respondent Workmen's Compensation Unit, a special appearance and motion for reconsideration, questioning the jurisdiction of respondent Workmen's Compensation Unit over the petitioner on the ground that he never received summons in WCU Case No. 12756, that he did know he was a respondent in said case, and that the lawyers who appeared in said case representing themselves as appearing for petitioner were never hired by him because he did not know of the existing case against him until a copy of the writ of execution in the already decided case was served upon him in October of 1968, and thereby asking respondent Workmen's Compensation Unit to set aside the decision in WCU Case No. 12756 for lack of jurisdiction over petitioner.[8]

(6) That respondent Workmen's Compensation Unit ordered the private respondents Dejandos to reply or oppose petitioner's motion for special appearance and reconsideration.[9]

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[5] p. 13, *rollo*.

[6] pp. 2, 14-18, *rollo*.

[7] pp. 2, 19, *rollo*.

[8] pp. 2-3, 20-21, *rollo*.

[9] pp. 3, 23, *rollo*.

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(7) That petitioner's special appearance and motion for reconsideration was not acted upon and resolved by respondent Workmen's Compensation Unit, and instead respondent Provincial Sheriff of Iloilo showed his determination to enforce the writ of execution issued in WCU Case No. 12756, by levying upon the properties of petitioner and advertising the sale of the same scheduled on May 22, 1970.[10]

(8) That after the decision in WCU Case No. 12756 was promulgated by the respondent Workmen's Compensation Unit, the lawyers supposed to represent Antero Edrosolano and Carlos Cordova (Cordova as petitioner in this case denied that he hired those lawyers to represent him and he did not know of the existence of WCU Case No. 12756 at that time) filed a motion for reconsideration of the decision which was denied by respondent Workmen's Compensation Unit in its order dated August 10, 1968, on the ground that although at the rehearing granted only Antero Edrosolano appeared to testify and petitioner Carlos Cordova did not appear (supporting petitioner's allegation that he did not know of WCU Case No. 12756 at that time), and Edrosolano testified that petitioner Carlos Cordova had nothing to do with the operation of the "Ame" taxi, the respondent Workmen's Compensation Unit believed that the deceased Demetrio Dejando was really hired as driver by Edrosolano, and hence the motion for reconsideration was denied and the decision of June 26, 1968 revived completely.[11]

(9) When the property of petitioner Carlos Cordova was scheduled to be sold at public auction on July 8, 1969, by virtue of the writ of execution issued by respondent Workmen's Compensation Unit on October 8, 1968, petitioner filed Civil Case No. 7960, for injunction, with the Court of First Instance of Iloilo on June 5, 1969 trying to stop the execution of the decision of respondent Workmen's Compensation Unit in WCU Case No. 12756, but the Court of First Instance of Iloilo, Branch I (Judge Emigdio V. Nietes), in its order dated March 9, 1970,

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[10] pp. 3, 24, *rollo*.

[11] pp. 44; 55-58, *rollo*.

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dismissed the petition on the ground that the Court of First Instance did not have jurisdiction to enjoin the writ of execution issued by respondent Workmen's Compensation Unit in WCU Case No. 12756.[12]

(10) Upon the republication of the sale at public auction of petitioner's properties and the re-schedule of sale by the respondent Provincial Sheriff on May 22, 1970, this petition for *certiorari* with preliminary injunction was filed with this Court on May 20, 1970.[13]

As to the principal issue of whether or not petitioner received summons issued by the respondent Workmen's Compensation Unit in WCU Case No. 12756, a close scrutiny of the record of this case unmistakably shows a clear preponderance of evidence in favor of petitioner. The summons issued by the respondent Workmen's Compensation Unit, on April 11, 1967, was directed to "Mr. Antero Edrosolano and/or Carlos Cordova, c/o Atty. Cirilo Y. Ganzon, Isnart Street, Iloilo City."[14] It is immediately noticeable that such summons was not directed to the address of petitioner Carlos Cordova, whose address appearing in the Notice and Claim For Compensation In Death Cases,[15] is "La Granja, La Paz, Iloilo City." This notice and claim was signed by private respondent Roseminda *Vda. de* Dejando. The respondent Dejando's claim that on March 10, 1967, a registered letter with registry receipt No. 14284 was sent by respondent Workmen's Compensation Unit to petitioner at La Granja, La Paz, Iloilo, informing him of the notice for accident and sickness filed by respondents Dejandos and that no employer's report of accident was ever made by the petitioner, is of no moment to the issue of failure to serve summons on the petitioner in WCU Case No. 12756, because there certainly is a great difference between the Notice And Claim For

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[12] pp. 44-45; 72-75; 80, *rollo*.

[13] pp. 1, 45, *rollo*.

[14] p. 13, *rollo*.

[15] p. 12, *rollo*.

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Compensation In Death Cases executed by respondent Dejandos,[16] and the summons issued on April 11, 1967 by respondent Workmen's Compensation Unit in WCU Case No. 12756.[17] That no employer's report of accident was ever made by petitioner is understandable in view of his unrefuted claim that "Ame" taxi company was owned by Manuel Bellosillo of Iloilo City since October 9, 1966,[18] and at the time of the death of driver Dejando on February 16, 1967, petitioner had never been the owner nor operator of the "Ame" taxi, and, therefore, had never been the employer of Dejando. Clearly, therefore, there is no evidence that petitioner received the summons issued by the respondent Workmen's Compensation Unit in WCU Case No. 12756, because the address given in the summons was that of Atty. Ganzon, and not that of petitioner and petitioner denied under oath that Atty. Ganzon was authorized to represent him in WCU Case No. 12756. Another convincing circumstance in the resolution of this issue is that petitioner never appeared before the respondent Workmen's Compensation Unit, at the original hearing in Case No. 12756, and not even during the hearing that was granted by respondent Workmen's Compensation Unit after a motion for reconsideration of the decision promulgated in said case, when the respondent Workmen's Compensation Unit in its order dated August 30, 1968, categorically stated that petitioner never appeared and it was only Antero Edrosolano who appeared and testified that petitioner had nothing whatsoever to do with the operation of the "Ame" taxi.[19]

We therefore hold that respondent Workmen's Compensation Unit never acquired jurisdiction over the person of petitioner for failure to serve the latter with the required summons.

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[16] p. 12, *rollo*.

[17] p. 13, *rollo*.

[18] p. 36, *rollo*.

[19] pp. 55-58, *rollo*.

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WHEREFORE, the decision of respondent Workmen's Compensation Unit, Regional Office No. VII, Department of Labor, Iloilo City, in WCU Case No. 12766, in so far as it affects petitioner, is hereby set aside, the writ of execution issued therein against petitioner nullified, and the restraining order issued herein made permanent, with costs against private respondents Dejandos.

SO ORDERED.

Santos and *Abad Santos, JJ.*, concur.

Fernando (Chairman), J., concurs on the express understanding that the right to collect the compensation due subsists against respondent Edrosolano in WCU Case No. 12756.

Antonio, J., concurs in the separate opinion of Justice Aquino.

Barredo, J., took no part.

AQUINO, *J., concurring opinion*:

I concur in the result because of the referee's finding that petitioner Carlos Cordova "is the owner of the taxi and the operator is Mr. Edrosolano, a very clear and simple operation of the *kabit* system" (p. 57, *Rollo*).

Antero Edrosolano, as the franchised operator of the Ame Taxi, using Cordova's car as a *kabit*, was the *employer of the deceased taxi driver, Demetrio Dejando, Cordova was not the employer. He was a silent partner.*

Cordova was notified of the claim for workmen's compensation by means of registered mail as shown in receipt No. 14284 dated March 10, 1967 sent to his address at La Granja, La Paz, Iloilo (p. 91, *Rollo*).

The summons addressed to his lawyer, Cirilo Y. Ganzon, is apparently in conformity with the rule that a notice of hearing may be sent to the party's counsel (Sec. 2, Rule 11 of the Workmen's Compensation Commission).

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Cordova's payment of ₱450 as the undertaker's bill for the funeral of the deceased driver (p. 16, *Rollo*) may be construed as an admission that he has some moral obligation in connection with the death of the cab driver who, however, *was directly employed by his partner, Edrosolano*. It seems that there was no privity of contract between Cordova and the deceased driver.

Hence, Cordova was not his employer and, therefore, was not liable to pay workmen's compensation to his heirs who entered into a compromise with the killer, Luis Jimenea, by accepting from him ₱4,750 as settlement of the criminal case for homicide through reckless imprudence against Jimenea (p. 19, Cordova's brief herein).

SECOND DIVISION

[G.R. No. L-39699. March 14, 1979]

SAN MIGUEL CORPORATION, *petitioner, vs.* **HON. CELSO AVELINO, Presiding Judge of the Court of First Instance of Cebu, Branch XIII, and the City of Mandaue,** *respondents.*

SYLLABUS

1. ***POLITICAL LAW; JUDICIARY; POWER OF JUDICIAL REVIEW; CONSTRUED.*** — In *Marbury v. Madison*, "Cranch 137 (1803) the American Supreme Court, through Chief Justice Marshall enunciated the principle of judicial review thus: "It is emphatically the province and duty of the judicial department to say what the law is."

2. **ID.; ID.; ID.; INCLUDES JURISDICTION TO PASS UPON THE VALIDITY OF LEGISLATIONS.** — The validity of a statute, an executive order or ordinance is a matter for the judiciary to decide and that whenever in the disposition of a pending case