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"But this applies only where the subsequent matter is incidental or related to the original or main case and not where, as in the instant case, the new controversy has absolutely no relation or is alien to the original or main case. To hold otherwise would be to grant to respondent Court excessive or broad powers, not conferred or contemplated by the statute." (At p. 1271).

WHEREFORE, the petition for a writ of *certiorari* and prohibition is hereby granted and the questioned order dated April 18, 1967, is set aside as null and void. The writ preliminary injunction issued is hereby made permanent. No costs.

SO ORDERED.

Barredo, Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Fernando, J., took no part.

SECOND DIVISION

[G.R. No. L-29857. February 28, 1979]

LEGASPI OIL COMPANY, INC. and THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC. *petitioners, vs.* **DOROTEO L. SERRANO, Chief of Workmen's Compensation Unit, Regional Office No. VI, Naga City, HONESTO ADORNADO & THE CITY SHERIFF OF MANILA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; COMPENSABLE INJURY; LOSS OF FOUR FINGERS AMOUNTS TO LOSS OF ENTIRE HAND.

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— Section 17 of the Workmen's Compensation Act (Act No. 3428, as amended) provides compensation for the loss, meaning amputation, of a member or part of any member of the body as well as loss of use of a member. While the first paragraph of Section 17 provides the schedule of compensability of the loss of each of the fingers and thumb of the hand, the penultimate paragraph thereof provides for compensation of the loss of use of a member thus: "The permanent loss of the use of a hand, an arm, a foot, a leg, an eye, a thumb, a finger, or toe, or a joint shall be considered as equivalent to and be compensated at the same rate as the loss of a hand, arm, foot, leg, eye, thumb, finger, toe or joint."

2. **ID.; ID.; ID.; PHYSICIAN'S REPORT OF SICKNESS AND INJURY; PROBATIVE VALUE THEREOF.** — The attending Physician's Report of Sickness or Accident, which was adopted and submitted by the employer together with its own Employer's Report of Accident or Sickness describing the degree of the injury as loss of use of "100% of right hand" and "Total disability for Right Hand" constitutes evidence of the fact in dispute under Section 40 of the Workmen's Compensation Act. It is not a grave abuse of discretion for the Hearing Officer to respect the opinion of the attending physician. To disregard the opinion of the attending physician would have been gross error especially where it does not stand alone.

3. **ID.; ID.; ID.; TEST OF DISABILITY.** — The test of disability must be based on the ease or competence of the injured hand to pursue the same type of occupation that the claimant did prior to the accident. This is so because compensation under the Workmen's Compensation Act is in lieu of wages or based on loss thereof. The medical opinion that the injury resulted in the loss of use of 100% of the right hand should not be disturbed for the more theorizing on the part of petitioners that the injured hand could still perform a variety of functions.

4. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PAYABLE IN OBLIGATIONS ARISING FROM LAW.** — Although in compensation proceedings attorney's fees are normally awarded as part of the costs, in a situation where the claimant has to spend for the expenses of litigation just to defend an award that is manifestly justified attorney's fees may be awarded. The provisions of the Civil Code on Damages are applicable to all

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obligations including those arising from law. The obligation to pay compensation arises from law and Art. 2208(11) of the Civil Code authorizes a court to order the payment of attorney's fees and expenses of litigation when deemed just and equitable.

APPEARANCES OF COUNSEL

L. Llorante for petitioners.
D. Serrano for respondents.

D E C I S I O N

ABAD SANTOS, *J.*:

This is a petition for *certiorari*, with prayer for a writ of preliminary injunction, filed on November 29, 1968 to declare that respondent Doroteo L. Serrano, Chief of Workmen's Compensation Unit, Regional Office No. VI, Naga City, acted in grave abuse of discretion in failing to modify his award dated June 7, 1968 in favor of Honesto Adornado; and, to enjoin the City Sheriff of Manila from executing said award. It involves the paltry sum of about ₱2,000.00. Both petitioners are giants in their respective fields of industry.

It appears from the facts and exhibits admitted by the parties that on January 7, 1968, Honesto Adornado, a laborer employed by the Legaspi Oil Co., Inc. (Employer) in its copra crushing plant, was injured in an accident that happened in course of his employment and which resulted in the loss of the four fingers of his right hand. The Employer accordingly accomplished the required documents, namely: Employer's Report of Accident or Sickness WC Form 3 (Annex A of the Petition), Physician's Report of Accident or Sickness WC Form 4 (Annex A-1), and Employer's Supplementary Report of Accident or Sickness WC Form 5 (Annex A-2). These documents were forwarded to the Philippine American General Insurance Co., Inc. (Carrier), its insurer, for computation of disability and medical benefits and eventual transmittal to the WC Unit. The Carrier remitted to the claimant the amount of ₱2,135.84 on April 5, 1968 and

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the latter acknowledged receipt thereof in a document entitled "Release of Claim" dated April 15, 1968.

On April 5, 1968, the Carrier advised the WC Unit of the payment made to Adornado of the Amount of ₱2,135.84. This amount was arrived at from the following computation:

loss of 1st finger . . .	30 wks.
loss of 2nd finger . . .	25 wks.
loss of 3rd finger . . .	20 wks.
loss of 4th finger . . .	10 wks.
	85 wks.
₱25.01 x 85 weeks . . .	₱2,125.85
Permanent partial dissability plus temporary total disability . . .	180.06
less 8% lump sum deduction on PPD payment	(170.07)
Net payment due . . .	₱2,135.84

(See Petition, page 4)

On June 7, 1968, the WC Unit issued its own Letter Computation awarding to Honesto Adornado, in addition to medical, surgical and hospital services and supplies, the amounts of ₱180.00 for temporary total disability and a permanent partial disability benefit of ₱4,003.20 for the loss of 100% of his right hand, or a total of ₱4,183.20.

Petitioners protested the award for permanent partial disability based on the loss of the entire right hand and insisted on a computation based on the loss of the four fingers. The protest was denied. Thereafter, the WC Unit issued an Alias Writ of Execution on October 4, 1968, directing the Sheriff of Manila to execute the award. Hence, the present petition.

This Court did not issue the writ of preliminary injunction prayed for. But in the answer filed by the respondent Sheriff on January 10, 1969, he stated that the award had not been

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executed for the reason that the ₱8.00 sheriff's fee to be paid in advance by the interested party had not been remitted. Petitioners' memorandum filed on March 14, 1969, reiterates the prayer that respondent Sheriff be enjoined from executing the award. On the other hand, the reply memorandum filed by respondent Serrano on April 1, 1969, contains a prayer asking this Court to order the respondent Sheriff to proceed with the execution of the award. It would appear, therefore, that the award has not been executed as of this date.

Respondent Adornado, in his answer filed before this Court, makes a counterclaim against petitioners for attorney's fees in the amount of ₱600 and for miscellaneous and incidental expenses in the amount of ₱300.00.

The sole issue is whether respondent Serrano acted with grave abuse of discretion in deciding that, under the circumstances of the case, the loss of Adornado's four fingers amounts to a loss of his entire right hand.

It must be emphasized that Section 17 of the Workmen's Compensation Act (Act No. 3428, as amended) provides compensation for the loss, meaning amputation, of a member or part of any member of the body as well as *loss of use* of a member. While the first paragraph of Section 17 provides the schedule of compensability of the loss of each of the fingers and thumb of the hand, the penultimate paragraph thereof provides for compensation of the loss of use of a member thus:

"The permanent loss of the use of a hand, an arm, a foot, a leg, an eye, a thumb, a finger, or toe, or a joint shall be considered as equivalent to and be compensated at the same rate as the loss of hand, arm, foot, leg, eye, thumb, finger, toe or joint."

Respondent Serrano applied the above quoted provision in making his award.

The evidence on record supports the award. The Physician's Report of Sickness or Accident, WC Form No. 4, which was submitted by the Employer together with its own Employer's Report of Accident or Sickness described the injury as "Traumatic

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Amputation 2nd, 3rd, 4th, and 6th fingers, Right hand at bases of 1st phalanges Hemorrhage severe, secondary infection severe, secondary." The degree of the injury was described in the same Physician's Report as loss of use of "100% of right hand" at paragraph 20 thereof and "Total Disability for Right Hand" at paragraph 22. This Physician's Report was adopted by the Employer in its Report (Annex A) where at paragraph 31 on the "Nature and Location of the Injury" and paragraph 32 on "Probable Length of Disability" the Employer provided no other information except simply stating "See WC Form No. 4." Even the Employer's Supplementary Report of Accident or Sickness, at paragraph 11, confirms the Physician's Report. There the questions: "Did injury or illness result in the loss of use or the amputation of the whole or part of any member?" "What percent?" were answered "yes" "100%." Paragraph 21 of the supplementary Report contains the following remark: "Patient was discharged from the hospital *but he cannot work.* He was paid partially of his weekly compensation in the amount of ₱173.88."

The foregoing reports are evidence of the fact in dispute under Section 49 of the Workmen's Compensation Act.[1] Respondent Serrano not only did not commit grave abuse of discretion in respecting the opinion of the attending physician but would have been adjudged in error had he disregarded it. Thus, in the case of *Lopez vs. WCC, et al.* L-42582, October 21, 1977, 79 SCRA 551 at 555, this Court ruled that the WCC erred in disregarding the medical finding of the attending physician that the claimant's length of disability is indefinite and that the degree of disability is total and permanent. To disregard the opinion of the attending physician would have been gross error considering that it does not stand alone. Respondent Serrano states, and this has not been contradicted by the petitioners, that his Unit's Medical Rating Officer conducted a physical examination of Adornado and the report thereon tallies with that of the Employer's attending physician.

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[1] *Romero vs. WCC, et al.*, L-42617, June 30, 1967, 77 SCRA 482 at 488.

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In the Reply to Petitioners' Memorandum, respondent Serrano relates how Adornado's right hand was unable to perform two basic functions of a hand, namely: holding a cup filled with coffee and holding a pencil for the purpose of writing. Petitioners, on the other hand, cite some functions that the remaining thumb and palm could do: the thumb could hook, the cupped palm could hold, and the thumb opposed to the palm could grasp. But these are functions that cannot always be performed. The thumb could hook a cup only if there is something to hook on. While the cupped palm may hold on to small objects and the thumb opposed to the palm could hold something, these do not amount to functional use of the hand. A working hand must be able to grasp and pinch. These functions require the "combined action of the fingers against the opposed thumb and the palm of the hand." Indeed, without the opposition of the fingers, the thumb and palm are useless for any gainful employment or just the ordinary requirement of simple living.

The test of disability must be based on the ease or competence of the injured hand to pursue the same type of occupation that the claimant did prior to the accident.[2] This is so because compensation under the Workmen's Compensation Act is in lieu of wages or based on loss thereof.[3] The medical opinion made in this case that the injury resulted in the loss of use of 100% of the right hand should not be disturbed for the mere theorizing on the part of petitioners that the injured hand of Adornado could still perform a variety of functions.

The computation made by the insurance carrier was patently an erroneous application of the facts contained in the documents submitted to it by the employer. It is "penny-pinching" that shows utter disregard for the welfare of a working man rendered disabled by an industrial accident. This should have been a

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[2] See *National Development Co. v. WCC, et al.*, L-18922, November 27, 1964, 12 SCRA 381 at 383; *Gonzales v. WCC, et al.*, L-43689, Feb. 28, 1978, 81 SCRA 703 at 709; and *Romero v. WCC, et al.*, 77 SCRA 483 at 489.

[3] *Pascuala Lombo v. Standard Cigarette Manufacturing Company*, L-35531, August 30, 1974, 58 SCRA 750 at 759.

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good occasion as any for the employer to show sympathy and compassion for the working man whom he should regard as an ally in his quest for profits.

Respondent Adornado, as above stated, has asked the Court to order the petitioners to pay attorney's fees in the amount of ₱600.00 and ₱300.00 for miscellaneous and incidental expenses. Attorney's fees were not awarded by the WC Unit and in proceedings such as this they are normally awarded as part of the costs. However, we are not unmindful of respondent Adornado's situation who has had to spend for the expenses of litigation just to defend an award that is manifestly justified. The provisions of the Civil Code on Damages[4] are applicable to all obligations including those arising from law.[5] The obligation to pay compensation to Adornado arises from law and Art. 2208 (11) of the Civil Code authorizes a court to order the payment of attorney's fees and expenses of litigation when deemed just and equitable. This is such a case.

WHEREFORE, the petition is dismissed; and the petitioners are hereby ordered to pay to Honesto Adornado the balance of the award due to him with legal interest from June 7, 1968, plus ₱900.00 by way of attorney's fees and expenses of litigation. No costs.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Aquino, J., took no part.

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[4] Title XVIII.

[5] Art. 2195. The provisions of this Title shall be respectively applicable to all obligations mentioned in Article 1157.

Art. 1157. Obligations arise from: (1) Law x x x.