therefore relieved of responsibility under the Workmen's Compensation Law, for acceleration of a previously existing disease in an injury under the Workmen's Compensation Laws (Brightman v. Aetna Life Insurance Company, 220 Miss. 17, 107 E.E. 527), and it is sufficient that the injury and a preexisting disease combined to produce disability in order to make the injury compensable." (71 C.J., 614; Isar v. Kellog and Sons, 40 O.G. 167).

"The fact that the employee suffered from impaired vision prior to the accident does not prevent the loss or further impairment of his vision from constituting an injury such as the statute authorizes compensation for." (Hicatur v. Hunter, 39 Pa. Super. 393.)

"Where a steel chip flew into an employee's eye, accelerating the development of a cataract and causing the loss of sight, he suffered an injury within the statute." (Kucinic v. United Engineering and Foundry Co., 160 A. 344; 110 Pa. Super. 261.)

"Where a miner while at work was struck so hard a blow on the left eye by a piece of coal that it accelerated the development of a cataract in that eye, and made necessary an operation which resulted in the loss of the vision of the eye, he suffered an injury with the statute." (Sakunas v. Philadelphia and Reading Coal and Iron Co., 78 Pa. Super. 261.)

"An employee was struck in the eyes by a stream of analyne. His eyes were injured and he was advised by the employer's physician to wear dark glasses. A month later while wearing these glasses, he fell downstairs and permanently injured one eye. The second injury was held the natural and proximate result of the first accident." (VI Schneider's Compensation Text, 30-40, and cases therein cited.)

"The Workmen's Compensation Act is a social legislation designed to give relief to the workman who has been the victim of an accident in the pursuit of his employment and must be liberally construed to attain the purpose for which it has been enacted." (71 C.J. 341-352; Ramos v. Poblete, 73 Phil. 241; Francisco v. Consing, 633 Phil. 354.)[3]

Petitioner also contends that respondent Commission erred in absolving respondent company from liability, in spite of its noncontroversion of petitioner's claim and admission of his injury in the performance of his regular work.

There is also merit in the contention. Examination of the records of the case discloses that the Employer's Report of Accident or Sickness, signed by respondent company's personnel manager, Mr. Gregorio Imperial, contains the following: (1) as to controversion, said report stated "No", indicating that respondent company will not controvert petitioner's claim; (2) as to the question, "was he (petitioner) injured in regular occcupation?", the answer is "Yes"; and (3) as to the description of the accident, said report stated: "while taking off the shell from a coconut, a speck of coconut shell hit his (petitioner's eye." As a rule, when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto. (Victorias Milling Co., Inc. v. Compensation Commissioner, G. R. No. L-10533, prom. May 13, 1957.)

WHEREFORE, the appealed decision and resolution of respondent Commission are set aside. Respondent Franklin Baker Co. is hereby ordered to pay petitioner, the amount of P460.77, as compensation in accordance with Section 14 and 17 of the Workmen's Compensation Act, and to pay the amount of P5.00 to respondent Commission, pursuant to Section 55 of the same Act. With costs against respondent company.

SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion and Endencia, JJ. concurred.

J.B.L. Reyes, J., on leave, took no part.

[3] See II Francisco, Labor Laws (3rd Ed.) 137-145.

IV

Trinidad de los Reyes Vda. de Santiago, for herself and in behalf of her minor children, Mamerto, Leonila, and Andrea, all surnamed Santiago, Petitioners, vs. Angela S. Reyes and Workmen's Compensation Commission, Respondents, G.R. No. L-13115, *February 29, 1960, Labrador, J.*

1. WORKMEN'S COMPENSATION LAW; PRESUMPTION OF PERFORMANCE OF DUTIES BY EMPLOYEE. — In the case at bar, it is a fact that before leaving Manila, the deceased was engaged in his employment, and the presumption is that he performed his duties legally and in accordance with the rules and regulations because that was his regular obligation and it is incumbent, therefore, upon the respondent to prove that the deceased voluntarily went out of his route and drove his jeepney towards the province of Quezon, not that the deceased voluntarily went to that province thereby going beyond the route provided for the vehicle that he was driving.

2. ID.; PRESUMPTION THAT EMPLOYEE DIED IN THE COURSE OF EMPLOYMENT. — In the case at bar, the death of the employee must be presumed to have arisen out of his employment because there is a presumption that the deceased died while in the course of his employment.

DECISION

This is a petition to review the decision of the majority of the members of the Workmen's Compensation Commission, denying a claim for compensation of petitioners for the death of Victoriano Santiago, driver of a jeepney operated by the respondent. The said deceased was the driver of an auto-calesa belonging to respondent and was last seen operating said auto-calesa at 9:00 in the evening of September 26, 1955. In the morning of September 27, 1955, his dead body was found in Tayabas, Quezon, obviously a victim of murder by persons who were at large and whose identities were not known. Apparently the driver must have been attacked with blunt instrument or instruments as an examination of his head disclosed that it was heavily fractured, fragmenting it into many pieces, crushing and lacerating the brains. (Stipulation of Facts). Other pertinent facts in the stipulation of facts submitted by the parties are as follows:

> "That there is a specific instruction given by the respondent to the deceased to follow the route prescribed by the Public Service Commission. In the case of jeep driven by the deceased, its route is within Manila and suburbs;
>
> That it has always been the practice of the respondent that, whenever the driver is accepted, specific instruction is given to him to follow faithfully the traffic rules and regulations, especially speeding and overloading, and he is requested also not to operate beyond the route given by the Public Service Commission. In case the driver goes beyond the route prescribed by the Public Service Commission, a fine of P50.00 is imposed which is paid by the respondent. However, in case of the traffic violations, especially speeding, it is the driver who pays. (p. 2, Annex "E").

Two of the members of the Commission made the following finding on the question as to whether or not the death of Victoriano Santiago arose of and was occasioned in the course of his employment.

> "There is nothing in the record which justified the assumption that he was forcibly taken away, at the point of a gun or a knife from his regular orbit or employment. The most that may be conceded, however remote it seems, is the possibility that, to use the referee's own word, "he, the driver, might have been lured." by his assasins to get away from his regular route, only to be robbed of his earnings,

the jeep, and, which is the most important, his life. But this only demonstrates the voluntariness of his act of going out to the ordinary way of fulfilling his assigned job. It only adds to the inevitable conclusion that he went with his attackers in disregard not only of the instructions or orders of his employer but also of the rules and regulations of the Public Service Commission, which rules undoniably should be regarded as having the force of law, having been set by authorities for the observance of those to whom they are addressed, this deceased driver not excluded. If there is any material finding that is to be made out in this case, it is that the drivers act in deviating from the route prescribed for his observance constituted a positive factor in bringing about his own demise. His departure from the route where his employment only required him to be, in fact, brought him to an area fraught with extra risks or hazards not forceably and ordinarily attached to the employement for which he was hired.

This Commission finds that the deceased willfully violated public service rules and regulations and the instructions of his employer in undertaking a trip too far beyond the limits of the line which his jeepney was authorized to operate. And with this as the basis, the correct determination of the second issue can be reached upon consideration of the following precedents: x x x. (pp. 5-6, Annex "E").

Associate Commissioner Nieves Baens del Rosario dissented from the opinion of the, majority. She says in part:

"In connection with the 'arising out of and in the course of employment' requirement in relation to the presumptions in favor of the employee, Larson makes this comment:

> 'The burden of proving his cases beyond speculation and conjecture is on the claimant. He is aided in some jurisdiction by presumptions that help to supply the minimum evidence necessary to support an award, and which shift the burden to the defendant when some connection of the injury with the work has been prove.' (p. 252, W/C.S. by Larson, Vol. 2)

And in this jurisdiction where such presumptions in favor of the employee are provided in our Workmen's Compensation Act, our Supreme Court in the aforecited Batangas Transportation case ruled:

> 'Our position is that once it is proved that the employee died *in the course* of the employment, the legal presumption in the contrary, is that the claim comes within the provisions of the compensation law (Sec. 44). In other words, that accident *arose out* of the workmen's employment (2-A).

Another presumption created in favor of the employee and which is more specific than the all embracing presumption 'that the claim comes within the provisions of the Act' is that one provided in sub-section 3 of Section 44. It reads: '3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another.' This presumption arises from the rule against suicides and once the presumption is established, the burden of proof shifts to the employer. He is, under the Workmen's Compensation Act, required to present 'substantial evidence' to overcome such presumption.

In the case of Travellers Insurance Company vs. Cardillo, 140 F-2d 10 (1943) the court stated:

> 'The evidence necessary to overcome the presumption then must do more than create doubt or set up non-compensable alternative explanations of the accident. It must be 'evidence such as a reasonable mind must accept as adequate to support a conclusion.'

No such evidence was presented by the herein respondent.

In explanation of this policy, the Court held in the Batangas Transportation case:

> 'It is not unfair; the employer has the means and the facilities to know the cause; and should not be allowed to profit by concealing it. May, he should take active steps to ascertain the cause of the murder; not just continue its operations unmolested.'

And in the case of Travellers Insurance Co. cited above the following reason was given:

> 'The death of the employee usually deprives the dependent of his best witness — the employee himself — and, especially where the accident is unwitnessed, some latitude should be given the claimant. Hence, presumptions or inference that an unwitnessed death arose out of the employment are allowed in some jurisdictions, *where the employer provides no contrary proof*, and when last seen deceased was working or had properly recessed.'

Here, the respondent employer has not provided any contrary proof, and Santiago when he was last seen was doing his regular work of driving x x x x. (pp. 14-16, Annex "G").

Section 43 of the Workmen's Compensation Act, as amended by Section 24 of Republic Act 772, establishes the following presumptions:

> "In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary —
>
> 1. That the claim comes within the provisions of this Act;
>
> 2. That sufficient notice thereof was given;
>
> 3. That the injury was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another;
>
> 4. That the injury did not result solely from the intoxication of the injured employee while on duty; and
>
> 5. That the contents of verified medical and surgical reports introduced in evidence by claimants for compensation are correct.

The decision of the majority of the members of the Commission reasons out that the deceased had received specific instructions not to operate beyond the route given by the Public Service Commission (only within the City of Manila), and his act in getting outside of the city was his free and voluntary act, because he disregarded the orders of his employer as well as the rules and regulations of the Public Service Commission. The majority concludes that the deceased willfully violated Public Service Commission rules and regulations and, therefore, death did not arise out of or by reason of his employement.

The flaw in the above reasoning of the majority is that it violates the presumption expressly laid down by the following provision of Section 69, par. (q), Rule 123, Rules of Court:

> "The following presumption are satisfactory if uncontradicted and overcome by other evidence:
>
> x x x x x x
>
> (q) That the ordinary course of business has been followed:
>
> x x x x x x

There is no question that immediately before leaving Manila the deceased was engaged in his employmnt. The presumption is that he performed his duties legally and in accordance with the rules and regulations, because that was his regular obligation.

Inasmuch as the law establishes the presumption that the deceased followed the law and regulations, it was incumbent upon respondent to prove that he did otherwise, or that he failed to comply with the regulations. In other words it was incumbent upon the respondent herein to prove that the deceased *voluntarily* went out of his route and drove his jeepney towards the province of Quezon, not that the deceased voluntarily went to that province thereby going beyond the route provided for the vehicle that he was driving.

Petitioners claim that the deceased voluntarily went out of his ordinary route. Petitioners also have the obligation to prove this fact, this being as affirmative allegation. They failed to do so.

There being no such evidence submitted by the respondent, i. e., that the going of the deceased to Quezon province was made voluntarily by him, we must conclude, pursuant to the presumption that every person performs his duty or obligation, that he was forced by circumstances beyond his will to go outside his ordinary route; in other words that while driving in the city he must have been forced to go out and drive to the province of Quezon on the threats of the malefactors guilty of assaulting and killing him against his (deceased) will.

In the case of Batangas Transportation Co. vs. Josefina de Rivera, et al., G. R. No. L-7656, prom. May 8, 1956, decided by this Court, in which a driver of a bus, while so driving was suddenly attacked by his assailant who boarded the bus and thereafter stabbed him, the majority of this Court held that the driver died in the course of his employment even if there were indications (not sufficient to prove) that there was personal animosity between the assailant and the victim, which may have caused the assault. In said case the reason for the decision of this Court was that the circumstances or indications show that the deceased died while driving the bus, thus that his death must have been due to his employment.

The present case is stronger than the above-cited case of Batangas Transportation Co. vs. Rivera, for while in said previous case there were indications which showed personal animosities which may have been the root cause of the assault, in the case at bar, there are no such indications. On the other hand, there is a presumption that the deceased died while in the course of his employment, and therefore his death must be presumed to have arisen out of said employment.

We, therefore, find that the decision of the majority which has been appealed from is not in consonance with the law and the express provision of Section 43 of the Workmen's Compensation Law; and that by reason of such express provision of the law, we must hold that Victoriano Santiago died by reason of and in the course of his employment and consequently his heirs are entitled to receive the compensation provided for by law in such cases.

Decision rendered by the court below is hereby set aside, and respondent is hereby ordered to pay the compensation due the heirs under the law. Without costs.

SO ORDERED.

Paras, C. J., Bengzon, Bautista Angelo, J.B.L. Reyes, Endencia, Barrera and Gutierrez David, JJ., concurred.

Montemayor, J., reserved his vote.

V

The Municipal Treasurer of Pili, Camarines Sur, Balbino Onquit and Felix Onquit, Petitioners, vs. The Honorable Perfecto R. Palacio, Judge of the Court of First Instance of Camarines Sur and Honesto Paladin, Respondents, G.R. No. L-13653, April 27, 1960 Montemayor, J.

CIVIL PROCEDURE; SECTION 10 RULE 40 OF RULES OF COURT CONSTRUED. — Under Section 10, Rule 40 of the Rules of Court, where a Justice of the Peace Court disposes of a case not on its merits but on a question of law, as when it dismisses it, and it is appealed to the Court of First Instance, the latter may either affirm or reverse the ruling or order of dismissal.

DECISION

This is a petition for certiorari and mandamus to set aside the decision of respondent Judge Palacio in Civil Case No. 3909 of the Court of First Instance of Camarines Sur, and to order him to return the case to the Justice of the Peace Court of Pili, Camarines Sur.

The facts in this case are not in dispute. Balbino Onquit lost a carabao sometime in February, 1946. In December of that year, Honesto Paladin bought a carabao for ₱100.00 from one Jovito Milarpis, who in turn had bought the same animal from Vicente Baguya that same day. Almost ten years later, that is, on April 13, 1956, Balbino Onquit saw the carabao bought by Paladin in December 1946, and in the latter's possession and supposedly recognized it to be the animal he had lost about ten years before; so, he reported the matter to the Chief of Police of Pili, who immediately impounded the animal and gave its custody to the Municipal Treasurer of the said town.

On April 28, 1956, Paladin filed an action for replevin in the Justice of the Peace Court of Pili, Camarines Sur, (Civil Case No. 66), against Balbino Onquit, Felix Onquit, and the Chief of Police of Pili, to recover possession of the carabao. The Justice of the Peace Court decided the case in favor of the defendants. Paladin appealed the case to the Court of First Instance of Camarines Sur (Civil Case No. 3453), which in a decision dated January 14, 1957, reversed the appealed decision and ordered that the carabao involved be returned to plaintiff Paladin. After said decision had become final and executory, Paladin demanded the delivery of the carabao to him, but the Municipal Treasurer refused to deliver.

Instead of having the decision executed by the proper authorities, Paladin would appear to have done nothing, possibly waiting for the Municipal Treasurer to change his mind. But on April 13, 1957, instead of filing motion to enforce the judgment in his favor which had long become final and executory, he filed another Civil Case No. 87 in the same Justice of the Peace Court of Pili, against the Municipal Treasurer, Balbino Onquit and Felix Onquit, making reference to Civil Case No. 66 of the Justice of the Peace Court and the decision in Civil Case No. 3453, Court of First Instance, in his favor, and asking that the same carabao be returned to him and that defendants Onquit be made to pay him the sum of ₱1,500.00 as damages. Defendants filed a motion to dismiss on the ground of *res adjudicata* and estoppel. Acting upon said motion, the Justice of the Peace Court dismissed the case, stating that it was without prejudice on the part of Paladin to file a motion for execution, on the ground that the decision in the first case had already become final and executory, at the same time ruling that the Municipal Treasurer, one of the defendants, had no interest in the case.

Paladin appealed the order of dismissal to the Court of First Instance of Camarines Sur. Defendants-appellees failed to file their answer to the complaint and were declared in default. Paladin was allowed to present his evidence in their absence and respondent Judge Palacio, presiding the Court of First Instance of Camarines Sur, rendered the decision aforementioned, ordering the defendants Balbino Onquit and Felix Onquit to deliver the carabao and its offspring to the plaintiff and to pay the latter the sum of ₱1,500.00 as moral and consequential damages plus costs. Defendants filed two motions for reconsideration which were denied. Thereafter, they filed the present petition for certiorari and mandamus.