



Aquino, Isacio v. Cargo Servicios Industriales S.A.

A. 2652. XXXVIII

Country: Argentina

Region: Americas

Year: 2004

Court: Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

Health Topics: Disabilities, Occupational health

Human Rights: Right to favorable working conditions, Right to health

Facts

A 29-year-old construction worker fell 10 meters from veneer roof while at work, rendering him permanently and totally disabled. No safety devices were provided by the employer, including a net or other protection mechanism to protect workers from falls. The worker brought an action challenging the constitutionality of Article 39(1) of the Occupational Risks Law (Ley de Riesgo del Trabajo - LRT), which exempted employers from civil liability for all injuries incurred on the job and also limited occupational risk indemnification to material damages, particularly lost wages.

The trial court declared the LRT's indemnification regime as unconstitutional and ordered the employer to fully indemnify the worker for damages incurred from the work accident. Upon appeal, the National Chamber of Labor Appeals affirmed the lower court's decision. The case was appealed by the respondent to the Supreme Court of Justice.

Decision and Reasoning

The Supreme Court of Justice affirmed the National Chamber of Labor Appeals' decision finding Article 39(1) of the LRT unconstitutional (30). The Supreme Court agreed with the lower court about the reparation system that the LRT created did not lead to the full and comprehensive reparation of the worker required by Article 14 of the Constitution and the various international instruments granted constitutional legal status under Art. 75(22) of the National Constitution. The Court emphasized that Article 14 of the National Constitution guarantees full and integral indemnification of the work. Additionally, calling for the protection of the worker, the Court based its findings on a number of international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ESCR); the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC). It also recognized the work of the Committee on Economic, Social and Cultural Rights (CESCR) as the official interpretation of the ICESCR and, accordingly, Art. 75(22) of the National Constitution.

The Supreme Court held that Congress must establish regulations for the protection of workers harmed by work accidents in accordance to Article 19, which establishes the principle of *alterum non laedere*, the "general principle" that prohibits persons from infringing on the rights of others and, according to the Court, is consistent with the concept of reparation. It emphasized that the legislative process should be consistent with international jurisdictions in the area of human rights. Recalling principles of social justice and fundamental human rights, the Court established that when the restitution of the worker is not possible, there must be just indemnification.

Decision Excerpts

"Article 19 of the National Constitution established the general principle that 'prohibits a person from damaging the rights of third parties': *alterum non laedere*, a right that is related to the idea of compensation. [€] The liability imposed by articles 1109 and 1113 of the Civil Code embodies this general principle, in a way that the regulation that the civil code does 'not embed this principle exclusively to persons in private law, it is a general principle that regulate any legal discipline' ('Gunther c/ Estado Nacional [€])." Paragraph 3

"Que el art. 19 de la Constitución Nacional establece el 'principio general' que 'prohíbe a los 'hombres' perjudicar los derechos de un tercero': *alterum non laedere*, que se encuentra entrañablemente vinculado a la idea de reparación. [€] La responsabilidad que fijan los arts. 1109 y 1113 del Código Civil sólo consagra el [citado] principio general', de manera que la reglamentación que hace dicho código en cuanto 'a las

personas y las responsabilidades consecuentes no las arraiga con carácter exclusivo y excluyente en el derecho privado, sino que expresa un principio general que regula cualquier disciplina jurídica' (Gunther c/ Estado Nacional [â€¦])." Paragraph 3.

"It must be recalled that the value of human life is cannot be considerable only with economic standards. Such materialistic conception must yield before an integral compensation of material and spiritual values, united in the human life and which it's reparation must, at least, bring justice." Paragraph 3.

"Cabe recordar, entonces, que el "valor de la vida humana no resulta apreciable con criterios exclusivamente econÃ³micos. Tal concepciÃ³n materialista debe ceder frente a una compresiÃ³n integral de los valores materiales y espirituales, unidos inescindiblemente en la vida humana y a cuya reparaciÃ³n debe, al menos, tender la justicia." Paragraph 3.

"Disability must be repaired, apart from the moral damage and the economic impairment that the victim faces, because the physical integrity has in itself a value that must be compensated." Paragraph 3, page 4.

"[L]a incapacidad debe ser objeto de reparaciÃ³n, al margen de lo que pueda corresponder por el menoscabo de [la] actividad productiva y por el daÃ±o moral, pues la integridad fÃsica en sÃ misma tiene un valor indemnizable." Paragraph 3, page 4.

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