

**PRIMITIVA VDA. DE GALINDO, FOR HERSELF AND ON BEHALF OF
HER MINOR CHILDREN, NAMELY: MYRNA, ROLANDO, ERNESTO AND
ERLINDA, ALL SURNAMED GALINDO, PETITIONERS, VS.
WORKMEN'S COMPEN...**

G.R. No. L-41603. September 28, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review on Certiorari of the Decision of respondent Workmen's Compensation Commission, dated August 6, 1975, reversing the award of death compensation benefits to petitioners by the Workmen's Compensation Unit, Regional Office No. XI, Cagayan de Oro City.

Petitioner Primitiva Vda. de Galindo is the widow of the late Proculo Galindo. Fe, Erlinda and Myrna (all surnamed Galindo) are their minor children.

The late Proculo Galindo started working with private respondent on October 22, 1949. He worked as field laborer in the pineapple plantation of respondent corporation from 5:00 in the morning up to 2:00 in the afternoon, for 6 days a week, with a salary of P51.36 per week. He was in good health and was never absent from work. However, on July 31, 1971, he was confined at the Philipps Memorial Hospital, owned by the company, in Cagayan de Oro City where he finally died on August 24, 1971 due to "cancer of the liver with metastasis".

On September 30, 1971, respondent company filed an "Employer's Report of Accident or Sickness"[1], wherein it admitted knowledge of the "injury or sickness" on July 31, 1971. On January 5, 1972, petitioners filed death compensation benefit claims with Regional Office No. XI, Cagayan de Oro City. Because of the company's failure to file an Answer, that Office issued an Order on July 11, 1972, declaring the claim non-controverted for failure of the company to give the proper notice pursuant to Section 37 of the Workmen's Compensation Act,[2] and for failing to file a notice of controversion on or before the fourteenth day of disability, or within ten days after it had knowledge thereof, as provided by Section 45 of the same Act. The company moved for reconsideration, enclosing a copy of its Employer's Report submitted on September 30, 1971. Reconsideration was just the same denied on the ground that although there was an Employer's Report controverting the claim, the same could not be taken into consideration because the company had knowledge of the sickness suffered by the deceased on July 31, 1971 but submitted the same to the Office only on September 30, 1971 beyond the reglementary period provided by law.

On September 26, 1972, finding that the illness "cancer of the liver" of the deceased, which led to his death, was service-connected, the Regional Office issued an Award in favor of petitioners as follows:

"AWARD, therefore, is hereby entered in favor of the claimants and respondent is directed to pay thru this Office, the following:

1. To the claimant, widow, Mrs. Primitiva vda. de Galindo, the amount of P2,000.00 for death benefit plus

P200.00 as burial expenses.

2. To the claimants, minor children, namely: Fe, Erlinda and Myrna, all surnamed Galindo, the amount of P4,000.00 for death benefit, apportioned as follows:

Fe P1,333.33

Erlinda 1,333.33

Myrna 1,333.34

3. To claimants counsel, Atty. Leovigildo Tandog, the amount of P300.00, as attorney's fee pursuant to Section 1, Rule 22 of the Rules of the Workmen's Compensation Commission.

4. To this Office, the amount of P61,00 as service fee pursuant to Section 55 of the Act.

x x x "[3]

Private respondent filed a petition for reinstatement of its right to controvert alleging this time that it had timely controverted the death compensation benefits claimed by petitioners on September 1, 1971, or, eight (8) days after Galindo's death. In a Resolution, dated October 30, 1972, the Regional Office denied reinstatement on the ground that the petition therefor was based on the same Employer's Report in the Motion for Reconsideration earlier filed except that the cover letter was submitted earlier on September 1, 1971; "that while the deceased died on August 24, 1971, the Employer's Report of controversion was submitted only on September 30, 1971 and specifically referring to Question No. 25 of the said Employer's Report which has been marked as Exhibit "Y", respondent had knowledge of the ailment of C.A. Liver suffered by the deceased starting July 31, 1971;" and that "granting that the notice of controversion was filed on September 1, 1971, the fact remains that the employer had knowledge of the ailment which eventually caused the death of the deceased on July 31, 1971 so that notice was still beyond the period provided by law for controverting claims for compensation. Therefore, there is nothing new in this Petition for Reinstatement except the different dates it was submitted." [4]

Upon appeal, respondent Commission, on August 6, 1975, reversed the Award and absolved private respondent from any liability on the ground that the claim being a death compensation benefit claim and not a disability claim, the period within which to controvert starts from knowledge of death and not from the date of disability; that considering that private respondent acquired knowledge of the death of the deceased only on August 24, 1971, the filing of the notice of controversion on September 1, 1971 is within the period prescribed under Section 45 of the Workmen's Compensation Act (Act 3428); and finally, that "cancer of the liver" is not an occupational disease, its etiology being still a medical mystery.

Following judicial precedents, we find merit in the petition. The record discloses that the company, somehow, had two covering letters to the Regional Office enclosing its Employer's Report, one dated September 30, 1971 [5] and the other, September 1, 1971. [6]

There is no question that private respondent was aware of the illness of the deceased on July 31, 1971 [7], which coincided with the date of the illness. Even granting that notice of controversion was filed on September 1, 1971, as the company alleges, that was 32 days from said knowledge, which, as correctly found by that Office, was beyond the period provided in Section 45, reading as follows:

"Sec. 45. Compensation, how payable.

"x x x

"In case the employer decided to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner x x x. Failure on the part of the employer x x x to comply with this requirement shall constitute a renunciation of his right to controvert the claim x x x." (This portion of Sec. 45 is now part of Sec. 44 after a series of amendments of the Workmen's Compensation Act)

The law should be interpreted to mean that when sickness which can be the basis of compensation occurs, the employer should controvert within fourteen days thereafter or within ten days from knowledge thereof. The fact that the employee dies subsequently should not result in the employer's getting more time within which to controvert. Liability of the employer had attached fourteen days from the date of illness or ten days from knowledge thereof, the employee being already entitled to compensation from said dates, as the case may be.

Having failed to controvert the right of the claimant within the period prescribed in Section 45 of the Act, the compensability of petitioners' claim, its reasonableness and validity, are now beyond challenge. The absence of controversion is fatal to any defense that an employer could interpose.[8]

Respondent Commission's finding, that cancer of the liver is not an occupational disease, cannot be the basis for ruling out compensability. The case of Maria Cristina Fertilizer Corporation vs. WCC, et al.,[9] , decided under the Workmen's Compensation Act, is authority for the ruling that cancer of the liver, though not an occupational disease, may be deemed work-connected.

There is no question that the deceased's illness supervened during his employment. He was in healthy condition when he joined respondent company in 1949. He worked as a field laborer for almost 22 years. The rebuttable presumption exists in his favor that such illness arose out of his employment or was at least aggravated by it, the contrary not having been proven by any evidence.[10]

The foregoing premises considered, the award in petitioners' favor is justified.

WHEREFORE, the decision of respondent Commission is REVERSED and SET ASIDE and that of the former Workmen's Compensation Unit, Regional Office No. XI, Cagayan de Oro City, is hereby reinstated and affirmed.

Costs against respondent Philippine Packing Corporation.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] Annex "A", Motion for Reconsideration.

[2] "Sec. 37. Notice of accidents by employer. - x x x As soon as possible after the occurrence of an injury resulting in absence from work for a day or more, the employer shall give written notice thereof to the Workmen's Compensation Commissioner on blank form specially prepared by said Commissioner x x x."

[3] Rollo, pp. 12-13.

[4] Ibid., pp. 10-11.

[5] Annex "A", Motion for Reconsideration.

[6] Annex "A", Petition for Reinstatement.

[7] Answer to Q. 25, Employer's Report, Annex "A-1".

[8] La Mallorca vs. Zuniga & WCC, 30 SCRA 613 (1969).

[9] 60 SCRA 228 (1974).

[10] Panangui, et al. vs. ECC, et al., 121 SCRA 65 (1983).

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