

PELAGIA NATIVIDAD, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND CANLUBANG SUGAR ESTATE, RESPONDENTS.

G.R. No. L-42021. November 21, 1979

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the November 19, 1975 decision of the Workmen's Compensation Commission reversing the December 6, 1974 decision of the acting referee awarding disability benefits to petitioner.

Petitioner is the surviving spouse of the late Cirilo Andres, who was employed by respondent Canlubang Sugar Estate as a coconut caretaker, until his disability retirement by reason of chronic peptic ulcer in November, 1969 at the age of 52. He died of bronchial asthma on December 22, 1973 at the age of 56 (p. 71, WCC rec.).

Before his death, or on October 29, 1973, Cirilo Andres filed with the Workmen's Compensation Unit, Department of Labor, at San Pablo City, a claim for disability benefits based on his chronic peptic ulcer. He stated in his claim that while he was employed by respondent employer, he got sick of chronic peptic ulcer and was treated at the Canlubang Sugar Estate Hospital and at the Philippine General Hospital, Manila, where he was operated on at the expense of the respondent; that he stopped working in November, 1969 by reason of his aforesaid illness; and that he notified respondent employer of his illness upon his retirement.

During the pendency of the claim or on December 22, 1973, claimant died; hence, he was substituted by his surviving spouse, herein petitioner (p. 70, WCC rec.).

After several hearings, the acting referee found the claim meritorious and ordered respondent employer to pay petitioner the amount of Six Thousand (P6,000.00) Pesos as disability benefits under Section 14 of the Workmen's Compensation Act, as amended. The acting referee found that:

"Claimant Cirilo Andres, now deceased, used to be an employee of the respondent Canlubang Sugar Estate as coconut caretaker for so many years. As such, he was earning an average weekly wage of P60.00 based on his salary 12 weeks next preceding his cessation from work. That in his capacity as caretaker, he was in his jurisdiction Block 54 at Bo. Putol, Canlubang Sugar Estate consisting of 24 hectares in area. At times, he used to harvest coconuts even during rainy season. As to his tour of duty, it is not at all the same. It was sometimes observed in the morning, some-times in the afternoon and sometimes in the evening. These, for several years, were the everyday life of the late Cirilo Andres. Then came the year 1962 when he was brought to the Philippine General Hospital where he was operated for chronic peptic ulcer at the expense of the respondent company. After having been declared fully fit, he returned to work again. It only took few years and his illness recurred again. At this juncture, it was found out that his illness was more severe hence, the respondent retired him x x x. Reason, due to physical disability.

"The only issue to be resolved is whether the illness of chronic peptic ulcer of the late Cirilo Andres is due to or aggravated by the nature of his work with the respondent.

"We can readily conclude that with the kind of work being performed by this claimant Cirilo Andres, now deceased, his illness of chronic peptic ulcer could have been directly caused by it or at least, aggravated by it. Eating irregularly, coupled with mental stress, getting afflicted with such illness is very likely. Granting without admitting that other outside factors were attendant to it, we have to admit that it is still a supervening illness or it could have aggravated during the course of employment. Under the present jurisprudence, it is now laid down at the door of the respondent to disconnect by substantial evidence, the injury or sickness from the employment (*Magalona vs. 21 SCRA 1203*) [sic]. In the present case, the respondent miserably failed at this point hence, we have no other alternative but to rule in favor of compensability" (pp. 27-28, WCC rec.).

Respondent employer filed a motion for reconsideration which was denied on February 20, 1975 by the acting referee. The entire records of the claim were however elevated to the Commission for review.

On November 19, 1975, the Commission reversed the decision of the acting referee in this wise:

"Section 8 of the Act provides that if the disease contracted or injury received by the employee as provided in Section 2 hereof causes his death within two years from the date of such injury or sickness, the employer shall pay to person entitled thereto, the death benefits provided thereunder.

"In other words, for death to be compensable under the Act, such death must occur within two years from the date of the compensable illness or injury which caused the death. And in determining the two year period, the date of onset of disability shall be the proper starting point. Accordingly, the instant claim cannot be considered compensable for the simple reason that the deceased died in 1973, more than two years from his disability, which started in 1969 due to illness. Granting that deceased retired in 1969 due to illnesses. (sic) Records show that these illnesses were contracted way back in 1962 and 1963 and when deceased filed his claim for disability compensation on November 9, 1973 more than 10 years had lapsed, hence the action has already prescribed."

I

1. The instant claim was filed under Section 14 of the Workmen's Compensation Act, as amended, and not under Section 8 thereof. In other words, the claim was for disability compensation and not one for death benefits. While claimant Cirilo Andres died during the pendency of his claim, such death does not absolve respondent employer from liability for disability compensation; nor does said death authorize the respondent Commission to treat, *motu proprio*, as it did, the disability claim as one for death compensation.

Consequently, the respondent Commission gravely abused its discretion when it treated the subject disability compensation claim as one for death benefits and in the process dismissed the same on the ground that death having supervened after two (2) years from the disabling illness, the same is already barred. Even the favorable decision of the Acting Referee which was reversed by the respondent Commission clearly shows that the subject of the instant case is one for disability compensation benefits and not for death benefits. Thus what was awarded to herein petitioner in the aforesaid decision was disability benefits under Section 14 of the Act, as amended.

2. The records show that the late Cirilo Andres anchored his compensation claim on his chronic peptic ulcer which he first contracted in 1962, but which recurred seven years after or in 1969 which ultimately forced him to retire at the early age of 52. No evidence to the contrary had ever been presented by the respondent employer. Moreover, petitioner, surviving spouse of Cirilo Andres, confirmed in her testimony that her late husband stopped working in 1969 due to his ulcer as he then frequently complained of stomach ache (p. 46, WCC rec.). Her further testimony to the effect that her late husband stopped working by reason of asthma cannot adversely affect the claim for such declaration is not totally irreconcilable with her previous statement that her husband ceased working by reason of his ulcer, considering that petitioner is but a layman, not a doctor. The fact remains, however, that per petitioner's testimony, her husband stopped working by reason of illness. Thus:

"Q - Will you try to remember the month or year when your husband ceased working?

A - 1969, sir.

"Q - Do you remember the month?

A - I cannot remember.

"Q - But can you tell us why he ceased working?

A - He had ulcer, he often complained of stomach ache.

"Q - Was he treated in a hospital outside CSE?

A - Yes, sir.

"Q - Where was the operation held?

A - At the Philippine General Hospital.

"Q - Who sent him at the PGH?

A - Dr. Bunyi of CSE.

"Q - How many months or weeks, did he work after he was operated on?

A - For a long time.

"Q - How many years?

A - 7 years more.

"Q - And after 7 years what made him stop working?

A - He got asthma.

"Q - Was he treated by the company physician for his asthma?

A - Yes, sir.

"Q - Who treated him?

A - Dr. Garcia.

"Q - How long was he treated for asthma?

A - For a long time.

"Q - Can you remember how many months?

"Atty. de los Reyes - Objection, your Honor, the illness as stated in the claim is peptic ulcer and not asthma

"Mr. Reyes: What we have asked here is the real ailment - - which is work-connected.

"x x x" (pp. 45-56, WCC rec.).

And counsel for petitioner explained the apparent conflict in the aforesaid testimony, thus: "Nowhere in her whole testimony did she say that chronic peptic ulcer was not the disabling ailment of her late husband in November, 1969, nor did she testify on the development of his asthma to the exclusion of his ulcer. In fact, to reiterate, the deceased claimant himself on October 9, 1973, nearly 4 years from date of disability and only 74 days prior to his

death on December 22, 1973, disclosed in his claim that he was disabled of chronic peptic ulcer. The only logical inference therefore that could be drawn is that deceased's ulcer was complicated by the development later on of asthma. Whether the cause of death was asthma, or ulcer, or both ailments, is of no moment. The uncontroverted fact remains that Cirilo Andres was disabled in November, 1969, by his chronic peptic ulcer" (pp. 37-38, rec.).

WE agree with the aforestated observations and conclusion of petitioner's counsel in the light of the circumstances of the claim. Furthermore, respondent employer, as earlier stated, did not present any evidence to disprove the factual basis of the claim; nor did it successfully discharge even at this late stage, its burden of overthrowing the presumption of compensability arising from the uncontroverted fact that the chronic peptic ulcer of the late Cirilo Andres and his disability by reason thereof, all supervened in the course of this employment with respondent employer. Such failure rendered the aforesaid presumption, rebuttable at its inception, conclusive (*Landicho vs. Workmen's Compensation Commission and Canlubang Sugar Estate*, G.R. No. L-45996, March 26, 1979).

3. The respondent Commission's ruling that the claim of petitioner had prescribed is without factual and legal basis. The reckoning point of time is not the onset of the illness, but the date of effective disability by reason of the illness (see *Magpantay vs. WCC*, 73 SCRA 533, 537-538 [1976]; *Earnshaw Docks and Honolulu Iron Works vs. Surtijas*, 66 SCRA 566 [1975]; and *Hernandez vs. WCC*, 14 SCRA 219, 220, 224 [1965]); because disability compensation accrues only from the time the workman's earning power is lost or impaired (*Alatco Transportation Inc. vs. WCC*, 42 SCRA 391 [1971]). It is clear, therefore, that while the late Cirilo Andres acquired his peptic ulcer in 1962, the same caused his effective disability from labor only in 1969.

Consequently, the respondent Commission likewise gravely abused its discretion in ruling that the instant claim has prescribed.

II

Moreover, it appears that the employee's right to compensation was not effectively controverted by the respondent employer.

There is nothing in the record to show that respondent employer timely complied with Section 37 of the Workmen's Compensation Act, as amended, with respect to employee's illness of peptic ulcer contracted on December 8, 1962, which necessitated his operation on December 9, 1962 and January 18, 1963 at the Philippine General Hospital, Manila. It is undisputed that respondent employer had, on the aforestated dates, knowledge of the aforesaid illness and operation, as one of the attending physicians of the employee was a doctor of respondent employer's hospital, Canlubang Estate Hospital (pp. 67, 73, WCC rec.), and the expenses of the operation were also shouldered by the respondent employer (pp. 37-38, WCC rec.). By reason of the said illness and operation, he was confined in the Philippine General Hospital from December 8, 1962 to February 12, 1963, and his disability retirement in November 1969 was precisely because of chronic peptic ulcer. Section 37 in relation to Section 45 of the Act, as amended, requires the employer, within 14 days from the occurrence or within 10 days from knowledge of an injury resulting in absence from work for a day or more, to give written notice thereof to the Workmen's Compensation Commission.

Consequently, the Employer's Report of Accident or Sickness filed by respondent employer only on February 15, 1971 (p. 64, WCC rec.) pursuant to afore-said Sections 37 and 45 was too late; which delay resulted in the renunciation of the right to controvert the claim, barring all defenses available (*Bautista vs. WCC*, 88 SCRA 121 [1979]; *National Development Co. vs. WCC*, 10 SCRA 696 [1964]), thereby constructively admitting the compensability of the illness or injury (*General Shipping Co., Inc. vs. WCC*, 109 Phil. 60 [1960]). As emphatically declared in *Vda. de Calado vs. WCC* (38 SCRA 577 [1971]),

"x x x this Court wants to make it clear now, that in line with the spirit and purpose of the Compensation Act and consistent with the public policy therein voiced that claims for compensable injuries or death are not waivable, any employer who, having actual notice or knowledge, directly or indirectly, of any compensable injury or death suffered by any of his employees or workers, violates Section 37 of the Act by failing to report the same and to controvert its liability therefor within the period stated in said section is under an inescapable obligation to pay the corresponding compensation in full whenever and howsoever a demand therefor is made by the party entitled thereto, the failure of such party to give the notice or to file the claim required by Section 24 of the Act notwithstanding. WE hold that unless this view is adopted the public policy declaring claims for compensation non-waivable would be open to facile circumvention and might just as well be cast aside."

III

Petitioner was represented by counsel only before this Court, hence, attorney's fees to be awarded must be limited to 5%.

WHEREFORE, THE DECISION OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY REVERSED AND SET ASIDE, AND RESPONDENT EMPLOYER IS HEREBY ORDERED

1. TO PAY PETITIONER THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DISABILITY COMPENSATION;
2. TO REIMBURSE PETITIONER THE MEDICAL AND HOSPITAL EXPENSES INCURRED BY THE DECEASED EMPLOYEE, DULY SUPPORTED BY PROPER RECEIPTS;
3. TO PAY ATTORNEY'S FEES EQUIVALENT TO 5% OF THE TOTAL AWARD; AND
4. TO PAY THE SUCCESSOR OF THE DEFUNCT COMMISSION, ADMINISTRATIVE FEES.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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