

NESTOR M. PATRIARCA, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND CENTRAL AZUCARERA DE LA CARLOTA, RESPONDENTS.

G.R. No. L-42918. September 30, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Workmen's Compensation Commission in W. C. Case No. 1817 modifying the decision of its Hearing Officer III, Demetrio P. Correa from whose decision the respondent appealed to the Commission.

The present controversy arose out of a claim for sickness and disability benefits filed by the petitioner. Nestor Patriarca started working in 1970 for private respondent Central Azucarera de la Carlota as a locomotive mechanic, passing the physical examination conducted by the company. Subsequently, he was promoted to diesel locomotive supervisor. His work involved the exertion of strenuous effort and exposure to cold, heat, dust and other elements of nature. Often he was not able to eat his meals on time due to the pressures of his work.

On October 26, 1974, petitioner-claimant suffered serious stomach pain. The company physician, Dr. Jose Ferrer, found Patriarca to have a tumor in his stomach and recommended him for operation to Dr. Patricio Tan and another company doctor, Dr. Jorge Villanueva. Petitioner had to stop working.

Thereafter, the petitioner-claimant suffered body weakness and dizziness but continued working with the private respondent upon the latter's instructions. On November 9, 1974, petitioner was again forced to stop working due to the serious nature and severity of his ailment. He was brought to the La Carlota Sugar Central Emergency Hospital and subsequently transferred to the Riverside Medical Center for an operation. Surgery was performed on him by Dr. Patricio Tan. He was permitted to work only on February 10, 1975 but this time as car repair supervisor, a less taxing job. At present, petitioner is no longer working having been discharged from employment due to physical disability.

On March 31, 1975, petitioner-claimant filed his notice of claim with the Workmen's Compensation Unit, Bacolod City. Notice of the claim was transmitted to the private respondent on April 3, 1975, by the Workmen's Compensation Unit and was duly received on April 12, 1975 as evidenced by the registry return card. Private respondent failed to controvert the claim and was declared in default. Petitioner-claimant was ordered to present evidence ex-parte. However, despite the declaration of default, the claim was re-transmitted to the respondent which filed its memorandum and physician's report. An order was issued by the hearing officer requiring the parties to present their respective evidence within fifteen (15) days upon receipt of the order. Again, private respondent failed to comply and on November 5, 1975, the hearing officer of the Workmen's Compensation Unit issued a decision awarding the petitioner compensation in the amount of P1,130.08 for loss of earning from October 26, 1974 to February 19, 1975 and 60% non-schedule disability (NSD) for permanent partial disability, which, according to the Compensation Rating Medical Officer, Dr. Antonio M. Habana, is in the amount of

P7,068.67. However, private respondent was ordered to pay only the maximum of P6,000.00.

On appeal by the private respondent, the Workmen's Compensation Commission modified the decision awarding petitioner-claimant only P1,006.72 as disability compensation under Section 14 of the Workmen's Compensation Act and reversed the decision of the Workmen's Compensation Unit with regard to the compensation benefit under Section 18 of the same Act, that is 60% NSD, on the ground that there is no permanent partial disability resulting from gastrectomy of a portion of the stomach. Compensation under such category was disallowed. Hence, this petition for review –

I)- THAT THE DECISION OF THE WORKMEN'S COMPENSATION COMMISSION, QUEZON CITY, IS NOT IN ACCORDANCE WITH LAW.

II)- THAT THE DECISION OF THE WORKMEN'S COMPENSATION COMMISSION IS CONTRARY TO THE EVIDENCE PRESENTED BY THE PARTIES.

III)- THAT THE DECISION RENDERED BY THE WORKMEN'S COMPENSATION COMMISSION IS CONTRARY TO THE APPLICABLE RULINGS PROMULGATED IN MANY DECISIONS OF THE HONORABLE SUPREME COURT AND MORE SPECIFICALLY IT DEPRIVED THE CLAIMANT/APPELLANT OF HIS RIGHTS AND BENEFITS UNDER THE PRINCIPLE OF SOCIAL JUSTICE.

In its decision dated December 20, 1975, the Workmen's Compensation Commission held that:

"In its motion for reconsideration, it is apparent that the respondent does not squarely assail the compensability of the instant claim; it only questions the extent of the compensation thus awarded the claimant. x x x."

It is likewise on this basis that we review the challenged decision.

The Workmen's Compensation Unit awarded petitioner/claimant the amount of P1,130.08 for total disability from October 26, 1974 to February 19, 1975 under Section 14 of the Workmen's Compensation Act. The Unit erred and we uphold the Commission's decision insofar as it holds that:

"The record will unmistakably show that claimant's disability for labor is only for the period October 26, 1974 to February 9, 1975 (Exhibit "B", page 31 of the record). He should only be compensated for this incapacity and not up to February 19, 1975. There is no factual basis for the award for such period."

Petitioner's Notice of Injury or Sickness and Claim for Compensation itself states:

xxx xxx xxx

"15. On what date did you stop working?
Nov. 9, 1974.

"16. Have you returned to work Yes (Yes, No) If yes, on what date?
February 10, 1975.

xxx xxx xxx

Thus, petitioner should be compensated accordingly.

Petitioner questions the disallowance of the 60% non-schedule disability benefit under Section 18 of the Workmen's Compensation Act which provides benefit or compensation for disability arising from amputation, injury resulting in disfigurement of the face or head and "all other cases of this kind of disability not mentioned in other sections of this Act." (Section 18, Workmen's Compensation Act as amended) Insofar as the latter are concerned, a Schedule of Compensation is provided showing the ratings for such non-schedule disabilities as basis of compensation computation. The 60% NSD evaluation of Dr. Antonio Habana, Compensation Rating

Medical Officer, Workmen's Compensation Unit was based on such schedule of compensation issued by the Commission which provides inter alia:

xxx xxx xxx

"2. Chronic diseases of any kind of the abdominal organs arising from industrial injury and resulting in permanent derangement of their functions, or impairment of nutrition:

xxx xxx xxx

"b. Moderate (such as chronic inflammation, produced by injuries to the abdominal organs, as produced to moderate abdominal pain and tenderness, nausea, vomiting, constipation or diarrhea, or impairment of nutrition, interfering with the worker's occupation in moderate degree).....60% NSD"

xxx xxx xxx

(New Schedule of Compensation, A Supplement to the One Prescribed By Law, Fourth Issue Including Medical Criteria for Determining the Compensability and Evaluation of Illnesses, as Pulmonary Tuberculosis, Cardio-Vascular Diseases, etc., pursuant to Sec. 2 of Act No. 3428, as amended; Revised, Improved and Updated (1964), by Fidel M. Guilatco, M.D., D.I.H., Chief Compensation Rating Medical Officer and Chief, Evaluation Division, Bureau of Workmen's Compensation, Department of Labor, Manila; Comments and Annotations of the Workmen's Compensation Act, Pucan and Besinga, 1971 Edition, page 643).

Because the schedule makes no mention of Gastrectomy of the stomach the Commission's Evaluating Officers concluded that there is no non-schedule disability or NSD for partial gastrectomy of the stomach. However, it should be emphasized that paragraph 4, Section 18 of the Workmen's Compensation Act makes no exclusive enumeration of cases of non-schedule disability and merely provides:

xxx xxx xxx

"In all other cases of this kind of disability not mentioned in other sections of this Act, x x x."

xxx xxx xxx

Likewise, the Schedule of Compensation for such cases is non-exclusive. However, respondent interprets the aforequoted provision vis-a-vis the preceding paragraph of the same section to wit:

"In case of an injury producing a serious disfigurement of the face or head, the proper court may, at the request of an interested party, determine and award such compensation as may seem fair and proper in view of the nature of the disfigurement, but which shall not exceed three thousand pesos."

xxx xxx xxx

and argues that gastrectomy of the stomach does not involve "disfigurement" as contemplated by the law as the same mentions only "Serious disfigurement of the face or head." Clearly, it was not intended that only disfigurements of the face or head are to be compensated under this paragraph as non-schedule disabilities as these are amply provided for by the preceding paragraph. Surely, duplication of provisions was not intended by the framers of the law. More properly interpreted, the general provision was meant to cover all other cases of disfigurement resulting from injury other than that of the face or head. Pucan and Besinga, who respondent cites as authority, discuss "disfigurement" in their book Comments and Annotations on the Workmen's Compensation Act, only with respect to the third paragraph of Section 18 of the same Act abovequoted. However, in discussing non-schedule disabilities, said authors state:

"This section provides compensation for non-scheduled disabilities such as loss of spleen, kidneys, lung, lifting

power, facial disfigurement, etc." x x x. (Pucan, Workmen's Compensation Act, p. 285)

Obviously then, loss of the whole or a portion of the stomach is also disfigurement causing disability as provided by the law.

It was error for the Commission to hold that "there is no permanent partial disability from gastrectomy of a portion of the stomach." Webster defines gastrectomy as the surgical removal of all or part of the stomach (Merriam-Webster, 3rd New International Edition Dictionary) while Dorland defines the same as excision of the whole (total) or part (sub-total partial gastric resection) of the stomach (Dorland's Medical Dictionary, 25th Edition). The definition alone connotes disability or loss or impairment of a physical or mental function resulting from injury or sickness. It is to be noted that upon his return to work, after his operation, the petitioner was no longer able to work as a diesel locomotive supervisor. He was then assigned as car repair supervisor, a much lighter job until his termination as a disabled employee. In fact, in his Physician's Report of Sickness or Accident, dated March 31, 1975, Dr. Patricio Tan, the attending physician, confirms that petitioner may no longer resume his former occupation or do similar work and recommended "light work". Further, Dr. Tan, in a medical certificate which he had issued averred that "Mr. Patriarca, Nestor, had a major surgery on his stomach and will not be completely normal again" having permanently lost 75% of his stomach. The loss, is indeed, permanent in duration although partial in character. Perhaps, respondent Commission erroneously considered the case as falling under Section 17 of the Act which provides for specific cases of permanent partial disability. Correctly, there is no permanent partial disability for gastrectomy of a portion of the stomach under Section 17, but as non-scheduled permanent partial disability, petitioner's case clearly falls under compensable disabilities provided in Article 18 of the Act.

Anent the 60% disability rating, we are of the opinion that the same should in fact be 75% NSD as warranted by petitioner's condition. Dr. Patricio Tan who had operated on and attended to the petitioner from the time of the latter's illness to the time of his recovery, with a resulting permanent disability, evaluated the loss of use of a part or member of the petitioner's body to be 75%. Subsequently, however, on June 27, 1975, Dr. Antonio M. Habana, Compensation Rating Medical Officer, Workmen's Compensation Unit, made the following evaluation:

"There is partial gastrectomy of the stomach due to tumor of the stomach.

"There is abdominal pain occurring occasionally and slight, impairment of appetite that interfere the worker's occupation in a moderate degree.

"Disability Evaluation:

"60% N.S.D. (Section 18)."

True, the same was based on the records of the claimant's attending physician, Dr. Tan as well as on the actual physical examination of the petitioner. However, as between one who had actually diagnosed the extent of disability operated on, and attended to claimant throughout the duration of his illness and one who had merely examined him later upon the petitioner's recovery for purposes of determining disability benefits, the former must prevail. (*Lavilla v. Secretary of Labor*, 122 SCRA 657, *Relente v. Republic*, 106 SCRA 505, *Marfe v. Employees' Compensation Commission*, 96 SCRA 885; *Guillen v. Workmen's Compensation Commission*, 97 SCRA 327; *Bandayan v. Workmen's Compensation Commission*, 77 SCRA 305; *Caling v. Workmen's Compensation Commission*, 77 SCRA 309; *Evangelista v. Workmen's Compensation Commission*; 77 SCRA 497; *Romero v. Workmen's Compensation Commission*, 77 SCRA 482; *Valdo v. Workmen's Compensation Commission*, 73 SCRA 623).

Under the decision of the Workmen's Compensation Unit, claimant was held to be entitled to compensation for

his 60% NSD (permanent partial disability) according to the evaluation of Dr. Habana for 124.8 weeks, that is, fifty (50%) percent of his average weekly wages which was P113.68 equals P56.64 and for 124.8 weeks, the claimant is entitled to P7,068.67 as compensation. With our findings of 75% NSD he would have been entitled to more. It is unfortunate, however, that the law provides a maximum amount of compensation of P6,000.00 for disability under Articles 14 and 18 of the Act, collectively to wit:

"The total compensation prescribed in this and the next preceding section and the total compensation prescribed in sections fourteen and fifteen of this Act shall, together, not exceed the sum of six thousand pesos." (Italics supplied)

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The decision of the Workmen's Compensation Commission dated November 5, 1975 is SET ASIDE, and the decision of the Hearing Officer Demetrio Correa, Workmen's Compensation Unit is hereby REINSTATED. Respondent is ordered:

1. To pay petitioner the total sum of SIX THOUSAND (P6,000.00) PESOS as compensation;
2. To pay to Atty. Pedro P. Requieron, petitioner's counsel the sum of SIX HUNDRED (P600.00) PESOS as attorney's fees; and
3. To pay to the Ministry of Labor and Employment the sum of SIXTY ONE (P61.00) PESOS as administrative fees, pursuant to Section 55 of the Workmen's Compensation Act.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and de la Fuente, JJ., concur.

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