

MANILA ELECTRIC COMPANY, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND LILIA VDA. DE SALAMEDA, IN HER BEHALF AND IN BEHALF OF HER MINOR CHILDREN GILDA AND JOSEPHINE BOTH...

G.R. No. L-31951. June 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This petition for review of the decision of the Workmen's Compensation Commission dated November 18, 1969 in RO4-WC Case No. 5651, and its resolution en banc dated April 6, 1970, raises three issues: (a) whether the brain tumor which caused the death of the employee had been aggravated by the nature of his work; (b) whether death foreclosed the right to disability benefits during illness; and (c) whether the Commission can award attorney's fees to claimants' counsel motu proprio.

Upon appeal by the heirs of the deceased employee of respondent Manila Electric Company from the decision of the Commission's Acting Referee, Claro Q. Riego de Dios, dismissing their claim for benefits under the Workmen's Compensation Act, the Commission reversed on the basis of the facts narrated as follows:

"Deceased Fortunato Salameda was first employed by respondent [Manila Electric Company] in 1959 as a laborer whose job consisted, among others, of digging holes along the streets. Later, he was promoted to steelman. As such steelman, he used to lift steel and connect iron pipes. A little later, he was again promoted to assistant boiler maker and one year thereafter, to full-pledged boiler maker. As boiler maker, his duties included connecting pipes and steels, operating the tugger, and assisting in welding jobs.

In 1964, when he was already a boiler-maker, he would at times arrive home with his eyes reddish and blood flowing from his nose. Worried about his health, his sister, Mrs. Cirila Tubiera, brought him to the St. Joseph Hospital in San Miguel, Manila, where the deceased was confined and treated for 10 days. The attending physician allegedly advised the deceased to stop working in the meantime as the reddening of his eyes was caused by the heat produced by his welding job.

Soon after he was discharged from the hospital, deceased returned to his work with the respondent. It was during this time that he suffered again from headache, which became worse, acute and chronic. He lost his appetite and whatever food he was able to eat, he vomited. On May 14, 1966, deceased, while working, felt that he could no longer bear the severe attacks of pain in his head, and so he decided to apply for sick leave on the spot. In view of the seriousness of his ailment, deceased's sister went to the office of respondent and pleaded for help so that his brother would be hospitalized. The plea was denied, but deceased was nevertheless given some medicine. After three days, deceased again pleaded to be hospitalized as by that time he was complaining of abdominal pains, vomiting, severe headache and blurring of vision. His eyes had become not only reddish; they were already cross. Respondent finally agreed to hospitalize the deceased at its own John F. Cotton Hospital where deceased's ailment was diagnosed as "cerebral brain tumor." A date was set so that deceased might be operated upon, but before this could be performed, he died on June 30, 1966. At the time of his death, deceased was receiving P1.20 per hour, working 8 hours a day, 6 days a week.

On July 25, 1966, claimant Lilia Vda. de Salameda, in her own behalf and that of her two minor children, filed the death claim with Regional Office No. IV, claiming not only death compensation and burial expenses, but also reimbursement of medical expenses in the amount of P1,454.00, allegedly spent for the deceased. However, it appears that as early as May 20, 1966, respondent filed with the same Regional Office an employer's report of accident or sickness controverting any claim for compensation of Fortunato Salameda."

Upon a finding that substantial evidence existed to support the compensability of the claim, the Commission awarded the following amounts: P236.98 as disability compensation corresponding to the period of the illness of the deceased from May 14 to June 30, 1966, payable to his estate; P5,028.57 as death compensation and P200.00 for reimbursement of burial expenses, both payable to the heirs-claimants; and P526.55 for attorney's fees payable to claimants' counsel.

1. Petitioner first questions, as erroneous and contrary to the evidence, the findings of the Commission as to the nature of the work of the deceased - that as laborer it involved making excavations along the streets; that as steelman it involved lifting heavy steel and iron pipes; and as boiler-maker it involved connecting pipes, operating the tugger and assisting in welding jobs. Petitioner denies all these and maintains that the work of the deceased as laborer, steelman and boiler-maker was of a light nature.

We see no reason to reverse the facts as found by the Commission, supported as they are by substantial evidence. Petitioner denies that the deceased was ever made to dig holes along the streets, but failed to specify exactly the work he did as laborer. As steelman the deceased was required, among other things, to cut reinforcing steel; and as boiler-maker, he assisted in the rigging of boiler materials and in fitting and connecting pipes and tubes. Petitioner admits this, but points out that the work was performed with the aid of tools and lifting devices. Be that as it may, physical exertion was still employed. Thus, to cut reinforcing steel it must be lifted to the cutting machine; tackle and gear must be handled to rig boiler materials; and fitting pipes and tubes involved operating the tugger and welding the materials together. The Commission did not err in not considering such work as of a light nature.

The more important issue is the compensability of the illness. Brain tumor was correctly ruled out as an occupational disease in this case. But in awarding compensation the Commission said: "the origin of cancer is still undetermined (despite tremendous scientific discoveries), but note that even respondent's witness, Dr. Mario Oca, has testified that fatigue, to which deceased was daily exposed, or physical or spontaneous development, could be the influencing factors to produce the consequence of cancer." At the very least his work must have aggravated the illness. It may be noted that the first symptoms manifested themselves in 1964. The employee continued working thereafter except when he was confined for a few days in a hospital. At that time his illness was not yet correctly diagnosed. He had his initial serious attack on May 14, 1966, when he was incapacitated for work. The company had him confined in its own hospital and it was then that he was pronounced to be suffering from "cerebral brain tumor," which caused his death on June 30, 1966. In other words the progressive course of the disease was apparent from 1964 to 1966, during which he kept at his various jobs involving physical labor. The aggravation of the illness as a consequence of the work cannot but be presumed under the circumstances.

The foregoing conclusion is not without precedent. Thus, where the deceased died of hemorrhagic gastric ulcer, this Court affirmed the Commission's finding that his work as beam carrier involving "the continuous exertion of carrying beams during his employment gradually, if imperceptively, resulted to his illness causing paralyzation of half of his body and ultimately his death." [1] In another case, although ulcer was not considered an occupational disease as it was not inherent in the nature of the work of the deceased as stockman, the irregular hours in which he had to perform his work was regarded as a factor aggravating his illness. [2] In the case of a sailor who was disabled by paralysis due to hypertension, this Court affirmed the award of death benefits upon a showing that the

illness super-vened during the period of employment even if there was no positive evidence that the work of the deceased aggravated his illness.[3]

2. Petitioner next questions the award of P236.98 by way of disability benefits to the estate of the deceased, on the theory that the right thereto is personal to the employee and is therefore extinguished upon his death. The theory is neither logical nor just. Under the Workmen's Compensation Act the dependents, in filing a claim for compensation, act on their own behalf only with respect to the death benefits due them for the loss of support by the employee. But there is no reason why disability benefits which had accrued to and otherwise would have been recovered by the employee himself cannot be claimed by his dependents upon his death.[4] Although the employer-employee relationship has ceased to exist, the rights which have already arisen are not thereby necessarily extinguished. Uncollected salaries of the employee, for instance, form part of his estate and the right to collect them is transmitted to the heirs. Disability benefits represent lost or impaired earnings of the employee which the employer is required to reimburse, and there is nothing in the statute which exempts the employer from such liability if the employee dies.

In any event the question is of no more than academic importance in this case. It is to be noted that the temporary total disability compensation of P236.98 was awarded by the Commission under Section 14, in conjunction with Section 12, of the Workmen's Compensation Act. The specific provision of Section 12 referred to provides that "in the event of death occurring after a period of total or partial disability, the period of disability shall be deducted from the respective total periods established in Section ten of this Act," which section ten fixes the maximum period of 208 weeks during which death compensation shall be paid. Thus the Commission awarded to the claimants "50% of the average weekly wages of the deceased for 208 minus 6 1/7 or 201 6/7 weeks," thereby deducting the disability compensation granted for the period of the illness of the deceased immediately prior to his death, that is, from May 14 to June 30, 1966, equivalent to 6 1/7 weeks.

3. Finally, the Commission's award of attorney's fees to claimants' counsel is in accordance with law. The case of *Central Azucarera Don Pedro vs. Agno* (L-20424, October 22, 1964) cited by petitioner is no longer applicable. The Workmen's Compensation Act, as amended by Republic Act 4119 (approved June 30, 1964), provides in its Section 31:

"SEC. 31. Intervention of the Workmen's Compensation Commission. - In case a laborer who suffers an accident or contracts an illness comprised within the provisions of Section two of this Act, or his dependents, contracts the services of a lawyer or other persons to help him or direct him in his claim for compensation against his employer, the fees of said lawyer or person which shall be chargeable against said employer shall not be more than five per cent of the total sum which said injured or sick laborer or his dependent in case of his death shall receive by way of compensation; but if his services shall take place in an appealed case, his fees shall not be in excess of ten per centum, of said sum, x x x"

The insertion of the phrase "which shall be chargeable against said employer" clearly indicates the intention of the law to make attorney's fees an integral part of the compensation or benefits due the employee or his dependents under the Act. Section 31 fixes the amount of attorney's fees that may be recovered or charged against the employer, such that a prayer for this specific relief and proof thereof is no longer necessary. The pronouncement of this Court in the *Central Azucarera* case that Section 31 contemplates only a situation where the question of fees arises between claimant himself and his counsel is no longer applicable under the amendment.[5]

The decision appealed from is correct. Wherefore the same is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., on official leave.

[1] Industrial Textile Manufacturing Company vs. Florzo L-21969, August 31, 1966.

[2] National Power Corporation vs. Workmen's Compensation Commission L-19843, January 30, 1965, 13 SCRA 116, 118.

[3] Justiniano vs. Workmen's Compensation Commission, G.R. No. L-22774, Nov. 21, 1966, 18 SCRA 677, 680.

[4] The benefits accrue to the employee during the period of disability. Section 14, Workmen's Compensation Act.

[5] See also: National Development Co. vs. WCC L-21796, August 29, 1966; Manila Railroad Company vs. Manalang, L-20845, November 29, 1965.

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