

FEDERICO CATAPANG, PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSION AND VICTORIAS MILLING CO., INC., RESPONDENTS.

G.R. No. L-19970. April 30, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

This is a claim for compensation for illness, the compensability of which is not in question in this proceedings. The issue, which We are called upon to determine is "the basis of computation of the average weekly pay of petitioner," which is determinative of whether he is covered under the applicable laws.

Petitioner Federico Catapang had been employed by respondent Victorias Milling Company since 1934 up to 1941, outbreak of the war. In 1946, he rejoined the company and was assigned as "Issuer of Foodstuffs," until his hospitalization for pulmonary tuberculosis on June 23, 1961. In 1939 and up to the outbreak of the war, he was subjected to an annual physical and X-ray examinations, in all of which he was found negative of the disease. In 1947, after returning to work, after X-ray examinations, he was found negative of pulmonary tuberculosis. In the succeeding year, however, (1948), acting on his complaint of hard breathing, with back and chest pains and loss of appetite, the company physician caused an X-ray examination and, for the first time, he was found to be suffering from minimal pulmonary tuberculosis. In spite of this finding, petitioner was made to continue working as Issuer of Foodstuffs, which entailed lifting and carrying of sacks of rice, groceries, and other items of foodstuffs, stockpiling and disposing of them to employees of the respondent Victorias Milling. In his work, as issuer of foodstuffs, petitioner usually worked early and retired late. The place, having been more often crowded than not, he was always wet with perspiration. With the finding of minimal pulmonary tuberculosis, petitioner was administered with anti-tuberculosis treatment, at intermittent intervals. The intermittent treatments might not have done any good for him, for on June 23, 1951, he was confined at the company hospital and he was found to be suffering from "far advanced pulmonary tuberculosis." Although the illness was not yet arrested, because further treatment was still required, petitioner was released from the hospital on September 15, 1951. On September 30, 1951, he was found medically unfit for work by the company physician who thereby recommended him for discharge from the service. A gratuity pay of P1,700.00 was given to petitioner.

The Hearing Officer of the WCC finding that the was caused and/or aggravated by the nature of his an award of compensation of P3,000.00, the maximum allowed by law, was rendered in favor of petitioner. The respondent was also ordered to provide petition with such medical, surgical and hospital services, as the nature of the illness might require, until the same was arrested and to pay P160.00 as attorney's fees. On appeal of the above decision, the WCC, speaking thru Commissioner Perez and concurred in by Commissioner Sanchez, reversed the same, not on factual basis but purely on the contention that petitioner was not within the coverage of the law then in force, since petitioner was receiving at the time more than P42.00 a week. Pertinent portions of the decision of the WCC En Banc, read as follows:

"* * * Accordingly, the instant case should be governed by the law in force on June 23, 1951, when the

claimant was incapacitated for labor due to said ailment. The law then in force was Act 3428, as amended by Commonwealth Act No. 210, Section 39 (b) of which reads as follows: “

“ 'Laborer' is used as a synonym of 'employee' and means every person who has entered the employment of, or works under a service or apprenticeship contracted for as employer. It does not include a person whose employment is purely casual and is not for the purposes of the occupation or business of the employer, or whose remuneration paid by the employer, exclusive of overtime pay is in excess of forty-two pesos a week * * *

It was only on June 20, 1952, upon the enactment of Republic No. 772 when the provision on the salary limit was eliminated the Act. Section 39 (b) of Act 3428, as amended by said Republic Act 772 now reads as follows:

“* * *. It does not include a person whose employment is purely casual and is not for the purposes of the occupation or business of the employer. * * *”.

Here, it appears from the record that the claimant was earning P200.00 a month or P46.15 a week at the time he severed connection from the employment on September 30, 1951 * * *). Consequently, his average weekly wage being in excess of forty-two pesos provided for in the aforementioned provisions of the prevailing law, the claimant in this case has no cause of action against the respondent.

“Much as we want to help the claimant in this particular case, but we cannot do otherwise except to follow the old law, inasmuch the amendatory provisions of Republic Act No. 772 cannot be made to apply retroactively (* * *). Thus, * * *, in the case of Wack Wack Golf & Country Club, Inc. vs. Workmen's Compensation Commission, et al., 101 Phil. 566, ruled: 'The elimination of such exclusion from the statute on June 20, 1952 can not render compensable facts or events which were not compensable when they happened.’

“Wherefore, the decision under review should be, as it is hereby, reversed and respondent absolved from compensation liability.”

From the above decision, Chairman N. Baens del Rosario, dissented, explaining that the P200.00 which petitioner was receiving only from June 1, 1951, should not be the basis for computing his average weekly pay. Chairman del Rosario claimed that there is a divergence as to the claimant's wages. Even respondent Victorias Milling, in its report (WCC Form No. 3 and Supplementary Report) both dated January 22, 1960, placed claimant's monthly salary as P140.00, and his weekly wage at P32.22; that it was only when respondent Victorias Milling filed its opposition to petitioner's motion for reconsideration that it claimed that he (petitioner) was receiving P200.00 a month; that immediately prior to June 1, 1951, he was receiving P170.00 monthly pay and it was only on June 1, 1951, that the company raised his salary to P200.00. Chairman del Rosario affirmed the findings of the Hearing Officer that it was the nature of the work of petitioner Catapang which caused and/or aggravated his illness, and advocated for the reversal of the decision of the majority, with some modifications, including the increase in the award of attorney's fees from P150.00 to P225.00.

After the WCC en banc denied the motion for reconsideration, petitioner elevated the matter to this Court.

As has been stated at the outset, there is no dispute regarding the compensability of the illness. There is also no question, that at the time of the supposed occurrence of the illness, there was such salary limit of not more than P42.00 a week. Nevertheless, we find that under the peculiar circumstances of the case, the application of salary limit should be denied.

No denial was interposed by the respondent Victorias Milling to the fact that it came to know that petitioner was suffering from minimal pulmonary tuberculosis since 1948, when its company physician caused an X-ray examination to be conducted and subsequently administered anti-tuberculosis treatments on intermittent scale,

upon the petitioner. Three (3) years thereafter (1951) petitioner was still performing the same work, which, as found by the hearing officer and concurred in by the Commission en banc, was the cause and/or aggravated the illness. It was not refuted also, that it was only on June 1, 1951, that, the company increased the monthly pay of petitioner from P170.00 to P200.00, and that part of the latter amount was applied to his hospital expenses, from the time of his confinement in the hospital on June 23, 1951.

On the dominant issue thus presented, Chairman del Rosario made the following observations and conclusions:

"* * *. Inasmuch as the exact amount earned during the 12 week period immediately preceding the date of his illness does not appear in the records, we can only rely on the statement of the claimant that before June 1, 1951 he was earning P170.00 a month. Using this amount as basis of computation and covering the 12-week period from March 31, 1951 to June 22, 1951 (for he was confined on June 23, 1951) we find his average weekly wage was P39.23 (P180.00 a month x 12 weeks ÷ P52 weeks). The wage earned during the 12 weeks next preceding the date of disability is used as basis in the computation of weekly compensation because the (measure of loss to the family due to the accident or illness is dependent on such wages. He is therefore entitled to compensation under the Workmen's Compensation Law before it was amended by Republic Act No, 772."

Which we deem tenable and logical and more in keeping with the spirit and purpose of the law and in consonance with the policy that the interpretation of compensation laws should feasibly be in favor of the worker. And the conclusion cannot be otherwise, for it is an unrefuted fact that 12 weeks immediately preceding June 23, 1951, petitioner was receiving only P170.00 a month. The law provides:

"Sec. 19. Computation of Wages. The average weekly wages shall be computed in such manner that it shall be the best computation that can be made of the weekly earnings of the laborer, during the twelve weeks next preceding his injury: * * *."

Although the injury (illness in the present case) was contracted very much earlier, the computation should start back from the date of disability of petitioner which took place on June 23, 1951, when he was hospitalized for "advanced pulmonary tuberculosis and completely disabled for work." Petitioner was so disabled that although he was released from the hospital on September 15, 1951, not at all cured, the company physician recommended, on September 30, 1951, that he should be, as he was, in effect, dismissed and given gratuity, from which We should infer that the basis of computation of petitioner's wages is June 23, 1951. Twelve (12) weeks back from said date, was March 31, 1951, long before and during which, until June 1, 1951, his monthly salary was P170.00 and the average of which (for 12 weeks) was P39.23, very much less than P42.00 a week, the limitation fixed by law (*supra*).

Even granting, for the purposes of argument, that the basis of computation is September 30, 1951, still the same result is obtained, because in the so-called increased salary of P200.00, the hospital expenses were included.

Appellees cited the case of *Nasco vs. De Leon, et al.*, G. R. No. L-9561, Sept 30, 1957, to bolster their theory. We have examined the case, and the ruling therein was predicated upon an entirely different set of facts. After a careful perusal of the record of the case, would seem that the increase and discharge of petitioner were so timed to coincide with the ultimate pattern to make him fall under the category of employees not covered by the law then in force, due to salary limit. Such an act can be interpreted as a subtle way of defeating petitioner's right to compensation, in the guise of generosity and benevolence.

IN VIEW OF THE FOREGOING, the decision sought to be reviewed is hereby reversed, and another entered declaring that petitioner is entitled to compensation, the amount of which is to be computed by the Workmen's Compensation Commission, in accordance with our findings. Respondent Victorias Milling Company should pay.

Reyes, J.B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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