

VIVENCIO OMISON, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION, ET AL., RESPONDENTS.

G.R. No. L-42942. August 22, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner seeks the reversal of the decision of the Workmen's Compensation Commission in WCU Case No. 356 entitled Vivencio Omison, claimant vs. Province of Negros Occidental (Provincial Engineer's Office) respondent, dismissing his claim for disability benefits which was earlier granted to him by the Workmen's Compensation Unit at Bacolod City.

The antecedent facts are not disputed. As summarized by Referee Pacifico Militante of the Workmen's Compensation Unit, Bacolod City, they are:

"As could be reflected from the pleadings and evidences adduced by the parties, the claimant appears to be under the employ of the respondent since the year 1939 continuously up to May 16, 1973, with assignment as construction helper (caminero or street caretaker), and receiving a monthly salary of P240.00 (Service Record). The nature of his duties were to clean, maintain, pave and helps (sic) in the construction of bridges, and to perform all maintenance and construction works of national road in the Province of Negros Occidental. As such, he is used to be exposed to all the climactic changes of the elements of nature. He likewise did some heavy lifting of beams and boulders needed in the construction projects and was usually exposed to the heat of the fire and obnoxious odor of the asphalt in its heating and melting process. That in the late 1960's he began to notice that his body resistance had lowered very much and he become easily susceptible to colds and afternoon fever. In 1972, he was prompted to consult Dr. Raymundo Guerrero and was given prescription of medicines for TB. He also consulted Dr. Genato Llamas, Sr. and Dr. Genato Llamas, Jr. and was given further medicines for his ailment with an advice to have himself x-rayed. (Physician's Report, Dr. Genato Llamas, Jr.). On April 5, 1973, x-ray examination at the Negros Occidental Chest Clinic revealed a findings of "PTB, moderately advance, Active". Again on June 25, 1974, he was x-rayed by the same Dr. Amador C. Antonio, Phthisiologist, (sic) Negros Occidental Chest Clinic, and the findings was "PTB, minimal, Questionably Active."

On May 15, 1973, the petitioner applied for retirement under Commonwealth Act 186 as amended due to his alleged physical inability to continue his work as a result of his illness. His application was approved and his last day of actual service was on May 15, 1973.

On June 21, 1973, the petitioner filed a claim for disability benefits under the Workmen's Compensation Act against the Province of Negros Occidental before the Workmen's Compensation Unit, Bacolod City.

On October 7, 1975, the Workmen's Compensation Unit through referee Pacifico Militante issued a decision granting disability benefits in favor of the petition. The dispositive portion of the decision reads:

"The matter fully considered, this Office then reached the conclusion that this claim is compensable, and, therefore, orders the respondent Province of Negros Occidental and/or Provincial Engineer's Office of Negros Occidental, to pay:

(1) To the claimant, under Section 18 of the Act, the sum of P5,213.57, computed as follows: Claimant's illness has been evaluated and certified to by Dr. Antonio Habana, Compensation Rating Medical Officer, this Office, dated October 1, 1975 to be 90% NSD. 50% of claimant's average weekly wage of P55.38 (P240.00 x 12+52) equals P27.69 multiplied with 90% of 208 weeks or 187.2 weeks equals P5,213.57;

(2) To the claimant, under Sec. 15 of the Act, as reimbursement of medical and hospital expenses and doctor's Bills, as certified to by Dr. Antonio Habana, this Office, the sum of P525.75;

(3) Atty. Romeo Bernaje, claimant's counsel, as attorney's fees under Section 31 of the Act, the sum of P260.68;

(4) To this Office, as administrative fee under Section 55 of the Act, the sum of P53.00;

All Payments must be coursed thru this Office.

On appeal by the province of Negros Occidental the Workmen's Compensation Commission reversed and set aside the afore-mentioned decision. Hence, the instant petition.

The Workmen's Compensation Commission rejected the petitioner's disability benefits claim on the premise that there was no evidence presented to the effect that as a result of his sickness the petitioner was either physically incapable of continuing his work or that his earning capacity was impaired. The Commission reasoned out its ruling in the following manner:

xxx xxx xxx

"x x x Under the law, compensable ailments are those which produce physical disability or which impairs the earning capacity of the employee. Further, it is an essential requirement under the Act, that in order to impose liability upon the employer for the payment of compensation benefits, it is essential that the illness which caused the physical disability be causally related with the employee's work or employment. In the instant case, claimant asserted that he first felt the symptoms of his illness in 1960. It was only in 1972 that he consulted a physician. There is, however, no showing that claimant has applied for sick leaves for a considerable length of time, showing incapacity for work before he stopped working on May 16, 1973. Obviously, therefore, there is no evidence which shows that claimant has been incapacitated or work due to a compensable illness or injury. It may be true that he was afflicted with PTB, minimal, probably active. At this stage PTB is curable. A careful scrutiny of the evidence, however, does not show any proof that claimant was physically incapacitated for work due to such ailment. Yet, the Compensation Rating Medical Officer has rated claimant's disability at 90% of non-scheduled disability under Section 18 of the Act. We do not find any factual basis for the doctor's evaluation. As a matter of fact, there is no showing that claimant ever suffered temporary disability. Hence, there is no justification of granting him permanent partial disability under Section 18 of the Act. We take note of the admissions by claimant in his affidavit when he stated that his service has been continuous until May 16, 1973. This, alone, is an adequate indication that claimant was never incapacitated for work with the respondent. In the absence of any proof of physical disability, claimant shall not be entitled to disability compensation benefits under Section 2 of the Act.

It is apparent that the Commission equates disability compensation benefits with claimant's physical incapacity to perform labor by reason of his illness. This conclusion is unwarranted. As stated in *Makabali v. Employees' Compensation Commission* (126 SCRA 174) citing *Corales v. Employees' Compensation Commission* (88 SCRA 555):

"x x x We have recognized the fact that an employee medically pronounced disabled for work can, despite thereof, pursue his work by sheer determination and ingenuity.

"In the subsequent cases of *Romero vs. WCC*, et al. (77 SCRA 480, June 30, 1977) and *Gonzales vs. WCC*, et. al.

(81 SCRA 709-710), We enunciated that:

"Disability, as a basis for compensation, is the combination of partial or total physical incapacity and of inability to work, or inability to work with the same ease and competency as before the injury, or the loss, total or partial, of earning power from the injury (Corpus Juris, Section 535, p. 813).

"Disability is used either in the medical or physical sense, as evidenced by obvious loss of members or by medical testimony that the claimant simply cannot make the necessary muscular movements and exertions; it is used to mean de facto inability to earn wages, as evidenced by proof that claimant has not in fact earned anything.

"This medical and wage-loss aspects of disability may be more clearly illustrated as follows: A claimant may be, in a medical sense, utterly shattered and ruined, but may be sheer determination and ingenuity contrive to make a living for himself; conversely, a claimant may be able to work, in both his and doctor's opinion, but awareness of his injury may lead employers to refuse his employment.

"The problem of the administrators of the Act is the proper balancing of these medical and wage-loss factors. An absolute insistence on medical disability in the abstract would produce a denial of compensation in the latter case, although the wage-loss is a real and as directly traceable to the injury as in any other instance. At the other extreme, an insistence on the wage-loss as the best would deprive the claimant in the former illustration of an award, thus not only penalizing his laudable efforts to make the best of his misfortune but also fostering the absurdity of pronouncing a man non-disabled in spite of the unanimous contrary evidence of medical experts and of common observation (Larson, Vol. II, p. 3)."

Hence, the fact that the petitioner rendered continuous service until his retirement does not imply that he can not claim disability compensation benefits under the Workmen's Compensation Act. Besides, his motivation not to be absent from his work despite his tuberculosis must have been due to the fact that he was a daily-wage earner. He needed the money.

The petitioner entered his employment as construction laborer (caminero) with the private respondent in 1939 presumably in good health. It was only in the 1960's or after a period of more than twenty one (21) years that sickness became manifest as he noticed that his body resistance had lowered and he became easily susceptible to colds and afternoon fevers. Apparently, through the years and in the course of his employment he contracted sickness which gradually aggravated. Thus, in 1972, he consulted physicians who gave him prescriptions of medicines for pulmonary tuberculosis. On April 5, 1973 he had an x-ray examination at the Negros Occidental Chest Clinic which revealed findings of "PTB moderately advanced active". The nature of the petitioner's work was such that he was exposed to dust, heat and sudden climatic changes which could have caused or aggravated his illness. These circumstances show that the petitioner's illness supervened and was aggravated in the course of his employment with the private respondent. The presumptions of compensability and the criteria for work connection and work aggravation under the old Workmen's Compensation Act's provisions on compensability apply.

WHEREFORE, the decision of the Employees' Compensation Commission is hereby SET ASIDE and the decision of the Workmen's Compensation Unit, Bacolod City is REINSTATED.

SO ORDERED.

Teehankee, (Acting C.J.), Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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