

MARTA D. AVENDAÑO, PETITIONER, VS. THE EMPLOYEES' COMPENSATION COMMISSION, RESPONDENT.

G.R. No. L-48593. April 30, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the June 15, 1977 decision of the Employees' Compensation Commission denying the claim for compensation filed by the herein petitioner in forma pauperis, assisted by the Citizens Legal Assistance Office of the Ministry of Justice.

Petitioner was employed as statistical clerk of the Philippine National Railways since October 15, 1940. As statistical clerk, she compiles from primary data derived statistics on revenue per train and per train kilometer, revenue per car and per car kilometer, volume of passenger and revenue per train and passenger per trainhour; and presents the results of statistical analysis by means of graphs, charts, etc.

On December 5, 1969, petitioner underwent a radical mastectomy, right, followed by a series of cobalt exposures at the GSIS General Hospital. Dr. Epitacio C. Alcantara, her attending physician, diagnosed her illness as "carcinoma of the breast with metastasis to the spine and skull" (p. 14, rec.).

On February 7, 1975, she was again hospitalized because of pain at lumbar areas and weakness of both lower extremities. X-ray examination results showed osteolytic lesion (metastatic). She had spinal laminectomy for removal of tumor extradural on April 4, 1976. The petitioner retired on June 1, 1976 at the age of 64 and after a long service of 36 years (p. 14, rec.).

On October 13, 1976, the petitioner filed a claim for disability income benefits with the GSIS. It was denied on the ground that her ailment is not an occupational disease and that petitioner failed to prove by substantial evidence, that her illness was directly caused by her employment or that the risk of contracting the same was increased by the working conditions present in her employment as statistical clerk, relying on Article 165[1] of Presidential Decree 626 as implemented by Section 1[b], Rule III of the Rules on Employees' Compensation, as amended.

Art. 165[1] - "Sickness" means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions.

Sec. 1[b] - For the sickness or the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied; otherwise proof must be shown that the risk of contracting the disease is increased by the working conditions.

As her motion for reconsideration was likewise denied, the petitioner brought her case on appeal to the Employees' Compensation Commission which rendered a decision on June 15, 1977 sustaining the GSIS order denying petitioner's claim for compensation.

Hence, this petition for review.

Time and again, this Court has resolved that when the illness subject of claim supervened in the course of the petitioner's employment prior to the effectivity of the New Labor Code, the provisions of the Workmen's Compensation Act shall govern.

Thus, in *Corales vs. Employees' Compensation Commission* (88 SCRA 547, 555 /1979/), this Court said:

"It must be impressed upon the movants that what this court applied in this claim are the provisions of the Workmen's Compensation Act, as amended. The decision sought to be reconsidered readily shows this fact. The facts of the case call for the application of the aforesaid provisions as it is undisputed that the illness of petitioner was contracted by him as early as September 1965 and remained uncured at the time of his retirement from the Government at the age of 65 on March 27, 1975. x x x Consequently, petitioner's cause of action existed as early as September 1965; hence clearly before the effectivity of the New Labor Code, although it can be advanced that his cause of action transcended the Workmen's Compensation Act, as amended, because his illness continued even after the New Labor Code was already effective and operative. Article 294, Title III (Transitory and Final Provisions of the New Labor Code) provides that all actions and claims accruing prior to the effectivity of this Code shall be determined in accordance with the laws in force at the time of their accrual and under the third paragraph of Art. 292, Title II (Prescription of Offenses and Claims), workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974 shall be processed and adjudicated in accordance with the laws and rules at the time their cause of action accrued. Hence, this Court applied the provisions of the Workmen's Compensation Act, as amended, in passing upon petitioner's claim."

Under the Workmen's Compensation Act, as amended, the well-settled rule is that once it is established that the illness supervened during employment, there exists a rebuttable presumption that such illness arose out of the employment or was at least aggravated by it. Consequently, the employer assumes, by force of this presumption, the burden of establishing the contrary by substantial evidence (*Espiritu vs. WCC*, et al., L-42471, 84 SCRA 636 [1978]; *Republic of the Philippines vs. WCC*, et al., L-40175, 85 SCRA 107 [1978]; *Vda. de Macanip vs. WCC*, et al., L-43223, 90 SCRA 484 [1979]; *Mesina vs. Republic of the Philippines*, L-43517, 90 SCRA 489 [1979]; *Tambasen vs. WCC*, et al., L-43627, 90 SCRA [1979]).

In the case at bar, it is undisputed that the disease, cancer of the breast, was contracted by the petitioner sometime in 1959 although clinical manifestations started only in 1969 as per certification of Dr. Epitacio Alcantara, her attending physician. Likewise, it is not controverted that when petitioner entered government service, she was found to be physically and mentally healthy. Unquestionably, the said illness supervened in the course of the petitioner's employment. This being the case, the statutory presumption of compensability applies.

Respondent contends however that the old Workmen's Compensation Act is inapplicable because it has been repealed by Section 292 of Presidential Decree 442, the New Labor Code.

This contention is untenable. Although petitioner filed her claim only on October 13, 1976, after the effectivity of the New Labor Code, it is of no moment since her right accrued as early as 1969 when she was first medically examined and found to be afflicted with cancer, which ailment commenced, as admitted by respondent ECC itself, as early as 1969. Hence, it is a vested right falling under the protective mantle of the Workmen's Compensation Act.

As aptly pointed out by this Court in *Corales vs. ECC*, supra, and reiterated in *Villones vs. ECC*, et al. (L-46200, July 30, 1979) --

"Rights accrued and vested while a statute was in force ordinarily survive its repeal.

"The repeal of a statute does not operate to impair or otherwise affect rights which have been vested or accrued while the statute was in force. This rule is applicable alike to rights acquired under contracts and to rights of action to recover damages for torts. Where a new statute continues in force, provisions of an old statute, although in form it repeals them at the moment of its passage, a right of action created by the old statute is thereby destroyed x x (82 CJS 1010)."

As hinted in the case of *Corales vs. ECC*, supra, it is immaterial that the disease remained uncured or resulted in a disability after the effectivity of the New Labor Code, as long as the disease or illness was contracted prior to its effectivity.

The conclusion of Dr. Nicolas T. Tagle, medical officer of the ECC, that "the disease is not compensable inasmuch as it was not directly caused by her occupation and neither was the risk of contracting it increased by the working conditions (p. 13, ECC rec.), is not sufficiently borne out by his medical findings. Mere medical opinions to the effect that there is no causal connection between the disease and claimant's employment do not constitute proof substantial enough to overcome said presumption. The respondent Commission cannot simply rely on probabilities or suppositions in controverting the claim for compensation.

In *Leoncia Magat vs. Workmen's Compensation Commission and Republic of the Philippines, etc.* (80 SCRA 617, 621 [1977]), this Court categorically stated –

"x x So rigid is the rule that even where the cause of death is unknown, the right to compensation subsists, the underlying philosophy or reason behind the Workmen's Compensation Act is that it is a social legislation designed to give relief to the working man (*Industrial Textile Mfg. Co. of the Philippines vs. Florzo, et al.*, L-21969, August 31, 1966, 17 SCRA 1104; *Domingo Vallo vs. WCC and the Republic of the Philippines*, L-41816, October 29, 1976). At any rate, in case of doubt, the same should be resolved in favor of the claimant for the reason that the provisions of the Workmen's Compensation Act, as a piece of social legislation, must be liberally construed to attain the purpose for which it is enacted (*Ramon vs. Poblete, et al.*, 40 O.G. 3474). Thus, it has been held that courts have generally held that a spirit of liberality should characterize the interpretation of the Workmen's Compensation Act, for the reason that it is classed as remedial legislation (*International Harvester Co. vs. Industrial Commission*, 157 Wis. 167, 147 N.W. 53; *Am. Case 1916 B 330*).

Recent studies in medical science unveil the following facts about breast cancer:

"The cause of breast cancer, like that of most other forms of malignant disease, is unknown. A few factors affecting its incidence are, however, reasonably established. The very strong hereditary influence in mice may be carried over, though in a much smaller degree, to human beings. x x

"The role of estrogenic hormones in the genesis of breast cancer in human beings is still controversial. The conservative view at the present time is that estrogens do not initiate the cancer but may hasten its development in genetically susceptible individuals, in whom the prolonged use should be discouraged. xx x

"Preliminary epidemiology studies from several sources indicate that the prolonged ingestion of reserpine, a prolactin secretagogue, increases the incidence of human breast cancer, thus tending to implicate prolactin rather than estrogens in the etiologic role. x x

"Observations on the epidemiology of breast cancer suggest that environmental influences may play a role. The disease is more common in Japanese women living in the United States than in Japan, in the women of Denmark than in their Scandinavian sisters in Finland, and in fat women than in thin. xx xx" (*Harrison, T.R., Principles of Internal Medicine*, McGraw-Hill Inc., 8th ed.; 1978, 618-619; underscoring supplied).

The respondent ECC itself, in its comment dated January 5, 1978 in the case of *Cristobal vs. ECC, et al.* (No. L-49280, April 30, 1980), admitted that it has expanded its list of occupational diseases, including certain types of cancer, and while considering that such types of cancer have no known etiology, still they are regarded as

occupational, thus:

"It may not be amiss to mention that the ECC has time and again expanded the list of occupational diseases. This comes about after continuing studies made by the ECC. Indeed, cancer has already been included as a qualified occupational disease in certain cases --

Occupational Disease

Nature of Employment

1. Cancer of the epithelial lining of the bladder (Papilloma of the bladder)

Work involving exposure to alphanaphthylamine, beta-naphthylamine or benzidine or any part of the salts; and auramine or magenta;

2. Cancer epithellomatons or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin or any compound product or residue of any of these substances

The use of handling of, exposure to, tar, pitch, bitumen, mineral oil (include paraffin) soot or any compound product or residue of any of these substances

xx xxxx xx

16. Cancer of the stomach and other lymphatic and blood-forming vessels; nasal cavity and sinuses;

Woodworkers; wood products industry carpenters, loggers and employees in pulp and paper mills and plywood mills;

17. Cancer of the lungs, liver and brain.

Vinyl chloride workers, plastic workers.

"Worth noting is the fact that the above types of cancer have no known etiology. Yet, they are regarded as occupational. The clear implication is that the law merely requires a reasonable work-connection" (pp. 59-60, rec.; underscoring supplied).

Failing to rebut with substantial evidence the presumption of compensability mandated by Section 44 of the Workmen's Compensation Act, the respondent Commission obviously erred in dismissing the claim of the herein petitioner.

WHEREFORE, THE DECISION OF RESPONDENT EMPLOYEES' COMPENSATION COMMISSION IS HEREBY SET ASIDE AND THE PHILIPPINE NATIONAL RAILWAYS IS HEREBY DIRECTED

- TO PAY THE PETITIONER THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS PERMANENT TOTAL

DISABILITY BENE-FITS; AND

- TO REIMBURSE PETITIONER HER EXPENSES FOR MEDICAL, SURGICAL AND HOSPITAL SERVICES DULY SUPPORTED BY PROPER RECEIPTS.

SO ORDERED.

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

Melencio-Herrera, J., concurs in so far as the doctrine in the Corales case is applied, and in the understanding that the medical, hospital and surgical expenses awarded are those which have already been incurred.

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