

**NATIONAL SHIPYARDS & STEEL CORPORATION, PETITIONER,
VS. BRIGIDA SANTOS AND HON. CESAREO DE LEON, IN HIS
CAPACITY AS COMMISSIONER OF THE WORKMEN'S
COMPENSATION COMMISSION, RESPON...**

G.R. No. L-9561. September 30, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition to review on certiorari a decision of the Workmen's Compensation Commission, awarding compensation to the widow of Lucio Cunanan, deceased employee of the National Shipyards & Steel Corporation.

It appears that the said Lucio Cunanan, who, since December 13, 1949, had been working as assistant foreman of petitioner's blasting crew at a daily wage of P7.04, was on July 1, 1951 promoted to first class blaster and his compensation increased to P7.20 a day. On the 13th of that same month, at about 6 o'clock in the morning, while performing his duties as such first class blaster in petitioner's rock excavation at Mariveles, Bataan, Cunanan vomitted blood, and taken immediately to petitioner's infirmary by his co-workers, he was found by Dr. Alfredo S. Paguio, charity physician of Mariveles, to be suffering from profuse haemophthisis. He was given first aid and medical treatment, but 9 days thereafter, that is, on July 22, he died and the death certificate issued by the sanitary inspector of Mariveles states that he died from tuberculosis.

Claim for compensation was presented by Cunanan's widow, but the Chief of the Workmen's Compensation Division, Bureau of Labor, denied the claim after considering the affidavits of two co-workers of the deceased and on the strength of the declaration of Dr. Valeriano Mendoza, Sanitary Inspector of Mariveles, Bataan, and the opinion of the Bureau's medical officer that the tuberculosis infection contracted by the deceased had no causal relation with his work.

On February 6, 1954, after the creation of the Workmen's Compensation Commission, the case was reopened by a referee of that office at the instance of the widow's counsel, who submitted a sworn statement of Dr. Paguio to the effect that he had personally known the deceased for several years previous to his death and that he had had no occasion to treat him for any lung ailment. After due hearing, in which evidence, both oral and documentary, was presented, the referee ruled that Cunanan's death was compensable and awarded the widow the maximum compensation of P3,000 plus P100 for burial expenses. The award having been affirmed by the Workmen's Compensation Commissioner, the corporation filed the present petition for review.

The petition raises only two questions: (1) whether Cunanan's death was due to an accident arising out of and in the course of his employment; and (2) whether he was a laborer within the purview of the Workmen's Compensation Act. As to the first question, the Commissioner found that Cunanan died from profuse haemophthisis induced by injury to his back when he was hit by flying stones while engaged in his work as first class blaster. The corporation disputes the finding as based on pure hearsay and attributes the death to idiopathic

disease. But there appears to be no need of going into this question, for, after all, Cunanan did not belong to the category of laborers entitled to the benefits of the Workmen's Compensation Act as it stood at that time. It is to be noted that before it was amended in 1952, the Act did not cover laborers receiving more than 42 a week. This is clear from subdivision (b) of section 39, which, for purposes of the Act, defines laborer as follows:

"(b) '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 contract for an 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 any employer, exclusive of overtime pay, is in excess of forty-two pesos a week, x x x." (Underlining supplied.)

Now, as stated in the beginning, Cunanan at the time of the alleged injury had a fixed daily wage of P7.20. Computed on that basis and considering a week as composed of six working days, his weekly remuneration amounts to P43.20. Even supposing, therefore, that he died as a result of an injury suffered in the course of his employment, his heirs would not be entitled to compensation inasmuch as his remuneration, exclusive of overtime pay, was in excess of P42.00 a week. This would still be true even if his weekly remuneration were to be computed on the basis of his previous daily wage of P7.04.

On June 20, 1952, the Act was amended so as to make it applicable to all industrial employees or laborers without regard to the amount of their compensation. (See Rep. Act No. 772.) But as the amendatory Act had no retroactive effect (*Amedo vs. Rio y Olabarrieta, Inc.*, G. R. No. L-6870, May 24, 1954; *Wack Wack Golf and Country Club, Inc. vs. Workmen's Compensation Commission, et al.*, G. R. No. L-9641, May 24, 1957) the same cannot be applied to the case of Cunanan, which arose long before its enactment.

The Commissioner, however, cites section 19 of the Workmen's Compensation Act and says that, computed in accordance with that section, Cunanan's weekly earnings during the 12 weeks next preceding his injury amounts to less than P42.00 a week. To arrive at this result, the Commissioner first added up the wages actually received by Cunanan during that period and then divided the total by 12, the number of weeks. This the Commissioner did without taking into account Cunanan's absences, that is to say, the days on which he did not work and for which he was not paid. (Cunanan, it would appear, worked only 55 1/2 days out of the 72 work days comprehended in the 55 1/2 weeks next preceding the injury and was paid the wages for those 55 12 days only.) As the days of absence were not taken into account, the Commissioner's computation naturally lowered the average of Cunanan's weekly wages to P32.61. That, we think, is a mistake. For as stated in a well-known authority, the average earnings for a particular unit of time is ordinarily arrived at by dividing the actual earnings during such period by the number of such units embraced therein; but allowance is usually made for cases in which the employment has not been continuous throughout such period "because of the employee's absence from work for various cases." (58 Am. Jur., sec. 309, pp. 794-795.)

The section cited by the Commissioner reads:

"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; Provided, That if, on account of the shortness of the time during which the laborer was so employed or of the cessation of the employment, it is impracticable to compute the remuneration, consideration may be had of the average weekly wages earned during the last twelve months preceding the injury by a person employed in the same grade and same Work by the employer of the injured 'laborer,' or if there is no person so 'employed, of the average weekly wages earned by a person employed in the same grade in the same kind of employment in the same district or locality."

This section, provides that the "best computation" be adopted for determining the injured laborer's average weekly

wages, doubtless with the end in view of securing for him the greatest benefit that could be accorded under the law. This is in line with the humanitarian purpose of the Act. In applying the section, therefore, we should not overlook, its bearing on the amount to be paid to the laborer by way of compensation for his injury, for that compensation is, under the Act, made to consist of a certain percentage of his average weekly wages or remuneration, so that the lower his average weekly wages are determined to be the less he will get for compensable injury. Having in mind the humanitarian purpose of the Act, we can not take the present section as authorizing a mode of computation that would bring down the injured laborers average weekly remuneration and, as a result, also lower the compensation he is to receive for his injury. The mode of computation adopted by the Commissioner produces that undesirable result, and while favorable to the laborer in this particular case in the sense that it would put Cunanan in the class of workers entitled to the benefits of the Act, it would, on the other hand, be prejudicial to labor in the great majority of cases, specially now that the rate of remuneration is no longer a factor in the classification. Such computation must be avoided as not conducive to the effectuation of the manifest intent of the Workmen's Compensation Act.

In view of the foregoing, the decision below is set aside and the claim for compensation denied. Without costs.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Paras, C.J., reserves his vote.

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