

OFELIA G. LUMABAS FOR HERSELF AND ON BEHALF OF MINOR CHILD, JOLINA G. LUMABAS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), C-MAN MARITIME INC., J.P. SAMARTZIS M...

Ponente: VILLON, J.

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VILLON, J.:

Assailed in this Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the decision dated June 22, 2011[1] of public respondent National Labor Relations Commission (“NLRC”), First Division in NLRC LAC No. 11-000973-10, which reversed and set aside the decision dated August 30, 2010[2] of Labor Arbiter Ramon Valentin C. Reyes in NLRC NCR OFW CASE NO. (M) 11-16297-09, which, in turn, ordered private respondents to pay jointly and severally, petitioners, the amount of Fifty-Seven Thousand U.S. Dollars (US\$57,000.00) as death benefits, plus Five Thousand Seven Hundred U.S. Dollars (US\$5,700.00) as attorney's fees, One Hundred Thousand Pesos (P100,000.00) as moral damages and One Hundred Thousand Pesos (P100,000.00) as exemplary damages.

Likewise assailed is NLRC resolution dated October 21, 2011[3], which denied petitioners' motion for reconsideration of the assailed decision.

Culled from the records, the facts are as follows:

Petitioner Ofelia Lumabas (“Ofelia”, for brevity) and petitioner Jolina Joy Lumabas (“Jolina Joy”, for brevity) are the surviving heirs of the late Julian Lumabas (“Lumabas”, for brevity).

Lumabas was hired by private respondent C-Man Maritime, Inc. (“C-Man” for brevity) for its foreign principal, private respondent J.P. Samartzis Maritime Enterprise Co. S.A. He was engaged as Electrician to work on board the vessel “Clipper Endeavour”. The Contract of Employment[4] provides for the following terms and conditions:

1.1 Duration of Contract

:

9 MONTHS+/-1 MONTH OWNER'S OPTION

1.2 Position

:

ELECTRICIAN

1.3 Basic Monthly Salary

:

ALL FIGURES IN U.S. DOLLARS: 1,174.00

1.4 Hours of Work

:

HRS./WEEK 40

1.5 Overtime

:

FIXED G.O.T.: 872.00 (103 HRS)/ O.T. RATE: 8.47/HR IN EXCESS

1.6 Vacation Leave with Pay :

:

SUB. ALLOW. 126/LV.WAGES:274.00

1.7 Extra Allowance

:

1,154.00

1.8 Point of Hire

:

MANILA, PHILIPPINES

Prior to embarkation, Lumabas underwent the mandatory Pre-Employment Medical Examination (PEME) and was declared “fit to work as seaman”[5].

On October 15, 2008, Lumabas left the Philippines and boarded the vessel “Clipper Endeavour” on October 17, 2008.

On May 24, 2009, from the said vessel, Lumabas was brought to Mater Medical Center in Queensland, Australia due to “swelling and pain in the right groin”. He underwent “right inguinal hernia” repair operation.[6]

On May 27, 2009, Lumabas was repatriated to the Philippines. Upon arrival in Manila, C-Man referred him to the company designated physician, Dr. Natalio C. Alegre II (“Dr. Alegre”, for brevity), of St. Lukes Medical Center. After periodic check-up and monitoring of his condition, Lumabas was declared by Dr. Alegre to be “fit to resume former work as a seafarer” effective June 29, 2009[7]. On even date, Lumabas himself executed a “Certification of Fitness for Work”[8], attesting to the fact that he was being released from the hospital as “Fit for Duty”.

On August 16, 2009, Lumabas was admitted at the University of Santo Tomas (UST) Hospital “due to hematemesis”. On August 21, 2009, despite all medical interventions, Lumabas died due to “cardiorespiratory failure”. The “Final Diagnosis: Hepatocellular Carcinoma with multiple Lung Metastasis.”[9]

On November 29, 2009, Ofelia, as the surviving spouse of Lumabas and in behalf of their minor child, Jolina Joy, filed a complaint against private respondents before the Arbitration Branch of the NLRC for death benefits, damages and attorney's fees arising from the death of her husband.

On August 30, 2010, the Labor Arbiter rendered a decision, the pertinent portion of which reads:

“WHEREFORE, the respondents are hereby ordered to pay, jointly and severally, the complainants the

following amounts:

1. Death benefits

- US\$57,000.00

2. 10% Attorney's fees

- US\$ 5,700.00

Total

=US\$62,700.00 or its Philippine Peso equivalent at the time of payment

3. Moral damages

-One Hundred Thousand Pesos (P100,000.00)

4. Exemplary damages

-One Hundred Thousand Pesos (P100,000.00)

SO ORDERED.”

Private respondents appealed to the NLRC.

On June 22, 2011, the NLRC rendered its decision which reversed and set aside the Labor Arbiter's decision, thereby ordering the dismissal of the labor complaint for lack of merit.

Petitioners moved for reconsideration of the assailed NLRC decision but the same was denied in the assailed resolution dated October 21, 2011.

Hence, the present recourse wherein petitioners seek the reversal of the assailed NLRC decision and resolution raising the following issues[10]:

I.

WHETHER PUBLIC RESPONDENT, THE 1ST DIVISION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED ITS FINDINGS DESPITE NON-PERFECTION OF APPEAL (BY PRIVATE RESPONDENTS).

II.

WHETHER PUBLIC RESPONDENT, THE 1ST DIVISION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED ITS FINDINGS DESPITE BEING CONTRARY TO THE FACTS AND THE LAW GOVERNING THE SAME.

III.

WHETHER PUBLIC RESPONDENT, THE 1ST DIVISION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED AND SET ASIDE THE LABOR ARBITER'S DECISION CONTRARY TO LAW AND JURISPRUDENCE.

Petitioners contend that private respondents failed to perfect their appeal because the Certification of Accreditation and Authority issued by the Supreme Court in favor of the bonding company which issued the requisite bond posted by the latter, Pioneer Insurance & Surety Corporation, only granted it the authority to transact business in relation to civil and/or special proceedings cases filed/pending before the Regional Trial

Courts of the National Capital Region; that an appeal from a judgment of the Labor Arbiter is perfected “only” upon the posting of a cash or surety bond to be issued by a reputable bonding company duly accredited by the Supreme Court; that filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC; that considering that private respondents' bonding company was given only authority by the Supreme Court to transact business related to civil and/or special proceedings, the posting of the bond herein may be considered irregular, thus, the appeal from the Labor Arbiter's decision was not perfected.

Petitioners further contend that the Labor Arbiter was correct in his observation that the ailment suffered by Lumabas was work-related having been aggravated by the nature of his job on board the vessel; that Lumabas was earlier diagnosed only to have hernia, however, while on board the vessel, he already showed signs or symptoms of lung cancer since she was having shortness of breath, loss of appetite, fatigue, loss of weight and feeling weak; and that there was, therefore, reasonable proof that Lumabas' lung cancer was work-connected.

Finally, petitioners contend that failure to rebut the statutory presumption that an illness or disease is compensable would be fatal to the cause of private respondents citing the cases of *Tibulan v. Inciong, et al.*[11] and *Government Service Insurance System v. Gabriel*[12]; that the law looks tenderly on the laborer, in that where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice; that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when it reversed the Labor Arbiter's decision, contrary to the facts and the prevailing jurisprudence on the matter, for what it did was to apply ultimate degree of certainty as the quantum of proof in the present claim for disability/death benefit of the deceased rather than probability; and that the NLRC erroneously looked for a direct causal relation rather than reasonable proof of work-connection in order to establish compensability of the ailment of Lumabas.

In their Comment[13], private respondents argue that Lumabas died after the expiration of his employment contract, thus, petitioners are not entitled to death benefits; that the NLRC correctly ruled that lung cancer is not work-related; and that Lumabas' nature of job did not cause, nor aggravate his condition. Private respondents further argue that lung cancer is not listed as an occupational disease under Section 32-A of the POEA SEC; that Lumabas never showed signs/symptoms of lung cancer during his employment; that Dr. Alegre, a medical expert, opined that lung cancer is not work-related as it is usually caused by cigarette smoking and is also genetic and metabolic in origin; that medical literature on lung cancer shows that lung cancer is caused by “smoking (which) is the single most important risk factor for the development of lung cancer;” and that there are several decisions of the NLRC where lung cancer was ruled as not work related.

Private respondents finally argue that Lumabas was medically repatriated due to hernia, but was declared later to be fit to work; that the Labor Arbiter committed palpable error in ruling that: (a) Lumabas' illness was left unnoticed or overlooked by private respondents and the company doctors; (b) Lumabas' illness was work-related because the same was aggravated by his arduous and strenuous work on board the vessel; and (c) the Certificate of Fitness for Work submitted by private respondent, was designed to evade liability. Too, private respondents submit that the appeal before the NLRC was duly perfected; and that the NLRC correctly ruled that petitioners are not entitled to moral and exemplary damages and attorney's fees as they never acted with bad faith in denying petitioners' claim.

In their Reply[14], petitioners contend that Lumabas' illness was either work-related or work-aggravated; that it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided in the POEA-SEC, but it is enough that the employment had contributed even in small degree to the development of the disease, citing the case of *Wallem Maritime Services,*

Inc., et al. v. NLRC, et al.[15]; that while Lumabas was medically repatriated due to the initial medical findings of “hernia”, he died of lung cancer only after a short period of time or just almost three (3) months from his date of arrival in the Philippines; thus, the NLRC’s declaration that Lumabas’ cause of death was not work-related is clearly a case of grave abuse of discretion amounting to lack or excess of jurisdiction; that the NLRC erroneously applied the principle of direct causal connection between the illness of Lumabas and his repatriation; and that the NLRC refused to apply the quantum of evidence used in disability cases, which is “reasonable probability”, as held in the cases of Cristobal v. ECC[16] and Wallem Maritime Services, Inc., et al. v. NLRC, et al.

The Court shall resolve first the jurisdictional issue, specifically, on the alleged non-perfection of the appeal to the NLRC.

The records disclosed that the Certificate of Authority[17] issued by the Insurance Commission plainly state that effective July 1, 2010 Pioneer Insurance & Surety Corporation was authorized to engage in insurance business for non-life insurance (Fire, Marine, Casualty & Surety) and “is hereby granted this Certificate of Authority to transact the class of insurance business above set forth until twelve o’clock midnight on the thirtieth day of June year 2011.”

The Court finds no grave abuse of discretion on the part of public respondent NLRC when it gave due course to the appeal of private respondents after having posted the requisite Surety Bond No. BD-NIL-HO-10-0084978-00-D dated October 11, 2010[18] in connection with the appeal of the decision dated August 30, 2010 in NLRC NCR (M) 11-16297-09. It must be noted that at the time of private respondents’ appeal, the Pioneer Insurance & Surety Corporation had an existing and valid certificate of authority issued by the Insurance Commission for non-life insurance business.

Be that as it may, it is also noted that petitioners had not raised this issue on non-perfection of appeal even when they filed their Comment (on respondents-appellants’ Memorandum of Appeal)[19] and Motion for Reconsideration[20] before public respondent NLRC. The Court cannot review and consider this jurisdictional issue for the first time in this petition for certiorari. What is repugnant to due process is the denial of opportunity to be heard[21]xxx. While it is a rule that jurisdictional question may be raised at any time, this, however, admits of an exception where, as in this case, estoppel has supervened.[22] This Court has time and again frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[23] The Court shall not countenance petitioners’ unjustifiable move. The Certification of Accreditation and Authority issued by the Office of the Court Administrator, Supreme Court, on which petitioners rely heavily as basis for charging grave abuse of discretion on the part of public respondent NLRC even confirmed that Pioneer Insurance & Surety Corporation was authorized to issue insurance policies (surety) in relation to civil and/or special proceedings cases pending before the Regional Trial Courts in Metro Manila.

We now discuss the merits of the case.

After a careful review of the parties’ respective arguments and the NLRC’s factual and legal findings, as well as the documentary evidence extant in the records, We find that the NLRC did not commit grave abuse of discretion when it rendered the assailed decision and resolution reversing the decision of the Labor Arbiter.

A claim for compensation due to injury or illness may be filed pursuant to the terms of the employment contract as approved by the POEA and the pertinent provisions of the POEA Standard Employment Contract, specifically, Section 20 thereof which states:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.
3. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Pag-Ibig, if applicable.
4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:
 - a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.
 - b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.
 - c. The employer shall pay the beneficiaries of the seafarer the Philippines currency equivalent to the amount of One Thousand US dollars (US\$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his

forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

C. It is understood that computation of the total permanent or partial disability of the seafarer caused by the injury sustained resulting from warlike activities within the war zone area shall be based on the compensation rate payable within the war zone area as prescribed in this Contract.

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

F. When requested, the principal shall furnish the seafarer a copy of all pertinent medical reports or any records at no cost to the seafarer.

G. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

Based on the above provisions of the POEA Standard Employment Contract, a death benefit claim may be filed when the seafarer suffered work-related injury or illness during the term of his contract. On the other hand, Section 20 B provides for compensation for work-related injury or illness suffered by the seafarer during the term of his contract, which injury or illness may be either permanent or temporary and total or partial, as determined by the company-designated physician.

In this case, petitioners submit that Lumabas, though repatriated purportedly because of "hernia", was already suffering from lung cancer while still on board respondents' vessel, having manifestations of the disease and symptoms such as shortness of breath, loss of appetite, fatigue and weight loss; and that the death of Lumabas is therefore compensable considering that his illness was work-related or aggravated by the nature of his job on board the vessel and that the cause of his death occurred before the termination of his employment contract.

The argument lacks merit.

It is undisputed that Lumabas was repatriated to the Philippines on May 27, 2009 after his operation to repair his

right inguinal hernia in Queensland, Australia. At the time of his repatriation, Lumabas' employment contract was still effective as the same had yet to expire on July 13, 2009. Records also disclosed that Dr. Alegre, the company designated physician, after periodic check-up and monitoring of his condition, certified that Lumabas was "fit to resume former work as seafarer" effective June 29, 2009. Apparently, Lumabas did not return to his work assignment at Clipper Endeavour. After the lapse of his 9-month employment contract on July 13, 2009, Lumabas had not entered into a new employment contract with private respondents until August 21, 2009 when he died.

In *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011, it was held:

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.[3]

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

SECTION 20. COMPENSATION AND BENEFITS

x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The 2000 POEA Amended Standard Terms and Conditions defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These are:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- 1) The seafarer's work must involve the risks described herein;
- 2) The disease was contracted as a result of the seafarer's exposure to the described risks;
- 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
- 4) There was no notorious negligence on the part of the seafarer.

Thus, the claim for death benefits filed by petitioners must comply with the following elements:

- That the injury or illness must be work-related; and
- That the work-related injury or illness must have existed during the term of the seafarer's employment contract.

In light of existing jurisprudence, to establish compensability of a non-occupational disease such as lung cancer, reasonable proof of work-connection and not direct causal relation is required. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[24]

While it is true that under Section 32-A of the POEA Standard Employment Contract, only two types of cancer are listed as occupational diseases – (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithelomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances, it is worth noting that Section 20 of the POEA Standard Employment Contract also states that those illnesses not listed under Section 32 are disputably presumed as work-related.

In this case, the medical condition affecting Lumabas was Hernia, not lung cancer, that resulted to his repatriation. Hernia is in fact an occupational disease that should be substantiated by evidence to be compensable.

On the other hand, Hepatocellular Carcinoma with multiple Lung Metastasis or lung cancer is not listed as among the occupational diseases under the POEA Standard Employment Contract. Before the disputable presumption of compensability shall apply against the employer, it should first be established that the illness or injury is work-connected.

In this case, other than bare allegations, petitioners have not submitted substantial evidence supporting their assertion that Lumabas's lung cancer was work-connected. On the other hand, private respondents presented a medical certification/letter dated May 26, 2009[25] from Dr. Catherine Heathwood, General Surgeon, Mercy Health and Aged Centre, Mater Medical Centre, Queensland, Australia as to the medical findings of hernia and the intervention given to Lumabas arising from his complaint only on swelling and pain on the right groin. The same findings were supported by the letter dated June 29, 2009 of Dr. Alegre that Lumabas was operated for "S/P Hernioplasty, Inguinal, Right".

In fine, the probability test of work-connection must be supported by substantial evidence for a non-occupational illness or injury to be compensable. This burden, petitioners failed to discharge.

Verily, there is no reasonable proof of work-connection between the cause of death of Lumabas, i.e. Hepatocellular Carcinoma with multiple Lung Metastasis, and his employment as an electrician on board private respondents' vessel. Other than bare allegations, there is no substantial evidence on record that Lumabas' work as electrician aggravated or at least contributed to his acquiring lung cancer during his employment. There was likewise no indication, or at least some signs or symptoms of lung cancer, that was presented to or noted by the Master of the vessel or by the attending doctors in Queensland, Australia when Lumabas was referred for medical treatment due to swelling and pain in his right groin.

With respect to the second element, it is relevant to note that the employment contract of Lumabas was for “9-months +/- 1 month at owner’s option”. At the time of his repatriation on May 27, 2009, Lumabas was only past 7-months into his employment contract. The certificate of fitness to return to work was issued by the company designated physician effective June 29, 2009 which, notably, was the same date Lumabas executed his own certification^[26] where he acknowledged and fully conformed with the certification that he was fit for work. There is no proof that after July 13, 2009, which was the lapse of his 9-month contract, and before his death on August 21, 2009, Lumabas had executed another employment contract with private respondents. Thus, there was no substantial evidence on record that the lung cancer of Lumabas, assuming it to be work-connected, was contracted during the effectivity of his employment contract with private respondents. The second element for compensability of death due to illness or injury is therefore wanting.

It is well-settled that findings of facts and conclusions of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.^[27] Findings of facts of the NLRC are deemed binding and conclusive upon the appellate court.^[28] We see no reason to deviate from this rule, more so in this case where the factual findings of the NLRC are supported by the evidence on record. Thus, We quote with approval the pertinent portions of the assailed NLRC decision, to wit:

“As clearly provided by the aforequoted provision, for a beneficiary to be entitled to death benefits, the death of the seafarer must occur during the term of the employment contract and the cause of death must be work-related. The term of the employment contract is the period from commencement until the termination thereof. This means from upon actual departure from the point of hire to the actual arrival at or return to the point of hire. In this instant case, seafarer Lumabas left the country on October 17, 2008, and arrived in the Philippines on May 29, 2009. he died on August 21, 2009. It is evident therefore, that seafarer Lumabas did not die during the term of his employment contract, his heirs are not entitled to death benefits.

xxx xxx xxx.

Thus, even on the ground alone that the late seafarer died after the end of his employment contract, his heirs, complainant and her minor child, are not entitled to the death benefits being claimed.

And even if We were to resort to the liberal interpretation of the POEA-SEC, the complaint must still fail as there is no evidence on record that shows connection between the working conditions on board and the cause of the seafarer’s death. Much less is there any material evidence indicating that the late seafarer was suffering from lung cancer while on board. In fact, seafarer Lumabas was repatriated not because of any symptoms of lung cancer but by reason alone of inguinal hernia from which he fully recovered after sugical procedures. Complainant narrated in her affidavit the alleged working condition on board the vessel which the late seafarer was supposedly subjected to, but the narration is purely hearsay, and unsubstantiated by any amount of evidence. All that was presented by complainant were medical certificates relating to inguinal hernia, a clinical abstract on the hospital confinement a few days before the late seafarer’s death and his death certificate. Nothing supports the theory of work connection or aggravation.

xxx xxx xxx.

In compensation cases such as this, death compensation benefits cannot be awarded unless there is substantial evidence that: (a) the cause of death is reasonably connected with the deceased’s work; or (b) the sickness/ailment for which the employee died is an accepted occupational disease; or © the deceased’s working conditions increased the risk of contracting the disease for which he died. (*Aya-ay vs. Arpaphil Shipping Corporation*, G.R. No. 155359, January 31, 2006).

Here, seafarer Lumabas died of lung cancer, a disease which is not listed as an occupational disease under Section 32-A of the POEA-SEC. No substantial evidence was presented to prove that the seafarer’ hernia (sic),

the illness which is the reason for his repatriation, is in any way linked to lung cancer. Neither is their evidence that lung cancer is reasonably connected with the seafarer's work or that the seafarer's working conditions increased the risk of contracting lung cancer. Under the circumstance, we are convinced that the cause of seafarer Lumabas' death is not work-related nor work-aggravated and therefore, much as we commiserate with the complainant's loss, we have no option but to deny her money claims.”

WHEREFORE, the instant petition is hereby DISMISSED. The assailed Decision dated June 22, 2011 and Resolution dated October 21, 2011 of public respondent National Labor Relations Commission (NLRC) First Division in NLRC LAC No. 11-000973-10 are hereby AFFIRMED.

SO ORDERED.

Sadang, M.Q.C.,[*] and Corales, P.B. JJ., concur.

[*]Acting Senior Member vice Justice Florito S. Macalino per Office Order No. 469-14-ABR dated November 14, 2014

[1] pp. 24-33, Rollo

[2] pp. 65-75, Rollo

[3] pp. 22-23, Rollo

[4] p. 43, Rollo

[5] p. 44, Rollo

[6] p. 45, Rollo

[7] p. 46, Rollo

[8] p. 47, Rollo

[9] p. 48, Rollo

[10] p.8, Petition, p.10, Rollo

[11] G.R.No. L-48576, August 11, 1989

[12] G.R. No. 130379, June 21, 1999

[13] pp. 197-222, Rollo

[14] pp. 256-270, Rollo

[15] G.R. No. 163838, September 25, 2008

[16] 103 SCRA 32

[17] p. 146, Rollo

[18] pp. 136-138, Rollo

[19] pp. 154-164, Rollo

[20] pp. 165-173, Rollo

[21] Caltex Phils. v. Castillo, 21 SCRA 1071

[22] Suarez v. Court of Appeals, 186 SCRA 339

[23] Korean Airlines Co., Ltd. v. Court of Appeals, G.R. Nos. 114061 & 113842, August 23, 1995, citing Sesbreno v. Court of Appeals, 240 SCRA 606

[24] Leonis Navigation Co. Inc. et al. v Catalino U. Villamater, etc., G.R. No. 179169, March 3, 2010

[25] p. 45, Rollo

[26] p. 47, Rollo

[27] Ass'n. of Integrated Security Force of Bislig v. Court of Appeals, et al., G.R. No. 140150, August 22, 2005, citing Progressive Devt. Corp. v. NLRC, G.R. No. 138826, October 30, 2000

[28] Permex, Inc. v. NLRC, 323 SCRA 121

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