

PATRICIO VIRAY, (SUBSTITUTED BY HIS WIDOW, MRS. LUCITA L. VIRAY), PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND CITY OF MANILA, RESPONDENTS.

G.R. No. L-42490. October 30, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review on certiorari[1] of the decision of the Workmen's Compensation Commission disallowing petitioner's claim.

Petitioner was formerly employed as laborer (toilet cleaner) in the Market Administration, City Treasurer's Office, Manila, with an annual compensation of P3,600.00. On March 31, 1975, he filed with the Workmen's Compensation Unit, Regional Office No. 4, Department of Labor, Manila, his Notice of Injury or Sickness and Claim for Compensation[2] against his employer. The claim is supported by a Certificate of his Attending Physician, Dr. Benvenuto T. Juatco,[3] Asst. Head, Department of Radiology, Veterans Memorial Hospital, stating that petitioner was suffering from PTB, Far Advanced, Active. Likewise attached to the claim is the Medical Examiner's Report on Claim for Disability Benefit,[4] signed by Dr. Francisco S. Cunanan of Quezon Institute, showing that petitioner has PTB Chronic, Far Advanced, Bilateral, Active. The X-ray result[5] of petitioner showed that he had fibroexudative lesions in both upper halves. Because of his illness, petitioner retired from the service effective March 1, 1973 under Section 12(c) of Commonwealth Act 186, as inserted by Republic Act 1616 and further amended by Republic Act 4968 at the age of 54.

Acting Referee Gaudioso P. Riconalla, Compensation Task Force, Workmen's Compensation Unit, Regional Office No. 4, Department of Labor, rendered his decision on October 28, 1975 in favor of the claimant, ordering respondent City of Manila, to pay the following:

"(1) To the claimant, thru this Office, the sum of Two Thousand One Hundred Sixty Pesos and 08/100 (P2,160.08) as compensation due under Section 14 of the Act; and another amount of Three Thousand Four Hundred Fifty Six Pesos and 46/100 (P3,456.46) as compensation for 48% NSD under Section 18 of the Act or the total amount of P5,616.54;

(2) To pay attorney's fee to Atty. Victorio S. Acuin, the sum of P280.83 as counsel for claimant pursuant to Section 31 of the Act;

(3) To reimburse claimant the sum of P1,500.00 for medical expenses incurred; and

(4) To pay to the Commission, thru this Office, the sum of P57.00 as decision fee, pursuant to Section 55 of the Act."

Respondent appealed to the Workmen's Compensation Commission which reversed the decision under review "for lack of factual basis" and dismissed claimant's claim for compensation. Said the Commission -

"A close scrutiny, however, of these exhibits, for instance, Exh. "E", which is the X-ray result of his examination taken at the Quezon Institute, would show that it was such a result of the examination and/or X-ray taken merely on July 6, 1973, or after over four (4) months from his stopping from work on February 28, 1973, as such therefore, it could not be sufficient to establish the fact that his illness of PTB was with him already at the time when he stopped working. Apparently, this finding was the basis of Exh. "C" (Medical Examiner's Report on Claim for Disability Benefits). Coming to Exh. "D", which is the application for total and permanent disability, we cannot give the allegations therein weight for reason that they lack basis, such as X-ray result of the examination taken during claimant's stay with the respondent or immediately after he ceased to be working. The findings therein could have been merely a reiteration of what was previously reported under Exh. "C" (supra). And this observation applies to Exh. "F" which is the medical bill by Dr. Benvenuto Juatco."

xxx xxx xxx

"We have held, however, that it has not been shown in this particular case that claimant had been suffering from his PTB way back during his employment and/or stopping from work."

Hence, this petition.

Respondent, in its Motion for Reconsideration and/or Appeal from the Decision rendered by Acting Referee Gaudioso P. Riconalla, quotes Section 24 of Republic Act 3428, as amended, to prove that the claim was filed beyond the reglementary period of "not later than 2 months after the date of the injury or sickness." However, the fact that petitioner filed his claim only on March 31, 1975 when his last day of service was February 28, 1973, is not fatal to his claim. Failure on the part of the claimant to file his claim within the statutory period is not a jurisdictional defect and that failure or delay in giving said notice is not a bar to the proceedings in the claim for compensation if it is shown that the employer, his agent or representative has knowledge of the injury, sickness or death or that the employer did not suffer by such delay or failure.[6] Compensation under the Workmen's Compensation Act, as amended, is a liability vested by statute; hence, it prescribes in ten years.[7]

Respondent employer was apprised of petitioner's illness even before petitioner filed the Notice of Injury or Sickness and Claim for Compensation when petitioner applied for sick leaves and when he applied for retirement; yet respondent did not comply with Sections 37 and 45 of the Workmen's Compensation Act, as amended. Section 37 requires the employer to give written notice of accident and sickness to the Workmen's Compensation Commissioner stating, among others, whether liability is admitted or controverted.

Under Sec. 45 of the Act, as amended, "(i)n case the employer decides to controvert the right to compensation, he shall, either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with this requirement shall

constitute a renunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate his right to controvert the claim."

The respondent City of Manila filed its controversion only on July 3, 1975. The failure of the employer to timely and effectively controvert petitioner's claim amounted to a waiver or renunciation of all non-jurisdictional defenses, such as the non-compensability of the claim.[8]

Petitioner worked for respondent City of Manila for 36 years, starting January 6, 1937 until February 28, 1973 as laborer, then pail collector, market laborer, and lastly, as toilet laborer. As toilet laborer, petitioner cleaned public toilets and worked 8 hours a day, 7 times a week, including Saturdays, Sundays and holidays. The nature of his work exposed him to heat, cold, rain, dust and unsanitary surroundings. The Certificate of Attending Physician states that as "cubetero," petitioner carried heavy loads of human stools and assumed hazardous jobs thereby resulting in his contracting PTB far advanced, active. It further points out that the patient was first treated in 1963 and outlines the clinical history of the patient as follows: "Conditions started since about 1960-61 as fever, cough, weakness, chills; later on had little blood in sputum. This condition came on and off with increasing severity up to now."

Considering that petitioner's illness supervened in the course of his employment with respondent, there arises the rebuttable presumption that the said illness either arose out of or at least was aggravated by the nature of his employment, and the burden to overthrow such presumption by substantial evidence rests on the employer.[9]

In the case of *Lorenzo vs. Workmen's Compensation Commission*,[10] the Court had occasion to point out that -

"Tuberculosis is not an instantaneous disease; it is an imperceptible disease caused by a germ which is breathed in and feeds on the lungs or taken with food. It is medically accepted that exposure to dust and dirt is a predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens resistance to any latent tuberculosis infection and reactivates that infection."

Moreover, no evidence was submitted by the respondent employer in support of its controversion of the claim except in stating in its comment[11] that -

"x x x Nowhere in the records of both parties can we find that claimant was afflicted with a disabling disease which could have incapacitated and/or disabled him in performing his daily work during his entire stay with respondent from January 10, 1937 up to his retirement on March 1, 1973. Claimant himself even admitted in his petition that 'there was no proof either that claimant-petitioner was already suffering from such illness of PTB far advanced.' (Petition, p. 9). Assuming arguendo that herein claimant was actually afflicted with PTB, yet he has not proved by substantial and convincing evidence that his illness supervened or occurred during his employment, and could be said to be service-connected."

With the approval of petitioner's optional retirement, the fact of his disability is placed beyond question. His retirement would not have been approved if it were not shown that petitioner was physically incapacitated to render further efficient service.[12]

Petitioner should be allowed the maximum benefits under the Workmen's Compensation Act. It is to be noted that petitioner's health deteriorated until his death on May 4, 1976 at the age of 57.[13]

IN VIEW OF THE FOREGOING, the decision of respondent Commission dated December 19, 1975 is hereby set

aside. Judgment is hereby rendered ordering the respondent employer -

- (1) To pay petitioner's widow the amount of SIX THOUSAND (P6,000.00) PESOS as compensation;
- (2) To pay petitioner's widow the amount of TWO HUNDRED (P200.00) PESOS as reimbursement for burial expenses;
- (3) To reimburse petitioner's widow the medical expenses incurred by the deceased duly evidenced by proper receipts;
- (4) To pay petitioner's counsel the sum of SIX HUNDRED (P600.00) PESOS as attorney's fees; and
- (5) To pay the sum of SIXTY-ONE (P61.00) PESOS as administrative fee.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Treated as a special civil action in the resolution of May 3, 1976.

[2] Annex A, Rollo, p. 17.

[3] Annex D, Rollo, p. 20.

[4] Annex E, Rollo, p. 21.

[5] Annex F, Rollo, p. 22.

[6] Guevarra vs. Republic, 77 SCRA 292; Caling vs. WCC, 77 SCRA 309; Ybañez vs. WCC, 77 SCRA 501; Romero vs. WCC, 77 SCRA 482; Vallo vs. WCC, 73 SCRA 623.

[7] De la Cruz vs. Workmen's Compensation Commission, 79 SCRA 96, Article 1144 (2), New Civil Code.

[8] Lorenzo vs. Workmen's Compensation Commission, 81 SCRA 434.

[9] Romero vs. WCC, 77 SCRA 482; Vda. de Flores vs. WCC, 78 SCRA 17; Bautista vs. WCC, 80 SCRA 313; Trinidad vs. WCC, 81 SCRA 668; Pillsbury Mindanao Flour Milling Company, Inc. vs. Murillo, 81 SCRA 306.

[10] Supra, 440.

[11] Rollo, p. 38.

[12] C.A. 186, as amended by R.A. 1616 and R.A. 4968 in relation to Memorandum Circular No. 133 issued on October 16, 1967 by the Office of the President.

[13] Rollo, p. 52.

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