

MANILA RAILROAD COMPANY, PETITIONER, VS. DANIEL PEREZ AND THE WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-21071. June 29, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari from a decision of the Workmen's Compensation Commission ordering herein petitioner, Manila Railroad Company to pay the sums of P3,000.00, as compensation, P1,900.00 for medical expenses, and P225.00 as attorney's fees, to respondent Daniel Perez, plus P36.00 to the Workmen's Compensation Fund as fees, pursuant to Section 55 of the Workmen's Compensation Act.

The main facts are, as set forth in the decision appealed from:

"That claimant Daniel Perez was first employed by the respondent company as a sixth class assistant conductor in its transportation department on September 1, 1939; that since then, he was assigned to different positions until he was made second class assistant conductor on May 10, 1946 with an annual salary of P1,800.00; that as a second class assistant conductor, his work consisted of: (1) attending to the tickets of the passengers, (2) helping lift the baggages of old passengers boarding the train, and (3) sometimes giving signals as requested by his superiors. The evidence also shows that because the schedules of the train were not the same, he sometimes worked seven (7) or eight (8) hours a day; and that he started his tour of duty sometimes at 3:00 o'clock a.m. or 3:00 o'clock p.m.

"Records also show that the claimant spat about two spoonfuls of blood in 1940 and about five spoonfuls in 1943; that he was given artificial pneumothorax in the San Lázaro Hospital in 1944; that in 1945 he again spat about two spoonfuls of blood; that in 1946 he was again given artificial pneumothorax treatment in the San Lázaro Hospital; and that the flouroscopic examinations of the claimant at Quezon Institute disclosed the following findings: (1) June 8, 1948 —'moderately advanced tuberculosis on the right and minimal on the left', (2) March 10, 1950—'minimal on the right, and clear on the left'. (3) April 10, 1950—'moderately advanced on the right, minimal on the left', and (4) December 18, 1950—'far advanced right, clear on the left'.

"The records further reveal that because of prolonged absence due to his pulmonary tuberculosis, the claimant was dismissed from the service on November 16, 1944; that on May 10, 1946, he was again allowed to work and assigned as second class assistant conductor; that sometime in October, 1950 claimant met with an accident while actually in the performance of his duty; that acting on the advice of his superior, Chief Conductor Silva, claimant applied for retirement which was approved effective January 1, 1951, the reason of Chief Conductor Silva in advising the claimant to seek retirement being the latter's poor health due to serious pulmonary tuberculosis."

Subsequently, or on September 6, 1960, respondent filed his claim for compensation, which was controverted by petitioner herein. After due hearing, the Chief Hearing Officer of the Workmen's Compensation Commission rendered a decision, dated February 6, 1962, holding that it had not been shown that respondent had contracted his

disease "in the course of his employment and by reason of factors traceable to the nature of his employment" and that "the aggravation of his sickness was due to the natural development thereof", and, accordingly, dismissing the claim upon the theory that it is not compensable. Elevated to the Commission, said decision of the Chief Hearing Officer was reversed by the Acting Chairman of the Commission, who rendered the appealed decision, which, on motion for reconsideration filed by petitioner herein, was upheld by the Commission en banc. Hence this appeal by certiorari taken by the petitioner.

Its brief maintains, in effect: (1) that respondent's illness was not aggravated by the nature of his employment; (2) that, even if so aggravated, the resulting disability is not compensable, it having taken place before the effectivity of Republic Act No. 772; and (3) that the evidence on the sums collectible by respondent are insufficient to support the award complained of. In its memorandum in lieu of oral argument, petitioner further contends that: (a) having been filed more than two (2) months after the date of the sickness, respondent's claim could not be entertained by the Workmen's Compensation Commission for lack of jurisdiction therefor; and (b) that said claim has prescribed already.

With respect to the first two (2) questions, it is urged by petitioner herein that respondent's disability has neither arisen out of the nature of his employment nor been aggravated by the same, and that, even if so aggravated, it is not compensable, because aggravation was not a cause for liability of the employer until June 20, 1952, upon the effectivity of Republic Act No. 772, which amended Section 2 of the Workmen's Compensation Act (No. 3428) by specifically mentioning tuberculosis and aggravation as causes for the liability of the employer, and respondent had ceased to work for petitioner prior thereto, or on January 1, 1951, when he retired from the service upon the advice of the Chief Conductor.

Respondent started working for petitioner on September 1, 1939, and there is no evidence that he was then submitted to medical examination. However, as early as 1940 he appeared to be suffering from tuberculosis, for he then spat two spoonfuls of blood. There was recurrence of this incident in 1943 and again in 1945. He was given artificial pneumothorax in 1944 and also, in 1946. Thereafter, the illness admittedly went from bad to worse. In other words, the records do not show clearly that respondent's illness was contracted in the course of the employment, and the fact that he spat blood several months after he had begun to work for petitioner suggests that he probably had it then in a latent or mild condition; but we are satisfied, as the Commission was, that the illness was aggravated by the nature of his employment.

Is the legal consequence of such aggravation affected by the fact that it took place before June 20, 1952, when Republic Act No. 772 became effective? In this connection, it should be noted that our Workmen's Compensation Law is patterned after similar laws in the United States, under which compensation for disability resulting from the aggravation of a pre-existing illness has invariably been granted despite the absence of a specific provision to this effect (see Harovitz on Workmen's Compensation, p. 82; *Naughton vs. Retirement Board of S.F.* 43 Cal. App. 2d 254, 260-61, 110 P. 2d 714; *Knock vs. Kindustrial Ace. Com.* 200 Cal. 456, 461, 253 P. 712; *Lumbermen's Mut. Cas. Co. vs. Ind. Ace. Com.* 29 Cal. 2d 492, 496, 175 P. 2d 823; *Firestone Tire & Rubber Co. vs. Industrial Ace. Com.* 208 Pac. 2d 44, 45). Accordingly, in *Blue Bar Coconut Company, et al. vs. Joaquín Boo*, 95 Phil., 867; (53 Off. Gaz. 3475), we held the employer liable for compensation, despite the fact that the aggravation of a pre-existing illness and the consequent disability had taken place before June 20, 1952, because:

"The fact that the term 'tuberculosis' and the words 'either aggravated by' are inserted by Rep. Act No. 772, amending section 2 of the Workmen's Compensation Act (No. 3428, as amended), which took effect on 20 June 1952 only, does not change the import of the legal provisions concerning the employer's liability to give compensation to a laborer * * * as provided for in the original Workmen's Compensation Act (No. 3428, as amended by Act No. 3812). * * *"

Moreover, the question whether a disability resulting from aggravation taking place before the effectivity of Republic Act No. 772 is compensable under said original Workmen's Compensation Law, was not raised in the Commission, not even in the motion for reconsideration of the decision of its Acting Chairman. It was not even one of the grounds alleged in support of the petition for review by certiorari filed with this Court. Hence, the defense must be deemed waived and cannot be, as it is, raised for the first time in petitioner's brief. As held in *Viaña vs. Al-Lagadan*, 99 Phil., 408; (54 Off. Gaz. 664) :

"The first ground is untenable, petitioner not having invoked it before the rendition of the Referee's decision on February 23, 1953. The objection to the application of Act No. 3428, upon said ground, was made for the first time when petitioner sought a review of said decision by the Workmen's Compensation Commissioner. The non-applicability of said Act * * * its, however, a matter of defense, which cannot be availed of unless pleaded in the employer's answer to the claim for compensation filed by the employee or his heirs. Petitioner herein having failed to do so, said defense may not be entertained (*Rolan vs. Perez*, 63 Phil. 80, 85-86)". See, also, *Manila Yacht Club, Inc. vs. Workmen's Compensation Commission*, L-19258, May 31, 1963.)

Petitioner assails, also, the sufficiency of the evidence in support of the amounts awarded to respondent, but this is a question of fact which may not be reviewed on appeal by certiorari.

With respect to the additional issues discussed in petitioner's memorandum in lieu of oral argument, suffice it to say that this is obviously irregular, for said memorandum was supposed to be in support merely of the position taken by petitioner in its brief. Besides, the raising of new issues in said memorandum amounts to the filing of a brief (in which said issues should have been taken up) beyond the reglementary period. Again, the question whether the claim had been filed beyond the period of two (2) months prescribed in Section 24 of the Workmen's Compensation Act and, if so, the effect thereof, had not been raised in the Commission. Similarly, the alleged prescription of action was not raised therein, until after the rendition of the decision of its Acting- Chairman, apart from not being set up in petitioner's brief. As a consequence, both defenses must be deemed waived (*Collector of Internal Revenue vs. Buan*, L-11438-39 and L-11542, July 31, 1958; *Dionisio vs. Jimenez*, 95 Phil., 594). Moreover, the failure to file the claim within the aforementioned period does not affect the jurisdiction of the Commission to entertain said claim (*Victorias Milling Co. vs. WCC*, L-1053S, May 13, 1957; *Century Insurance Co. vs. F.A. Fuentes*, L-16039, August 31, 1961). Again, compensation under the Workmen's Compensation Act, as amended, is a liability created by statute (*Pan Philippine Corporation vs. Commission*, 101 Phil., 66), which prescribes in ten (10) years, pursuant to Article 1144(2) of the Civil Code of the Philippines (*Luzon Stevedoring Co. vs. De Leon*, 106 Phil., 562), and such period had not expired when respondent's claim was filed.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against petitioner herein. It is so ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Decision affirmed.

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