

**NATIONAL HOUSING CORPORATION, PETITIONER, VS.
WORKMEN'S COMPENSATION COMMISSION, AND NICASIA
VDA. DE NIONES, MARIO AND RENATO, BOTH SURNAMED NIONES,
RESPONDENTS.**

G.R. No. L-37907. September 30, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

The National Housing Corporation, petitioner in this case, owns a big tract of land in Tala, Caloocan City. Sometime in 1971 petitioner undertook the construction of a plant complex inside its property and one of the laborers in the construction was Serafin Niones. On April 18, 1971, Serafin Niones died at the Jose Reyes Memorial Hospital in the City of Manila of "acute cardiac failure due to gastric carcinoma." On May 4, 1971, the widow, Nicasia Vda. de Niones., in her behalf and of her minor children Mario and Renato, both surnamed Niones, filed with the Workmen's Compensation Commission, Regional Office No. 4, a claim for death benefits against the National Housing Corporation docketed as WCC Case No. 123122. Copy of this claim was received by the National Housing Corporation on May 11, 1971, and on May 26, 1971, the latter filed its answer. The Acting Chief Referee issued an award on June 10, 1971. A motion for reconsideration was filed but the same was denied by the Chief Hearing Officer on September 8, 1971, by reason of which the record of the case was elevated to the Commission en banc. On August 14, 1973, the Workmen's Compensation Commission acting through Associate Commissioner, Dr. Herminia Castelo-Sotto, affirmed the award and ordered the National Housing Corporation thus:

"1. To pay to claimants through this Commission, in lump sum, the amount of FIVE THOUSAND FOUR HUNDRED PESOS (P5,400.00) as compensation and reimbursement of burial expenses;

"2. To pay to claimants' counsel, the sum of P540.00, as attorney's fee; and

"3. To pay to this Commission, the sum of P58.00 including the P5.00 costs of review, as administrative fee pursuant to Section 55 of the Workmen's Compensation Act, as amended." (p. 40, rollo)

A reconsideration of the above-quoted award having been denied the National Housing Corporation elevated the case to Us for review.

Two issues are submitted for Us to resolve, viz: (1) that there was no employer-employee relationship between petitioner-corporation and the deceased worker, Serafin Niones; and (2) that gastric carcinoma which caused the death of the worker is not an occupational and compensable disease under the Workmen's Compensation Act.

1. Petitioner alleges that there was no employer-employee relationship existing in this case to justify its liability for the illness and consequent death of Serafin Niones.

According to petitioner, it awarded to Marsteel Corporation the contract of building one of its plants at Tala and Sunga Construction was the supervising manager. Under the contract, Marsteel was to employ its own labor,

furnish the materials of prefabricated steel, etc., for which petitioner would pay it a definite amount, hence, Serafin Niones was an employee of an independent contractor and not of petitioner.[1]

Contrary to the allegations of the Petition for Review, respondent Commission, however, found from the evidence adduced that Serafin Niones was an employee of petitioner, as proof of which: (1) petitioner issued to Serafin Niones a gate pass which stated "the bearer is an employee"; (2) it remitted directly to the Social Security System the contribution or share of the employee for his social security benefits; (3) for at least 3 months prior to his death, Serafin Niones worked with the petitioner-corporation as per office records; and (4) petitioner exercised control and supervision over the conduct and work of the deceased in the construction of its plant.[2]

We find and hold that the ruling of respondent Commission on this point is supported by the law in force at the time of the death of Serafin Niones and existing jurisprudence.

Section 39(a) of the Workmen's Compensation Act provides:

"'Employer' includes every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer. It includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there." (Italics Ours)

The above provision or definition of the word "employer" is broad enough to include the National Housing Corporation in its relation with the deceased laborer, Serafin Niones, even on the assumption that the latter was part of the labor force supplied by Marsteel Corporation. This is so, for the reason that among the objectives for the creation of the National Housing Corporation is the manufacture of low cost houses, community development, etc.[3] and to accomplish such objective it undertook the construction in its Tala property of a plant complex in 1971. Although petitioner engaged the services of another entity to perform the construction work it ultimately was responsible for the supervision and control over the nature and kind of work undertaken by the laborers and employees in the construction in order that the same would conform with the specifications and standards set forth in its designs and plans. While Serafin Niones may have appeared in the payroll of Marsteel as claimed by petitioner, the fact was that on paydays the National Housing Corporation made advances of payment to the contractor for the wages of the laborers from which petitioner deducted the contributions of the workers and employees for their social security benefits and directly remitted them to the Social Security System.[4]

Applying our jurisprudence, We hold that Serafin Niones was part of the building project and function of petitioner corporation and that although the latter was not the direct employer of the deceased by reason of the presence or intervention of an alleged independent contractor, said corporation is still considered as the "statutory employer" and is liable to the claimant herein for compensation under the law.[5]

Thus, in *Manila Railroad Company vs. Vda de. Oliveros, et al*, June 30, 1961, the Court held petitioner responsible for death compensation due the heirs of a civil engineer who was employed by Tuazon, Hizon & Ocampo Construction Co. to work in the construction of a bridge which was a project of the Manila Railroad at Bacnotan, La Union. Under the contract between MRR and Tuazon Construction the latter was to supply the labor; the deceased was in Tuazon's labor force. Notwithstanding the presence of an independent contractor, MRR was still liable because the construction of the bridge was in furtherance of its transportation business, and it necessarily "exercised close supervision over the construction of the project in order to assure compliance by the contractor with the specifications provided in the contract." The Court laid down the following rule:

"x x x Where the owner of an industrial or business establishment lets another do a certain piece of work or execute a particular job directly or necessarily connected with the conduct or pursuit of its usual or habitual

business, and the owner of the said establishment has direct supervision and control of the employees or workers of the person executing the job or work, the owner of the establishment ordering the execution of the job or work becomes the statutory employer of the employees of the said contractor " (Italics Ours) (2 SCRA665, 670)

2. The second point set forth in this Petition is whether or not gastric carcinoma is work-connected and compensable under the Workmen's Compensation Act.

Petitioner asserts that inasmuch as respondent Commission in at least two cases had ruled that carcinoma has no causal relation to the work of the employee nor is aggravated by it, there is no reason now for the same Commission not to apply said rulings in the case at hand[6]

Perforce, petitioner's argument cannot stand on the basis of recent decisions of this Court which broadened the scope of compensable diseases of "laborers" under the umbrella of the presumption of compensability provided for in Section 44 of the Workmen's Compensation Act.[7]

On March 30 of this year the Court awarded compensation for the death of an employee caused by "cancer of the left lung" or bronchogenic carcinoma. Through Justice Felix Makasiar who wrote the Opinion for the Court in *Vda. de Galang vs. W.C.C., et al.*,[8] We said:

"While it is true that the actual cause of death of deceased employee Lorenzo Galang was cancer of the left lung and not PTB, this alone will not preclude payment of compensation benefits in favor of herein petitioner, for it is a settled doctrine in our jurisdiction that the law presumes in the absence of substantial evidence to the contrary that a claim is compensable, and so rigid is the rule that even where the cause of death is unknown the right to compensate subsists, the reason being that the Workmen's Compensation Act is a social legislation designed to give relief to the working man (*Industrial Textile Mfg. Co. of the Phil. vs. Florzon, et al.*, L-21969, August 31, 1966, 17 SCRA 1104 and reiterated in *Domingo Vallo vs. The Workmen's Compensation Commission and the Republic of the Philippines*, CR.No. L-41816, Oct. 29, 1976, per Justice Munoz Palma."

The Court likewise granted compensation benefits in the following instances where the ailments were: chronic rheumatic arthritis,[8-a] intestinal amoebiasis,[9] post eclampsia in a pregnant woman,[10] frontal sinusitis,[11] hernia,[12] carcinoma of the nasal pharynx,[13] amoebic liver abscess,[14] optic neuritis, migraine and dizziness,[15] malignant stomach tumor,[16] rheumatism,[17] nervous depression leading to neurosis and psycho-asthenia,[18] "bangungot,"[19] cirrhosis of the liver,[20] dermoid cyst,[21] cerebral brain tumor,[22] chronic mononeuritis,[23] cancer of the liver,[24] and gastric ulcer.[25]

In these cases, the Court invariably applied the rule of presumed compensability of the claim of the employee either because the ailment supervened in the course of employment or was aggravated by the nature of the work, uncontradicted by any substantial evidence presented by the employer, and accompanied with a failure of the employer to controvert the claim within the reglementary period provided for in the law.[26]

In this case of Serafin Niones, the respondent Commission found for a fact that the deceased was a laborer "who contracted cardiac failure due to gastric carcinoma which was aggravated by the nature of his work resulting in his death." [27] The Physician's report of sickness duly signed by Dr. Faulein Canalita, attending physician, expressly stated that the illness of the deceased worker was aggravated by the nature of his employment.

As a laborer in the construction work, Serafin Niones had to perform hard manual labor such as handling and lifting heavy construction materials, pushing carts of gravel and sand under the heat of the sun and all kinds of weather, all of which involved unusual exertions and strains coupled with the fact that he could only feed himself irregularly with deficient meals taken at very short intervals of rest periods during the day — all of that necessarily caused traumatic pressures on the worker's physical internal system and weakened his condition thereby

aggravating the diseased state of his abdomen, that is, if, as claimed by petitioner, the ailment of Serafin Niones was already in existence before he joined the Tala Construction project.

Petitioner even calls Our attention to the fact that Serafin Niones was a leper and that his leprosy was the one which aggravated whatever ailment he had.

We have examined the record of the case and respondent Commission never made a finding that Serafin Niones was sick of leprosy at the time of his employment with petitioner. The laborer may have had the disease before but it is now medically admitted that leprosy is curable and the probability is that the disease of Serafin Niones was cured otherwise he would not have been taken in the construction work of petitioner's Tala plant. And even on the assumption that Serafin Niones was sick of leprosy at some time before his employment with petitioner, there is nothing in the record to show that the laborer's gastric carcinoma was the result of or was aggravated by leprosy. What is clear to Us is that whatever pre-existing condition of leprosy the laborer had will not in itself discount the probability and overthrow the presumption that the gastric carcinoma of which the laborer died was aggravated by the strenuous physical work he undertook as a construction laborer. Probability and not the ultimate degree of certainty is test of proof in compensation proceedings.[28]

Finally, respondent Commission justifies its award on its finding that petitioner did not establish its right to controvert the claim to compensation despite notice dated May 7, 1971 and received by the petitioner on the same date. Respondent failed to submit the required employee's report of accident or sickness, within 10 days from the death of the worker, April 18, 1971, and consequently, an outright award is justified, (p. 26, rollo)

Of course petitioner asserts that it could not be expected to file an employer's report of accident or sickness because it did not consider itself the employer; that function devolved on the independent contractor. This argument is without merit, for even if it did believe that it was not the employer, considering however that the claimants gave it notice of the sickness and death of Serafin Niones, petitioner should have precisely controverted the claim and asserted the absence of an employer-employee relationship. That it failed to do, not until it answered the claim before the Workmen's Compensation Commission sometime on May 25, 1971, but then it was too late.

It is now an indisputable rule that failure to controvert results in the loss of non-jurisdictional defenses and an ultimate admission of compensability.[29]

IN VIEW OF THE FOREGOING, We hereby affirm the decision of respondent Workmen's Compensation Commission of August 14, 1973 and its Resolution of November 13, 1973, denying petitioner's motion for reconsideration.

So Ordered.

Teehankee (Chairman), Makasiar, Martin, Fernandez, and Guerrero, J.J., concur.

[1] p. 5 of Petition.

[2] pp. 18-19. rollo.

[3] Letter of Instruction No. 118 issued by the Office of the President of the Philippines in August 1973, increases the authorized capital of the National Housing Corporation from Pi 00 million to P-250 million of common shares of stock to enable it "to fulfill further its objective of manufacturing low-cost housing components and of constructing low-cost housing units for the masses . . ."

[4] petitioner's brief, p. 10.

[5] *Universal Corn Products Inc. vs. Workmen 's Compensation Commission, et al.*, per then Chief Justice-Makalintal, L-33463, May 21, 1974, 57 SCRA 51. In this case Universal Corn Products was held liable for compensation benefits arising out of the death of a security guard employed by the International Watch Agency but assigned by the tatter to guard the premises of Universal which the Court held as the statutory employer.

In *Flores vs. Compania Maritima*, 1933, 57 Phil. 905, per Carlos A. Imperial, the court held the defendant company liable for death compensation of a laborer engaged by a contractor to load and unload a company ship's cargo because the work was included in the business of defendant.

In *Shellborne Hotel vs. Hon. de Leon, et at.*, L-9149, May 31, 1957, per then Chief Justice Ricardo Paras, the petitioner Motel was ordered to compensate for the injuries sustained by a carpenter who worked in the construction of the mezzanine floor of the hotel because inter alia the "construction can be said to be for the promotion of, and to have a direct bearing on petitioner's hostelry business," although the hotel had engaged the services of a contractor for the work.

[6] p. 11, rollo.

[7] "SEC. 44. Presumption. — In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary —

"1. That the claim comes within the provisions of this Act;

" x x x x x x x x

[8] 76 SCRA 153.

[8-a] *Dimaano vs. WCC, et al*, L-43553, Aug. 31. 1977: *PROS vs. WCC, et al.*, L-43348, Sept. 29. 1976. 73 SCRA 92; *Caparas vs. WCC, et al*, L-42450. Sept. 30. 1976. 73 SCRA 221.

[9] *Morales vs. WCC, et al*, L-43856, March 31. 1977. 76 SCRA 239.

[10] *Francisco vs. WCC, et al*, L-436961. April 22, 1977. 76 SCRA 492.

[11] *Despe vs. WCC, et al.*, L-42828, February 28. 1977. 75 SCRA 350.

[12] *Santos vs. WCC, et al*, L-43243, February 28, 1977; 75 SCRA 364.

[13] *Bihag vs. WCC, et al.*, L-43162, February 28, 1977. 75 SCRA 357.

[14] *Marapo vs. Phil. Packing Corp.*, L-42390, January 31. 1977, 75 SCRA 188.

[15] *Dometita vs. WCC, et al*, L-43612. November 29. 1976. 74 SCRA 217.

[16] *Vda. de Laron vs. WCC, et al*, L-43344. Sept. 29, 1976. 73 SCRA 84.

[17] *Vda. de Leoma vs. WCC, et al*. L-42543. Sept. 30. 1976, 73 SCRA 228; *Martinez vs. WCC. et al*, L-43744, Sept. 30. 1976. 73 SCRA 271.

[18] *Camarillovs. WCC, et al*, L-42831, October 21, 1976, 73 SCRA 497.

[19] *Vda. de Galler vs. WCC, el al.* .L-41985. February 28, 1977. 75 SCRA 336.

[20] *Mercado vs. WCC, et al*, L-42451. July 30, 1976. 72 SCRA 260.

[21] *Simon vs. Republic*, L-42510. June 30, 1976. 71 SCRA 643.

[22] Manila Electric Co. vs. WCC, et al, L-31591. June 30, 1971. 39 SCRA 669; Uy vs. WCC. et al, L-38096. May 14, 1975, 64 SCRA 37.

[23] Philippine Graphic Arts vs. Mariano, L-30979. October 26. 1973, 53 SCRA 409.

[24] Maria Cristina Fertilizer vs. WCC. et al, L-29998. October 21. 1974, 60 SCRA 228.

[25] National Power Corp. vs. WCC, L-1 9843, January 30. 1965. 13 SCRA 116; Vicente Galang vs. WCC, et al. L-41893. August 27. 1976. 72 SCRA 455.

[26] See Sec. 27, Workmen's Compensation Act; Justo vs. W.C.C.. et al., L-43681, Jan. 31, 1977; Angel de Castro, Jr. vs. Republic of the Phil. A W.C.C., L-43289, Feb. 28. 1977.

[27] p. 26. rollo.

[28] Auten vs. Johnston, N.J. Sup.. 115 N.J.L. 71, 178 A. 187. 188. cited in Wallace vs. American Cyanamid Co., 1942, 26 A. 2d 704, 708.

[29] Justo vs. WCC, et al., L-43681, Jan. 31. 1977; Bael et al. vs. WCC, et al., L-42255, Jan. 31. 1977; Bihag, et al. vs. WCC, at al., L-43162, Feb. 28, 1977; Despe vs. WCC. et al., L-42828, Feb. 28. 1977.

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