

**PATRICIO BIHAG, CHARLIE BIHAG AND RICHARD BIHAG, HEIRS OF
RIZALINA BIHAG, PETITIONERS, VS. WORKMEN'S
COMPENSATION COMMISSION AND REPUBLIC OF THE PHILIPPINES
(BUREAU OF PUBLIC SC...**

G.R. No. L-43162. February 28, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for review on certiorari of the decision of the Workmen's Compensation Commission dated December 26, 1975 reversing that of the Acting Referee, Regional Office No. 7, Cebu City, dated August 21, 1975, granting the claim for compensation to herein petitioners. On July 12, 1976, this COURT resolved to give due course to this petition, treated this case as a special civil action, and required the parties to submit simultaneous memoranda.

On August 7, 1964, Rizalina B. Bihag - married to Patricio Bihag, by whom she gave birth to two children, namely, Charlie and Richard Bihag - was employed in the Bureau of Public Schools as a class-room teacher in Lapu-Lapu City, Cebu. Her service record shows that she served as such classroom teacher up to December 19, 1974, or for more than 10 years (p. 29, rec.). She died on December 20, 1974 of carcinoma of the nasal pharynx (p. 23, rec.).

On January 26, 1975, her son Charlie Bihag filed a notice of claim for compensation with the Bureau of Public Schools, Division of Lapu-lapu City.

On January 30, 1975, a committee chaired by Mr. Agapito S. Cañete, of the Bureau of Public Schools Division Academic Supervisor, and a member, Napoleon B. Tumalak, submitted its report to the Lapu-lapu City Superintendent of Schools, recommending that the claim for compensation "be given due course and favorable action." [1] The said City Superintendent of Schools, in a communication also dated January 30, 1975, submitted all the pertinent, papers in connection therewith to the Department of Labor, Regional Office No. 8, Cebu City (p. 33, rec.), which office, pursuant to Section 1, Rule 8 of the Rules of the Workmen's Compensation Commission, transmitted the same to the Office of the Solicitor General with the statement that the "claim is not controverted" and requested for that office's "official stand" on the matter (p. 34, rec.).

On February 20, 1975, the Office of the Solicitor General submitted a letter of controversion, on the ground that there is "no causal relationship between the cause of death of the deceased and the nature of her employment." [2]

On May 22, 1975, the same City Superintendent of Schools sent a letter to the Provincial Fiscal of Cebu, recommending that said claim be favorably considered. [3]

On June 18, 1975, the Office of the Solicitor General again sent a letter to the Workmen's Compensation Commission contesting claimant's right to compensation.

On August 21, 1975, the Acting Referee of Regional Office No. VII, Cebu City, rendered a decision granting the claim for compensation. A pertinent portion of this decision reads:

"Claimant Rizalina Bihag joined the government service on August 7, 1964 as classroom teacher at Lapu-lapu City Division of the Bureau of Public Schools. She was in good health until she complained of 'harsh and coarse throat due to too much talking and explaining to her pupils' in the first grade in 1972. On October 21, 1974, she was treated by Dr. Jorge Dosdos for 'gross nasopharynx & hypopharynx and metastasis, both sides of neck' (physician's report). On July 19, 1974, she suffered severe throat pain while conducting classes. Again, she was treated by Dr. Dosdos at the Chong Hua Hospital on September 30, 1974. Her illness resulted in permanent total disability and because of such disability, she was not able to return to her work until she died on December 20, 1974. She was survived by her husband, Patricio Bihag, and children, Charlie Bihag and Richard Bihag.

"The herein claim for compensation was not controverted by the Superintendent of the Division of Lapu-lapu City. The reason for this was the favorable recommendation made by the committee he created to look into the merits of the claim. Said committee found that the illness of the claimant was contracted in the course of her employment.

"There is here sufficient showing that the illness supervened at the time of claimant's service. This gives rise to the presumption that said illness was caused or aggravated by her employment in the absence of substantial evidence to the contrary. Her employment may not be the cause of the illness, but the talking she always did to her pupils at school could cause aggravation of the illness. Since no evidence was presented to dispute this presumption, a conclusion favorable to her claim for compensation is inescapable.

"In view of the foregoing, this Office finds this case within the Workmen's Compensation Act, as amended, and that the claimant is entitled to disability compensation equivalent to 60% of her weekly wage for 208 weeks, pursuant to Section 15 of the said Act. 60% of P80.21 - her average weekly wage - equals P48.12 and for 208 weeks, she is entitled to P6,000.00, the maximum allowed.

"Upon claimant's death her right to compensation was deemed transmitted to her legal heirs (RP vs. WCC, et al., L-29703, Feb. 25, 1971). Shown to be the legal heirs of the claimant are her husband, Patricio Bihag, and her two children mentioned earlier and to them the compensation due the claimant passes."

On October 17, 1975, respondent employer filed a motion for reconsideration of this order. This was denied by the acting referee on November 25, 1975, and the entire records were forwarded to the Workmen's Compensation Commission.

On December 26, 1975, respondent Workmen's Compensation Commission rendered a decision reversing that of the acting referee and denying the claim for compensation, on the ground that "the cause of death of decedent is carcinoma nasopharynx and as such, it has no causal relationship with the nature of her employment."

This finding is predicated on the medical report of Angelina V. Cruz Geonaratne, Medical Supervisor I, which states that "Mrs. Rizalina Bihag was treated for CA of the nasopharynx and died on December 20, 1974. Cancer is a disease of unknown etiology but it is not an occupational disease. It has no causal relationship to her work and has a course of its own usually fatal and teaching will not change its course."

Maria Cristina Fertilizer Corporation vs. Workmen's Compensation Commission and Epifania Vda. de Castillo (G.R. No. L-29998, Oct. 21, 1974, 60, SCRA, 228) would support the medical report that cancer is not an occupational disease, but at the same time stressed that it is not an obstacle to the compensability of any illness. The records would show that the principal duties of the deceased Rizalina Bihag as a classroom teacher was mostly talking and explaining to her Grade I pupils. She entered the government service on August 7, 1964 in good health. On October 21, 1972, she complained of hoarse throat due to too much talking and explain-ing to

her pupils and was treated by Dr. Dosdos for (1) mass carcinoma nasopharynx and (2) metastasis, both sides of the neck. On July 18, 1974, she became sick of sinusitis affecting eyesight and throat, with severe headache. On the following December 20, 1974, or about 3 months afterwards, she died of carcinoma of the nasopharynx.

Indubitably, the principal duties and responsibilities of the deceased as a classroom teacher directly affected her vocal cavity and may have exhausted the chord. Continuous talking can be a contributory factor to her disease. Medical science accepts certain contributory factors in the etiology of carcinoma of the esophagus. Some contributory theories offered are irritation of the esophogical mucosa by chemical, mechanical, or thermal stimuli (p. 169, Vol. I Gastroenterology by Backus, Second Ed.). Plainly, it was during and in the course of the deceased's employment as a classroom teacher that she felt the symptoms of her ailment and it was also during her employment when she suffered cancer of the esophagus which is the principal cause of her death. At the very least, therefore, the nature and condition of her work contributed to and aggravated in a large measure her ailment and entitled her to compensation under the Workmen's Compensation Act. Thus, *Lilia D. Simon versus Republic of the Philippines* (G.R. No. L-42510, June 30, 1976), citing a very recent case penned by Mr. Justice Ruperto G., Martin, held:

"x x x x assuming the employee's illness may be ruled out an occupational disease or that the causal link between the nature of his employment and his ailment, has been insufficiently shown, nevertheless, it is to be presumed as mandated by Section 44 of the Workmen's Compensation Act that the employee's illness which supervened during his employment either arose out of, or at least aggravated by said employment and with this presumption, the burden of proof shifts to the employer and the employee is relieved of the burden to show causation. In the case before us, the respondent has failed to discharge that burden. The mere opinion of the doctor who treated the petitioner that 'dermoid cyst' is congenital, although he admitted that it may also be aggravated by her employment, cannot prevail over the presumption of compensability.

"x x x x x.

"x x x x It is now well settled that once it is established that the illness supervened during employment, as in this case, there is a rebuttable presumption that such illness arose out of the employment or was aggravated by it; and the employer has the burden of proving the contrary by substantial evidence. Here the petitioner failed to discharge that burden. It did not adduce substantial evidence tending to show that the disease which caused the death of the late Alfonso Castillo was not service-connected. The mere opinion of its plant physician that there was no causal connection between cancer of the liver and the nature of Castillo's employment cannot prevail over the said presumption."

In the subsequent case of *Laron vs. Workmen's Compensation Commission and Republic of the Philippines* (Department of Health) [L-43344, Sept. 29, 1976], the deceased, who was a cook in a government hospital, died of stomach cancer and was granted death benefits by reason of his death, because the ailment supervened during his employment.

Moreover, as found by the referee, there was no timely controversion on the part of the superintendent, as representative of the Bureau of Public Schools, which failure constitutes a waiver of all defenses other than jurisdictional.

WHEREFORE, THE DECISION OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY SET ASIDE AND THE RESPONDENT BUREAU OF PUBLIC SCHOOLS IS HEREBY ORDERED TO PAY:

1. CLAIMANT CHARLIE BIHAG, FOR HIMSELF AND IN BEHALF OF HIS FATHER PATRICIO BIHAG, AND HIS BROTHER RICHARD BIHAG:

A. THE SUM OF SIX THOUSAND AND TWO HUNDRED PESOS (P6,200.00) AS COMPENSATION BENEFITS AND REIMBURSEMENT OF BURIAL EXPENSES; AND

B. SIX HUNDRED PESOS (P600.00) AS ATTORNEY'S FEES; AND

2. THE WORKMEN'S COMPENSATION COMMISSION THE SUM OF SIXTY-ONE PESOS (P61.00) AS ADMINISTRATIVE FEES.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[1] "We have the honor to submit herewith our detailed report on the compensability of the claim of Mr. Charlie Bihag, son of Mrs. Rizalina B. Bihag, who died on December 20, 1974 due to cancer of the pharynx in conformity to the pro-visions of Circular No. 5, s. 1969, viz:

"That Mrs. Rizalina B. Bihag, classroom teacher of Canjulao Elementary School applied for sick leave and got confined at the Chong Hua Hospital, Cebu City, up to September 30, 1974. She then stayed in bed at home but died on December 20, 1974. According to the attending physician's statement of sickness, Mrs. Bihag died of carcinoma of the nasal pharynx. Attached herewith are the papers to support this claim for compensability.

"Furthermore, we wish to make it of record that the hereunder designated committee members have a full knowledge of Mrs. Rizalina Bihag's having suffered such illness as carcinoma of the nasal pharynx.

"In view of the above, it is hereby recom-mended that the claim of Mr. Charlie Bihag be given due course and favorable action."

[2] "In connection with your Notice and Claim, etc. relative to the above-captioned case, please be informed that we referred the same to the Director, Bureau of Public Schools, Manila, for his informa-tion and appropriate action pursuant to Memorandum Circular No. 210 of the Office of the President of the Philippines.

"In the meantime, please register our controversion on this claim, there being no causal relationship between the cause of death of the deceased and the nature of her employment."

[3] "This is with reference to a letter of that Office dated May 15, 1975 re the claim for compensation filed by the heirs of Rizalina B. Bihag, a former public school teacher of this Division. In view of the favorable recommendation, copy attached, of the Committee created to look into this matter, this Office is not submitting counter affidavits and other documents in this regard.

"It is therefore recommended that said claim be favorably considered."

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