

ESTRELLA B. ONDOY, PETITIONER, VS. VIRGILIO IGNACIO, PROPRIETOR M/B LADY ESTRELLITA AND/OR IMPERIAL FISHING ENTERPRISES AND/OR THE SECRETARY OF LABOR AND/OR THE COMPENSATION APP...*G.R. No. L-47178. May 16, 1980*

Ponente: FERNANDO, C.J.

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The undisputed facts argue strongly for the granting of the claim for compensation filed by petitioner, the mother of one Jose Ondoy, who was drowned while in the employ of private respondent, Virgilio Ignacio. Whatever be the cause for the failure to do so, it is admitted that there was no controversion. Such omission, fatal in character, was sought to be minimized by the filing of a motion to dismiss based on the alleged absence of an employment relationship. What cannot be ignored, however, is that subsequently, in the hearing of such claim, private respondent submitted affidavits executed by the chief engineer and oiler of the fishing vessel that the deceased, a fisherman, was in that ship, undeniably a member of the working force, but after being invited by friends to a drinking spree, left the vessel, and thereafter was found dead. The referee summarily ignored the affidavit of the chief-mate of respondent employer to the effect "that sometime in October, 1968, while Jose Ondoy, my co-worker, was in the actual performance of his work with said fishing enterprises, he was drowned and died on October 22, 1968. That the deceased died in line of duty." [1] The hearing officer or referee dismissed the claim for lack of merit. [2] A motion for reconsideration was duly filed, but in an order dated August 29, 1977, the then Secretary of Labor, now Minister Blas F. Ople, denied such motion for reconsideration for lack of merit. [3] Hence this petition for review.

- In *La Mallorca v. Workmen's Compensation Commission*, [4] this Court explicitly held that the failure to controvert "is fatal to any defense that petitioner could interpose. So we have held in a host of decisions in compliance with the clear and express language of the Workmen's Compensation Act. Any assertion to the contrary is doomed to futility." [5] The opinion noted thirty decisions starting from *Bachrach Motor Co. v. Workmen's Compensation Commission* [6] to *Northwest Orient Airlines, Inc. v. Workmen's Compensation Commission*. [7] Thereafter, in *Regal Auto Works, Inc. v. Workmen's Compensation Commission*, [8] such a doctrine was reaffirmed. It was further noted that nine more decisions had been rendered by this Court starting from *Republic v. Workmen's Compensation Commission* [9] to *Abong v. Workmen's Compensation Commission*. [10] By the time respondent Secretary of Labor denied the motion for reconsideration, a host of decisions that speaks to the same effect had been promulgated. [11] It clearly appears, therefore, that the failure of the referee to grant the award ought to have been remedied and the motion for reconsideration granted.

- The deceased in this case met his death because of drowning. In *Camotes Shipping Corporation v. Otadoy*, [12] there was not even any direct testimony that the deceased was drowned while in the performance of his duty. All that could be alleged was that he "was lost at sea while in the employ of petitioner." [13] Nonetheless, the award for compensation was sustained. Likewise, the ruling in *Caltex (Phil.) Inc. v. Villanueva* [14] was cited with

approval. Thus: "The fact that the employee was found missing while on board the petitioner's vessel MV 'Caltex Mindanao' became known to the captain of the vessel on 10 October 1956 but it was only on 6 November 1956 when the petitioner transmitted to the respondent Commission WCC Form No. 3 stating that the employee was 'lost at sea and presumed dead as of October 10, 1956,' and that it was controverting the respondent's claim." [15] In the present case, there is evidence of the fact of death due to drowning. That was not controverted. Under the circumstances, the failure to grant the claim finds no justification in law.

- It bears repeating that there is evidence, direct and categorical, to the effect that the deceased was drowned while "in the actual performance of his work" with the shipping enterprise of private respondent. Even without such evidence, the petitioner could have relied on the presumption of compensability under the Act once it is shown that the death or disability arose in the course of employment, with the burden of overthrowing it being cast on the person or entity resisting the claim. Time and time again this Court has stressed such statutory provision. It suffices to mention cases decided from January to April of this year. [16] An appraisal of the counter-affidavits submitted by two employees of private respondent and there-after beholden to him to the effect that the deceased left the vessel for a drinking spree certainly cannot meet the standard required to negate the force of the presumption of compensability.

- Nor is an affirmance of the finding of the referee adverse to the claim warranted because of the doctrine that the findings of facts of an administrative agency must be accorded due weight and consideration. An excerpt from the recent case of *Uy v. Workmen's Compensation Commission* [17] finds pertinence: "The claim merits scant consideration for this Court is authorized to inquire into the facts when the conclusions are not supported by substantial or credible evidence." [18]

- This Court, in recognizing the right of petitioner to the award, merely adheres to the interpretation uninterruptedly followed by this Court resolving all doubts in favor of the claimant. So it has been since the first leading case of *Francisco v. Conching*, [19] decided a year after the 1935 Constitution took effect. What was said in *Victorias Milling Co., Inc. v. Workmen's Compensation Commission* [20] is not amiss: "There is need, it seems, even at this late date, for [private respondent] and other employers to be reminded of the high estate accorded the Workmen's Compensation Act in the constitutional scheme of social justice and protection to labor." [21] Further: "No other judicial attitude may be expected in the face of a clearly expressed legislative determination which antedated the constitutionally avowed concern for social justice and protection to labor. It is easily understandable why the judiciary frowns on resort to doctrines, which even if deceptively plausible, would result in frustrating such a national policy." [22] Lastly, to quote from the opinion therein rendered: "To be more specific, the principle of social justice is in this sphere strengthened and vitalized. A realistic view is that expressed in *Agustin v. Workmen's Compensation Commission*: 'As between a laborer, usually poor and unlettered, and the employer, who has resources to secure able legal advice, the law has reason to demand from the latter stricter compliance. Social justice in these cases is not equality but protection.'" [23]

WHEREFORE, the petition for review is granted and petitioner Estrella B. Ondoy is awarded the sum of P6,000.00 as compensation for the death of her son, Jose Ondoy; P300.00 for burial expenses; and P600.00 as attorney's fees. This decision is immediately executory. Costs against private respondent Virgilio Ignacio.

Antonio, Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.
Barredo, J., is on leave.

[1] Annex C-1.

[2] Petition, par. 8.

[3] Ibid., par. 11.

[4] L-29315, November 28, 1969, 30 SCRA 613.

[5] Ibid., 619-620.

[6] 99 Phil. 238 (1956).

[7] L-25274, July 29, 1969, 28 SCRA 877.

[8] L-29455, September 30, 1975, 67 SCRA 207.

[9] L-26763, December 26, 1969, 30 SCRA 811.

[10] L-32347, December 26, 1973, 54 SCRA 379.

[11] Cf. *Security Services v. Workmen's Compensation Commission*, L-40739, Jan. 30, 1976, 69 SCRA 269; *Dinaro v. Workmen's Compensation Commission*, L-42457, March 31, 1976, 70 SCRA 292; *Talip v. Workmen's Compensation Commission*, L-42574, May 31, 1976, 71 SCRA 218; *Reynaldo v. Republic*, L-43108, June 30, 1976, 71 SCRA 650; *Laude v. Moderna*, L-43009, Aug. 31, 1976, 72 SCRA 569; *Vda. de Lauron v. Workmen's Compensation Commission*, L-43344, Sept. 29, 1976, 73 SCRA 84; *Pros v. Workmen's Compensation Commission*, L-43348, Sept. 29, 1976, 73 SCRA 92; *Camarillo v. Workmen's Compensation Commission*, L-42831, Oct. 21, 1976, 73 SCRA 497; *Vallo v. Workmen's Compensation Commission*, L-41816, Oct. 29, 1976, 73 SCRA 623; *Dometita v. Workmen's Compensation Commission*, L-43612, Nov. 29, 1976, 74 SCRA 217; *Arzadon v. Workmen's Compensation Commission*, L-42404, Dec. 8, 1976, 74 SCRA 238; *Delgado Brothers v. Workmen's Compensation Commission*, L-42753, Feb. 28, 1977, 75 SCRA 343; *Deope v. Workmen's Compensation Commission*, L-42828, Feb. 28, 1977, 75 SCRA 350; *Bihag v. Workmen's Compensation Commission*, L-43162, Feb. 28, 1977, 75 SCRA 357; *Gomez v. Workmen's Compensation Commission*, L-43617, Feb. 28, 1977, 75 SCRA 395; *Baterna v. Workmen's Compensation Commission*, L-43932, Feb. 28, 1977, 75 SCRA 409; *Buenaventura v. Workmen's Compensation Commission*, L-42835, April 22, 1977, 76 SCRA 485; *Romero v. Workmen's Compensation Commission*, L-42617, June 30, 1977, 77 SCRA 482; *Evangelista v. Workmen's Compensation Commission*, L-43572, June 30, 1977, 77 SCRA 497.

[12] L-27699, October 24, 1970, 35 SCRA 456.

[13] Ibid., 456.

[14] 112 Phil. 897 (1961).

[15] Ibid., 905-906.

[16] Cf. *Guzman v. Workmen's Compensation Commission*, G. R. No. L-38911, Jan. 28, 1980; *Pajarillo v. Workmen's Compensation Commission*, L-42927, Jan. 28, 1980; *Villones v. Employees Compensation Commission*, L-44301, Feb. 14, 1980; *Cabriera v. Workmen's Compensation Commission*, L-43363, Feb. 21, 1980; *Del Rosario v. Workmen's Compensation Commission*, L-44114, Feb. 21, 1980; *Macatol v. Workmen's Compensation Commission*, L-43127, Feb. 28, 1980; *Barga v. Employees Compensation Commission*, G. R. No. L-49227, April 25, 1980; *Reyes v. Workmen's Compensation Commission*, G. R. No. L-46579, April 28, 1980; *Guillen v. Workmen's Compensation Commission*, G. R. No. L-46692, April 28, 1980; *Cenabre v. Employees Compensation Commission*, G. R. No. L-46802, April 28, 1980; *Avendaño v. Employees Compensation Commission*, G. R. No. L-48593, April 30, 1980.

[17] L-43389, April 28, 1980.

[18] Ibid., 15. The opinion of Justice Makasiar cited the following cases: *International Factory v. Vda. de Doria and WCC*, 109 Phil. 553 (1960); *Abong v. WCC*, L-32347-53, Dec. 26, 1973, 54 SCRA 379; *Mulingtapang v. WCC & Marcelo Steel Corporation*, L-42483, Dec. 21, 1977, 80 SCRA 610; *Yutuc v. Republic of the Philippines*, L-43270, Dec. 29, 1978, 87 SCRA 436.

[19] 63 Phil. 354.

[20] L-25665, May 22, 1969, 28 SCRA 285.

[21] Ibid., 296.

[22] Ibid., 297-298.

[23] Ibid., 298. *Agustin v. Workmen's Compensation Commission* is reported in 120 Phil. 846 (1964). The ponente is Justice J.B.L. Reyes. It must be stressed that the present Constitution has expanded and made more specific the principles of social justice and protection to labor.

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