

(WITH RES. JAN. 30, 1964)*G.R. No. L-16490. June 29, 1963*

Ponente: REYES, J.B.L., J.

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The petitioner seeks the reversal of the decision and the resolution of the respondent Workmen's Compensation Commission, affirming, with modification, the decision rendered by Hearing Officer Liberate C. Delizo of Regional Office No. 1, Dagupan City, in WOC Case No. 89-ROL. The modified decision, ordering the present petitioner—

- "1. To pay to the claimant, thru this Office, the amount of P4,000.00 - as compensation;
2. To provide such medical, surgical and hospital services and supplies until claimant's pulmonary tuberculosis is cured or arrested; and - . .
3. To pay to the Workmen's Compensation Fund the sum of P46.00 as costs."

was affirmed by resolution of the Commission en banc, denying the petitioner's motion for reconsideration.

The respondent-claimant Cecilio Gatdula, after he was found physically fit for work, was employed as a driver of the Pangasinan Transportation Company, Inc., from January 1950. The routes assigned to him, Dagupan- Tayug via San Carlos, San Jose-Dagupan via Villasis, and Dagupan-Mangatarem via San Carlos, all in the province of Pangasinan, were rough and dusty. He further helped his conductor to load and unload baggages, or, when his conductor was busy punching passengers' tickets, did the work by himself. His driving schedule started from six o'clock in the morning to six o'clock in the afternoon, and from the same time to eight o'clock in the evening every alternate day.

On 20 June 1953, while driving for the company, Gatdula met an accident, suffered injuries, was hospitalized for time, and discharged from the hospital on 22 August 1953. The company fully compensated for his injuries, and he returned to work on 17 January 1954. Before the end of the year, he complained of breast and back pains and headaches. First aid treatment, in the form of Cortal tablets, gave him temporary relief from his headaches, but the chest and back pains persisted. On 23 January 1955, he was afflicted with bronchitis, acute, and the company ordered him to stop working; a month thereafter, he was found suffering from pulmonary tuberculosis, moderate, right; on 12 April 1955, the disease became chronic, fibro-exudative, bilateral.

The wage-earner-claimant filed his notice of sickness and claim for compensation on 2 September 1957, and a copy thereof was sent to the company on 14 October 1957.

The petitioner-company insists that (1) the claim is barred for failure of the wage-earner to file his notice of sickness and claim for compensation within sixty (60) days from disability, as established in Section 24 of the Workmen's Compensation Act, as amended; (2) the hearing officer had no jurisdiction to hear the case; and (3) the claimant's illness was not caused by, or traceable to, and aggravated by, the nature of his employment.

We find none of these defenses to be meritorious.

While it is true that the claimant filed his notice of sickness and claim for compensation only on 2 September 1957, after more than two (2) years from the time the disease was discovered, such delay is excused because the employer had actual knowledge of the claimant's bronchitis, which, shortly thereafter, developed into pulmonary tuberculosis; and claimant was actually laid off due to his pulmonary affliction. Section 27 of the Workmen's Compensation Act, as amended, provides:

"Sec. 27. Sufficient notice.—* * *. Failure to or delay in giving notice shall not be a bar to the proceedings herein provided for, if it is shown that the employer, his agent or representative had knowledge of the accident or that the employer did not suffer by such delay or failure."

On the question of jurisdiction, the doctrine is now settled that Reorganization Plan No. 20-A, insofar as it confers judicial power to the Regional Offices over cases other than those falling under the Workmen's Compensation Law, is invalid and of no effect (*Miller vs. Mardo*, L-15138, July 31, 1961). This Court, in the case of *La Mallorca and Pampanga Bus Company vs. Ramos, et al.*, L-15476, September 19, 1961, precisely resolved the same issue on the jurisdiction of hearing officers now raised by the petitioner. It said—

"* * *. The claim involved in this action is for compensation for disability due to tuberculosis, alleged to have been caused and aggravated by the nature of plaintiff's employment in the petitioners' service. It is then a claim which falls squarely under Section 2, of the Workmen's Compensation Law * * *."

"* * * * *"

And, as the jurisdiction vested by Act No. 3428, as amended, on the Workmen's Compensation Commission to hear and decide claims for compensation coming under its provisions has not been revoked, either expressly or by necessary implication, by Republic Act No. 992, as amended, or by any other subsequent statute, and the regional offices created under Reorganization Plan No. 20-A in the Department of Labor partake of the nature of referees which the Workmen's Compensation Commission had the right to appoint and clothe with jurisdiction to hear and decide such claims (Sec. 48, Act No. 3428, as amended), the provisions of said reorganization plan, insofar as they confer on said regional offices jurisdiction over claims for compensation falling under the Workmen's Compensation Law, is perfectly legal; and their decisions on such claims are valid and binding."

The Commission found as a fact, and its finding cannot be disturbed on appeal, being supported by substantial evidence and experience, that—

"The rough and dusty condition of the routes assigned to the herein. claimant, his lifting of baggages and cargoes of passengers thereby using physical exertion, and the nature of his work as driver requiring him to remain in the bus from eight to twelve hours every day the whole week, are the precipitating factors and the producing cause of the aggravation of his already pre-existing pulmonary tuberculosis. It is not surprising, therefore, that on February 5, 1955, the claimant's illness of pulmonary tuberculosis was found to be in its moderate stage."

A stronger reason to sustain the compensability of the present claim is that the company failed to rebut the presumption in favor of the working man, as held in the case of *Naira vs. Workmen's Compensation Commission et al.*, L-18066, 30 October 1962, when this Court pronounced

"* * *, in the absence of proof that the injury or death supervening in the course of employment has arisen because of the nature of the same, the death or injury is, by law, compensable, unless tile employer clearly establishes that it was not caused or aggravated by such employment or work. Mere absence of evidence that the mishap was traceable to the employment does not suffice to reject the claim; there must be credible showing that it was not so traceable. * * *."

while the company, in the case at bar, theorizes that the claimant Gatdula was infected by his wife, who died of tuberculosis on 23 April 1956, the testimony of Dr. Jose Gaerlan indicated a strong probability that it was the claimant who infected his wife.

Wherefore, the decision under review is affirmed, with costs against the petitioner, Pangasinan Transportation Company, Inc.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concur.

RESOLUTION

January 30, 1964.

REYES, J. B. L., J.:

Petitioner, Pangasinan Transportation Company, Inc., has filed, through counsel, a motion praying for reconsideration of the decision of this Court, promulgated on June 29, 1963, affirming that of the Workmen's Compensation Commission. We ordered the case set for rehearing on October 23, 1963. The parties have chosen to submit memoranda in lieu of oral argument.

The motion to reconsider is based on two grounds:

- (1) That the claimant Gatdula's illness was neither caused nor aggravated by the nature of his employment; and
- (2) That his claim was barred for failure to submit it to his employer within the two (2) months period prescribed by section 24 of the Workmen's Compensation Act.

The first ground is without merit. The findings of fact of the Commission, that the condition of Gatdula's work as driver and loader of the company's buses exposed him to tubercular infection, as well as the presumption of compensability established by statute, have not been adequately destroyed by the evidence, invoked by the petitioner. The testimony of Dr. Gaerlan that respondent was contaminated by his deceased wife is pure supposition, and the fact that the wife died ahead of tuberculosis does not warrant the inference that she contracted the disease earlier than her husband. We find this assumption of the doctor much too flimsy, it being undeniable that the earlier demise could be due to other factors, such as the weaker constitution of the wife. Mere possibilities are not enough to enervate the statutory presumption.

After mature consideration, the Court reached the conclusion that the second ground is meritorious, and furnishes adequate basis for setting aside the previous decision. "Here it is not disputed", says the Workmen's Compensation Commission in its decree appealed from, "that the notice of injury or sickness and claim for compensation was filed by the claimant only on September 2, 1957 or more than two (2) years from January 23, 1955 the day he stopped working for the respondent". Nevertheless, the Commission concluded that the claim was still not barred because the employer (petitioner) "was notified of the ailment of respondent Cecilio Gatdula", since it had actual knowledge thereof, and, in fact, ordered him to stop working. The Commission was of the opinion that this knowledge sufficed to excuse the absence of timely claim under section 27 of the Compensation Act, to the effect that—

"Sec. 27. Sufficient notice.—Any notice given in accordance with the provisions of section twenty-five of this Act shall not be considered as invalid or sufficient by reason of any incorrectness to the statement of time, place, nature or cause of the injury or of anything else, unless it be shown that the employer has been actually misinformed respecting the injury. Failure to or delay in giving notice shall not be & bar to the proceeding

herein provided for, if it is shown that the employer, his agent representative had knowledge of the accident or that the employer did not suffer by such delay or failure." (Italics supplied)

Petitioner points out, with reason, that said section 27 refers clearly to the notice of injury, but not to the claim for compensation; that section 24 of the Act clearly requires the claimant to perform two different acts; (a) notify the employer of the injury or sickness suffered by the claimant worker; and (b) file with the employer a claim for compensation within two months. This is plainly shown by the text of section 24:

"Sec. 24. Notice of the injury and claim for compensation.—No compensation proceeding under this Act shall prosper unless the employer has been given notice of the injury or sickness as soon, as possible after the same was received or contracted, and unless a claim for compensation was made not later than two months after the date of the injury or sickness, or in case of death, not later than three months after death, regardless of whether or not compensation was claimed by the employee himself. Such notice may be given and such claim made by any person considering himself entitled to the compensation or by any other person in his behalf. In case medical, surgical, and hospital services and supplies have been furnished voluntarily by the employer, notice of the injury or sickness within the time limit above mentioned shall not be necessary, and if the employer has voluntarily made the compensation payments, the claim for compensation to be made within the time limits above established shall no longer be necessary." (Italics supplied)

The statute distinguishes clearly the notice of injury from the claim of compensation, to the extent of prescribing different periods for the filing of each. As to the notice of injury or sickness, the same is to be given "as soon as possible" without any fixed period. The law evidently realizes that, while the time of giving notice can not be predetermined, it is important that the employer be afforded the earliest opportunity to determine the circumstances surrounding the injuring mishap, and obtain the testimony of witnesses while the same is fresh in their memory; for, as pointed out by the eminent criminologist, Dr. Edmond Locard, in his manuals of criminal investigation, the hours immediately following the event to be investigated "are priceless, and in these matters, the time that passes is truth in flight".

Upon the other hand, for the filing of the claim for compensation with the employer, the law allows a fixed period of two months (or three months in case of death of a workman). While not as urgent as the giving of notice of injury (which must be done "as soon as possible"), the statute still sets a very short period for filing the claim in order to enable the employer to decide quickly what precautions he must take to protect his interests. For it is evident that his defenses in case the injured workman chooses to hold the employer under the Workmen's Compensation Laws will not be the same as those to be taken when the worker elects to sue the employer under the Civil Code. Under the latter, he can set up a variety of defenses (i.e., lack of fault or negligence on the part of the employer, assumption of risk, contributory negligence, last clear chance, etc.) that would not be available under the Workmen's Compensation Act.

The distinction between notice of injury and claim for compensation is further emphasized by section 24, where different excuses are allowed for each case. Delay or absence of notice of injury within the time limited is not required "when medical, surgical and hospital services and supplies have been furnished voluntarily by the employer while delay in filing a claim for compensation need not be made within the respective time limit "if the employer has voluntarily made the compensation payments". Thus the excuses for delay are neatly distinguished.

Again, the last phrase in section 25 of the Act, "that "the notice may include the claim", plainly indicates that the two, are not identical, since the permissive "may" reveals that normally, "notice" (of injury) will not include the "claim" for, compensation,

The same diversity appears in section 26. After specifying the persons to whom "the notice" is to be served, and the manner in which the same is to be given, the section adds that "the foregoing provisions shall be applicable to

the procedure in connection with the claim". Once more, the statute plainly indicates that "notice" (of injury) is not to be identified with "claim" for compensation.

From the premises, we think it is incontestable that when the Workmen's Compensation Law, in its section 27, speaks of "sufficient notice", and that "failure to or delay in giving "notice shall not be a bar—if it is shown that the employer—had knowledge of the accident or—did not suffer by such delay or failure", without making the least reference therein to the claim for compensation, or any assimilation of one and the other (as is done in section 25 and 26, heretofore discussed), the provisions of section 27 must have been intended to apply exclusively to the notice of injury, and do not apply to the claim for compensation. For the courts to hold otherwise would require disregard of a clear legislative intent.

We are not called upon to decide whether the time limits set by the Compensation Act are too short or not. The fixing of these periods are essentially a matter of legislative discretion that the courts may not disregard without breaching the separation of powers.

Since it is clear that the only statutory excuse for a late claim is the making by the employer of compensation payments, in part or in full (section 24), and since no such payments were proved to have been made in this case by the employer, Pangasinan Transportation Co., Inc., the award by the Compensation Commission is not warranted in law.

The great majority of decisions in the United States (from which we derived our own Compensation Act) is to the effect that failure to present a claim for compensation within the legal time limit is fatal, because its presentation in due time is a condition precedent to the compensation proceedings and of jurisdictional import (see 78 ALR, p. 1294). This Court has expressed the same views in *Luzon Stevedoring vs. Workmen's Compensation Commission*, L-18388, June 28, 1963.

Respondent-claimant invokes our ruling in *Saulog vs. Del Rosario*, L-11504, May 23, 1959, that any provisions concerning the form of notice should normally be deemed applicable to claim; but the ruling that either or both of them may be written or verbal does not warrant the conclusion that one can take the place of the other, or that anything which applies to notice should also apply to the claim, when the statute plainly considers each distinct from the other, their purposes being likewise diverse.

Finally, we are not unaware that the tendency of late has been to view delay in filing a claim for compensation with the employer, or his representative, as being merely a defense that is subject to the general rules of waiver (2 *Larson, Workmen's Comp. Law*, 284-287; *Horowitz, Workmen's Compensation Law*, 254, 255), and such, is the minority view in the United States (78 ALR 1306). But even if this Court were to adhere to the latter doctrine, the award in the present case would still remain untenable, since the employer from the very beginning has pleaded the delay, and consistently relied thereon throughout these proceedings without adopting any position incompatible with such defense.

Wherefore, the motion is granted, and our decision of June 29, 1963 is reconsidered and set aside. A new decision shall be entered whereby the award of the Workmen's Compensation Commission under appeal is reversed, and the claim for compensation ordered dismissed. No costs.

So ordered.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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