

NATIONAL DEVELOPMENT COMPANY, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND ROSARIO MARTIN VDA. DE MALLARI, RESPONDENTS.

G.R. No. L-27692. May 30, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

For the death of Milagros Mallari due to pulmonary tuberculosis her mother, respondent Rosario Martin Vda. de Mallari, obtained an award of death compensation benefits in the sum of P2,196.48, plus burial expense reimbursement of P200.00, against the erstwhile employer, the National Development Company. The award is the subject of this re-view by certiorari.

The two issues posed by the petitioner are: (1) that the death of Milagros Mallari was not compensable, either under the theory of work-connection or aggravation of illness; and (2) that the claim for compensation did not comply with the requirements of Section 24 of Act No. 3428.

We take up the second issue, which we believe is decisive of this case.

The late Milagros Mallari was an apprentice weaver, later on a spare weaver, in the National Development Company since 1947. During her employment she was afflicted with pulmonary tuberculosis, minimal stage. On December 21, 1951 "she spat blood while operating the machine," was advised by the work supervisor to rest, was taken to the company dispensary, and failed to report the following day. Nor did she return thereafter. There is an allegation in the petition for review, not denied by respondent, that on the date aforesaid Milagros Mallari was separated from the service and given the corresponding gratuity. The sickness must have progressively become worse since then, for she died on July 12, 1953, when she was no longer an employee.

The deceased's mother, respondent here, first filed a claim in the Court of First Instance of Manila on August 29, 1960. The claim was dismissed and the dismissal was subsequently sustained by this Court. Another claim was filed with Regional Office No. 4 of the Department of Labor on January 25, 1963. Petitioner herein put up the defense that the claim was time-barred under section 24 of the Workmen's Compensation Act (No. 3428), which provides that "no compensation proceedings under this Act shall prosper ... unless a claim for compensation was made not later than two (2) months after the date of the injury or sickness or in case of death, not later than three (3) months after death..."

The claim here was filed in the Court of First Instance more than seven years, and in the Department of Labor more than nine years, after death. The defense, however, was turned down both by the Referee and subsequently by the Workmen's Compensation Commission itself on the ground that "despite respondent's (petitioner here) knowledge of Mallari's death it miserably failed to controvert the claimant's right to compensation, thereby forfeiting by operation of law (Section 45 of the Act) all the defenses it might have against the claim, including the defense that it was filed out of time."

Although as a general rule findings of fact by the Workmen's Compensation Commission are not reviewed by this Court, the peculiar circumstance that the claim here was not formally asserted until after the lapse of more than seven years constrains us to take a closer look into the factual background of the ruling appealed from. Failure to controvert indeed constitutes an implied waiver of defenses, including prescription, as pointed out by the Commission. But such waiver presupposes that the respondent had knowledge of the sickness, injury or death upon which the claim is predicated. In this case it should be noted that when Milagros Mallari died she was no longer in the service of respondent below, now petitioner, and had been out of the service for almost two years. Knowledge of her death on the part of petitioner cannot be presumed from any employer-employee relationship. The only evidence on the point is the testimony of the claimant herself that while her daughter was still lying in state she went to a certain Francisco Lopez, assistant manager of the textile mills of the company, requested from him some financial aid for burial expenses and also demanded other benefits that might be due to the deceased, but that the same were denied. This evidence is disputed by the company, through its administrative officer, who said that Francisco Lopez had left the service and, his whereabouts being unknown, was no longer available to rebut the claimant's testimony; but that if it were true that the claimant had made such a demand it would have appeared in the record of the company, and no record there-of existed.

Ordinarily such negative evidence would not preponderate over the claimant's positive statement; but in determining the question of evidentiary weight and credibility the following circumstances must be considered: that death occurred almost two years after the employee had left the service; that the alleged demand for compensation benefits was not made of record; that it was not followed up after it was verbally denied, especially at a time when the claimant was presumably in urgent financial need; and that the claim was not formally filed until over seven years later - over nine years, in fact, before the proper office. The law requires that the claim for compensation must be made within two months in case of sickness or the injury, and within three months in case of death. These peremptory periods are fixed not merely to prevent stale claims but also to ensure that the case is really compensable, for which purpose it is necessary that the employer be given a reasonable opportunity to investigate while the facts are still accessible and to avail of witnesses who have personal knowledge of them. Of course if a timely claim is filed or if the employer has knowledge of the injury, sickness or death, and he fails to file a notice of controversion he is deemed to have waived his defenses. But it is quite dangerous and unfair to the employer to accord unqualified credence to the self-serving statement of a claimant that is entirely unsupported by the record and made years after the time the claim should have been formally presented. The employer, with evidence to the contrary no longer available, would be virtually at the claimant's mercy in such a situation. To be sure, there are cases where a mere verbal notice of injury or death and claim for compensation has been held sufficient, but those are cases in which the evidence there-of is clear and convincing. The present instance is not one of them.

Wherefore, the decision appealed from is reversed and set aside, without pronouncement as to costs.

Dizon, Zaldivar, Sanchez, Fernando, Capistrano, and Barredo, JJ., concur.

Reyes, J.B.L. (Acting C.J.), in the result.

Teehankee, J., took no part.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

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