

INTERNATIONAL OIL FACTORY, PETITIONER, VS. TOMASA MARTINEZ VDA. DE DORIA, FOR HERSELF AND IN BEHALF OF HER MINOR CHILDREN TEOFILO, CLARA AND EMERITA, ALL SURNAMED DORIA, AND HON...

G.R. No. L-13426. September 30, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

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Petition to have a review of a decision rendered by the Workmen's Compensation Commission, under the provisions of section 46, Act No. 3428, as amended, that orders the petitioner—

- To pay to the claimants in lump sum the amount of P4,000.00 as compensation;
- To reimburse the claimants the sum of P1,500.00 for medical expenses under Section 13 of the Act;
- To reimburse the claimants the burial expenses in the sum of P1,500.00; and
- To pay to the Workmen's Compensation Fund the sum of P41.00 as fees pursuant to Section 55 of the Act. (WCC Case No. 30612, Annex E)

and of resolution of the Commission en banc denying its motions for reconsideration (Annexes H, J and L).

The findings of the Commission are the following:

A careful examination of the records of the case reveals that the late Emilio Doria started working with the respondent, the International Oil Factory, as a laborer in its soap-making department in 1938, remaining as such up to 1941, that sometime in July 1947, the deceased returned to his former job in the respondent company where he worked continuously up to February 21, 1953, earning P5.50 a day and working six days a week; that his main job was to assemble soap frames or moulds which he used to carry, one frame weighing about 25 kilos, and when four frames were assembled, therefore, they weighed about 100 kilos; that it was the practice among the laborers of the respondent to help their co-workers, whenever anyone is through with his particular assigned work, by performing odd jobs such as rolling barrels of caustic soda to the melting tank, shoveling silicate of soda from the floor to the melting tank, boiling soap chemical to be cooked into soap, loading boxes of soap weighing 20 kilos on trucks for delivery to customers, and lifting returned soap in boxes weighing 30 kilos each; and that in the performance of these varied duties, the deceased was required to exert effort.

Records also show that sometime in October 1952, the laborers of the respondent were X-rayed by a mobile unit of the Philippine Tuberculosis Society; that the results of said X-ray examinations, which were posted in the premises of the factory, showed that the deceased was suffering from far advanced infiltrations in both lungs; that in spite of his state of health, the deceased was allowed to continue working; that the deceased who formerly lived alone was joined by his daughter Lolita since July 1952; that prior to the mass X-ray

examination of the laborers of the respondent, the deceased usually complained of back and chest pains, headaches and colds with coughing at night; that sometime in February 1953, deceased spat blood while actually in the performance of his duty; and because of said incident and after talking it over with his daughter who found him pale and weak when he came home from work on February 21, 1953, deceased left for his home in Binmaley, Pangasinan, on February 22, 1953, evidently with the knowledge of the respondent, to take vacation due to his ailment of tuberculosis.

Records further disclose that the deceased went on March 15, 1953 to Dr. Darius C. Fernandez's clinic for, consultation and treatment, that said doctor found him suffering from pulmonary tuberculosis, moderate bilateral; that during the first months of treatment, his condition was found to have improved; that because he could hardly afford to pay for his injections and tablets he was forced to reduce the daily treatment to three times a week which lasted up to December 30, 1953; that because of this change of treatment and of poor nutrition, his illness which at first was responding to the daily treatment, gradually became worse; that when he was examined by Dr. Fernandez on December 6, 1954, the deceased's ailment was found to have worsened making him weaker and thinner; that because of this condition, Dr. Fernandez sent the deceased to the Pangasinan Provincial Hospital for chest fluoroscopic check-up, the result of which showed P.T-B. far advanced, right and P.T.B. moderately advanced, left; that because of this finding which left little hope for recovery and of the further fact that the deceased could not pay for his treatment, Dr. Fernandez stopped treating the deceased; and that although the deceased religiously followed the instructions of Dr. Fernandez during the period of his treatment and did not abuse himself, he finally died of pulmonary tuberculosis on February 13, 1955. (Annex E.)

Findings of fact by the Workmen's Compensation Commission will not be disturbed on appeal except when the decision appealed from is not supported by substantial evidence.[1]

The Commission held that while the deceased was found suffering from pulmonary tuberculosis as early as 13 October 1952, yet he was not disabled by that illness, for he continued working up to 12 February 1953; and concluded that the period of two years provided for in section 8 of Act No. 3428, should be counted from 22 February 1953, when due to the aggravation of his ailment the deceased was forced to stop working, and not from 13 October 1952, when he was found suffering from the disease. From 22 February 1952, when he stopped working, to 13 February 1955, when he died, only 1 year 11 months and 21 days had elapsed, or the death caused by the disease is within the two-year period provided for in section 8, Act No. 3428, as amended. The petitioner contends otherwise.

In *Central Azucarera Don Pedro vs. De Leon*, 105 Phil., 1141, this Court passing upon a similar question held:

It is petitioner's theory that the two-year period mentioned in the law should be reckoned with from the date the injury is caused or the illness is contracted resulting in death in order that the employee may be entitled to compensation, or that the wording of the law should be interpreted literally in order that the illness or death may be compensable. To this we cannot agree for that would render the law nugatory and ineffective. A reasonable interpretation would be that the two-year period be counted from the death the disease or illness becomes compensable, or from the time the employee's sickness renders him physically disabled to do the work, which interpretation is in keeping with the general rule in compensation cases that the injuries or diseases that are compensable are only those which produce disability and thereby affect the earning power of the employee. In other words, as long as the employee is able to work and receives his pay even if he is suffering from illness, he is not entitled to compensation.

In the instant case, it appears, Garin contracted pulmonary tuberculosis much prior to September 28, 1950, when his treatment by petitioner's physician began, although the same did not prevent him from working until December 5, 1951, when he applied for retirement because of the aggravation of his illness. He therefore became incapacitated for work only beginning December 5, 1951, and only from that time on his ailment

became compensable within the meaning of the law, and so the counting of the two-year period should start from that time. The period of two years cannot be counted from September 28, 1950 when Garin was placed under treatment by petitioner's physician, as petitioner would like us to apply because even if Garin were then treated he was not yet completely incapacitated for labor until December 5, 1951, when he applied for retirement. Petitioner's contention that the claim for compensation should have been dismissed is therefore without merit.

The decision under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] See Section 46, Act No. 3428, as amended; Section 2, Rule 44; Union of Philippine Education Employees (NLU) vs. Philippine Education Co., 91 Phil., 93; Laguna Tayabas Bus Company vs. Consunto, 108 Phil., 62.

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