

JAMES V. FADRIGALAN, SUBSTITUTED BY HIS HEIR AND WIDOW MELANY PAZ P. FADRIGALAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MAGSAYSAY MARITIME CORPORATION, CRUISE SHIP...

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GALAPATE-LAGUILLES, J:

This Petition for Certiorari[1] seeks the reversal of the June 10, 2011 Decision of the National Labor Relations Commission denying petitioner's claim for disability benefits.

The facts are of record.

Magsaysay Maritime Corporation, a local manning agency, for and in behalf of its principal, Cruise Ships Catering and Services International NV, employed James Fadrigalan as Sous Chef on board the vessel Costa Victoria for a period of eight months, subject to extension of three months upon mutual consent of the parties.[2] James passed the pre-employment medical examination and had been declared fit for sea duty when he boarded the vessel on October 11, 2009.[3] In early December 2009, James complained of back pain. He consulted the ship doctor and was given medical care on board.[4] On December 26, 2009, due to recurrent back pain, James was referred to a doctor in Rio de Janeiro, Brazil.[5] The shore side doctor noted back pain radiating into the right leg.

On December 28, 2009, James was repatriated to Manila where he was immediately referred for treatment at the Manila Doctors Hospital. The company-designated doctor Benigno A. Agbayani, Jr.'s initial diagnosis was R/O Lumbar Disc Herniation.[6]

Subsequently, a Lumbosacral Spine MRI was done to James. The results revealed no disc herniation, spinal stenosis, or neural foraminal narrowing but showed multiple marrow changes at the spine T12, L1, L3, L4, L5.[7] A CT Scan of the abdomen showed hepatic lobe mass.[8] Further tests were conducted, and on February 8, 2010, after a biopsy of the liver mass, Dr. Agbayani found that James had Hepatocellular Carcinoma, Somatic Pain Secondary to Metastatic Bone T`12, L1, L3, L4, L5.[9] On April 7, 2010, an Emergency Admission In Patient Consult Report issued by the Dr. Agbayani revealed that James was suffering from Hepatocellular Carcinoma, Somatic Pain Secondary to Metastatic Bone T`12, L1, L3, L4, L5. Lumbar Subcutaneous Abscess S/P I & D, T/C Esophageal bleeding 2nd to liver cancer. Vertebral collapse secondary to metastasis.[10] In the Report, Dr. Agbayani stated that the disease is not work-related, of viral etiology, and not caused by environmental factors.

Consequently, James instituted a complaint[11] before the labor arbiter against respondents seeking the payment of disability benefits, moral and exemplary damages, and attorney's fees. James claimed that he had been working for the respondents since 1999, and he contracted his illness during his employment with the respondents. He further claimed that his work as a sous chef contributed to or aggravated his liver cancer. James insisted that he is entitled to full disability benefits because his illness lasted for more than 120 days.[12]

Respondents denied liability arguing that James's disability is not work-related; therefore, not compensable. They

further insisted that hepatocellular carcinoma is of viral etiology, and his work did not involve the risks that might have contributed to acquiring the disease.[13]

On October 3, 2010, during the pendency of the case, James died of hepatoma.[14] He was substituted by his wife Melany Paz P. Fadrigalan as complainant in the labor case.

In a Decision[15] dated December 15, 2010, the Labor Arbiter denied Melany's claim for disability benefits ratiocinating that James's illness is not related to his employment. On appeal, Melany argued that as a Sous Chef, James's work involved food intake, and according to the Merck Manual on Hepatocellular Carcinoma, the ingestion of food with fungal aflatoxins contributes to the high incidence of hepatoma in subtropical regions.

In a Resolution[16] dated June 10, 2011, the NLRC affirmed the Labor Arbiter's decision, thus:

x x x

[I]t must be emphasised that while it is true that Seafarer Fadrigalan's illness is disputably presumed work-related, and respondents are charged with the burden of disputing the same, complainant also has the equal duty to allege the reasons and particular circumstances that caused the illness of seafarer Fadrigalan and present pertinent evidence in support thereof. x x x.

In this regard, complainant Melany only alleged in his [sic] Reply the generalization that "this Honorable Office should kindly take judicial notice that seafarers do not have control over their food intake" and "take whatever food the vessel provides to them"; that "it is common knowledge that the kind of food being served are not healthy and most are even the cause of illnesses that claimant seafarers suffers from, including herein deceased seafarer.

[M]elany has not identified the particular food or foods onboard that was suspected as having high concentrations of fungal aflatoxins. It must be clarified, lest there be a confusion of misunderstanding, that the medical or health opinion she cited, particularly specified "ingestion of food with fungal aflatoxin", is not through inhalation of fungal aflatoxins, because of seafarer Fadrigalan's implied or perceived exposure during the preparation of even storage of food as part of his duties as Sous Chef. Consequently, complainant has failed to satisfy the first condition under Section 32-A of the POEA employment contract requiring him to prove that his work as Sous Chef involve [sic] the risk described therein.

x x x

Melany's motion for reconsideration was denied for lack of merit;[17] hence, this petition for certiorari claiming grave abuse of discretion on the part of the NLRC in finding that James's illness is not work-related and that he is not entitled to disability benefits and damages.[18]

The petition is bereft of merit.

Time and again, the Supreme Court has ruled that in a petition for certiorari under Rule 65 of the Rules of Court, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[19] This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.[20] In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*,[21] the Supreme Court held:

Resort to judicial review of the decisions of the NLRC by way of a special civil action of certiorari under Rule 65 is limited only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the labor tribunal. It does not include an inquiry as to the correctness of the evaluation of the evidence which was the basis of the labor agency in reaching its conclusion. Neither is it for the CA nor this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses or substitute the findings of fact of an

administrative body which has gained expertise in its specialized field.

Here, Melany failed to support her imputation of grave abuse of discretion on the part of the NLRC. No evidence was presented to prove that the NLRC exercised its judgment whimsically, arbitrarily or despotically by reason of passion and hostility. Moreover, it is axiomatic that findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the same are supported by substantial evidence.[22] Since Melany presented an issue of fact, her petition for certiorari collapses in view of the identical findings of the Labor Arbiter and the NLRC.

Even on the merits, the petition should be dismissed because Melany failed to substantiate her claim that her late husband's illness is work-related and that it was acquired during the term of his contract.

We emphasize that the liabilities of the employer when a seafarer suffers work-related injury or illness during the term of his contract are subject to the provisions of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships (Standard Contract).[23] Pursuant to the Standard Contract,[24] two elements must concur for an injury or illness to be compensable: first, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[25]

In this case, James did not acquire the illness during the term of his employment contract. Hepatocellular carcinoma, like most types of cancer, takes long to develop. Medical studies show that it appears 20-30 years following the initial insult to the liver.[26] It is, therefore, improbable that James acquired it in less than three months, the length of time that he was on board Costa Victoria. Also, Melany failed to prove by substantial evidence her allegation that respondents employed James since 1999. Even assuming the allegation to be true, given that the employment of a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires,[27] James's illness during his alleged previous contracts with respondents is deemed pre-existing during his subsequent contract, hence, not compensable.[28]

As to the issue of work-relatedness of hepatocellular carcinoma, the law is clear that illnesses not listed as occupational diseases under Section 32 of the Standard Contract are disputably presumed as work related;[29] but this provision only affords a disputable presumption. The Supreme Court clarified in *Leonis Navigation Co., Inc. v. Villamater*[30] that this legal presumption should be read together with the requirements specified by Section 32-A of the Standard Contract, to wit: (a) the seafarer's work must involve the risks described [under the Standard Contract]; (b) the disease was contracted as a result of the seafarer's exposure to the described risks; (c) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (d) there was no notorious negligence on the part of the seafarer.

Hepatocellular carcinoma[31] or malignant hepatoma is a primary liver cancer that begins in hepatocytes (liver cells).[32] It is not one of the occupational diseases listed in the Standard Contract. At most, there is only a disputable presumption that the disease is work-related. Thus, to be compensable, the above-cited requisites[33] must be satisfied by presenting no less than substantial evidence that the claimant's employment exposed him to risk factors[34] that caused the illness or aggravated any pre-existing condition he might have had.

Medical research shows that hepatocellular carcinoma frequently arises in the setting of cirrhosis.[35] To reiterate, it appears 20-30 years after the initial insult to the liver. However, 25% of the patients have no history or risk factors for the development of cirrhosis.[36] Another medical authority believes that the etiology of hepatocellular carcinoma is likely multifactorial[37] or dependent on a number of factors.

In this case, Melany failed to present any expert medical opinion to establish a reasonable connection between

James's work and his hepatocellular carcinoma. There is nothing in the records to prove that James was exposed to any of the risk factors. No evidence was shown as to how and why his working conditions as Sous Chef increased the risk of contracting the illness. Further, nothing was presented to prove Melany's allegations that James had ingested food with fungal aflatoxin, and assuming that his dietary provisions while at sea consisted of unhealthful food, no proof was submitted to establish that the food on board caused the illness.

Indeed, absent any semblance of causation, it cannot be inferred that James's illness is compensable. We cannot sanction an award of disability benefits anchored on flimsy evidence.[38] Awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive proposition[39] that there is probably a relation between the illness and the work.[40] Probability, and not mere possibility, is required; otherwise, the resulting conclusion would proceed from deficient proofs.[41] Absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, We are left with no alternative but to deny the claim.

FOR THESE REASONS, the petition is DISMISSED.

SO ORDERED.

Punzalan Castillo, M.P., Chairperson and Macalino, F.S., JJ., concur.

[1] Rollo, pp. 3-29.

[2] Id. at 48, Contract of Employment.

[3] Id. at 35, Findings of Facts of the National Labor Relations Commission.

[4] Id. at 84, Respondents' Position Paper.

[5] Ibid.

[6] Id. at 112.

[7] Id. at 113.

[8] Id. at 126, Emergency In Patient Consult Report.

[9] Id. at 128, Follow Up In Patient Consult Report dated February 8, 2010.

[10] Id. at 134.

[11] Id. at 59-60.

[12] Id. at 65.

[13] Id. at 87, Respondents' Position Paper.

[14] Id. at 53, Certificate of Death.

[15] Id. at 178-185.

[16] Id. at 33-44, NLRC Decision dated June 10, 2011.

[17] Id. at 46-47.

[18] Id. at 10.

[19] Abedes v. Court of Appeals, 562 Phil. 262, 276 (2007).

[20] The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x. (Yu v. Judge Reyes-Carpio, G.R. No. 189207, June 15, 2011, 652 SCRA 341).

[21] G.R. No. 166649, November 24, 2006.

[22] Spouses Santos v. National Labor Relations Commission, 354 Phil. 918, 931 (1998).

[23] POEA Memorandum Circular No. 10, Series of 2010, October 26, 2010.

[24] Section 20(A)(1) of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships [POEA Memorandum Circular No. 10, Series of 2010, October 26, 2010].

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month. The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

x x x

[25] *Jebsens Maritime, Inc. v. Enrique Undag*, G.R. No. 191491, December 14, 2011.

[26] emedicine.medscape.com, .

[27] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002.

[28] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, September 27, 2006.

[29] Section 20(A)(4) of the Standard Contract.

[30] G.R. No. 179169, March 3, 2010.

[31] Most primary liver cancers begin in hepatocytes (liver cells). This type of cancer is called hepatocellular carcinoma or malignant hepatoma. Liver cancer cells can spread by breaking away from the original tumor. They mainly spread by entering blood vessels, but liver cancer cells can also be found in lymph nodes. The cancer cells may attach to other tissues and grow to form new tumors that may damage those tissues. See the Staging section for information about liver cancer that has spread.

[32] <http://www.surgery.ucsf.edu/conditions—procedures/hepatocellular-carcinoma-%28primary-liver-cancer%29.aspx>, .

[33] Section 32-A of the Standard Contract.

[34] <http://www.cancer.gov/cancertopics/pdq/treatment/adult-primary-liver/HealthProfessional/page1>, . The etiology of HCC is likely multifactorial. The following factors may increase the risk of HCC:

- Hepatitis B virus (HBV) infection and hepatitis C virus (HCV) infection: HBV and HCV infections appear to be the most significant causes of HCC worldwide. Chronic HBV infection is the leading cause of HCC in Asia and Africa. HCV infection is the leading cause of HCC in North America, Europe, and Japan.

The annual incidence of HCC in HBV carriers is 0.5% to 1% per year in patients without cirrhosis and 2.5% per year in patients with cirrhosis. The relative risk of HCC is 100 (i.e., carriers of HBV are 100 times more likely to develop HCC than uninfected persons).

In a single, prospective, population-based study that included 12,008 patients, the presence of anti-HCV positivity conferred a twentyfold increased risk of HCC compared with persons who were anti-HCV negative. HCC may occur in HCV-infected patients with bridging fibrosis, even in the absence of overt cirrhosis. However, the risk is highest among patients with HCV-related established cirrhosis, which has an incidence rate of HCC of 2% to 8% per year.

- Alcoholic cirrhosis: Several reports suggest that alcoholic cirrhosis is a risk factor for HCC. However, the true incidence of HCC in alcoholic cirrhosis is unknown because most epidemiology reports on this subject were published before the identification of HCV.

- Metabolic syndrome: The risk factors associated with metabolic syndrome, including insulin resistance, hypertension, dyslipidemia, and obesity, have been recognized as potential causes of nonalcoholic hepatosteatosis,

cirrhosis, and HCC. However, no study to date has followed a sufficiently large group of these patients for long enough to describe the incidence of HCC caused by metabolic syndrome.

- Biliary cirrhosis: The incidence of HCC in stage IV primary biliary cirrhosis is approximately the same as in cirrhosis resulting from hepatitis C.

- Chronic liver injury: Chronic liver injury probably increases the risk of HCC, especially in patients who develop cirrhosis. The 5-year cumulative risk of developing HCC for patients with cirrhosis ranges between 5% and 30% and depends on etiology (highest in individuals with HCV infection), region or ethnicity (highest in Asians), and stage of cirrhosis.

- Hemochromatosis: Hemochromatosis is a significant risk factor for HCC and has an increased relative risk twenty times that of the normal population.

- Aflatoxin B1: Aflatoxin B1 is produced by fungi of the *Aspergillus* species and is a common contaminant of grain, nuts, and vegetables in some parts of Asia and Africa. Aflatoxin B1 has also been implicated as a cofactor in the etiology of primary liver cancer in carriers of HBV because it increases the neoplastic risk threefold.

[35] Widespread disruption of the normal liver structure by fibrosis and the formation of regenerative nodules that is caused by any of the various chronic progressive conditions affecting the liver (as long-term alcohol abuse or hepatitis), .

[36] emedicine.medscape.com, ,.

[37] <http://www.cancer.gov/cancertopics/pdq/treatment/adult-primary-liver/HealthProfessional/page1>, .

[38] *Andrada v. Agemar Manning Agency, Inc.*, G.R. No. 194758, October 24, 2012.

[39] *Orate v. Court of Appeals*, G.R. No. 132761. March 26, 2003.

[40] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.* , G.R. No. 188637, 15 December 2010, citing *Government Service Insurance System v. Cuntapay*, G.R. No. 168862, 30 April 2008, 553 SCRA 520.

[41] *Government Service Insurance System v. Cuntapay*, *supra*.

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