

**LEON JESALVA, IN BEHALF OF HIS BROTHER, ORPINO JESALVA,
PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION
AND REPUBLIC OF THE PHILIPPINES (BUREAU OF PUBLIC
HIGHWAYS), RESPONDENTS.**

G.R. No. L-43007. January 28, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the February 19, 1976 decision of respondent Commission reversing the August 29, 1974 award of the acting referee in RO4 Case No. 151132 filed with the Department of Labor, Regional Office No. 4, Manila.

Orpino Jesalva, represented by his elder brother Leon Jesalva, filed on December 18, 1973 a claim for compensation with the Department of Labor, by reason of the death of his father Juan Jesalva on October 14, 1965. The claim was thereafter amended to make the Republic of the Philippines (Bureau of Public Highways), which was the last employer of the late Juan Jesalva, as the respondent in lieu of the Republic of the Philippines (Bureau of Public Works) as originally designated in the claim (p. 37, WCC rec.).

Petitioner Orpino Jesalva was, at the time of his father's death on October 14, 1965, almost twenty (20) years old, having been born on October 16, 1945. Orpino is undisputedly an invalid from birth according to the medical certificate of Dr. Florendo Granado who stated therein that petitioner is suffering from congenital ataxia severe (p. 16, rec.). He filed the compensation claim as dependent of the late Juan Jesalva pursuant to Section 9 of the Workmen's Compensation Act, as amended, which enumerates as one of the persons entitled to compensation "A son x x x, if under eighteen years of age or incapable of supporting himself or herself, and unmarried, whether actually dependent on the deceased or not, x x x" (underlining supplied).

The evidence shows that the deceased Juan Jesalva, was, until his death at the age of 63 on October 14, 1965, employed by respondent employer Bureau of Public Highways as Senior Head Carpenter with an annual salary of P2,678.76; that in the course of employment or specifically on September 7, 1959, he contracted hypertension which necessitated his hospitalization for three times; that thereafter or on October 14, 1965, while on his way home from work (bridge construction), he collapsed and never recovered as he died on the same day of October 14, 1965. His death certificate (Exhs. A and A-1, pp. 1-2, WCC rec.) disclosed that the disease or condition directly leading to his death was coronary thrombosis, which was due to hypertension, essential. The physician's diagnostic findings as contained in the Physician's Report (p. 10, WCC rec.) is that the late Juan Jesalva died of heart attack -- coronary -- and the physician stated that the cause was rheumatic arthritis and hypertension; and concluded that the illness or accident was directly caused by or was the result of the nature of the employment of the deceased worker. The physician also revealed therein that he treated the late Juan Jesalva of his ailment for the first time on September 7, 1959 and his last treatment was on October 2, 1965 or twelve (12) days before his death on October 14, 1965.

The aforesaid facts were established at the August 9, 1974 hearing in which respondent employer, despite due notice, failed to attend (p. 47, WCC rec.). On even date, the case was declared submitted for decision upon motion of petitioner's counsel.

On August 29, 1974, the acting referee rendered his decision holding that since the illness that caused the death of petitioner's father supervened in the course of employment, the presumption that the same either arose out of or was aggravated thereby, applies, which presumption was not overthrown by respondent employer. Respondent employer was consequently ordered to pay (1) petitioner the sum of Four Thousand One Hundred Sixty [P4,160.00] Pesos as death benefits and Two Hundred [P200.00] Pesos as burial expenses; (2) petitioner's counsel the sum of Two Hundred Eight [P208.00] Pesos as attorney's fees; and (3) the Commission, the sum of Forty-two [P42.00] Pesos as administrative fees.

Respondent employer filed a motion for reconsideration contending that the employee's illness -- hypertension -- is only a symptom, not a disease; that the claim was filed beyond the periods prescribed in Section 24 of the Workmen's Compensation Act resulting in undue prejudice to respondent, which is a sufficient ground for the dismissal of the present claim on the ground of prescription; and thereby prayed for the reconsideration of the award of the acting referee and that therefore the claim be dismissed (pp. 53, 54, WCC rec.).

On September 30, 1974, petitioner opposed the aforesaid motion for reconsideration, pointing out that the defense of prescription was not raised by respondent employer before the hearing officer and therefore the same can no longer be raised for the first time in its motion for reconsideration (pp. 55-56, WCC rec.).

In an order dated March 11, 1975, the acting referee denied the aforesaid motion for reconsideration, for having been filed late, "it appearing that a Decision dated August 29, 1974 was received by the respondent on September 3, 1974, its Motion for Reconsideration filed on September 25, 1974 or twenty-two days thereafter, should be denied for having been filed late, thereby rendering the Decision sought to be set aside final and executory" (p. 60, WCC rec.) and thereby directed respondent employer "to remit to this Office for corresponding payment to the claimant the amount of FOUR THOUSAND ONE HUNDRED SIXTY PESOS (P4,160.00) as death benefits plus TWO HUNDRED PESOS (P200.00) as burial expenses and the amount of FORTY-TWO PESOS (P42.00) as fee within five (5) days from receipt hereof, to enable us to close this case. x x" (p. 60, WCC rec.).

But on January 6, 1976, the Workmen's Compensation Commission issued an order directing the chief of the Workmen's Compensation Unit to elevate to the Commission the entire records of the case to enable it to act intelligently on respondent's motion to elevate records dated April 10, 1975 (p. 63, WCC rec.).

No copy of the aforesaid April 10, 1975 motion is found in the WCC records of this case although the allegations of said motion were reproduced by the Acting Solicitor General in his comment filed on April 7, 1976, thus:

"1. The decision rendered in the above-entitled case by Acting Referee Danilo L. Reynante of the Workmen's Compensation Section, Regional Office No. IV was served on undersigned counsel on September 3, 1974.

"2. On September 18, 1974, within the reglementary period for appealing, the undersigned counsel filed a motion for reconsideration with the said regional office by registered mail. Copy of the motion was served in like manner on the claimant's counsel. The affidavit of the mailing clerk of the Office of the Solicitor General stating this fact is hereto attached as Annex 'A';

"3. On March 11, 1973, however, Acting Referee Danilo L. Reynante issued an order denying the motion on the ground that it was filed out of time, having been received by the Regional Office only on September 22, 1974;

"4. The above order is without any basis. The respondent's motion for reconsideration was filed on time. The

date it was sent by registered mail to the regional office, that is, September 18, 1974, is, under Rule 13, Section 1 of the Rules of Court, considered the date of its filing which date is clearly within the reglementary period provided by Rule 19, Section 1 of the Rules of the Workmen's Compensation Commission" (pp. 26-27, rec.).

On February 26, 1976, the Workmen's Compensation Commission set aside the August 29, 1974 award in this wise.

"The ground relied upon by the respondent in its motion for reconsideration is well-taken. We will not discuss the issue raised by the respondent as we are looking into this case from a different angle. A review of the records reveal that the deceased Juan Jesalva was a widower. This claim was instituted by the youngest son Orpino Jesalva who upon close scrutiny of his records show that he was born on October 16, 1945. It is clear that at the time of the decedent's death on October 14, 1965, the herein claimant was already over 18 year's old. Under the law he is not entitled to compensation.

"We will not discuss the compensability or non-compensability of the illnesses although we are inclined to believe that the illnesses are not service-connected and considering further that the accident happen(ed) while deceased Juan Jesalva was already off from his work."

Hence, this petition, petitioner submitting that respondent Commission erred

A - in failing to consider the fact that petitioner although over 18 years of age at the time of death of his father, was an inborn invalid, unmarried and was totally dependent for chief support from his deceased father during the latter's lifetime.

B - in holding that coronary thrombosis which was the cause of death of the late Juan Jesalva is not service-connected.

I

1. It must be noted that the issue (petitioner as qualified dependent) upon which the respondent Commission principally based its reversal order was never raised by the respondent employer either at the hearing before the Acting Referee where it did not appear despite due notice or in its motion for reconsideration of the Award of the acting Referee or in its motion to elevate records of the case to the respondent Commission. In its motion for reconsideration, respondent employer simply contended that the employee's illness of hypertension was not a disease, but only a symptom and that the claim was filed beyond the periods provided for in Section 24 of the Workmen's Compensation Act, as amended. The question as to petitioner Orpino's qualifications as a dependent under Section 9 of the Act was never raised nor placed at issue in any of the pleadings filed before the Acting Referee and the respondent Commission. WE have time and again called the attention of the defunct respondent Commission of the fact that "It is not good policy in regard to social legislation like the Workmen's Compensation Act for the Workmen's Compensation Commission to go out of its way in absolving an employer from liability for compensation for work-connected injury or death of his employee or worker by upholding grounds not invoked by the employer himself as defense before it." (Buenaventura vs. Workmen's Compensation Commission, 76 SCRA 485, 490 [1977]; Vda. de Calado vs. Workmen's Compensation Commission, 38 SCRA 569, 585-586 [1971]).

2. Moreover, the records of the case reveal that respondent employer never complied with its obligations under Sections 37 and 45 of the Act of reporting to the Commission within fourteen days from occurrence of the injury or death of its employee or within ten (10) days from knowledge thereof; which non-compliance generates [a] the loss of the right to controvert the claim on jurisdictional grounds, and the employer cannot be subsequently heard to complain that the law was strictly construed against him (Victory Shipping Lines, Inc. vs. WCC, 106 Phil. 550 [1959]); [b] the renunciation of the right to controvert the claim, barring all defenses available without exception

(National Development Co. vs. WCC, 10 SCRA 696 [1964], thereby constructively admitting that it is compensable; and [c] the waiver of the defense that the claim for compensation was not filed within the statutory period (Vda. de Calado vs. WCC, 38 SCRA 41 [1964])). Consequently, herein respondent employer is barred from raising any defense to defeat petitioner's claim.

II

1. But even on the merits of the ground upheld by the respondent Commission, the same cannot be sustained because its conclusion that petitioner Orpino Jesalva, being over eighteen (18) years old at the demise of his father, was not a qualified dependent under Section 9 of the Act, is patently erroneous, as it overlooked or failed to grasp the full import and clear language of the aforesaid section; which expressly states that "The following persons, and no others, shall be considered as dependents and entitled to compensation under the provisions of this Act: A son or daughter, if under eighteen years of age or incapable of supporting himself or herself, and unmarried, whether actually dependent on the deceased or not; x x x" (underscoring supplied). Hence, Section 9 gives two classes of unmarried children as dependents, as follows:

(1) those who are under eighteen years of age; and

(2) those who even if over eighteen years of age, where they are incapable of supporting themselves [Fernandez and Quiason, Labor Standards and Welfare Legislation 632-633 (1964)].

Consequently, petitioner falls and qualifies under the second class of dependent unmarried children as it is undisputed that he was an invalid from birth. As per medical certificate issued by Dr. Florendo Granado of Masbate, Masbate, petitioner is suffering from Ataxia severe, inborn.

2. The Acting Solicitor General, however, contends that petitioner failed to present evidence to show that he is unmarried and incapable of supporting himself and therefore not a qualified beneficiary under Section 9 of the Act, theorizing that "x x the fact that he was invalid since birth does not necessarily mean that he was unmarried and incapable of supporting himself x x." Technically, the Solicitor General may be close to being correct in his contention. WE must, however, again emphasize that this is workmen's compensation claim; by reason of which, the Solicitor General owed a duty to the acting referee and the commission to make known at the hearing its line of defense and even to propound questions to the witnesses to bring out the true facts. That he did not, as he failed to attend the hearing of the claim, can be taken as a waiver of the aforesaid defense which he is raising for the first time at this stage of the case. Moreover, by reason of respondent employer's failure to comply with Sections 37 and 45 of the Act as aforestated, said defense may now be considered as waived.

3. There are, furthermore, undisputed evidence on the record from which We can reasonably infer that petitioner Orpino Jesalva is unmarried and incapable of supporting himself, as follows: (a) the claim was filed for petitioner by his older brother, Leon Jesalva as his guardian; (b) since Orpino's birth, he remained in the custody and care of his parents and after his father's death on October 14, 1965, his mother having predeceased his father, Orpino was taken care of by his brother, Leon Jesalva, who up to the present provides all his needs; and as earlier stated, Orpino is an inborn invalid who is suffering from severe ataxia, described as failure of muscular coordination; irregularity of muscular action (Dorland's Illustrated Medical Dictionary, 157 [24th ed.]); or lack of power to coordinate voluntary muscular movements (Malay Medical Dictionary for Lawyers, 60 [2nd ed.]). WE are persuaded that the aforesaid circumstances render improbable petitioner becoming a good matrimonial prospect, for no woman ordinarily would marry a congenital invalid only to slave for and to take care of him.

Moreover, the above enumerated circumstances lend support and credence to the claim of counsel for petitioner that petitioner's guardian, Leon Jesalva, declared at the hearing of the claim that petitioner is unmarried and

incapable of supporting himself (pp. 6, 37, rollo).

III

Finally, with respect to the question as to whether the late Juan Jesalva's ailment which caused his death is work connected or not, the same is already foreclosed not only by the failure of the respondent employer to effectively controvert the right of petitioner to compensation claim as above discussed; but also by respondent employer's failure even at this late stage to destroy the presumption of compensability which obtains in the instant case by reason of the undisputed fact that said ailment as well as the death of Juan Jesalva supervened in the course of employment.

WHEREFORE, THE DECISION OF THE RESPONDENT COMMISSION IS HEREBY REVERSED AND SET ASIDE AND RESPONDENT EMPLOYER IS HEREBY ORDERED TO PAY

1. PETITIONER

(A) THE AMOUNT OF FOUR THOUSAND ONE HUNDRED SIXTY [P4,160.00] PESOS AS DEATH BENEFITS AND THE SUM OF TWO HUNDRED [P200.00] PESOS AS BURIAL EXPENSES;

(B) THE MEDICAL EXPENSES OF HIS DECEASED FATHER DULY SUPPORTED BY RECEIPTS;

(C) THE SUM OF FOUR HUNDRED SIXTEEN [P416.00] PESOS AS ATTORNEY'S FEES; AND

2. THE SUCCESSOR OF THE DEFUNCT COMMISSION ADMINISTRATIVE FEES.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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