

PACIENCIA VDA. DE PONGAN, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND LUZON STEVEDORING CORPORATION, RESPONDENTS.

G.R. No. L-42419. May 27, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to review the decision of the Workmen's Compensation Commission, en banc, which reversed the decision of Acting Referee Benjamin C. Almonte, granting compensation to the petitioner and reimbursement for burial expenses. The Commission dismissed the claim for lack of merit.

Petitioner, through her son, Antonio Pongan, filed a notice and claim for compensation in death cases against respondent Luzon Stevedoring Corporation (LUZTEVECO) for pulmonary tuberculosis which her late husband, Dominador Pongan contracted in the course of his employment with respondent corporation.

The deceased was employed by LUZTEVECO even before the last world war. He was a stevedore in Pier 9 and Pier 13 at South Harbor, Manila. He was mostly assigned on night shifts. In 1967, he contracted pulmonary tuberculosis. He was treated by Dr. Nicolas Buñag, the company physician and medical director. However, because of necessity, he continued working. He was still assigned mostly on night shifts, thus further weakening him due to lack of sleep and improper rest and aggravating his PTB. He was still being treated by Dr. Bunag when he died on February 12, 1973.

The case was tried on the merits and after the hearing, the Acting Referee issued a decision granting death compensation benefits in the amount of P4,680.00 to petitioner plus reimbursement of burial expenses in the amount of P200.00

From the foregoing decision, respondent LUZTEVECO filed a petition for review and/or motion for reconsideration alleging that the pulmonary tuberculosis of the deceased was not caused and/or aggravated by his employment.

Acting on the petition, the Commission, en banc, issued the decision sought to be reviewed. Hence, this petition.

Petitioner assigns the following errors:

I

THAT THE WCC ERRED IN HOLDING THAT THE PETITIONER'S HUSBAND, DOMINADOR PONGAN, HAD NOT UNDERGONE ANY X-RAY EXAMINATION TO SUPPORT THE FINDINGS THAT PTB WAS THE CAUSE OF HIS DEATH;

II

THAT THE WCC ERRED IN HOLDING THAT THE PETITIONER FAILED TO ESTABLISH A CAUSAL LINK BETWEEN THE ILLNESS OF PULMONARY TUBERCULOSIS OF THE DECEASED TO HIS EMPLOYMENT;

III

THAT THE WCC ERRED IN DISMISSING THE HEREIN CASE DESPITE THE FACT THAT AFTER THE PETITIONER HAS PROVEN HER CASE RESPONDENT LUZTEVECO DID NOT SUBMIT ANY EVIDENCE.

The dispute is over the illness and actual cause of death of the late Dominador Pongan. Petitioner maintains that the deceased died of pulmonary tuberculosis as evidenced by his death certificate stating "PTB" (pulmonary tuberculosis) as the cause of death. On the other hand, respondents allege that Pongan died of cerebro vascular accident (CVA) rather than PTB as shown by the medical certificate submitted by petitioner herself as Exhibit "A".

From the records, it appears that Dominador Pongan was suffering from cerebro vascular accident as evidenced by the medical reports made by Dr. Buñag upon the former's admission into the Martinez Memorial Hospital in Caloocan City on January 18, 1973. Later an x-ray report was submitted by Dr. A.L. Gregorio, Radiologist. The radiology report stated:

CHEST, P A

"Lungs — Homogenous density at the RUL with tracheal retraction to the right. Rest of lung fields essentially negative.

Heart — Normal limits.

IMPRESSION: Atelectatic Right upper lungs. A possibility of Pancoast Tumor right has to be eluminated."
(sic)

However, at the time of his death, a month later, on February 12, 1973, he was certified to have died of tuberculosis. Petitioner maintains that the deceased had contracted PTB way back in 1967 and had been under treatment for it. Likewise, he was also suffering from cerebro vascular accident (CVA). On the other hand, the respondent believes that since the medical certificate of the Martinez Memorial Hospital as well as the x-ray report did not mention specifically PTB, Mr. Pongan could not have, within a period of one month, died therefrom. Therefore, it is their contention that since the deceased did not die of PTB, but of CVA which has not been successfully linked to the deceased's employment, the petitioner is not entitled to compensation benefits.

In *Vda. de Galang v. Workmen's Compensation Commission*, (76 SCRA 153) we held that:

"While it is true that the actual cause of death of deceased employee Lorenzo Galang was cancer of the left lung and not PTB, this alone will not preclude payment of compensation benefits in favor of herein petitioner, for it is settled doctrine in our jurisdiction that the law presumes in the absence of substantial evidence to the contrary that a claim is compensable, and so rigid is the rule that even where the cause of death is unknown the right to compensation subsists, the reason being that the Workmen's Compensation Act is a social legislation designed to give relief to the working man (*Industrial Textile Mfg. Co. of the Phil. vs. Florzon, et al.*, L-21969, August 31, 1966 17 SCRA 1104 and reiterated in *Domingo Vallo vs. The Workmen's Compensation Commission and the Republic of the Philippines*, G.R. No. L-41816, October 29, 1979, per Justice Munoz Palma)."

Likewise, in *Villones v. Employees' Compensation Commission*, (92 SCRA 320) we held:

"Finally, the grant of compensation benefits to herein petitioner will not be impaired even if he (petitioner himself) entertains doubts as to the real cause of the death of his son when he stated that no autopsy was made nor was there anybody who actually examined the deceased prior to or after his death. At any rate, as aforesaid, pulmonary tuberculosis is concededly one of the causes of hemoptysis. Even unexplained deaths, the occasion and circumstances of which are unknown or undetermined, are usually deemed compensable, as

long as there is some basis in the facts for inferring a work connection, a causal relation between the death and the employment (*Mulingtapang v. WCC*, 80 SCRA 610 (1977); *Castro v. WCC*, 75 SCRA 179 (1977); *ITEMCOP v. Florzo*, 16 SCRA 2104 (1966). x x x."

Be that as it may, even if he was suffering from pulmonary tuberculosis, it may not have caused the death of Dominador Pongan. By the very nature of this illness, it could not have possibly progressed so fast so as to cause Mr. Pongan to die from it within the period of one month from his x-ray examination. Pulmonary tuberculosis (PTB) does not belong to the category of sickness which is instantaneously fatal to its victim upon his contracting the same, but takes months, if not years, before the afflicted person dies. (*Villones v. ECC* 92 SCRA 321 citing *Corales v. ECC*, 88 SCRA 547). The evidence is not sufficient to establish that the deceased died from PTB. The report of the attending physician, Dr. Nicolas Buñag mentioned nothing about tuberculosis. As between this report and the death certificate, the entries of which were merely furnished by an informant, who, in this case is claimant herself, the former must prevail. Based on the certificate of Dr. Buñag, therefore, the deceased must have died as a result of the cerebro vascular accident suffered by him.

In determining the compensability of the death of an employee or laborer, the same rules of causality governing injury and disease apply, in view of the fact that "death" is included within the meaning of "personal injury" or "sickness" (Section 39 c, Act 3428 as amended, Comments and Annotations on the Workmen's Compensation Act, Pucan and Besinga, 1971 Edition, page 115).

Pursuant to Section 8 of the Act, as amended, death benefits accrue when death immediately results from or follows within two years from a compensable disease or injury. (Pucan and Besinga, *supra*; Quiason & Fernandez, Labor Law Series, Volume IV, 1964 Edition, page 72). The basis of the benefits is the fact of death which is due to or caused by a compensable injury or illness.

Is death from cerebro vascular accident, therefore, compensable?

It is now unquestionable that once the illness supervened at the time of the employment, there is a rebuttable presumption that such illness arose out of the employment or was at least aggravated by such employment (Secs. 2 and 44 of The Workmen's Compensation Act; Jurisprudence from *Batangas Transportation Co. v. Vda. de Rivera*, 99 Phil. 1025 and *Bohol Land Transportation Co., v. Vda. de Madanguit*, 70 Phil. 685 to *Felarca v. Bookman*, 127 SCRA 275). The presumption of causation or aggravation, then applies. Not having been successfully controverted by substantial evidence to the contrary, in the case at bar, petitioner enjoys the presumption of compensability.

We do not rely solely on this legal presumption to grant petitioner's claim.

Section 2, of the Workmen's Compensation Act provides:

"SEC. 2. Grounds for compensation. — When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified. x x x."

Under the Act, injury or sickness is compensable as personal injury from accident arising out of and in the course of employment. Likewise, illness is compensable as a result of the nature of one's employment. Thus, though cerebro vascular accident may not be said to be an occupational disease in the case of stevedores, the same falls within the ambit of the law as directly caused or aggravated by the employment. Illness directly caused by the employment, as distinguished from occupational diseases, need not result from the nature of the employment. It is enough that some feature of the employment accidental or occasional, brought them about (Quiason & Fernandez,

supra, page 39-40; Pucan and Besinga, supra, page 87).

It is sufficient to say that an injury is received in the course of the employment when it comes while the workman is performing the duty in which he is employed. It arises out of the employment when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment (*Afable, et al. v. Loyola, et al.*, L-7789, May 27, 1955, 97 Phil. 960 Unrep.) Thus, in the case at bar, with Mr. Pongan constantly being ex-posed to the elements of nature and considering the great physical strain which he had to bear, a stroke or cerebro vascular accident may fairly be expected. The physical effort and the periodic urgency involved in the duties of a stevedore may cause a great increase in blood pressure, straining the vascular system of the body. Occuring repeatedly and over a long period of time, a stroke is validly foreseeable. Even a single heavy load, at a single point in time, may cause the same cerebro vascular accident to laborer who has neither tools nor machines to aid him in his tasks bearing the onus of making a living with only his body and raw physical strength. It is to be expected that after working continuously as such for more than thirty years, expending his natural energies, the same would take a toll on Pongan wearing him away to finally succumb to illness or injury. Thus, the fact of causality of the deceased employee's illness or accident by his employment, is demonstrated. The conclusion of compensability is inevitable.

WHEREFORE, in view of the foregoing, the PETITION is hereby GRANTED. The questioned decision of the Workmen's Compensation Commission is hereby REVERSED. The respondent Luzon Stevedoring Corporation is ordered:

- (1) To pay petitioner, Paciencia Vda. de Pongan, the sum of SIX THOUSAND PESOS (P6,000.00) as death benefits;
- (2) To pay petitioner, the sum of TWO HUNDRED PESOS (P200.00) as reimbursement of burial expenses;
- (1) To pay petitioner's counsel, the sum of SIX HUNDRED PESOS (P600.00) as attorney's fees under Section 31 of the Workmen's Compensation Act; and
- (2) To pay the Ministry of Labor and Employment as administrative fee, the sum of SIXTY ONE PESOS (P61.00).

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Abad Santos, Melencio-Herrera, Escolin, Relova, De la Fuente, Cuevas, and Alampay, JJ., concur.

Aquino, J., no part.

Concepcion, Jr., and Plana, JJ., on official leave.

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