

LEOPOLDO LORENZO, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND PHILIPPINE GLASS MANUFACTURING CO., INC., RESPONDENTS.

G.R. No. L-42631. January 31, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition seeks to reverse the December 31, 1975 decision of the Workmen's Compensation Commission affirming the October 2, 1975 decision of Regional Office No. IV, Department of Labor, Manila, which dismissed petitioner's claim for compensation benefits under the Workmen's Compensation Act, as amended.

On February 24, 1975, petitioner Leopoldo Lorenzo, a moulder in respondent company, assisted by his representative, one Feliciano M. Reyes,[1] filed a Notice of Injury or Sickness and Claim for Compensation with the Rizal Workmen's Compensation Unit, Regional Office IV of the Department of Labor, claiming In substance that he was an employee of respondent company since February, 1964 and that he contracted lung ailment during and in the course of his employment that finally forced him to stop working on October 4, 1974 (p. 67, WCC rec.). Under item 22 of said claim, petitioner stated that he orally notified on August 27, 1974 the company's manager of his ailment (id.).

Based on the following finding of facts --

"x x x (C)laimant was employed as a Moulder on February 21, 1964. He reported on a weekly rotation basis with schedule working time from 6:00 A.M to 2:00 P.M. on first shift; or from 2:00 P.M. to 10:00 P.M. on second shift and from 10:00 P.M. to 6:00 A.M. on third shift. For working as a moulder, he received a salary of P59.00.

"On August 27, 1974, claimant had complaints of cough, chest pain and fever, for which reason he con-sulted Dr. Rodolfo Gonzales. On October 4, he stopped working allegedly due to illness. He underwent X-ray examination at the Philippine Tuberculosis Society on October 7, 1974. The X-ray result showed he was suffering from minimal infiltrations on both lungs. Another X-ray on September 4, 1975 was presented also showing minimal infiltrations in both lungs. On the other hand, the respondent submitted affidavits and evidences showing that on October 4, 1974, the Philippine Glass Manufacturing Co., Inc. stopped operation for lack of fuel. This was reported to the Department of Labor under DOL Form No. 74-3 of September 19, 1974. Subsequently, on January 19, 1975, an application for clearance to close business effective January 31, 1975 was filed by the respondent with the Department of Labor under DOL Form No. 74-3, for reason of losses and lack of operating capital." - -

the Assistant Chief of Section dismissed on October 2, 1975 the compensation claim for lack of merit, thus:

"The herein claimant stopped working on October 4, 1974. Previous to such date, he has been continuously reporting for work. We also have it on record that on October 4, 1974, the respondent stopped its business operation for reason of lack of fuel. This fact is supported by the application of clearance with the Department of Labor (DOL Form No. 74-3). We need not dwell in detail into the circum-stances of the illness of the claimant in this case. It is clearly established that up to October 3, 1974 and days previous he was working continuously and therefore has not suffered any disability. To be entitled to benefits under the Workmen's Compensation Act, as amended, the illness of a working man must result in disability. In this case even if the claimant was sick, nevertheless, he never stopped working nor suffered disability and his stopping from work was brought about not by the illness but rather due to the closure of business of the herein respondent for lack of fuel supply."

A copy of the aforesaid order of dismissal was received by herein petitioner only on November 20, 1975.[2] Upon denial of petitioner's motion for reconsideration, the records of the case were elevated for review to the respondent Commission which affirmed on December 31, 1975 the aforesaid decision. In so affirming, the respondent Commission adhered to the basic facts of the case as stated in the decision of the assistant chief and in addition, found that claimant contracted on August 27, 1974 an illness of PTB "due to fatigue and exposure to intense heat of the furnace, dust and fumes and to sudden changes of temperature and/or x x was aggravated by or the result of the nature of this employment" causing him to stop "working on October 4 1974 and never returned to work anymore x x x." That, notwithstanding, it ruled:

"Records show that claimant's claim for compensation is based on his alleged illness of PTB acquired or either aggravated by or the result of the nature of his employment with respondent. The claimant failed to attach a medical certificate or a Physician's Report of Accident or Sickness to attest the true facts of his sickness. What we find in the records are x-rays findings or result (1 xerox copy and 1 original) made by the same Dra. Genoveva Lomibao Dies at the Philippine Tuberculosis Society, Inc., Manila, dated October 7, 1974 and January 15, 1975, indicating that claimant was suffering from minimal infiltration apex and infraclavicular, fibro-exudative, right hemithorax and minimal infiltrations 1st and 2nd interspaces, fibro-exudative and minimal infiltration, fibro-exudative left hemithorax respectively. We noticed that this X-ray findings were all taken after claimant was terminated from his employment. There being no competent medical evidence to show that claimant was suffering from a disabling sickness of PTB during the period of his employment and at the time of his separation, this Commission, regrets to consider this claim not compensable under the law."

Hence, this petition.

I

Both the assistant chief of section and the respondent Commission expressly found that petitioner's illness supervened in the course of employment. With that express finding, the assistant chief and the respondent Commission were mandated by the Workmen's Compensation Act, as amended, to apply the legal presumption of compensability to petitioner's illness. For We have repeatedly ruled that once the illness, subject of the compensation claim, is shown to have supervened in the course of employment, there arises in favor of claimant the rebuttable presumption that the said illness either arose out of or at least was aggravated by the nature of his employment; and that consequently, the burden to show by substantial evidence the contrary lies with the employer. Because the respondent company failed to present any sufficient and competent evidence to discharge the aforesaid burden as the only evidence submitted by it on that score was the affidavit of its assistant manager (pp. 35-43, WCC rec.), the inescapable conclusion is that the respondent Commission grossly erred in not applying and enforcing the aforesaid legal presumption of compensability to which petitioner, under the obtaining circumstances, is legally entitled. As a matter of fact, the respondent Commission itself expressly stated that

petitioner contracted on August 27, 1974 an ailment of PTB "due to fatigue and exposure to intense heat of the furnace, dust and fumes and to sudden changes of temperature and/or x x was aggravated by or the result of the nature of this employment" causing him to stop "working on October 4, 1974 and never returned to work anymore x x x." Notwithstanding that express finding, the respondent Commission inexplicably ruled out as unmeritorious petitioner's compensation claim. Certainly, the respondent Commission gravely abused its discretion.

II

The conclusion of the respondent Commission that there was "no competent medical evidence to show that claimant was suffering from disabling sickness of PTB during the period of his employment and at the time of his separation" not only unduly nullified the effects of the un rebutted presumption of compensability of petitioner's illness of PTB but also is without basis as it is patently contrary to the evidence on record. For part of petitioner's evidence submitted by him before the respondent Commission were the (1) Physician's Medical Certificates dated October 9, 1974 and September 4, 1975 issued by Dr. Rodolfo J. Gonzales certifying that petitioner was under his medical care for Pulmonary Tuberculosis (active) since August 27, 1974 (pp. 44-53, WCC rec.); and (2) copy of the result of the October 7, 1974 photofluorography conducted on petitioner at the Philippine Tuberculosis Society, Inc., Central Chest Clinic and Dispensary, Manila, showing the following findings: Right Hemithorax - minimal infiltrations, apex and infraclavicular, fibro-exudative, left hemithorax - minimal infiltrations, 1st and 2nd interspaces, fibro-exudative (p. 69, WCC rec.); and (3) a xerox copy of the result of the January 15, 1975 photofluorography conducted likewise by the Philippine Tuberculosis Society, Inc., Central Chest Clinic and Dispensary, Manila, on petitioner with the following findings: right hemithorax - minimal infiltration, fibro-exudative, left hemithorax - minimal infiltration, fibroexudative (p. 68, WCC rec.). The veracity of the aforesaid documentary evidence was never disputed by the respondent company. Consequently, We rule that they constitute competent evidence to show that petitioner contracted his disabling disease of tuberculosis in the course of his employment with respondent company. For We have repeatedly ruled that pursuant to section 49 of the Workmen's Compensation Act, as amended, a medical report of an attending physician, like the aforesaid certificates, may be received as evidence and used as proof of the fact in dispute (*Romero vs. WCC*, 77 SCRA 483, 488 [1977]). With equal, if not greater, evidentiary force and value are the aforesaid photo-fluorography results.

The evidentiary force and value of the October 7, 1974 and January 15, 1975 photo-fluorography results cannot be diluted by the fact alone that the examinations were conducted only after the cessation of the business operation of respondent company on October, 1974, By the very nature of tuberculosis, petitioner could not have suddenly and instantaneously contracted such illness during the three-day period from October 4, 1974, when the respondent company stopped its operation, to October 7, 1974, when the examinations were conducted on petitioner. Tuberculosis is not an instantaneous disease; it is an imperceptible disease caused by a germ which is breathed in and feeds on the lungs or taken with food. It is medically accepted that exposure to dust and dirt is a predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens resistance to any latent tuberculosis infection and reactivates that infection (*Justo vs. WCC*, 75 SCRA 224-225 [1976]). And on this specific point, the case of *Valencia vs. WCC* (72 SCRA 245 [1976]) is strikingly similar to the present case. In that case, claimant "showed or established that after she stopped working on July 31, 1971, she was treated by Dr. Evangelina Gonzales from August 3, 1971 up to February 15, 1972 as per the medical certificate issued to her dated January 17, 1972, and according to the physician's report, it was clearly shown that she was sick of 'minimal pulmonary tuberculosis' x x x." And the Court therein ruled and pointed out that:

"x x x It is clear therefore that when Dr. Gonzales examined petitioner herein on August 3, 1971, just three

days after she stopped working, she was already found suffering from tuberculosis although in its minimal stage. Obviously, petitioner's ailment could not just have appeared simply on the third day of her separation.

"Tuberculosis is a chronic infection caused in humans by bacteria and initiated almost always by inhalation of infectious bacteria. Medical authorities are agreed that the incubation period of tuberculosis is from two (2) to ten (10) weeks from the time of infection. Tuberculosis in its minimal stage indicates a slight lesion without demonstrable cavitation confined to a small area of one or both lungs, the total extent of which does not exceed the equivalent of the volume of lung tissue which lies above the 2nd chondrosternal junctions and the spine of the 4th or body of the 5th thoracic vertebra on one side. As stated in *Batangas Transportation Co. vs. Perez & WCC*, L-19522, August 31, 1964, tuberculosis is not an instantaneous disease; it is an imperceptible germ disease that feeds on the lungs whose presence in the body cannot be easily discerned and its incipient stage may not be readily discovered."

III

There is therefore no doubt that the disabling illness of petitioner supervened in the course of employment. This conclusion is further buttressed by Exhibits "C", "C-1", "D", "D-1", "E", "E-1", "F", "F-1" and "G" (pp. 13-21, rec.) submitted on September 30, 1975 by claimant to the respondent Commission, which exhibits were however ignored by it. Aforesaid exhibits are petitioner's SSS sickness notifications which show that in various dates -- February 23, 1974, March 25, 1974, October 9, 1974, November 8, 1974 and January 24, 1975 -- petitioner was medically examined in connection with his SSS claim for sickness benefits and was found suffering from acute bronchitis and PTB minimal; by reason of which the Social Security System initially allowed him confinement for 14 days (February 23, 1974 to March 6, 1974); then for a period of twenty days (March 25, 1974 to April 13, 1974); then for thirty days (October 9, 1974 to November 7, 1974); then for sixty days (November 8, 1974 to January 6, 1975); and then another sixty days from January 17, 1975 to March 17, 1975. The aforesaid documents which were all signed by the general manager of respondent company, readily show that even before October 4, 1974 when respondent company stopped operation by reason of lack of fuel, petitioner had already intermittently failed to report for work by reason of his illness, which required his confinement. The claim of respondent company that petitioner was not disabled as he was able to work continuously up to the closure of the company's business operation on October 4, 1974, is therefore patently without merit.

IV

The fact that respondent company ceased business operations on October 4, 1974 cannot prejudice petitioner's rights to compensation for at that precise point of time, respondent company's liability or obligation under the Workmen's Compensation Act, as amended, had already set in. In *Ayuso vs. WCC* (73 SCRA 237-238 [1976]), WE ordered therein respondent company to pay compensation benefits to therein disabled petitioner despite the closure of the company's business by reason of the expiration of its license to do business. WE therein ruled that said closure "will not excuse private respondent from the liability to give compensation benefits to its employee who became ill during the course of his employment. The closing of the business of private respondent cannot prejudice the rights of the employees to recover what is due to them under the law."

To the same effect is *Laude vs. Cine Moderna* (72 SCRA, 569-570, 573-574 [1976]), wherein WE held that the destruction of the employer's property, as when the theater where therein claimant worked was razed by fire, does not ipso facto work to terminate employer-employee relationship even if the employer ceases to do business as a result.

The respondent company's jurisdictional defense of lack of employer-employee relationship at the time of

petitioner's disability is likewise unmeritorious in the light of OUR above pronouncements and OUR findings that petitioner contracted his illness in the course of his employment with respondent company or before the cessation of its operation on October 4, 1974.

V

Finally, petitioner's claim for compensation was not timely and effectively controverted by the respondent company. It had knowledge of petitioner's illness on August 27, 1974 (p. 67, WCC rec.) and even earlier, or on February 25, 1974 (see Annex C-1, p. 14, rec.); yet it did not comply with Sections 37 and 45 of the Workmen's Compensation Act, as amended. Consequently, said failure amounted to a waiver or renunciation of the right to controvert the claim. The controversion filed by the respondent company only on May 4, 1975 was too late and cannot be taken cognizance of for the reason that its right to controvert has never been reinstated in the meantime as there was no petition to that effect. Having failed to timely controvert the claim, the respondent company was thereby considered to have renounced all non-juris-dictional defenses, such as the non-compensability of the claim. The respondent Commission therefore gravely abused its discretion in failing to treat the claim as uncontroverted.

VI

Under the circumstances obtaining in this case and as there is no contrary showing in the records that petitioner's illness and/or disability has been arrested, We feel that he should be awarded the maximum benefits allowed by law. The latest medical certificate dated November 12, 1975 issued to petitioner shows that his illness, PTB, was moderately advanced (p. 39, WCC rec.).

WHEREFORE, THE DECISION OF THE RESPONDENT COMPENSATION COMMISSION IS HEREBY SET ASIDE AND RESPONDENT PHILIPPINE GLASS MANUFACTURING CO., INC. IS HEREBY ORDERED:

- TO PAY PETITIONER THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DISABILITY BENEFITS;
- TO REIMBURSE PETITIONER HIS EXPENSES FOR MEDICAL AND HOSPITAL SERVICES, DULY SUPPORTED BY PROPER RECEIPTS;
- TO PROVIDE PETITIONER WITH SUCH SERVICES, APPLIANCES AND SUPPLIES AS THE NATURE OF HIS DISABILITY AND THE PROCESS OF HIS RECOVERY MAY REQUIRE AND THAT WHICH WILL PROMOTE HIS EARLY RESTORATION TO THE MAXIMUM LEVEL OF HIS PHYSICAL CAPACITY; AND

- TO PAY THE COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Fernandez, and Guerrero, JJ., concur.

[1] According to the petition, petitioner, on September 30, 1975, filed a motion to disauthorize representative which was duly received by one Mr. Ubaldo Privado of the Receiving Section of WCU Region 4, Manila. Cited as reason for the motion was that petitioner discovered that Mr. Reyes "is not a lawyer and is only one of those fixers milling the WCC premises" (Annex A, p. 11, rec.).

[2] In his motion for reconsideration, petitioner revealed "(1) that upon verification of the status of this case on November 20, 1975, the herein claimant was advised by this Honorable Office that this case was dismissed by Asst. Chief of Section Manuel P. Asuncion in a decision dated October 2, 1975 allegedly on the ground that claimant's illness did not supervene during and in the course of his employment; (2) that claimant up to the present has not received a copy of said decision but was likewise advised that a copy of said decision was sent to Mr. Feliciano Reyes notwithstanding his Motion to Disauthorize Representative dated September 29, 1975 and filed on September 30, 1975 x x x."

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