

**APOLINARIO KIRIT, SR., ALICE K. MATURAN, ROSELYN K. BIGLETE,
APOLINARIO A. KIRIT, JR., WILLIAM A. KIRIT AND LORNA A. KIRIT,
PETITIONERS, VS. GOVERNMENT SERVICE INSURANCE SYSTEM ...**

G.R. No. L-48580. July 06, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioners seek a review of the decision of respondent Employees' Compensation Commission (ECC), dated March 1, 1978, which affirmed the denial by respondent Government Service Insurance System (GSIS) of petitioners' claim for death benefits under Presidential Decree No. 626, as amended.

The findings of respondent commission are as follows:

The late Eugenia A. Kirit was a classroom teacher of the Department of Education and Culture assigned at the Inalad Elementary School, Siaton, Negros Oriental. Her clinical record reveals that on March 25, 1976, she was confined at the Siliman University Medical Center on complaints of pain on the left shoulder for six (6) months prior to admission, with limitation of motion, accompanied by numbness at the left side of the face, shoulder and arm. Her ailments were diagnosed as "Osteoarthritis and Giant Cell Tumor, left humerus." She died on July 1, 1976 at the age of fifty six (56).[1]

On December 17, 1976, a claim for employees' compensation benefits was filed by the decedent's husband, Apolinario Kirit, Sr., with respondent Government Service Insurance System. Said claim was denied by the GSIS in its letter-decision dated December 21, 1976,[2] stating that the cause of Mrs. Kirit's death, osteoarthritis and giant cell tumor, left humerus, are not occupational diseases, taking into consideration the nature of her particular work. The GSIS further stated that the evidence submitted by petitioners had not shown that said ailment directly resulted from her occupation or employment as a teacher.

Apolinario Kirit, Sr. filed a motion for reconsideration on March 17, 1977, which was likewise denied by the GSIS on the same grounds stated in its decision of December 21, 1976.[3]

On appeal, respondent Employees' Compensation Commission affirmed the decision of the GSIS holding that:

"Osteoarthritis and Giant Cell Tumor, are definitely not accepted as occupational diseases. Both are not included in the list of occupational diseases. In the case of Osteoarthritis, medical authorities believe that it is the result of physiologic process of aging. It is characterized by thinning or degeneration of cartilage and degeneration of bone in some parts of the joint. Osteoarthritis usually develops slowly and gradually in the latter half of life. It involves degeneration and in one sense is a part of the aging process of the people afflicted with it. The same could be said of Giant Cell Tumor, which is precipitated by extrinsic factors unrelated to employment."[4]

The sole issue presented for resolution in this case is whether or not the death of Eugenia Kirit caused by osteoarthritis and/or giant cell tumor is legally compensable.

There is no dispute that the provisions of the Labor Code apply to the case at bar, as admitted by the petitioners[5] and as shown by the evidence on record that the illness and death of the decedent occurred after January 1, 1975.

Thus, the contentions of petitioners, which are anchored on presumptions of compensability and aggravation provided under the former Workmen's Compensation Act, cannot be upheld. The said presumptions have been abandoned under the compensation scheme in the present Labor Code.[6]

Article 167(1) of the Labor Code, as amended, defines a compensable sickness as "illness definitely acceptable as an occupational disease listed by the Commission or any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions."

For the sickness or the resulting disability or death to be compensable, the claimant must either show that it is a result of an occupational disease listed by the Employees' Compensation Commission or, if not so listed, he must present proof that the risk of contracting the same is increased by working conditions.[7]

In the case at bar, the cause of decedent's death, osteoarthritis and/or giant cell tumor, are not listed by the ECC as occupational diseases. Consequently, to be compensable it was incumbent upon petitioners to prove that the decedent's working conditions as a teacher increased the risk of her contracting the fatal illness.

A careful review of the record shows that petitioners did not present any evidence to prove work connection. They relied solely on the theory of aggravation and presumptions of compensability under the old compensation law which have no application in this case. In the absence of proof, we cannot conclude that it was the employment of the decedent which increased the risk of her contracting the disease.[8] The burden of proof is upon petitioners, as awards of compensation cannot be made to rest on presumptions.

As ruled in *Tanedo vs. Employees' Compensation Commission, et al.*: [9]

"Neither may an award in petitioner's favor be justified upon any presumption that illness causing death or disability arose out of the employment or was at least aggravated by such employment. That presumption was laid down by the old statute. It is however now a thing of the past, abolished on effectivity of the new law on January 1, 1975. Awards of compensation benefits for death or disability can now no longer be made to rest on presumption, but on a showing that the causative disease is among those listed by the ECC, or on substantial evidence that the risk of contracting said disease is increased by the employees' working conditions."

Petitioners having failed to discharge the burden of proof placed upon them by the Labor Code, the claim for death benefits was correctly denied by public respondent.

ACCORDINGLY, the petition is hereby **DISMISSED**. The decisions of respondents Government Service Insurance System and Employees' Compensation Commission denying the claim are **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Rollo, 24.

[2] Ibid., 17.

[3] Ibid., 18-21

[4] Ibid., 26.

[5] Ibid., 11-12.

[6] Sulit vs. ECC, et al., 98 SCRA 483 (1980); Casumpang vs. ECC, et al., 150 SCRA 21 (1987); Sarmiento vs. ECC, et al., 161 SCRA 312 (1988).

[7] Section 1(b). Rule III of the Amended Rules on Employees' Compensation: Debatian vs. GSIS, 149 SCRA 123 (1987).

[8] Vda. de Inguillo vs. ECC, et. al., G.R. No. 51543, June 6, 1989.

[9] 154 SCRA 288 (1987).

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