

CENTRAL AZUCARRERA DON PEDRO, PETITIONER, VS. CESAREO DE LEON, ETC., ET AL., RESPONDENTS.

G.R. No. L-9449. July 24, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of respondent Commissioner dated April 20, 1955, granting the dependents of one Domingo Garin the sum of P2,994.25 as death benefits, plus burial expenses not exceeding P200, minus any amount already paid.

Petitioner is a corporation organized under the laws of the Philippines. Domingo Garin was employed by petitioner as a laborer in its Central since 1927, first as a bagasse-packer, and later as a stoker, with a daily compensation of P4.36. While in the performance of his duties he contracted pulmonary tuberculosis and on December 5, 1951, he applied for retirement for reasons of ill-health. On December 6, 1951, petitioner's physician issued a certification attesting to the weak physical condition of Garin and recommended approval of his request. Whereupon he was retired and granted retirement pay in the sum of P525, which was later raised to P725.

On June 10, 1952, Garin filed a notice of sickness and claim for compensation with the Workmen's Compensation Division of the Bureau of Labor, and while the same was pending investigation, Garin died on January 11, 1953. Thereafter, on June 30, 1954, respondent Commissioner rendered a decision awarding Garin the amount of P2,502 as disability benefits and a weekly compensation of P18.00.

On January 11, 1955, petitioner informed respondent Commissioner that it is willing to pay the correct amount of compensation on condition that such compensation be limited to the period from October 20, 1951 to January 11, 1953, the last date corresponding to Garin death.

On April 16, 1955, Felicidad Ocampo Vda. de Garin executed a notice of death and claim for death benefits and sent the same to respondent Commissioner, and on April 28, 1955, the latter rendered another decision awarding the dependents of Garin the amount of P1,134.00 as disability compensation from October 20, 1951 to January 11, 1958, another amount of P2,994.25 as death benefits, plus burial expenses amounting to P200, less any amount already paid.

On May 4, 1955, petitioner wrote respondent Commissioner conceding the amount of P1,134 to Garin's dependents as disability benefits provided the amount of P725 paid to Garin be deducted therefrom. However, it contested that portion of the decision awarding death compensation on three grounds: (1) that the notice of death and claim for compensation were filed out of time; (2) that Garin died more than 2 years from the date of sickness; and (3) that the increase from P18 when Garin was alive to P20.65 after he had died was not correct.

On June 27, 1955, respondent Commissioner rendered an order on petitioner's motion stating that the delay in giving the notice of death and in filing the claim for death benefits did not prejudice the petitioner, and as a result, he ignored the latter's request for hearing.

Hence the present petition for review by way of certiorari.

It is now contended that respondent Commissioner acted with great abuse of discretion in awarding death benefits and burial expenses to Garin's dependents for the following reasons: (1) that the notice of death and claim for death benefits were filed out of time; (2) that the claim for death benefits and burial expenses should have been dismissed for the reason that Garin died more than two years from the date of sickness; and (3) that respondent Commissioner does not have before him sufficient proof to justify his award of death benefits. Petitioner likewise contends that respondent Commissioner acted arbitrarily when he denied petitioner's request for a hearing.

Petitioner's contention that the notice of death and claim for death benefits were filed out of time is not well founded. Although Section 24 of our Workmen's Compensation Act, as amended, provides that the notice and claim for compensation must be made within two months after injury or sickness or in case of death not later than three months after death, however, the same section provides that in case medical, surgical, and hospital services and supplies have been furnished voluntarily by the employer, such notice shall not be necessary, and that if the employer has voluntarily made compensation payments, the claim for compensation is not also necessary. Petitioner admits that it had freely furnished the late Garin, with such medical services and supplies he needed during his illness and that upon his retirement it had voluntarily paid him a retirement compensation in the amount of P934, which clearly indicate that the present claim comes within the exception to the rule which requires timely filing of the notice and claim for compensation.

Moreover, Section 27 of the same Act provides that "failure to or delay in giving notice shall not be a bar to the proceeding herein provided if it is shown that the employer, his agent or representative had knowledge of the accident or that the employer did not suffer by such delay or failure." Here it cannot be pretended that the late filing of the notice and claim for death benefits has caused prejudice to petitioner for it knew right along the sickness with which Garin was afflicted so much so that it helped him in his medical treatment and hospitalization. In fact he was under treatment of petitioner's physician up to October 26, 1952, and it is this same sickness that brought him to his grave on January 11, 1953. The reason behind the requirement that prompt notice be given of the sickness or death by the employee or his dependents to the employer is in order that the latter may take the necessary steps to protect his interest, which purpose may not be attained if notice is unreasonably delayed, but when the employer knows right from the beginning the sickness of the employee and the cause of his death, the reason for the requirement ceases to exist. Such is the situation herein obtained.

The contention that the claim for death benefits and burial expenses should be dismissed for the reason that Garin died more than two years from his sickness, is not also well founded. The law invoked by petitioner is Section 8 of the Act which we quote in part:

"Sec. 8. Death benefits.—If the disease contracted or injury received by the employee as provided in section two hereon cause his death within two years from the date of such injury or sickness; the employer shall pay the compensation to the persons entitled thereto, and in case there shall be none, he shall pay to the person representing the deceased employee the burial expenses not to exceed two hundred pesos, and shall also pay to or for the following persons, in the order or priority and during the periods hereinafter set forth. * * "

It is petitioner's theory that the two-year period mentioned in the law should be reckoned with from the date the injury is caused or the illness is contracted resulting in death in order that the employee may be entitled to compensation, or that the wording of the law should be interpreted literally in order that the illness or death may be compensable. To this we cannot agree for that would render the law nugatory and ineffective. A reasonable interpretation would be that the two-year period be counted from the date the disease or illness becomes compensable, or from the date the employee's sickness renders him physically disabled to do the work, which interpretation is in keeping with the general rule in compensation cases that the injuries or diseases that are

compensable are only those which produce disability and thereby affect the earning power of the employee. In other words, as long as the employee is able to work and receives his pay even if he is suffering from illness, he is not entitled to compensation.

"Sec. 240. Nature of injuries and elements of damage compensated. —In compensation, unlike tort, the only injuries compensated for are those which produce disability and thereby affect earning power. * * *" (Larson's Workmen's Compensation Law, Vol. I, pp. 9-10).

In the instant case, it appears, Garin contracted pulmonary tuberculosis much prior September 28, 1950, when his treatment by petitioner's physician began, although the same did not prevent him from working until December 5, 1951, when he applied for retirement because of the aggravation of his illness. He therefore became incapacitated for work only beginning December 5, 1951, and only from that time on his ailment became compensable within the meaning of the law, and so the counting of the two-year period should start from that time. The period of two years cannot be counted from September 28, 1950 when Garin was placed under treatment by petitioner's physician, as petitioner would like us to apply, because even if Garin were then treated he was not yet completely incapacitated for labor until December 5, 1951, when he applied for retirement. Petitioner's contention that the claim for compensation should have been dismissed is therefore without merit.

Petitioner finally contends that respondent erred in making the award for death benefits even if he had not before him sufficient proof to justify such award. This contention is also untenable. It appears that petitioner became aware of the death of Garin on January 11, 1955. Pursuant to Section 45 of the Act, it has 10 days within which to controvert dependents' right to compensation, but it failed to do so, and instead it merely informed the Commissioner that Garin died way back on January 11, 1953, and that there was need of a re-computation of the amount of the award in order to adjust it to the date of death of Garin. Such failure constitutes a renunciation on its part of its right to dispute the award. And since they have failed to controvert dependents' right to compensation seasonably, it cannot now be heard to complain that it was deprived of its right to a hearing.

Wherefore, petition is denied. The decision appealed from is affirmed. Costs against petitioner.

Paras, C. J., Bengzon, Padilla, Concepcion, Endencia, and Barrera, JJ., concur.

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