

MANSUETO D. TENASAS, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND DELGADO BROTHERS, INC., RESPONDENTS.

G.R. No. L-42418. November 29, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Petitioner Mansueto D. Tenasas appeals from a decision of the Workmen's Compensation Commission which set aside an award in his favor rendered on July 29, 1975 by the Acting Referee Daisy Dumol Lopez of Regional Office No. IV, the dispositive portion of which We quote:

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"WHEREFORE, judgment is rendered ordering the respondent Delgado Brothers Corporation.

"1. To pay claimant Mansueto Tenasas the sum of FOUR THOUSAND SIXTY TWO PESOS 96/100 (P4,062.96) as disability compensation under Section 14 of the Act, as amended.

"2. To pay Atty. Samson Enano the sum of TWO HUNDRED THREE PESOS 15/100 (P203.15) as attorney's fee under Section 31 of the Act.

"3. To pay this Office the sum of FORTY ONE PESOS (P41.00) as administrative fees pursuant to Section 55 of the Act, as amended.

"SO ORDERED." (pp. 66-67, original record)

The findings of the Acting Referee follow:

"The evidence on record shows that claimant was employed with the respondent sometime in 1966 to September 4, 1973 when he became disabled and was not able to resume his work; that he was employed as Stevedore working six (6) days a week with a weekly wage of P68.40; that sometime in 1971 he contracted Pulmonary Tuberculosis by reason of which he filed a claim for disability compensation with this Office which was awarded on March 14, 1972 for the disability he suffered from April 23, 1971 to December 8, 1971 in the total amount of P913.41; that he was paid by the respondent of the award and when his physical condition permitted him he resumed his work; that on September 5, 1973 he became disabled for labor due to the same ailment of Pulmonary Tuberculosis, minimal; that he remained under the medical care of Dr. Ruben Nepumoceno of the Quezon Institute Hospital from September 7, 1972; that his X-ray examinations conducted by Dr. A.M. Laxamana on April 26, 1974 reveals the following findings, Minimal Koch with Fibrocalcific tendency, bilateral, heart no deformity; that his X-ray result conducted on July 11, 1975 at the National Tuberculosis Center Clinic, Department of Health reveals the impression of suspicious TB pathology; that the disability of the claimant was referred to the Compensation Rating Medical Officer of this Office who in a report dated July 15, 1975 has determined claimant's temporary total disability from the time he stopped working to July 11, 1975." (pp. 67-68, *ibid.*, emphasis supplied.)

Notwithstanding the above findings, the Workmen's Compensation Commission on appeal of Delgado Brothers, Inc. held that while it may be true that petitioner was afflicted with Tuberculosis there is no showing however that he was incapacitated to work as a result thereof when he stopped working on September 4, 1973 and that as a matter of fact the claimant's Exhibit B which is the medical report dated April 26, 1974 (p. 3, *ibid.*) and the X-ray report of July 11, 1975 show that his ailment was cured. (p. 59, *ibid.*) The Commission concluded that except for claimant's "own self-serving declarations, all the medical proofs on record clearly negate claimant's allegation that he was sick of PTB in September, 1973. And to award compensation on the mere unsupported declaration of a working-man would be making an oppressive statute out of the Workmen's Compensation Act to the consummate prejudice of employers. In workmen's compensation cases, such as this one at bar, it is imperative that the claimant has to prove, by the necessary quantum of evidence, his illness complained of and the resulting disability." (p. 78, *ibid.*)

We are constrained to set aside the decision under review.

It is an actuality that petitioner became sick of pulmonary tuberculosis as early as 1971 in the course of his employment as a stevedore of Delgado Brothers, Inc. The physical strain, the exposure to dust, sun, and inclement weather, weakened claimant's resistance to infection and rendered him vulnerable to lung disease. In fact, the employer paid petitioner disability compensation for the latter's ailment covering the period from April 23, 1971 to December 8, 1971.

Petitioner's return to work in 1972 is not to be taken against him; rather, readmitting petitioner to work was a risk which the employer assumed knowing as it did that its employee was a tuberculous patient. There is no record that the laborer was given a thorough physical and medical examination by the company's physician and was found physically fit for work when he resumed his occupation as a stevedore in 1972. On the other hand, the testimony of Dr. Ruben Nepomuceno given during the hearing proved that claimant Tensas was admitted in September of 1972 at the Mary Chiles Hospital as a "TB patient"; that the X-ray findings showed lesions in both lungs and his "TB" was classified as "minimal" which could be cured from six (6) months to two (2) years if given proper medications; that petitioner was once more examined by Dr. Nepomuceno in February of 1973 and the doctor's diagnosis of the patient was: "PTB minimal bronchial chronic still active." (pp. 42- 43, *ibid.*) And when Dr. Nepomuceno was asked if the patient could have resumed his work in that state of health, the witness declared that he could but "with some risk." (p. 42, *ibid.*)

We are indeed convinced that when petitioner herein returned to work in 1972 he was still suffering from the pulmonary tuberculosis which he incurred in 1971. He had however to continue working to earn for his livelihood and to support his family. That petitioner worked sporadically after September of 1972 (the employee's witness, Bienvenido de Castro in charge of payrolls, testified that Mansueto Tensas worked only for one day in a month in 1973, for the month of July 5 days, for August - one day and the last day was September 4, 1973," p. 53, *ibid.*) confirmed the poor state of his health and his inability to undergo the usual burden and strain of manual work which consisted mainly of loading and unloading heavy cargoes aboard the vessels being served by Delgado Brothers. We have the testimony of Tensas that he was compelled to stop working due to the hard work and his "back pain." (pp. 37, 38, *ibid.*)

For an employee to be entitled to receive disability compensation, it is not a prerequisite, that he be totally and absolutely disabled to perform any kind of work. It is sufficient that the employee concerned is rendered incapacitated for the usual work he is accustomed and competent to do or perform, and as a consequence, his earning capacity impaired. As a matter of fact,

"In order to be 'compensable', disability need not be limited to incapacity of a workman to pursue his ordinary occupation but embraces impairment of earning power generally." (*Bianco v. Industrial Accident Commission*,

Cal. App., 142 P. 2d 73, 78; 150 P. 2d 806, 24 Cal. 2d 584)

Hence, although petitioner Tensas may be said to have been cured of his pulmonary tuberculosis as of July, 1975, the fact remains that from the time he left Delgado Brothers on September 5, 1973, he was unable to resume his usual occupation as a stevedore as a result of the ailment that afflicted him and which sapped his vigor, energy, and vitality, he being at the age of 30 in the prime of his manhood.

IN VIEW OF THE FOREGOING, We set aside the decision of respondent Commission and reinstate the Acting Referee's award in favor of petitioner-claimant Mansueto Tensas.

So Ordered.

Teehankee, (Chairman), Makasiar, Martin, Fernandez, and Guerrero, JJ., concur.

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