

ALBERTO MENDOZA, PETITIONER, VS. V. ENRIQUEZ FURNITURE AND/OR VIRGILIO ENRIQUEZ, MANAGER AND OWNER AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-34229. August 30, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a claim for compensation that was filed over 24 years ago with the Workmen's Compensation Commission. After a long wait, the claimant died. His widow now hopes that final action could be taken on their Claim.

The facts are undisputed. Alberto Mendoza was employed in 1960 by Virgilio Enriquez who was engaged in the furniture business as a driver of his delivery truck with a salary of P5.00 a day. His daily chore was to make deliveries to buyers within Caloocan City and neighboring cities like Pasay and Manila, six (6) days a week with an average of two deliveries per day. In many instances, Mendoza took his meals irregularly due to his work.

In September, 1962, he suffered from "peptic ulcer, chronic ascariasis," so he was confined in the U.E. Memorial Hospital from September 14 to 21, 1962. Thereafter, he reported back to work. In January, 1963, he was again confined at the same hospital, this time for a period of seven (7) days, from January 19 to 25, 1963, for "peptic ulcer duodenal; intestinal parasitism." He reported back to work upon his discharge. However, because of his almost daily absences from work, he was fired by Enriquez in October, 1963.

Mendoza then filed a claim for separation and overtime pay with the Manila Regional Office No. 4 of the Department of Labor. The case was amicably settled when he was paid the amount of P130.00 by Enriquez.

Mendoza then filed a claim for compensation under the Workmen's Compensation Act, as amended, against Enriquez for disability because of peptic ulcer and ascariasis which he allegedly contracted while the employ of Enriquez. After due hearing, a decision was rendered on October 3, 1966 by Acting Chief Referee Atanacio A. Mardo of said office dismissing the claim for lack of merit. A motion for reconsideration filed by claimant was denied so he appealed to the Workmen's Compensation Commission (WCC).

On July 26, 1967, Mendoza died, so his widow was substituted in his place. Associate Commissioner Priscila Argonza Medina of the Commission rendered a decision on May 26, 1970, denying the claim.

A motion for reconsideration of the decision was filed by Mendoza and the Commission en banc denied the motion on July 29, 1971.

Hence, the herein petition filed by Mendoza wherein he raises two issues, namely: (1) whether the order of July 21, 1971 of the WCC en banc denying the motion for reconsideration is in accordance with law; and (2) whether the claim of petitioner is compensable or not.

Section 2 of the Workmen's Compensation Act[1] provides as follows:

"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 person hereinafter specified xxx (underscoring supplied)."

On two occasions, petitioner was confined in the hospital due to peptic ulcer. During these periods of hospitalization he was not in a position to render service due to his physical inability to perform his work in the usual and customary way.[2] Under the Workmen's Compensation Act, there is disability when there is a loss or diminution of earning power which is due to injury arising out of and in the course of employment.[3] It is not the injury that is compensated but rather it is the incapacity to work due to impairment of the capacity to work.[4]

No doubt, petitioner suffered disability by his sickness which is compensable. He did not receive his salary during the period of his hospitalization and convalescence. The sickness is compensable as it has supervened during his period of employment with private respondent. His peptic and duodenal ulcers were aggravated by his working conditions.

Under the Workmen's Compensation Act, as amended, the claimant was relieved of the duty to prove causation as it was then legally presumed that the illness arose out of employment, under the presumption of compensability.[5] Under the present law[6] which superseded the Workmen's Compensation Act, the principle of aggravation and the presumption of compensability have been stricken off by the lawmakers as grounds for compensation.[7]

For a case to be brought under the protective mantle of the old compensation law, the ailment must be contracted prior to January 1, 1975.[8] Petitioner was sick and confined in the hospital from September 14, 1962 to September 31, 1962 and from January 19, 1963 to January 25, 1963 due to peptic ulcer-duodenal, intestinal parasitism and chronic ascariasis.

Petitioner's right to compensation is clear.

WHEREFORE, the decision of the Workmen's Compensation Commission dated July 29, 1971 is hereby REVERSED and SET ASIDE and another judgment is hereby rendered ordering private respondents to pay disability benefits to petitioner to be determined by public respondent, now Employees' Compensation Commission, by computing petitioner's income during the period of his disability, considering the present-day economic standard and financial realities, with legal interest from the filing of this petition on October 10, 1971. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Aquino, and Medialdea, JJ., concur.

[1] Act No. 3428.

[2] *Bello v. WCC*, 80 SCRA 153.

[3] *Marcelino v. Seven-Up Bottling Co.*, 47 SCRA 343.

[4] Vicente Francisco, *Labor Laws of the Philippines*, 4th ed., Vol. II, p. 492, cited in *Bello v. WCC*, supra.

[5] *Tortal v. WCC*, 124 SCRA 211.

[6] See Articles 166 to 208, Labor Code of the Philippines, as amended.

[7] Milano v. Employee's Compensation Commission, 142 SCRA 52.

[8] Tortal v. Workmen's Compensation Commission, *supra*; Dabatian v. GSIS, 149 SCRA 123; Sulit v. ECC, 98 SCRA 483.

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