

VIRGINIA VDA. DE TUMOLVA, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION, GOVERNMENT SERVICE INSURANCE SYSTEM (MUN. GOV.; T. TUMAUNI, ISABELA), RESPONDENTS.

G.R. NO. L-46187. January 16, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Employees' Compensation Commission in ECC Case No. 0231 entitled "Virginia Vda. de Tumolva v. Government Service Insurance System (Municipal Government, Tumauni Isabela)" which affirmed the decision of the Government Service Insurance System and denied the claim for death benefits of Virginia Tumolva, widow of the late Ildefonso Tumolva.

The assailed decision of the Employees' Compensation Commission is as follows:

"On the sole question of whether or not the deceased's ailments of Obstructive Jaundice Secondary to Cancer, Head-Body of Pancreas and Pulmonary Tuberculosis. Moderately Advanced, could have emanated from the nature of his employment as a Municipal Secretary, as well as the working conditions attendant thereto, appellant herein seeks a review of the decision of the respondent Government Service Insurance System denying her claim for income benefits for death due to the foregoing ailments under Presidential Decree No. 626, as amended.

"The controlling facts as appearing from the record are as follows: The late Ildefonso A. Tumolva, husband of appellant herein, was in life a Municipal Secretary of Tumauni, Isabela. On February 6, 1975, on complaints of general body weakness with vague abdominal discomfort and slight yellowish discoloration of the sclerae associated with gradual loss of appetite, he was brought to the Tumauni Emergency Hospital. Noting no improvement in his prognosis, he was transferred to the Mary Johnston Hospital where his ailments were clinically diagnosed to be 'Obstructive Jaundice Secondary to CA, Head-Body of Pancreas and PTB, Moderately Advanced.' He subsequently died on June 19, 1975 due to the foregoing ailments.

"The claim for income benefits for death filed by the deceased's widow, appellant herein, was denied by the respondent System on June 21, 1976 on the ground that the causes of death are not occupational diseases and the nature of the deceased's duties as Municipal Secretary as well as the working conditions obtaining in his employment could not have directly caused his ailment which led to his subsequent death. From this denial, appellant elevated her claim to this Commission for review.

"After a careful examination of the facts of this claim, we do not see any reason why the respondent System's decision, finding the present claim to be not compensable, should be reversed.

"In this particular case, the illness that actually hastened the life of the deceased was Obstructive Jaundice Secondary to CA, Head-Body of the Pancreas. As time and again stressed by this Commission, when an ailment upon which a claim for compensation is based is not classified as an occupation disease under Annex "A" of the Rules on Employee's Compensation, such as in the instant claim, it is incumbent upon the claimant to establish by substantial proof that the risk of contracting the ailment is increased by the employee's working

conditions. In the case at hand, there is nothing at all in the record that could substantiate the allegation of the appellant that such employment conditions to which deceased had been exposed had increased the risk of contracting his malignant ailment of Cancer of the Pancreas.

"Pulmonary Tuberculosis, while it may have served to complicate the main ailment of the deceased, does not fall under the purview of 'Occupational disease' as defined and understood under the decree, unless the claimant could show that the employee's occupation involved close and frequent contact with a source or sources of tuberculosis

infection by reason of employment: (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, (b) as a laboratory worker, pathologist or postmortem worker where occupation involves working with material which is a source of tuberculosis infection. The deceased's occupation as a Municipal Secretary does not involve any of these risks. Accordingly, since the foregoing ailments that eventuated in the death of the deceased had not been due to the deceased's employment, the ensuing death, therefore, is hereby, as the respondent did, held not compensable.

"FOR ALL THE FOREGOING, the decision appealed from should be. as it is hereby AFFIRMED, and the instant claim dismissed." (Original Records. Decision of ECC).

Upon receipt of the copy of the above decision on May 6, 1977, Virginia Tumolva immediately filed a notice of appeal and elevated her case to this Court by way of certiorari on June 9, 1977. Although her claim is based on Presidential Decree No. 626, the petitioner raises the following issues which seem to invoke provisions of the old Workmen's Compensation Act:

"1. whether or not the defense of non-compensability is waived by failure of employer to controvert claim.

"2. whether or not Pulmonary Tuberculosis is an "occupational disease" to be service connected, and hence, compensable." (Petition, Rollo, p. 8).

Considering that the severe illnesses which contributively precipitated the death of petitioner's husband occurred immediately after the effectivity of the New Labor Code on January 1, 1975, we find a close scrutiny of the nature of these ailments necessary for a just adjudication of this case.

Medical authors on the said diseases reveal the following findings:

"Jaundice — a morbid condition characterized by yellowness of the eyes, skin and urine, constipation and loss of appetite x x x" (Maloy, Medical Dictionary for Lawyers. 3rd Ed..(p. 334)/

'x x x it is usually first noticeable in the eyes, although it may come on so gradually that it is not immediately noticed by those in daily&contact with thm jaundiced person.

"Jaundice is not a disease. It is a symptom of one of a number of different diseases and disorders of the liver, gallbladder and bnood xxx.

"Jaundice man also bg a symptom of infectious (viral) hepatitis." (Miller. Encyclopedia and Dictionary of Medicine and Nursing, p. 505).

"CHOLESTASIS

"A clinical and biochemical syndrome which results when bile flow is impaired at any point from the liver cell canaliculus to the ampulla of Vater. The term "cholestasis' is preferred to 'obstructive jaundice' because a mechanical obstruction is not always present.

"Etiology.

"For clinical purposes a distinction between intra and extrahepatic causes is crucial.

"The commonest intrahepatic causes are viral or other hepatitis, drugs, and alcoholic liver disease. Some less common etiologies are primary biliary cirrhosis, cholestasis of pregnancy, metastatic carcinoma, pericholangitis secondary to ulcerative colitis, and numerous rare disorders.

"Extrahepatic cholestasis is most often due to a common duct stone or pancreatic carcinoma. Less frequently, benign stricture of the common duct (usually related to previous surgery), ductal carcinoma, pancreatitis or pancreatic pseudocyst. and sclerosing eholangitis are causative." x x x. (Berkow. editor. The Merck Manual of Diagnosis and Therapy, 13th ed.. p. 852).

In this case, Obstructive Jaundice, which is one of the immediate causes of the deceased's death, co-existed with Cancer of the Head-Body of the Pancreas which in turn has the following characteristics:

"G.

Adenocarcinoma of Pancreas. Cancer of the pancreas is increasing in frequency. It usually develops between age 40 and 60. The disease is rarely curable because it has extended or metastasized by the time it is detected.

"1.

Diagnosis —

a.

Symptoms and signs. Pain in the epigastrium and back is l deep-seated, dull and often is exacerbated by recumbency. Anorexia and weight loss are characteristics. Obstructive jaundice is caused by cancer arising in the head of the gland x x x" (Schrock, Handbook of Surgery, 7th ed., p. 332.).

"Pancreas. Malignant tumors arise from the ducts and acinar cells as adenocarcinoma. Adenocarcinoma in the head of the pancreas usually causes painless jaundice, anorexia, nausea and weight loss. A tumor in the body of the pancreas causes gnawing pain which radiates to the back and is worse after the patient eats and when he lies down; weight loss and anorexia are late consequences. Tumors in the tail of the pancreas are often silent until they spread locally, especially to the spleen. Prognosis is very poor since pancreatic tumors are advanced when detected. Metastases to the stomach, liver and lung are common." (Berkow, supra, p. 830).

"Severity of Problem. Fifty per cent of those with pancreatic cancer die in less than three months from the time of diagnosis. Two percent or less survive for three years. Usually the cancer is so well advanced when detected that little can be done to fight it." (Pescar, Medical Reference Library: Symptoms and Illness, p. 76).

The foregoing medical conclusions attest to the fact that obstructive jaundice is caused by and can be directly traceable from cancer of the pancreas. At the very least, said illness may be considered as an aggravation of the original sickness of cancer of the pancreas.

More important to the issues presented by the petitioner, there is a unanimous finding that cancer of the pancreas is one of those rare diseases which are already at their advanced stages when detected such that the chances for their effective cure become nil. There are no findings that this illness does not progress gradually.

The facts of this case appear to be consistent with the aforecited medical findings because from the time the deceased complained of abnormal body functions on February 6, 1975, a rapid deterioration of his physical condition ensued which led to his death on June 19, 1975 or barely four months after his first medical check-up on record at the Tumauni Emergency Hospital.

It is, therefore, not unreasonable to conclude that the deceased's sickness had pre-existed and dated back to a much earlier time before he obviously felt the severity of his ailment or before 1975.

Even assuming, however, that this inference is, strictly speaking, based on other inferences which are difficult to verify, we note that the deceased's death was also caused by Moderately Advanced Pulmonary Tuberculosis.

In the case of *Leonardo v. Workmen's Compensation Commission* (88 SCRA 58), we attributed to pulmonary tuberculosis the following nature:

xxx xxx xxx

"x x x tuberculosis is not an instantaneous disease. It is an imperceptible disease that is breathed in and feeds on the lungs and taken with food; its presence in the body cannot easily be discerned; its incipient stage may not be readily discovered. 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 the resistance to any latent tuberculosis infection and reactivates that infection."

Thus, we cannot avoid the conclusion that the ailments which led to the deceased's death imperceptively supervened at the time when the New Labor Code was not yet in force and effect. In this case, we only need to reiterate this Court's rule that where the ailment was contracted before January 1, 1975, although the death occurred and the subsequent claim was filed after the effectivity of the New Labor Code in 1975, the claim should still be decided under the Workmen's Compensation Act. (See *De Castro, Jr. vs. Republic*, 75 SCRA 372; *Cuenza v. Employees' Compensation Commission*, 103 SCRA 316; *Manahan v. Employees' Compensation Commission*, 104 SCRA 198). It is a settled rule that the governing law in the prosecution of a cause of action which has accrued prior to the effectivity of a new law shall be the law enforced at the time of the accrual of said cause of action (*Balatero v. Employees' Compensation Commission*, 95 SCRA 608).

Applying now the provisions of the old Workmen's Compensation Act, we rule that when there is a showing that the ailment was contracted in the course of his employment, there is a disputable presumption that the claim is compensable and the burden of proof is shifted to the employer to prove by substantial evidence that the illness did not arise from such employment or was at least aggravated by it. (*Cuenta vs. Employees' Compensation Commission*, *supra*).

The deceased's employer, the municipal government of Tumauni, Isabela, did not controvert the petitioner's claim. The Government Service Insurance System which is the party respondent in this case did not rebut the petitioner's allegations that the deceased, as municipal secretary and alter ego of the mayor, was exposed to potential sources of tuberculosis infection. The petitioner alleged that her husband, aside from doing office work also frequented the barrios, usually passing along dusty road, entertained and helped people from all walks of life and stayed" up late in the evening during cases of emergency.

Due to respondent's failure to overthrow by substantial evidence the presumption of compensability in this case, we are constrained to rule in favor of the petitioner.

WHEREFORE, the decision of the Employees' Compensation Commission is hereby REVERSED and SET ASIDE. The respondent Government Service Insurance System is ordered to pay:

SIX THOUSAND PESOS (P6,000.00) for death benefits to the petitioner;

TWO HUNDRED PESOS (P200.00) burial expenses to the petitioner;

SIX HUNDRED PESOS (P600.00) attorney's fees to petitioner's counsel; and

SIXTY ONE PESOS (P61.00) administrative fees to the Ministry of Labor and Employment.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, De la Fitente and Patajo, JJ.. concur.
Meleneio-Herrera, J.. took no part.

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