

WALLEM MARITIME SERVICES, INC., PACIFIC INTERNATIONAL LINES, ART SERAFICO AND ERICKSON G. PEDROSA, PETITIONER, VS. HEIRS OF THE DECEASED PRUDENCIO F. CANO REP. BY HIS BROTHER EL...

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MACALINO, J:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court[1], seeking to annul and set aside the 28 February 2014 Decision[2] (“Assailed Decision”) and the 28 April 2014 Resolution[3] denying the Motion for Reconsideration, promulgated by the National Labor Relations Commission (“Public Respondent”) in NLRC NCR OFW Case No. (M) 01-00502-13 [NLRC LAC No. 01-000127-14]. The dispositive portion[4] of the Assailed Decision reads:

“WHEREFORE, premises considered, the appeal is hereby declared with merit. The Decision of the Labor Arbiter is REVERSED and SET ASIDE and new one entered; Respondents are hereby ordered to pay jointly and solidarily Complainants, heirs of Prudencio Cano represented by Elleonie F. Cano, US\$50,000.00 minus the US\$10,000.00 already paid for the death compensation or its Philippine Peso equivalent at the prevailing exchange rate at the time of payment plus attorney's fees equivalent to 10% of the monetary award.

SO ORDERED.”

FACTS OF THE CASE

Engr. Prudencio F. Cano (“Deceased”) is a seafarer by profession. On 11 July 2012, Deceased entered into an employment contract[5] with Wallem Maritime Services, Inc., the manning agent of Principal Pacific International Lines Pte. Ltd., with Officers Erickson Pedrosa and Art Serafico (“Petitioners”), to work onboard the vessel “M/V Kota RuKun” as a second engineer for a period of six (6) months, working 48 hours a week with a basic monthly salary of USD 2,250.00.

On the same date, Deceased underwent a mandatory pre-employment medical examination (“PEME”). Although it was determined that he was fit for sea duty, findings showed that he was hypertensive and was prescribed to take the following medications: “Losartan, HctZ (Combizar) 100/25 mg. OD, Metoprolol (Neoblock)100mg.OD, Amlodipine 10mg.OD, Solotrate 60mg.OD, and Aspirin (Bayprin) 100mg.OD.”[6] On 20 July 2012, Deceased was eventually deployed en route to Singapore where he performed his duties and responsibilities as Second Engineer by providing assistance to the Chief Engineer in running the ship efficiently.[7]

On 28 September 2012, around 8:30PM, his duty ended. Thereafter, he asked the Chief Engineer to go ashore together with the other crew members, proceeding to a bar to drink.[8] While drinking at around 4 A.M. of the following day, 29 September 2012, the Deceased fell from his chair and hit his head. He was immediately brought to the nearest hospital, Tan Tok Seng Hospital Pte. Ltd., where he expired. His death certificate[9] confirms that the Deceased died due to Ischemic Heart Disease (“IHD”).

By way of humanitarian considerations, Petitioners thought it best to provide financial assistance to the family of

the Deceased in the amount of Php42,700.00[10] as well as shouldering the latter's funeral expenses in the amount of Php120,000.00.[11] Pursuant to the provisions of Republic Act No. 8042, or the Migrant Workers Act, as well as the POEA-Standard Employment Contract, the Deceased's family was also paid the amount of USD 10, 000.00 or a peso equivalent of Php413,500.00.[12]

The Petitioners forwarded the said Certificate of Death to their designated physicians for review and to determine whether the cause of death was compensable or due to an occupational disease. On 10 November 2012,[13] and subsequently on 27 February 2013,[14] Dr. Ramon S. Estrada, the Petitioners' physician determined that such cause of death was not work-related as the circumstances surrounding Deceased's death failed to meet the requirements stated in the POEA guidelines concerning cardiovascular diseases. Petitioners allege that the family of the Deceased were well informed of such findings.

Believing otherwise and relying that Petitioners would be releasing death benefits befitting the Deceased which they have not yet received, the heirs of the Deceased, as represented by the latter's brother, Elleonie F. Cano ("Private Respondent"), filed an instant Complaint[15] on 11 January 2013 for non-payment of death benefits and attorney's fees. As efforts toward reaching an amicable settlement have failed, the parties were ordered to submit their respective position papers and pleadings.

On 30 October 2013, Labor-Arbiter Paolo A. Gajardo, Jr. rendered a Decision,[16] dismissing the Complaint for lack of merit. In the said Decision, the Labor-Arbiter ruled that Private Respondents are not entitled to death compensation benefits in accordance with the POEA contract for the reason that the latter failed to adduce evidence to show that the Deceased's work as Second Engineer contributed or aggravated his medical condition.[17] In addition, the Labor-Arbiter agreed with the Petitioners that the Deceased's tour of duty was nothing out of the ordinary; any indication to show that the Deceased was experiencing unusual stress was lacking. In fact, the Deceased even had the strength and the time to spare to go ashore and have a drinking session with other crew members.[18] Further, despite being instructed by the PEME Doctor to take the prescribed medications to control his hypertension, the Private Respondents were unable to prove that Deceased was able to buy all the maintenance medicines. As to the connection of the cause of death to the Deceased's work, the Labor-Arbiter ruled that even though the death occurred during the term of his employment, the fact that Deceased was on shore leave and on a drinking session belies the fact that he is considered to be in the performance of his duty at the time of death.[19]

Aggrieved with the Decision of the Labor-Arbiter, Private Respondents elevated the case to the National Labor Relations Commission, Public Respondent, via a Notice of Appeal[20] dated 16 January 2014 and a Memorandum of Appeal[21] dated 16 January 2014. Said Memorandum of Appeal is hinged on the following errors: (1) The Labor-Arbiter committed a serious yet reversible error in adopting the Petitioners' theory that the Deceased is not entitled to death benefits as he was then not performing his duties as a Second Engineer at the time when he suffered a heart attack. The Private Respondents point out that the two (2) requisites in order to be entitled to death benefits are all present as the death occurred within the effectivity of Deceased's employment contract, and that the cause of death is work-related, having been consistently exposed to stress in relation to his duties and responsibilities as Second Engineer; (2) The Labor-Arbiter committed a serious error when it unduly refused to consider the glaring reality that the general and specific requirements for death benefits entitlement under the POEA-SEC were all established by the Private Respondents through substantial evidence; (3) In clear violation of the labor concept of equiponderance, the Labor-Arbiter committed an error by skirting-off the fact-finding investigation and the corresponding sworn statement made by the lawyer for the Private Respondents, in favor of the un-notarized, handwritten statements of Petitioners' crew. Private Respondents opine that the documentary evidence they presented-- an affidavit[22] of their counsel, Atty. Florence Tolentino, revealing the

results of her investigation in the bar where the deceased expired-- enjoys more weight than the self-serving and highly dubious statements of Petitioners' crew that were merely handwritten.

Praying that the appeal of the Private Respondents be dismissed for utter lack of merit, Petitioners filed their Comment to Appeal[23] on 10 February 2014. On 19 February 2014, Private Respondents filed their Reply,[24] asserting that they were able to show their entitlement to death benefits and that substantial evidence existed to support their claim, thus praying that the Decision of the Labor-Arbiter be reversed.

RULING OF THE NLRC

On 28 February 2014, Public Respondent rendered a Decision[25] declaring Private Respondents' appeal with merit, thus reversing the Labor-Arbiter's Decision.

In reversing the Decision of the Labor-Arbiter, the Public Respondent ruled in this wise:

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“Having determined that complainant [Private Respondents] met at least one, in this case 2 conditions under Item 11 of Section 32-A, there is no other conclusion that We can reach except that Prudencio Cano's [Deceased] IHD is an occupational disease. Complainants even complied with the requirements for this occupational disease, which are:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer (Sec. 32A, POEA-SEC) Complainant identified the risks on board the vessel that would lead to the development of heart disease. These are (a) irregular working hours wherein Prudencio Cano was required to work during wee hours of the night; (b) he had no regular time for rest (p. 12, Records); (c) stress is related to his work as he supervised lower ranking seafarers (p. 18, Records); (d)the work environment and, most of the time the vessel is at the high seas, he had no regular exercise (p. 18, Records); (e) his diet mostly consisted of frozen meat which are high in cholesterol (p. 18, Records). Accordingly, these risks are augmented by the fact that he is known to be hypertensive (p. 18, Records).

As to the second requisite, it can readily be noted that Prudencio Cano passed the PEME and was declared “Fit for Sea Duty.” At the time of embarkation, he had no heart disease and did not have IHD. We find based on established jurisprudence that it is sufficient that the risks or factors to which the seafarer was exposed to contributed or aggravated the development of the illness of the seafarer. It is not essential that these risk (sic.) or factors be the sole and only cause of the illness. Our findings reveals (sic.) that the logical conclusion is that these risks or factors somehow contributed or aggravated the development of Prudencio Cano's IHD, as he boarded the vessel without any heart disease. He was merely diagnosed to have “controlled hypertension.” We take judicial notice that a lot of employees are working in land based offices will develop heart disease just by the fact that they are hypertensive. This is the reason why employees who have hypertension can still be declared fit for work. Certainly, while hypertension is a factor that could lead to the development of Ischemic Heart Disease, We find that this factor is combined with the other risks or factors relative to the nature or work and working environment of Prudencio Cano and the risks attendant to ocean going vessels, these combined risks hastened and enhanced the development of the disease that led to the death of Prudencio Cano.

Respondent [Petitioners] contends that ischemic heart disease is a condition in which fatty deposits accumulate in the cells lining the wall of the coronary arteries and that these fatty deposits build up “gradually” and “irregularly” citing *Virjen Shipping et al. v. Barraquio* (G.R. No. 178127, April 16, 2009) which led the

Supreme Court to conclude that ischemic heart disease cannot develop in a short span of time (21 days) that respondent served as chief cook in that case: 'Ischemic heart disease may develop slowly, as plaque builds up over time, or it may occur quickly if an artery is suddenly blocked.' In this case, We find that the more than 2 months exposure (20 July 2012 to 28 September 2012) to risk factors such as irregular work schedule, lack of regular rests, type of diet, physical and mental stress and the strain and physical nature of work combined with the fact that Prudencio Cano is hypertensive is already a sufficient period so as to contribute, aggravate, trigger, hasten and enhance the development of the IHD that led to Prudencio Cano's death while serving as seafarer.

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Finally, as previously discussed, we do not find any sufficient evidence that Prudencio Cano was smoking a lot, took sex enhancement pills or consumed alcoholic drink so as to be considered notoriously negligent to avoid the attack that led to his death.

The evidence therefore shows that Prudencio Cano died during the existence of the Contract of Employment caused by IHD which we find under the circumstances and evidence presented as work-related being a compensable occupational disease pursuant to the POE-SEC (sic.).

As to the complainant's claim for moral and exemplary damages, we deny the same as there was no proven malice or bad faith on the part of the respondents. Respondents were under the good faith impression that Prudencio Cano's death is not compensable under the POEA-SEC. This good faith is manifested in their immediate shipment of the remains of Prudencio Cano, the granting of humanitarian aid in the amount of USD1,000.00, provisioning of burial expenses in the amount of P120,000.00 and the release of the compulsory insurance proceeds of USD10,000.00.

We find, however, that attorney's fees equivalent to 10% of the monetary award is proper as complainants were compelled to litigate and incur attorney's fees in the process.

Respondents admitted that respondents Serafico and Pedrosa are officers of respondent Wallem Maritime Services. Pursuant to Section 10 of the Migrant Workers and Overseas Filipinos Act (R.A. 8042) as amended, "If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.' In this regard, individual respondents cannot escape joint and solidary liability with respondent Wallem Maritime Services by express provision of law."

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Subsequently, Petitioners filed a Motion for Reconsideration[26] on 01 April 2014. On 14 April 2014, Private Respondents filed a Comment/Opposition to the Motion for Reconsideration,[27] praying that the Motion for Reconsideration be denied outright for utter lack of merit. Petitioners subsequently filed Reply to Comment/Opposition[28] on 28 April 2014, emphasizing their argument that the affidavit of Private Respondents' counsel revealing her findings during her investigation of the alleged witnesses in Singapore does not constitute substantial evidence to support the essential condition of compensability that the seafarer must not have been guilty of notorious negligence as the same constitutes hearsay which is inadmissible in court. A Resolution[29] was promulgated by the Public Respondent on 28 April 2014, denying the instant Motion for lack of merit.

This instant Petition[30] was filed on 03 July 2014 before this Court. In a Resolution[31] promulgated on 14 July 2014, the Private Respondents were directed to file their Comment on the Petition within ten (10) days from notice and thereafter, the Petitioners are given five (5) days from receipt of the Comment to file a Reply. The Private Respondents filed their Comment/Opposition[32] on 08 August 2014, praying that the Petition be dismissed for utter want of merit. Thereafter, Petitioners filed a Reply[33] on 19 August 2014, reiterating that albeit Deceased's death being regrettable, it is not directly attributable to his employment with the Petitioners.

There is no evidence of an acute exacerbation which was precipitated by the unusual strain in his work. There was nothing unusual in Deceased's activities before his demise and neither was there any evidence of severity of such unusual strain. It should be noted that the Deceased even had the time and strength to pursue a drinking session after his duties. A Rejoinder[34] by Private Respondents was filed and admitted by this Court on 11 September 2014 emphasizing on the probative value of the evidence submitted, namely: (1) the inventory of medicines issued by one Capt. Sevillano and the email sent likewise by Capt. Sevillano, to show that there was no notorious negligence on the part of the Deceased in controlling his hypertension, corroborate each other and is further corroborated by the other pieces of documentary evidence presented by them; (2) the sworn statement by their counsel, as the statements were not entirely hearsay as she was stating facts based on her investigation.

In a Resolution dated 27 October 2014,[35] Private Respondents filed their Memorandum[36] before this Court on 25 November 2014, while Petitioners filed his Memorandum[37] on 06 January 2015. Prior to the promulgation of such Resolution, on 09 October 2014, a Conditional Satisfaction of Judgment,[38] without prejudice to the pending Petition for Certiorari, was filed by Private Respondents, stating that by virtue of the conditional payment of the judgment award of the Decision and Resolution by Public Respondent, Private Respondents will no longer pursue the execution proceedings initiated with this Court. Should there be a reversal of the judgment award, Private Respondents and his counsel shall return the entire amount paid by Petitioners.

Finally, the case was submitted for decision pursuant to Resolution[39] on 24 February 2015.

THE ISSUES

In praying that the Decision and Resolution of the Public Respondent be overturned, Petitioners raise the following issue before this Court:

“I. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE SEAFARER'S DEATH DUE TO ISCHEMIC HEART DISEASE IS WORK-RELATED AND COMPENSABLE;

II. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THE SEAFARER DID NOT COMMIT NOTORIOUS NEGLIGENCE;

III. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ADMITTING TO EVIDENCE AND GIVING CREDENCE TO THE AFFIDAVIT OF ATTY. FLORENCE TOLENTINO WHICH IS PURELY HEARSAY;

IV. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT PETITIONERS MR. SERAFICO AND MR. PEDROSA ARE LIABLE TO PRIVATE RESPONDENTS;

V. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO ATTORNEY'S FEES.”[40]

THE RULING OF THIS COURT

We resolve to grant the petition.

In cases of death of seafarers, reference must be made to the provisions of POEA Memorandum Circular No. 10-10[41] (“POEA-SEC”), specifically Sec. 20(B)(1):

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“In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his

beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.”

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Thus, in order for death to be compensable and to entitle the heirs of the deceased seafarer to the benefits in the POEA-SEC, two conditions must concur: (1) the death must have occurred during the term of the employment contract; and (2) the cause of death must be work-related.

As the death of the Deceased was caused by IHD according to the Certificate of Registration of Death[42] issued by the Republic of Singapore, such death is considered as occupational or work-related should the conditions in Sec. 32(A) of the POEA-SEC be complied with, in relation to cardiovascular events:

“SECTION 32-A. Occupational Diseases. —

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The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

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11. Cardio-vascular events — to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

- a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work.
- b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.
- c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.
- d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.
- e. In a patient not known to have hypertension or diabetes, as indicated on his last PEME.”

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It is undisputed that the death occurred during the term of employment of the Deceased. As the latter commenced the term of his 6-month contract on 20 July 2012[43] when he departed from the Philippine port, and died on the morning of 29 September 2012, no further elaboration is needed for this Court to conclude that Deceased's contract with Petitioners was not yet terminated during the time of his death.

However, the time of death alone during the term of employment is insufficient to entitle Private Respondents to death benefits. To borrow the words of the Honorable Supreme Court in the recent case of *Casomo v. Career Philippines Shipmanagement, Inc.*[44] :“it is not enough that a seafarer contracts the illness during his term of employment or such illness renders him or her permanently disabled: The seafarer must demonstrate that his work as such involved risks and within a period of exposure thereto resulted in his contraction of the disease.” (Emphasis Ours)

Private Respondents argue that the death of Deceased shows the existence of conditions (a), (b), and (d) of Sec. 32-A (11) of POEA-SEC above-mentioned. In showing the existence of such conditions to prove work-relatedness, jurisprudence provides that “the claimant must not merely rely on the disputable presumption, but must be able to present no less than substantial evidence to support her claim. Substantial evidence is more than a mere scintilla. It must reach the level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.”[45]

However, in the case at bench, this Court is convinced that Private Respondents have failed to present such substantial evidence required.

Although the heart disease was known to be have been present during employment, as his PEME revealed that Deceased suffered from hypertension, the claims[46] made by Private Respondents of his irregular schedule, lack of time for rest or exercise, his complaints of having headaches during work, and his diet of frozen meats that are high in cholesterol as the main causes of the heart disease remain as mere speculations as no proof to substantiate the same were presented; exposure to high levels of stress due to the environment and the demands of the work required is not equivalent to them being the cause of his death. No evidence to support the fact that Deceased allegedly made such causal connection by sharing them with Private Respondents through phone calls were even submitted. As a matter of fact, Petitioners were able to present two (2) medical reports made on 10 November 2012⁴⁷ and 27 February 2013⁴⁸ by one Dr. Ramon S. Estrada, revealing that the cause of death was not work-related as “there is no strong evidence of a direct and clear causal relationship to his employment as seafarer.” Unfortunately, Private Respondents failed to refute such reports by submitting evidence in rebuttal.

Moreover, the evidence is lacking to show that the Deceased was subjected to an unusual strain of work to cause the disease's exacerbation. At the time of his death, Deceased was on shore leave and together with members of the crew, were engaged in merrymaking in a bar. Having been relieved of his duties at around 8:45 P.M., Deceased was clearly engaged in activities that do not involve heavy strains of work for at least six (6) to seven (7) hours until his demise, thus, could in no sense be considered as work-related. Lastly, the most recent case of *Sy v. Philippine Transmarine Carriers, Inc.*⁴⁹ is clear that there exists no entitlement to death benefits if at the time the seafarer died, the latter was not performing any act in relation to the nature of his work, viz.:

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AB Sy was hired as a seaman on board M/V Chekiang on June 23, 2005 and was found dead on October 1, 2005, with drowning as the cause of death. Notably, at the time of the accident, AB Sy was on shore leave and there was no showing that he was doing an act in relation to his duty as a seaman or engaged in the performance of any act incidental thereto. It was not also established that, at the time of the accident, he was doing work which was ordered by his superior ship officers to be done for the advancement of his employer's interest. On the contrary, it was established that he was on shore leave when he drowned and because of the 20% alcohol found in his urine upon autopsy of his body, it can be safely presumed that he just came from a personal social function which was not related at all to his job as a seaman. Consequently, his death could not be considered work-related to be compensable.” (Emphasis Ours)

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Further, no proof that the Deceased was subject to a strain of work of sufficient severity was presented by Private Respondents. The fact that Deceased had merely less than three (3) or four (4) hour intervals of rest the day before he died remain as bare allegations as they do not in any way prove that such lack of rest contributed or aggravated Deceased's condition. In fact, this Court is persuaded to believe that given Deceased's experience as a seafarer and being cleared as fit for sea duty, with the company-designated physicians being fully aware of his hypertension, the Deceased is expected to be well-acquainted with the work required of him as an engineer aboard a vessel. In

addition, as mentioned above, the Deceased was on shore leave for at least six (6) to seven (7) hours before his death and thus was not subject to any severe kind of work.

As to the compliance of the Deceased with the signed Undertaking[50] to take his prescribed medications, thus negating the existence of notorious negligence, this Court finds for the Petitioners. It is indubitable that a presentation of receipts from Mercury Drug, Las Pinas is insufficient to prove that the prescribed medications were brought on board and taken by Deceased. This Court is also led to question the integrity of the medicine inventory[51] dated 12 November 2012 of the Deceased executed by Capt. Sevillano. This Court agrees with Petitioners that said inventory appears suspicious and leaves much doubt as the said documentary evidence is a mere typewritten document that remains unsigned and bears no proof that it was indeed written by Capt. Sevillano. Moreover, this Court gives more credence to the inventory list[52] of the Deceased's possession dated 01 October 2012 which were signed by several officers of the vessel as well as Capt. Sevillano himself. Said inventory reveals that no sort of medicines exist in the possession of the Deceased aboard the vessel. Thus, in the absence of rebutting evidence to discredit such discrepancy, this Court is led to infer that the latter inventory bearing a list of several medicines allegedly in the possession of the Deceased is a mere afterthought and was merely executed in order to disprove any sort of notorious negligence on the part of the Deceased.

This Court cannot agree with the Decision of the Public Respondent in giving evidentiary weight to the affidavit[53] executed by Private Respondents' counsel, Atty. Florence Tolentino, stating that based on her interviews with the staff of the bar where Deceased expired, the latter merely ordered one mug of beer and was merely sipping it. It is clear that said affidavit is inadmissible for being hearsay as Petitioners are deprived of the opportunity to cross-examine said staff who allegedly narrated the events leading to Deceased's death. The identities of the said staff were not even disclosed purportedly due to several immigration and employment issues. Neither was there any other corroborative evidence submitted to support said investigation. The arguments that Private Respondents had to contribute and spend money to send said counsel to Singapore to investigate and that such counsel executed said affidavit under oath as a lawyer and as an officer of the court are misplaced and irrelevant as the occurrence of such events were not of her personal knowledge but was based on the personal knowledge of others who unfortunately could not be placed on the witness stand. The case of *People's Bank and Trust Co. v. Leonidas*[54] is instructive as to the probative value given to such affidavits:

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“Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.” (Emphasis Ours)

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In light of the above discussion, the claim of attorney's fees by Private Respondents should necessarily fail as the Petitioners did not show any bad faith as it was well within their right to deny said death benefits so claimed by Private Respondents for being unable to prove a causal connection between the Deceased's death and the nature of the work. As told in the recent case of *Lui Enterprises, Inc. v. Zuellig Pharma Corp.*[55], “attorney's fees will not be awarded if no bad faith could be reflected in a party's persistence in a case.”

Lastly, Petitioners Mr. Serafico and Mr. Pedrosa should necessarily be dropped as a party in this case and should not be held jointly and severally liable with the corporation-employer as the latter cannot be held liable for the claims of Private Respondents. Despite the direct provision of Sec. 10, R.A. 8042 which makes the liability of the recruitment and placement agency joint and several with that of the principal employer on all money claims

pertaining to employees, the Private Respondents in the case at bench are not entitled to any compensation, having failed to comply with the conditions of the POEA-SEC.

WHEREFORE, based on the foregoing, the petition is GRANTED. The 28 February 2014 Decision and the 28 April 2014 Resolution of the NLRC in NLRC NCR OFW Case No. (M) 01-00502-13 [NLRC LAC No. 01-000127-14] are REVERSED and SET ASIDE. The 30 October 2013 Decision of the Labor-Arbiter dismissing the complaint for lack of merit is REINSTATED.

SO ORDERED.

Castillo, M., Chairperson, and Galapate-Laguilles, Z.T., JJ., concur.

- [1] Rollo, p. 3.
- [2] Rollo, p. 65.
- [3] Rollo, p. 95.
- [4] Rollo, p. 92.
- [5] Rollo, p. 119.
- [6] Rollo, p. 149.
- [7] Rollo, p. 129.
- [8] Rollo, p. 11.
- [9] Rollo, p. 120.
- [10] Rollo, p. 121.
- [11] Rollo, p. 122.
- [12] Rollo, p. 123.
- [13] Rollo, p. 124.
- [14] Rollo, p. 125.
- [15] Rollo, pp. 100-101.
- [16] Rollo, p. 46.
- [17] Rollo, p. 54.
- [18] Rollo, p. 57.
- [19] Rollo, p. 60.
- [20] Rollo, p. 237.
- [21] Rollo, p. 240.
- [22] Rollo, p. 224.
- [23] Rollo, p. 324.

- [24] Rollo, p. 340.
- [25] Rollo, p. 65.
- [26] Rollo, p. 370.
- [27] Rollo, p. 385.
- [28] Rollo, p. 401.
- [29] Rollo, p. 95.
- [30] Rollo, p. 3.
- [31] Rollo, p. 401.
- [32] Rollo, p. 419.
- [33] Rollo, p. 459.
- [34] Rollo, p. 471.
- [35] Rollo, p. 484.
- [36] Rollo, p. 485.
- [37] Rollo, p. 521.
- [38] Rollo, p. 517.
- [39] Rollo, p. 572.
- [40] Rollo, p. 9.
- [41] POEA Memorandum Circular No. 10-10, Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, October 26, 2010.
- [42] Rollo, p. 120.
- [43] Rollo, p. 133.
- [44] Casomo v. Career Philippines Shipmanagement, Inc., G.R. No. 191606, August 1, 2012.
- [45] Talosig v. United Philippine Lines, Inc., G.R. No. 198388, July 28, 2014.
- [46] Rollo, pp. 130, 136.
- [47] Rollo, p. 124.
- [48] Rollo, p. 125.
- [49] Sy v. Philippine Transmarine Carriers, Inc., G.R. No. 191740, February 11, 2013.
- [50] Rollo, p. 159
- [51] Rollo, p. 219.
- [52] Rollo, pp. 220-221.
- [53] Rollo, p. 224.

[54] People's Bank and Trust Co. v. Leonidas, G.R. No. L-47815, March 11, 1992.

[55] Lui Enterprises, Inc. v. Zuellig Pharma Corp., G.R. No. 193494, March 12, 2014.

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