

**ROSARIO MARTIN VDA. DE MALLARI, PLAINTIFF AND APPELLANT,
VS. NATIONAL DEVELOPMENT COMPANY, DEFENDANT AND
APPELLEE.**

G. R. No. L-17914. October 31, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Rosario Martin Vda. de Mallari from the order of the Court of First Instance of Manila, in Civil Case No. 44010 dismissing her complaint against the National Development Company on the grounds of lack of cause of action, and lack of jurisdiction over the subject matter.

On June 13, 1960 Rosario Martin Vda. de Mallari filed a claim with the Regional Office No. 3 of the Workmen's Compensation Commission against the National Development Company to recover compensation (under the Workmen's Compensation Act) for the death of her daughter, Milagros Mallari. This claim was withdraw before it could be heard and decided on the merits and, thereafter (on August 30, 1960) appellant filed the present action against appellee in the Court of First Instance of Manila to recover death compensation under the provisions of Article 1711 of the New Civil Code, alleging the following in her complaint:

That she is the dependent mother of the late Milagros Mallari, a former spare weaver of the National Development Company since 1938, with a salary of P4.40 a day; that because of the nature of her work and due to an accident she suffered in the course of her employment, she spat blood sometimes in March, 1951, which developed into pulmonary tuberculosis and caused her retirement on September 17, 1951; that she died of the disease on July 12, 1953; that because her cause of action was not covered by the provisions of the Workmen's Compensation Act, as amended, her daughter having died more than one year after she contracted the disease, she was filing the action under the provisions of the New Civil Code.

Upon motion of appellee the lower court dismissed the complaint on two grounds: (a) that it did not state a sufficient cause of action, and (b) that the Court had no jurisdiction over the case.

The law gives the Workmen's Compensation Commissioner original and exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court, in the same manner and in the same period provided by law and by rules of court for appeals from the decisions of the Court of Industrial Relations (Section 24, Republic Act No. 772). And it has been held in this connection that all claims for compensation of a laborer employee or his dependents, filed on or, after June 20, 1952. shall be decided exclusively by the Workmen's Compensation Commissioner, subject to appeal to the Supreme Court, even if the accident out of which the right to compensation arouse occurred before the date (Carmen Castro et al. vs. Francisco Sagariz 94 Phil., 208; 50 Off. Gaz. p. 94; Teresita Capulong vs. L.V.N. Pictures Inc. G. R. No. L-9697, November 29, 1960).

On the other hand, Section 7 of Republic Act 772 which became effective on June 20, 1952 as amendatory to the Workmen's Compensation Act, provides that if the disease contracted or injury received by the employee causes

his death within two years from the date of such injury or sickness, the employer shall pay the compensation to the persons entitled thereto.

As stated heretofore, the late Milagros Mallari was employed by respondent as a spare weaver since the year 1938. The complaint filed with the lower court alleged that up to the year 1950, she was free from any sign of pulmonary tuberculosis but that due to the nature of her work and the conditions under which she worked and because of an accident she suffered in the course of employment sometime in March 1951, she spat blood and thereafter began to lose weight and appetite until she fell victim of pulmonary tuberculosis in September 1951—this resulting in her retirement on said date; that she never recovered from her sickness until she died of it on July 12, 1953.

According to the facts so alleged—if proven—Milagros Mallari contracted the disease, of which she later died, in the month of September 1951; that she died on July 12, 1953, that is, clearly within two years from the date when she contracted such sickness. It is clear, therefore, that her case is covered by the provisions of the Workmen's Compensation Act, as amended, and appellant's claim falls within the exclusive original jurisdiction of the Workmen's Compensation Commission, it being the evident intention of Congress to provide that all claims of workmen against their employers for damages due to accidents suffered in the course of employment shall be investigated and adjudicated by the Workmen's Compensation Commission (*Manalo vs. Foster Wheeler Corporation* etc. 98 Phil., 855; 52 Off. Gaz. p. 2514-2515).

Wherefore, the order of dismissal appealed from is affirmed, without prejudice to the filing of a claim by appellant against appellee with the Workmen's Compensation Commission. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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