

JUAN ISBERTO, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES (BUREAU OF PUBLIC HIGHWAYS) AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-22769. August 30, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

A petition for review by certiorari from the decision of the Workmen's Compensation Commission reversing the decision of the Hearing Officer, Department of Labor, Regional Office No. 1, Dagupan City, awarding compensation benefits to the petitioner Juan Isberto in the total amount of P5,250.00, including attorney's fees, dated July 17, 1962.

It appears that petitioner Juan Isberto was first employed as Construction Foreman, emergency status, on August 1, 1951, in the Office of the District Engineer of Pangasinan. He, thereafter, occupied various positions in an emergency capacity, and on February 1, 1957, he was appointed Building Foreman with permanent status, having a salary of P2,040.00 per annum or P170.00 monthly. As building foreman, in-charge of the 5th Congressional District of Pangasinan, his duties consisted of supervision, investigation and completion of projects in the entire 5th District which projects were for the construction and repair of schools, markets and other public buildings. The nature of his work required him to take public conveyances, and when the projects were in the barrios, he had to take animal drawn vehicles and sometimes had to hike the distance if the place was not accessible by any means of transportation.

On December 23, 1957, petitioner filed sick leave of absence due to pains at his back, the history and description of which according to Dr. Gudelia Nicu-Jose of the Eastern Pangasinan Emergency Hospital, were as follows:

"Started as intermittent recurrent attacks of severe pains at the lumbar region with tenderness of firm pressure over the affected area and abnormal limitation of mobility. Spasm of the lumbar muscles, decrease of lumbosacral flexibility, limitation of straight leg raising by pain. See G.S. Form No. 41, Medical Certificate, dated April 30, 1958."

The patient was confined at the said Hospital from December 23, 1957 to April 30, 1958. His sickness was diagnosed as "Tuberculosis of the bones or Pott's disease". During his confinement in the hospital, he was visited by his immediate supervisor, engineer Pa-dilla, but neither medical nor hospital expenses have ever been extended to him by his employer. On June 15, 1961, he was pronounced to have completely recovered.

In the meantime, on December 19, 1960, when the petitioner was already in progress of complete recovery, he filed a Notice of Injury and Claim for compensation with the Department of Labor, Regional Office No. 1 at Dagupan City. After due hearing, the Hearing Officer awarded compensation only to be reversed by the Workmen's Compensation Commission. Re-consideration thereof was sought by the petitioner but denied by the Commission en banc in its resolution of April 3, 1964. Hence this appeal.

Petitioner maintains that under the facts of the case, the law on the issue involved, is Section 2 of Act 3428, which provides that when an employee contracts tuberculosis or other illness directly caused by employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation.

The respondents argue, on the other hand, that from the facts of the case, there is no showing that claimant had any accidental injury during the period of his employment that may have traumatized the spinal column which localized the tuberculosis germs and be sick of Tuberculosis of the bones or Pott's disease. Neither could the nature of his work be the direct cause of claimant-petitioner's illness since there is no evidence indicating or tending to show that said illness was inherent in his work or occupation or the natural result thereof.

There is no quarrel as to this sickness of the petitioner - Tuberculosis of the bones or Pott's disease. It is admitted that petitioner was in perfect health when he entered the service in 1951, until he began feeling pains in his back sometime in September, 1957, only to be discovered that he was sick of tuberculosis of the bones; and that he had continued performing same kind of work throughout the period of his employment.

Time and again, it has been held by this Court, as in the case of *Justiniano vs. Workmen's Compensation Commission*, G.R. No. L-22774, November 21, 1966, that "the laborer is relieved from the burden of proving causation once the disease is shown to have arisen in the course of the employment. The disease having arisen in the course of employment, it is presumed by law that it arose out of it." It cannot be denied that petitioner as foreman in the whole 5th Congressional District of Pangasinan, the nature of his work, requiring continuous or frequent traveling or hiking in the different municipalities and barrios, is naturally exposed to all kinds of dust and dirt, and to the elements. He even sometimes missed his meals.

In another decision of this Court, it was said: "while it is true that 'lobar pneumonia', is directly caused by the virus known as 'pneumoccus', and as such is not an occupational disease, where it appears that when he contracted the sickness, he was well in the course of his employment as he was doing then his usual daily chore, it is but fair that he can be compensated as required by law." (*Manila Railroad Co. vs. WCC, et al.*, G.R. No. L-19377, January 30, 1964)

Under the law, it is not required that the employment be the sole factor in the growth, development or acceleration of his illness to entitle petitioner to the benefits provided therein. It is enough if his employment had contributed, even in a small degree, to the development or acceleration of the disease. (*Manila Railroad Co. vs. Pineda*, G.R. No. L-19773, May 30, 1964)

Another point raised by the petitioner is the failure of respondents to comply with Sections 37 and 45 of Act 3428. Section 37 requires the employers to submit to the Commissioner a report of accident or sickness, whether fatal or not, received by his employee; and while Section 45 requires that before an employer can be allowed the right to controvert an employee's claim for compensation, he shall either on or before the fourteenth day of disability or within ten days after he has actual knowledge of the alleged accident or sickness, file a notice with the Commissioner that compensation is not being paid and the reason why the same is not being paid. In the case at bar, it appears that no less than his immediate supervisor Engineer Padilla learned of his illness, not only as a matter of fact when he filed his sick leave of absence with pay, but also because Engineer Padilla even visited him at his sick bed.

On the other hand, respondents maintain that since this defense of failure to controvert was not raised either before the hearing officer or before the Workmen's Compensation Commission, petitioner cannot now, for the first time raise this issue on appeal. Hence, the defense must be deemed waived and cannot be raised, as it is, for the first time in petitioner's brief.

This contention is devoid of merit. The re-cords will bear it out that when the respondents filed its motion for reconsideration from the ruling or decision of the Hearing Officer, awarding compensation, one of its grounds was prescription or the fil-ing of claim was out of time; and in the answer to the motion for reconsideration filed by the petitioner, he categorically stated therein the non-compliance by the respondent of Sections 37 and 45 of Act 3428. And since the Hearing Officer denied the motion for recon-sideration of the respondents, it is safe to assume that the contention of the respondent was denied al-though "sub silencio". And, therefore, for failure to controvert, compensation must be awarded.

And since there is no dispute regarding the total amount of P5,250.00 awarded by the Hearing Officer, the full compensation for the same as given, is war-ranted.

WHEREFORE, judgment is rendered setting aside the decision appealed from, and ordering the respondent to pay the petitioner the sum of P5,250.00. No costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, JJ., concur.

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