

EMPLOYEES[&]8217; COMPENSATION COMMISSION, PETITIONER, VS. COURT OF APPEALS AND AIDA ALVARAN, RESPONDENTS.

G.R. No. 115858. June 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

For purposes of determining compensation to be given their widows and orphans, policemen -by the nature of their functions- are deemed to be on 24-hour duty. This Court holds that since the public demands, as it ought to, strict performance of duty by our lawmen in maintaining peace and security, the government, in the same measure, must be ready to compensate their heirs who are left without any means of support.

This is a petition for review on certiorari under Rule 45 to set aside the Decision[1] promulgated on April 19, 1994 by the Court of Appeals[2] in CA-G.R. SP No. 28487 and the Resolution[3] promulgated on June 10, 1994 denying reconsideration.

The Facts

The assailed Decision of the respondent Court of Appeals reversed a ruling by petitioner, a government agency organized under P.D. 422, as amended, holding that private respondent, a policeman's widow, is not entitled to compensation. The facts are not disputed and are quoted by the assailed Decision[4] from the reversed judgment of petitioner as follows:

"The deceased was a member of the Mandaluyong Police Station, assigned at the Pasig Provincial Jail as 2nd Shift Jailer with tour of duty from 7:00 P.M. to 7:00 A.M. He had been serving the Mandaluyong Police Station for more than twenty years, since he first entered the service on April 1, 1964, until his death on November 19, 1988.

Records disclosed that on November 19, 1988, at around 11:50 in the evening, the deceased was in front (sic) of the Office of the Criminal Investigation of the Mandaluyong Police Station and was talking with another policeman, PFC. Ruben Cruz, when another policeman, Pat. Cesar Arcilla, who had just arrived, immediately got off the car holding his service firearm and approached the deceased and without saying any word, he fired three successive shots at the surprised police sergeant which sent him slumped to the ground. The deceased, however, although critically wounded, drew his side firearm and fired back, twice hitting fatally Pat. Cesar Arcilla, who was still advancing towards him and uttering 'ano, ano.' Both fell, fatally wounded, and were rushed to the Mandaluyong Medical Center, but Sgt. Alvaran was pronounced dead upon arrival. Pat. Cesar Arcilla, died in the same hospital, the day after.

Records further disclosed that previous to that shooting incident, it was learned that the same, stemmed from a family feud, wherein Sgt. Alvaran's son, stabbed the patrolman's nephew, a day before (November 18, 1988). Such quarrel was aggravated when the latter fired shots on (sic) the air and uttered defamatory words before the relatives of the former. The presence of Sgt. Alvaran at the Mandaluyong Police Station, that night of November 19, 1988, (when he was supposed to be in the Pasig Provincial Jail, as 2nd Shift Jailer), was to accompany his son who was to be interviewed at the same and to shed light with regards (sic) that stabbing

incident which he got involved (in) a day before.

The appellant subsequent (sic) filed a claim for compensation benefits under PD 626, as amended. The System [GSIS] denied the claim on the ground that at the time of the accident the deceased was supposed to be at the Pasig Provincial Jail as 2nd Shift Jailer and with a specific duty to perform, in a particular place, his presence in the Mandaluyong Police Station, although he was a member of the same, clearly reflects the fact that he was 'there merely to accompany his son who was requested to be interviewed by the Officer-in-case Pfc. Carlos Villaruel pertaining to the stabbing incident which ultimately led to a family feud. In other words according to the System, 'he was plainly acting as a father to his son, an act which is purely personal, foreign and unrelated to his employment. His having been killed at the place where he was not required to be and while he was not in the performance of his duty, cannot be considered to have arisen out of and in the course of employment.'

Appellant requested a reconsideration of the respondent's [GSIS] ruling saying that the contingency happened in the police station where her husband is a member although at that time of the contingency her husband was assigned at the Pasig Provincial Jail.

Respondent [GSIS], nonetheless, took a firm stand prompting appellant to elevate her case to this Commission for review. (ECC Decision pp. 1-3; Rollo, pp. 11-13)."

On July 31, 1991, petitioner Commission affirmed the holding of the GSIS that the death of private respondent's husband is not compensable under P.D. 626, as amended. On appeal, respondent Court reversed petitioner Commission via its assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is GRANTED and the decision of the Employees' Compensation Commission dated July 31, 1991 is REVERSED and SET ASIDE and another one is hereby rendered declaring the petitioner entitled to compensation benefits under P.D. 626, as amended. Respondent ECC is hereby ORDERED to accordingly AWARD the petitioner the benefits under said law."

Respondent Court held that "(b)y the nature of his work, a police officer exercises his official duty on a 24 hour basis" and that his death "came as an incident in the performance of his duties in the police force x x x (and) must be declared compensable under our law."

The Issues

Before us, petitioner attacks the appellate court's holding and assigns the following "errors":

"I

The respondent Court of Appeals erred in ruling that deceased P/Sgt. Wilfredo Alvaran was performing an official function when he accompanied his son for interview at (the) Criminal Investigation Division of the Mandaluyong police station; and

II

The respondent Court of Appeals erred in ruling that the private respondent is entitled to the compensation benefit under P.D. 626, as amended, on account of the death of her husband, P/Sgt. Wilfredo Alvaran."

Upon the other hand, private respondent raises the issues of forum-shopping claiming that this Court, in G.R. No. 115040, had already dismissed an earlier petition questioning the very same Decision of the Court of Appeals in CA-G.R. SP No. 28487.

Thus, the issues could be restated as follows:

(1) Did petitioner engage in "forum-shopping" in filing this petition?

(2) Did the Court of Appeals err in holding that the death of Sgt. Alvaran is compensable?

The First Issue: Forum-Shopping

The herein petition should be denied.

In *Buan vs. Lopez*,^[5] this Court, speaking through Mr. Chief Justice Andres R. Narvasa, ruled that forum-shopping exists where the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res adjudicata* in the other:

"There thus exists between the action before this Court and RTC Case No. 86-36563 identity of parties, or at least such parties as represent the same interests in both actions, as well as identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity on the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant*."

xxx xxx xxx

"As already observed, there is between the action at bar and RTC Case No. 86-36563, an identity as regards parties or interests represented, rights asserted and relief sought, as well as basis thereof, to a degree sufficient to give rise to the ground for dismissal known as *auter action pendant* or *lis pendens*. That same identity puts into operation the sanction of twin dismissals just mentioned. The application of this sanction will prevent any further delay in the settlement of the controversy which might ensue from attempts to seek reconsideration of or to appeal from the Order of the Regional Trial Court in Civil Case No. 86-36563 promulgated on July 15, 1986, which dismissed the petition upon grounds which appear persuasive."

The test therefore in determining the presence of forum-shopping is whether in the two (or more cases) pending, there is identity of (a) parties, (b) rights or causes of action and (c) reliefs sought.

Applying the above test, there is no question that there is identity of cause of action and reliefs sought between this petition and the petition in G.R. No. 115040. The very same decision of the respondent Court of Appeals in CA-G.R. SP No. 28487 promulgated by the same Fifth Division and by the same ponente is sought to be set aside in both petitions before this Court. However, the Solicitor General, as counsel for petitioner, insists that there is no identity of parties inasmuch as the petitioner in G.R. No. 115040 is the Government Service Insurance System as represented by the Government Corporate Counsel while the petitioner now before us is the Employees' Compensation Commission. The Solicitor General also avers that he observed Administrative Circular No. 28-91 proscribing forum-shopping, because he attached a certification^[6] to the herein petition expressly mentioning the dismissal of the petition in G.R. No. 115040, as follows:

"3. Except for the petition for review filed by the Government Service Insurance System in this Court on June 9, 1994 and which was subsequently dismissed per its resolution dated June 27, 1994, I have no knowledge of such other action or proceeding that is pending in this Court, the Court of Appeals or any tribunal or agency; x x x"

The Solicitor General misses the point. Forum-shopping does not require a literal identity of parties. It is sufficient that there is identity of interests represented.^[7] That there is identity of interests represented in the two cases filed before us^[8] is clearly shown by the very allegations of the petition^[9] in G.R. No. 115040, as follows:

"Petitioner Government Service Insurance System is a government owned and controlled corporation, in charge with (sic) the administration of the Employees' Compensation programs and with office address at the GSIS Headquarters Bldg., Financial Center (Reclamation Area), Roxas Boulevard, Pasay City where it can be served with legal notices and whose decision was affirmed by the ECC but was reversed by the respondent Honorable Court of Appeals which is now the subject of this petition. x x x" (Italics supplied)

The Solicitor General also argues that the petition in G.R. No. 115040 was dismissed "on the basis of technicality and not on the merits, i.e. GSIS failed to comply with the requirements provided under Circular 1-88 and 19-91." This is an inaccurate statement as the honorable counsel of the Republic conveniently neglected to add that in the entry of judgment in G.R. No. 115040, this Court's resolution had an important last paragraph, which reads:

"Besides, even if the petition was filed on time, it would still be dismissed, as petitioner failed to show that a reversible error was committed by the appellate court."

The above holding is an adjudication on the merits, as this Court in effect adopted the questioned Decision as its own.[10]

Be that as it may, we should add that to be more accurate, private respondent should have alleged *res judicata*, and not forum-shopping, as defense because the decision in G.R. No. 115040 had already become final and executory. In fact, it has been recorded in the Book of Entries of Judgments on July 28, 1994. Forum-shopping applies only when the two (or more) cases are still pending.[11] Thus, Circular 28-91, among other things, authorizes their "twin dismissal."

The Second Issue: Is Death of Alvaran Compensable?

As above explained, this Court already ruled in G.R. No. 115040 that the Court of Appeals committed "no reversible error in promulgating the assailed Decision in CA-G.R. SP No. 28487. This Resolution is, to repeat, on the merits and adopts by reference the impugned Decision. But for clarity's sake and as a guide for future cases, we hereby hold that members of the national police, like P/Sgt. Alvaran, are by the nature of their functions technically on duty 24 hours a day. Except when they are on vacation leave, policemen are subject to call at any time and may be asked by their superiors or by any distressed citizen to assist in maintaining the peace and security of the community.

In *Hinoguin vs. Employees' Compensation Commission*, [12] we ruled that "a soldier on active duty status is really on 24 hours a day official duty status and is subject to military discipline and military law 24 hours a day. He is subject to call and to the orders of his superior officers at all times, 7 days a week, except, of course, when he is on vacation leave status x x x"

We hold that by analogy and for purposes of granting compensation under P.D. No. 626, as amended, policemen should be treated in the same manner as soldiers.

While it is true that, "geographically" speaking, P/Sgt. Alvaran was not actually at his assigned post at the Pasig Provincial Jail when he was attacked and killed, it could not also be denied that in bringing his son - as a suspect in a case--to the police station for questioning to shed light on a stabbing incident, he was not merely acting as father but as a peace officer. As explained by the private respondent before the Court of Appeals:[13]

"When the deceased accompanied his son to the Police Station, he was performing a police function. He brought his son in order to place the latter under the authority and Jurisdiction of the police authorities of Mandaluyong. He could have helped his son to hide or to flee, but being honest, he chose instead to fulfill his sworn duty to submit suspected offenders to the authority of the police. Had he not done so, he would have been accused and charged of abetting a suspected felon using his cloak of authority as a police officer, an act contrary to law and to his sworn duty as a police officer.

The deceased, therefor, although assigned as jailer at the Pasig Provincial Jail, adjacent to the municipality of Mandaluyong, was not only doing his fatherly duties but also carrying out his sworn duty as a police officer, enforcing the law without favor to anyone including his family. He had not abandoned his duty as Jailer, but was at the same time performing another one of his many duties as a law enforcer."

Finally, in *Vicente vs. Employees' Compensation Commission*,^[14] we held that in case of doubt, "the sympathy of the law on social security is toward its beneficiaries, and the law, by its own terms, requires a construction of utmost liberality in their favor." For this reason, this Court lends a very sympathetic ear to the cries of the poor widows and orphans of police officers. If we must demand - as we ought to - strict accountability from our policemen in safeguarding peace and order day and night, we must also to the same extent be ready to compensate their loved ones who, by their untimely death, are left without any means of supporting themselves.

WHEREFORE, the petition is DENIED and the assailed Decision is again AFFIRMED. No costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, and Francisco, JJ., concur.

Davide, Jr., J., in the result.

[1] Rollo, pp. 23-30.

[2] Fifth Division, composed of J. Arturo B. Buena, ponente and chairman, JJ., Jinal D. Razul and Ramon U. Mabutas, Jr., members.

[3] Rollo, pp. 31-32.

[4] CA Decision, pp. 1-3; Rollo, pp. 24-26; petition, pp. 4-5; Rollo, pp. 12-13.

[5] 145 SCRA 34 (October 13, 1986).

[6] Rollo, pp. 78-79.

[7] Cf. *First Philippine International Bank, et al. vs. Court of Appeals, et al.*, G.R. No. 115849 (January 24, 1996).

[8] G.R. No. 115040 and G.R. No. 115858.

[9] Rollo, p. 40.

[10] Vide *Alex Go vs. Court of Appeals*, 210 SCRA 661 (July 1, 1992), where this Court ruled:

"x x x Although the respondent Court merely quotes the findings of the trial court and concludes that '[a]fter a painstaking perusal of the case' it finds 'no reversible error committed by the court a quo,' x x x there is no doubt in the mind of this Court that the respondent Court adopted, in effect, such findings as its own; x x x"

[11] See footnote 7, *supra*

[12] 172 SCRA 350, 357 (April 17, 1989).

[13] Rollo, pp. 28-29.

[14] 193 SCRA 190, 197 (January 23, 1991).

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