WALLEM MARITIME SERVICES, INC., AND WALLEM SHIP MANAGEMENT, LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELIZABETH INDUCTIVO, RESPONDENTS.

G.R. No. 130772. November 19, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

WALLEM MARITIME SERVICES, INC. and WALLEM SHIP MANAGEMENT LTD. in this petition for certiorari assail for having been rendered with grave abuse of discretion the 30 June 1997 Resolution of the National Labor Relations Commission dismissing their appeal for lack of merit, as well as its 29 August 1997 Resolution denying reconsideration thereof.[1]

Sometime in May 1993, Pan-Fil Co. Inc., as manning and crewing agent in the Philippines of Wallem Ship Management Ltd. (WALLEM MANAGEMENT), hired Faustino Inductivo as utilityman for "MT Rowan," a vessel owned and operated by WALLEM MANAGEMENT, a Hongkong based shipping company. The employment contract of Faustino Inductivo was good for ten (10) months with a compensation of US$360.00 monthly basic salary, US$201.00 fixed monthly overtime pay, and a monthly vacation leave with pay for six (6) days. As was the standard procedure, Faustino Inductivo underwent pre-employment medical examination and was found by his employer's doctors to be physically fit for work. So, on 13 May 1993, he was told to board as he did the "MT Rowan."

In November 1993 Wallem Maritime Services, Inc. (WALLEM SERVICES) took over as WALLEM MANAGEMENT's manning and crewing agent in the Philippines. Faustino Inductivo, who was advised of the takeover, opted to remain on the vessel and to continue his employment under the manning agency of WALLEM SERVICES. Barely two (2) months before the expiration of his employment contract, or on 17 January 1994, he was discharged from the vessel. His Seaman's Book[2] and Wages Account[3]indicated that the cause of the discharge was "mutual consent, on completion of 8 months and 5 days." Accordingly, he disembarked in Hong Kong, travelled to Manila alone and then returned to his hometown in Nueva Ecija.

On 19 January 1994, two (2) days after his arrival in the Philippines, he was hospitalized at the Yamsuan Medical Clinic in Gapan, Nueva Ecija, after complaining of occasional coughing and chest pains. The clinical diagnosis was pneumonities, bilateral. As his condition worsened, Faustino Inductivo was rushed to the Lung Center of the Philippines where a mass was found on his right lung and another on his right neck. His doctor advised him to undergo biopsy treatment, but since he was scared he requested to go on medication at home instead. Two (2) days thereafter, Faustino Inductivo returned to the hospital, this time at the De Ocampo Memorial Medical Center. Dr. Alfredo Sales, his attending physician, found on examination the presence of water in his lungs causing shortness of breath. For insufficiency of medical facilities, however, he was transferred to the Makati Medical Center where his doctor finally abandoned all hopes for his recovery as his disease was already in its advanced

stage. He succumbed to his illness on 23 April 1994 and the autopsy report showed as cause of death disseminated intravascular coagulations, septecalmia, pulmonary congestion and multiple intestinal obstruction secondary to multiple adhesions.[4]

Before Faustino Inductivo's death, or sometime in February 1994, herein private respondent Elizabeth Inductivo went to petitioners to claim the balance of her husband's leave wages. She also inquired about his sickness benefits as he was then very sick. Petitioners however informed her that her husband was not entitled to sickness benefits because he was not sick at the time he was "offsigned" from the vessel; he was "offsigned" from the vessel on "mutual consent" and not on medical grounds; and since he failed to advise or notify petitioners in writing within seventy-two (72) hours of his alleged sickness, his right to claim sickness benefits was deemed forfeited. Consequently, at the instance of Faustino Inductivo, private respondent filed an affidavit-complaint against petitioners for the payment of sickness and insurance benefits. After Faustino Inductivo died his complaint was amended by private respondent to include death benefits.

On 24 September 1996 the Labor Arbiter[5] rendered a decision in favor of private respondent ordering petitioners to pay complainant, for herself and in her capacity as guardian of her two (2) minor children, as follows: US$50,000.00 as death benefits; US$14,000.00 as children's allowances; and US$1,000.00 as burial expenses.

On appeal the NLRC sustained the Labor Arbiter. In its Resolution of 30 June 1997 the NLRC held in part -

It may be true that the deceased failed to report to respondent Wallem Maritime within seventy two hours after arrival in the Philippines but it could not be denied also that the deceased was sick when he arrived. Human mind dictates that a medical consultation at the nearest clinic is necessary before anything else. The wife could not immediately advise the respondent due to the situation of her deceased husband x x x x The allegation of the complainant that her husband was repatriated upon petition of the crew due to the deteriorating physical condition of Faustino Inductivo, was not denied by respondent. The defense of the latter that the repatriation of the deceased was by "mutual consent" and not discharged medically deserves scant consideration. It is to be emphasized that the illness was contracted during the deceased's employment on board "MT Rowan." Suffice it to say that the death of Faustino Inductivo is compensable under the circumstances.

Their motion for reconsideration having been denied by the NLRC in its Resolution of 29 August 1997, petitioners are now before us imputing grave abuse of discretion on the part of the NLRC in: (a) totally disregarding the evidence on record; (b) ignoring and disregarding the existing law and jurisprudence on the matter; and, (c) affirming in toto the Labor Arbiter's award of death compensation in favor of private respondent.

The pivotal issue to be resolved is whether the death of Faustino Inductivo is compensable as to entitle his wife and children to claim death benefits. Petitioners insist that it is not compensable for two (2) principal reasons: first, Faustino Inductivo was offsigned from the vessel "MT Rowan" based on "mutual consent" and not on medical grounds, and the cancer which caused his death was not contracted during his employment but was a pre-existing condition; and second, Faustino Inductivo failed to comply with the mandatory seventy-two (72)-hour reporting requirement prescribed by the POEA standard employment contract, and therefore his right to claim benefits was deemed forfeited.

Petitioners would want to impress upon this Court that Faustino Inductivo was still in good health when he disembarked from "MT Rowan," as shown in his Seaman's Book indicating that the cause of his discharge was "mutual consent in writing" and not on medical grounds.

We disagree. From all indications, Faustino Inductivo was already in a deteriorating physical condition when he

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left the vessel. This is the only plausible reason why with barely two (2) months away from the expiration of his employment contract he was all of a sudden and with no rational explanation discharged from the vessel. This conclusion is buttressed by the events that transpired immediately upon his arrival in the Philippines, i.e., he was hospitalized two (2) days later and died three (3) months after.

Thus, as succinctly observed by the Labor Arbiter -

While it's true that the seaman was offsigned from the vessel by "mutual consent," what could have been the compelling reason why only less than two (2) months away before the expiration of his employment contract, he decided to disembark. Then there is the question about the true state of his health at the time he disembarked. The puzzle of course is why two (2) days upon his disembarkation complainant's husband lapsed into his ordeal immediately serious at the onset without any sign of relief until his last breath barely three months thereafter.

It is indeed unthinkable that the deceased seaman at the homestretch of his voyage would suddenly seek the end of his employment for no reason at all. There is only one logical explanation for this given the circumstances that took place immediately after disembarkation. Complainant's husband was already seriously ill when he (was) discharged from the vessel. This conclusion is supported by the fact that barely two (2) days upon his arrival in the Philippines, he was rushed to a local medical clinic for some serious symptoms. There being no relief after six (6) days of medical attendance, the late seaman was transferred to the Lung Center of the Philippines. Again, as there was likewise no relief obtained the family was constrained to seek further work-outs in two (2) other hospitals, the last of which was at the Makati Medical Center where all clinical procedures and work-outs were ruled out as of no consequence since the deceased's condition at the time was already irreversible.

There is likewise no merit in petitioners' theory that Faustino Inductivo died of cancer which was pre-existing and could not have been contracted during the eight (8)-month period of his employment at the vessel. Primarily, both the Death Certificate[6] and Autopsy Report of Faustino Inductivo never mentioned that the cause of death was cancer. What was mentioned was "septicemia," if we go by the Death Certificate, and "disseminated intravascular coagulations, septecalmia, pulmonary congestion, multiple intestinal obstruction secondary to multiple adhesions," if we refer to the autopsy report. Ostensibly, cancer was not in the list.

Indeed, there was never any categorical or conclusive finding that Faustino Inductivo was afflicted with cancer. Petitioners' extensive discussion in support of their "cancer theory" is nothing more than mere speculations cloaked in medical gibberish.

Moreover, we agree with private respondent that opinions of petitioners' doctors to this effect should not be given evidentiary weight as they are palpably self-serving and biased in favor of petitioners, and certainly could not be considered independent. These medical opinions cannot prevail over the entries in the Death Certificate and Autopsy Report.

Furthermore, before Faustino Inductivo was made to sign the employment contract with petitioners he was required to undergo, as a matter of procedure, medical examinations and was declared fit to work by no less than petitioners' doctors. Petitioners cannot now be heard to claim that at the time Faustino Inductivo was employed by them he was afflicted with a serious disease, and that the medical examination conducted on the deceased seaman was not exploratory in nature such that his disease was not detected in the first instance. Being the employer, petitioners had all the opportunity to pre-qualify, screen and choose their applicants and determine whether they were medically, psychologically and mentally fit for the job upon employment. The moment they have chosen an applicant they are deemed to have subjected him to the required pre-qualification standards.

But even assuming that the ailment of Faustino Inductivo was contracted prior to his employment on board "MT

Rowan," this is not a drawback to the compensability of the disease. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.

It is indeed safe to presume that, at the very least, the nature of Faustino Inductivo's employment had contributed to the aggravation of his illness - if indeed it was pre-existing at the time of his employment - and therefore it is but just that he be duly compensated for it. It cannot be denied that there was at least a reasonable connection between his job and his lung infection, which eventually developed into septicemia and ultimately caused his death. As a utilityman on board the vessel, he was exposed to harsh sea weather, chemical irritants, dusts, etc., all of which invariably contributed to his illness.

Neither is it necessary, in order to recover compensation, that the employee must have been in perfect condition or health at the time he contracted the disease. Every workingman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had therefor independent of any pre-existing disease.[7]

On the alleged failure of private respondent to comply with the seventy-two (72)-hour reporting requirement, the POEA Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean Going Vessel,[8] provides in part -

x x x x the seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory requirement shall result in his forfeiture of the right to claim the above benefits (underscoring supplied).

Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA standard employment contract. But such requirement is not absolute and admits of an exception, i.e., when the seaman is physically incapacitated from complying with the requirement. Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination, assuming that he was still capable of submitting himself to such examination at that time. It is quite understandable that his immediate desire was to be with his family in Nueva Ecija whom he knew would take care of him. Surely, under the circumstances, we cannot deny him, or his surviving heirs after his death, the right to claim benefits under the law.

Similarly, neither could private respondent Elizabeth Inductivo be expected to have thought of, much less had the leisure of time to travel all the way to Manila, to notify petitioners of her husband's condition. Her primary concern then was to take care of her husband who was at the brink of death.

At any rate, it appears that in early February 1994 private respondent went to petitioners to claim the balance of her husband's leave wages. She then informed petitioners of the condition of her husband as well as his confinement in a hospital, and inquired about the sickness benefits she intended to claim. This was more than sufficient actual notice to petitioners.

It is relevant to state that the POEA standard employment contract is designed primarily for the protection and

benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must, therefore, be construed and applied fairly, reasonably and liberally in favor or for the benefit of the seamen and their dependents. Only then can its beneficent provisions be fully carried into effect.

Finally, petitioner WALLEM SERVICES as manning agent is jointly and severally liable with its principal, WALLEM MANAGEMENT, for the claims of the heirs of Faustino Inductivo in accordance with Sec. 1, Rule II of the POEA Rules and Regulations.[9]

WHEREFORE, the petition is DISMISSED. The assailed Resolutions of public respondent National Labor Relations Commission dated 30 June 1997 and 29 August 1997, respectively dismissing petitioners' appeal for lack of merit and denying reconsideration thereof, are AFFIRMED. Petitioners are ordered to pay, jointly and severally, the following amounts to private respondent for herself and in her capacity as guardian of her two (2) minor children: US$50,000.00 as death benefits; US$14,000.00 as children's allowances; and US$1,000.00 as burial expenses. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Elizabeth Inductivo v. Wallem Maritime Services, et al.," NLRC NCR CA 012170-97; Decision penned by Commissioner Victoriano R. Calaycay, concurred in by Commissioners Raul T. Aquino and Rogelio I. Rayala.

[2] Records, p. 38; Annex "2."

[3] Id., p. 37; Annex "3-A."

[4] Rollo, p. 164; Annex "2."

[5] Labor Arbiter Roberto I. Santos.

[6] Rollo, p. 163; Annex "1."

[7] More Maritime Agencies, Inc., et al. v. National Labor Relations Commission, et al., G.R. No. 124927, 18 May 1999.

[8] See Rollo, pp. 124-125; Annex "7."

[9] See Seagull Maritime Corp., et al. v. Balatongan, et al., G.R. No. 82252, 28 February 1989, 170 SCRA 813, 820.

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