RUFINA TANCINCO, PETITIONER, VS. GOVERNMENT SERVICE INSURANCE SYSTEM AND EMPLOYEES COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. 132916. November 16, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari, praying for the reversal of the Resolutions[1] dated May 30, 1997 and March 5, 1998 issued by the former Sixteenth Division of the Court of Appeals in CA-G.R. SP No. 44148. The first resolution dismissed petitioner's appeal from the decision of the Employees' Compensation Commission, whereas the second resolution denied her motion for reconsideration.

The facts are:

At around noon of July 17, 1995, while he was repairing a service vehicle in front of his house along the National Road in Barangay Palanas, Lemery, Batangas, SPO1 Eddie G. Tancinco was shot dead by five (5) unidentified armed men. SPO1 Tancinco was a member of the NCR Security Protection Group of the Philippine National Police, and at the time of his death, was assigned as part of the close-in security detail of then Vice-President Joseph E. Estrada. SPO1 Tancinco was off-duty at the time inasmuch as the former Vice-President was in the United States for medical treatment.

His widow, petitioner Rufina Tancinco, filed a claim for benefits before the Government Service Insurance System (GSIS). On February 19, 1996, the GSIS denied petitioner's claim on the ground that there was no proof that petitioner's husband's death was work-related. Petitioner appealed the denial to the Employees' Compensation Commission (Commission) which, on December 19, 1996, issued a Resolution[2] dismissing the appeal for lack of merit. As ruled by the Commission:

> It is evident that the death of SPO1 Tancinco on July 17, 1995, when he was on off duty status did not arise out of and in the course of his employment as a member of the PNP Security Command.
>
> Apparently, the conditions aforementioned were not satisfied in the present case. Notably, SPO1 Tancinco was repairing his service vehicle at the time of his death. He was neither executing an order for VP Estrada nor performing an official function on that fateful day inasmuch as Police Superintendent Atilano Miranda duly certified that SPO1 Tancinco was on "off-duty status" on July 17, 1995.
>
> We would like to stress once more that not all contingencies such as injury, disability, or death which befall an employee are compensable. The same must be the result of accident arising out of and in the course of employment.
>
> Since the cause of SPO1 Tancinco's death is no longer part of his official functions, the claim for compensation benefits under Presidential Decree No. 626, as amended, cannot be given due course.

Petitioner filed a petition for review from the aforesaid decision of the Commission before the Court of Appeals.

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On May 30, 1997, the appellate court issued the first assailed resolution[3] dismissing the petition for review on the following grounds: (a) that the certification of non-forum shopping was defective; (b) that certified true copies of material portions of the record were not attached to the petition; and (c) that the petition failed to state all the material dates which would establish the timeliness thereof. As admitted by petitioner herself, she received a copy of the resolution on June 9, 1997, and yet it was only on January 27, 1998, or seven-and-a-half (7 ½) months later, that she filed a motion for reconsideration. As can be expected, the appellate court denied her motion in the second assailed resolution[4] of March 5, 1998.

Petitioner seeks recourse before us via this petition for review on certiorari, arguing that:

> RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION OR A REVERSIBLE ERROR IN NOT ENTERTAINING THE PETITION FILED BY PETITIONER WHICH SUBSTANTIALLY COMPLIED WITH THE RULES AND WAS ON ITS FACE MERITORIOUS.

In lieu of a comment, the Office of the Solicitor General filed a Manifestation[5] signifying its solidarity with petitioner. The Solicitor General adopts the view that SPO1 Tancinco's death is work-related given the circumstances under which he was killed, given that (a) the deceased was a policeman and (b) the killing was done in a professional manner. He speculates that the motive behind the killing "is likely to have arisen during the duration of the almost eighteen (18) years that he served as constable in the PC and as a policeman."

With regret, we deny the petition.

The conclusion is inevitable because the instant petition was not timely filed.[6] Under section 1 of Rule 45 of the former Revised Rules of Court, which was then still in effect, an appeal from a decision rendered by the Court of Appeals to this Court must be made within fifteen (15) days from notice of the judgment or the denial of a motion for reconsideration filed in due time. In the case at bar, petitioner filed her motion for reconsideration from receipt of the resolution of dismissal two hundred thirty one (231) days late, thereby rendering the said resolution final and executory. The gap of more than seven (7) months is too large for us to ignore. Petitioner did not even offer any explanation to account for the tardiness. It behooves the party invoking liberality in the application of procedural rules to at least explain his non-compliance therewith.[7] We have held that the period of appeal is not only mandatory, but more importantly, it is jurisdictional.[8] Even we cannot ignore the immutable character of a final judgment.[9]

Prescinding from the finality of the appealed resolutions, the appeal will still fail on the merits. Rule III of the Amended Rules on Employees Compensation provides:

> SECTION 1. Grounds--(a) For the injury and the resulting disability or death to be compensable, the injury must be the result of an employment accident satisfying all of the following conditions:
>
> (1) The employee must have been injured at the place where his work requires him to be;
>
> (2) The employee must have been performing his official functions; and
>
> (3) If the injury is sustained elsewhere, the employee must have been executing an order for the employer.
>
> xxx xxx xxx

The aforesaid requirements have not been met. Anent the first, as part of the former Vice-President's security detail, the decedent was required to guard the person of the former; hence, his presence was officially required wherever the Vice-President would go. At the time of his death, SPO1 Tancinco was off-duty since Vice-President Estrada was out of the country. In fact, he was at home; it is not even known if he was temporarily re-assigned to another detail while the Vice-President was away. Clearly, he was not at the place where his work

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required him to be.

As to the second requirement, it was not sufficiently established that SPO1 Tancinco died while performing his official functions. In this regard, we held that policemen are regarded as being on twenty-four (24) hour alert. As we explained in Employees' Compensation Commission v. Court of Appeals,[10]

> xxx 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.
>
> xxx xxx xxx
>
> 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.

The twenty-four hour duty rule was originally applied to members of the armed forces,[11] until it was applied by extension to policemen, as aforesaid, and eventually to firemen.[12]

However, in the more recent case of Government Service Insurance System v. Court of Appeals,[13] we clarified that not all deaths of policemen are compensable. Thus,

> Taking together jurisprudence and the pertinent guidelines of the ECC with respect to claims for death benefits, namely: (a) that the employee must be at the place where his work requires him to be; (b) that the employee must have been performing his official functions; and (c) that if the injury is sustained elsewhere, the employee must have been executing an order for the employer, it is not difficult to understand then why SPO2 Alegre's widow should be denied the claims otherwise due her. Obviously, the matter SPO2 Alegre was attending to at the time he met his death, that of ferrying passengers for a fee, was intrinsically private and unofficial in nature proceeding as it did from no particular directive or permission of his superior officer. In the absence of such prior authority as in the cases of Hinoguin and Nitura, or peacekeeping nature of the act attended to by the policeman at the time he died even without the explicit permission or directive of a superior officer, as in the case of P/Sgt. Alvaran, there is no justification for holding that SPO2 Alegre met the requisites set forth in the ECC guidelines. That he may be called upon at any time to render police work as he is considered to be on a round-the-clock duty and was not on an approved vacation leave will not change the conclusion arrived at considering that he was not placed in a situation where he was required to exercise his authority and duty as a policeman. In fact, he was refusing to render one pointing out that he already complied with the duty detail. At any rate, the 24-hour duty doctrine, as applied to policemen and soldiers, serves more as an after-the-fact validation of their acts to place them within the scope of the guidelines rather than a blanket license to benefit them in all situations that may give rise to their deaths. In other words, the 24-hour duty doctrine should not be sweepingly applied to all acts and circumstances causing the death of a police officer but only to those which, although not on official line of duty, are nonetheless basically police service in character. [italics supplied]

In the present case, the decedent was repairing a service vehicle when he was killed. We have tried to view it from all possible angles, but the inescapable conclusion is that he was not performing acts that are "basically police service in character." As a policeman, SPO1 Tancinco is part of "an organized civil force for maintaining order, preventing and detecting crimes, and enforcing the laws xxx".[14] Based on these parameters, it cannot be said that the deceased was discharging official functions; if anything, repairing a service vehicle is only incidental to his job.

Neither was the last requirement satisfied. As the fatal incident occurred when SPO1 Tancinco was at home, it was incumbent on petitioner to show that her husband was discharging a task pursuant to an order issued by his

superiors. This also was not done.

In administrative proceedings, the quantum of proof necessary to support a claim is substantial evidence,[15] which is that "amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[16] Unfortunately, the burden was not successfully met.

In closing, we express our heartfelt commiseration with petitioner for the misfortune which has befallen her and her family. Even this Court, the embodiment of justice dispensed impartially, can feel very human emotions, as it does so now. However, for reasons both procedural and substantive, we cannot grant her petition.

WHEREFORE, the instant petition is hereby DENIED. The Resolutions dated May 30, 1997 and March 5, 1998 are AFFIRMED in toto. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., in the result.

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[1] Penned by Associate Justice Conchita Carpio Morales and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Demetrio G. Demetria. Rollo, pp. 16-22.

[2] Rollo, pp. 24-28.

[3] Rollo, pp. 18-19.

[4] Rollo, pp. 21-22.

[5] Rollo, pp. 61-73.

[6] Astoundingly, despite this glaring infirmity, the processor indicated on the first page of the Rollo that the petition was filed on time.

[7] Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 334 SCRA 305, 318 (2000).

[8] Eg., Demata v. Court of Appeals, 303 SCRA 690, 696 (1999) and the cases cited therein.

[9] Cf. Bank of America, NT & SA v. Gerochi, 230 SCRA 9, 16 (1994).

[10] 257 SCRA 717, 725 (1996).

[11] Hinoguin v. Employees' Compensation Commission, 172 SCRA 350 (1989); also Nitura v. Employees' Compensation Commission, 201 SCRA 278 (1991).

[12] See Valeriano v. Employees' Compensation Commission, 333 SCRA 441 (2000).

[13] 306 SCRA 41, 49 (1999).

[14] Mission, et al. v. Rosario, et al., 94 Phil. 483, 486 (1954).

[15] Lorena v. Encomienda, 302 SCRA 632, 641 (1999).

[16] Iriga Telephone Co., Inc. v. National Labor Relations Commission, 286 SCRA 600, 608 (1998).

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