

GAU SHENG PHILS., INC. AND BESTOW OCEAN UNIA TRADING PTE. LTD., PETITIONERS, VS. ESTELLA JOAQUIN, RESPONDENT.

G.R. No. 144665. September 08, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us for review is the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 54596, holding the petitioners solidarily liable for compensation arising from the death of Roberto L. Joaquin.

The Antecedents

Bestow Ocean Unia Trading Pte. Ltd. (Bestow) is a foreign corporation doing business in the Philippines through its agent Gau Sheng Philippines, Inc. (Gau Sheng), a licensed manning agency.

On June 8, 1993, Roberto L. Joaquin signed a contract with Bestow, through Gau Sheng, under which he was hired as a fisherman on board the MV Bestow Ocean with a salary of US\$250, with working time of forty-eight hours a week for a period of one year.[3] Roberto boarded the vessel on September 23, 1993. After twenty-eight (28) days at sea, he fell ill and had to be repatriated to the Philippines on October 21, 1993, per his request. Upon his arrival in the Philippines, he and his wife, Estella Joaquin, went to the office of Gau Sheng and requested medical treatment for his illness and financial assistance, which was, however, rejected. They went home to Pangasinan, their home province. Roberto's illness worsened and he had to be confined and treated at the Villaflor Hospital in Dagupan City. He later became an outpatient at the National Kidney Institute. On August 25, 1994, or eight (8) months after his repatriation, he succumbed to chronic renal failure.[4]

Estella filed a complaint before the Philippine Overseas Employment Agency (POEA)[5] against Gau Sheng and Bestow for death compensation, docketed as POEA Case No. ADJ(M) 94-08-2608.[6] She claimed that she and her children by her deceased husband were entitled to compensation, considering that her husband became ill during his employment with Bestow and died during the effectivity of their contract. She invoked Memorandum Circular No. 5, Series of 1994 of the POEA.[7]

For their part, Bestow and Gau Sheng denied any liability for the death of Roberto, contending that it was impossible for the latter to have acquired and developed chronic renal failure on board the vessel MV Bestow Ocean for a period of less than a month. They averred that the complainant failed to prove that Roberto contracted the said illness while on board the said vessel and that the risk of contracting the said illness was increased by his working conditions. Moreover, the Employees' Compensation Commission did not include chronic renal failure as an occupational disease. They pointed out that Roberto was given financial assistance for his medical check-up, and that Memorandum Circular No. 5 did not apply to Roberto because he died eight (8) months after he was repatriated.[8]

Ruling of the Labor Arbiter

On February 28, 1997, the Labor Arbiter (LA) rendered a decision declaring Roberto's death compensable and

holding Gau Sheng and Bestow solidarily liable for the payment of death compensation to the complainant:

In fine, respondents are liable in solidum to the complainant in the following amounts less whatever had already been extended to him by way of financial assistance.

- a) death benefits in the sum of US\$1,000.00 or its peso equivalent;
- b) four (4) months' pay at US\$200 a month or US\$1,000 or its peso equivalent; and
- c) medical expenses incurred in the Philippines which was not quantified.

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering the respondents in solidum to pay the complainant the peso equivalent of the disposition above which is hereby incorporated herein less the amount of financial assistance already received by complainant.[9]

The LA declared that Roberto was already suffering from chronic renal failure while on board the vessel MV Bestow Ocean and was repatriated to the Philippines while his contract was subsisting. He rejected the claim of Gau Sheng and Bestow that Roberto was already suffering from kidney renal failure even before his employment, as the latter was issued a clean bill of health by the designated physician who conducted a physical examination on him prior to embarkation. The LA based the award on the POEA Standard Employment Contract in force at the time of Roberto's death.

Gau Sheng and Bestow appealed the decision to the National Labor Relations Commission (NLRC). In a Resolution dated July 26, 1999, the NLRC granted the appeal and dismissed the complaint:

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby given due course. This case should be, as it is, hereby dismissed for lack of merit.[10]

The NLRC ruled that under Subsection 4-C, Section C, Part II of the POEA Standard Employment Contract,[11] Roberto was required to submit to a post-medical examination conducted by the company-designated physician, but failed to do so. It held that aside from the death certificate indicating that Roberto died of chronic renal failure, the complainant failed to present any medical certificate or any documentary evidence to support her claim for death compensation. Further, Roberto was repatriated twenty-eight (28) days after his deployment and died of chronic renal failure several months thereafter; although his pre-employment medical examination showed that he was fit to work, it did not necessarily mean that he did not have kidney trouble before he sought employment from Bestow. Since there was no evidence to show that he contracted the disease during the term of his employment, the same cannot be said to be compensable.

The NLRC, likewise, pointed out that the death benefits awarded to the four children of Roberto had no basis because the complainant failed to show their filiation.[12]

Aggrieved, Estella filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 54596.

The Ruling of the Court of Appeals

The CA, in a decision dated April 28, 2000, reversed and set aside the July 26, 1999 Resolution of the NLRC. The dispositive portion is quoted, infra:

WHEREFORE, the petition is GRANTED, the assailed resolution of public respondent National Labor Relations Commission dated July 26, 1999 is SET ASIDE, and the decision of Labor Arbiter Melquiades Sol D. Del Rosario is AFFIRMED with MODIFICATION as follows: "In fine, private respondents, Gau Sheng Phils., and Bestow Ocean Unia Trading Pte., Ltd., are liable in solidum to the complainant in the following amounts less whatever had already been extended to him by way of financial assistance:

- a) death benefit in the sum of US\$11,000 or its peso equivalent;
- b) funeral benefit in the sum of US\$1,000 or its peso equivalent; and
- c) four (4) months' pay at US\$250 a month or US\$1,000 or its peso equivalent.”[13]

In reversing the resolution of the NLRC, the CA ruled that the compensability of an ailment does not depend on whether the injury or disease is work-related or aggravated his condition. It stressed that in order for an employee to recover compensation, it is not required that an employee be in perfect condition or health at the time he received the ailment or that he be free from disease.[14] Citing the case of *More Maritime Agencies, Inc. v. National Labor Relations Commission*,[15] the CA stated that while the employer is not the insurer of the health of his employees, he takes them as he finds them; he assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury, independent of any pre-existing weakness or disease. The CA went on to say that there was at least a reasonable connection between Roberto's job and his kidney infection, which eventually developed into chronic renal failure and ultimately caused his death.

The CA also held that Roberto's failure to comply with the seventy-two-(72)-hour post-medical examination, as required by the provisions of the POEA Standard Employment Contract, cannot be used to avoid payment of death compensation benefits. Estella could not be expected to travel from Lingayen, Pangasinan to Manila to inform Gau Sheng and Bestow of her husband's condition.

The CA stressed 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 provision must, therefore, be construed and applied fairly, reasonably and liberally or for the benefit of the seamen and their dependents.

Aggrieved, the petitioners filed a motion for reconsideration which was dismissed.

Hence, the instant petition.

The Present Petition

The petitioners allege that the appellate court committed the following errors:

- THE COURT OF APPEALS ERRED IN SETTING ASIDE THE COMMISSION'S DECISION, THERE BEING NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE COMMISSION.
- THE COURT OF APPEALS ERRED IN FINDING THAT THE DEATH OF ROBERTO JOAQUIN WAS COMPENSABLE FOR LACK OF FACTUAL BASIS.
- THE COURT OF APPEALS ERRED IN AWARDING DEATH BENEFITS. BURIAL BENEFITS AND THE AMOUNT EQUIVALENT TO FOUR (4) MONTHS' SALARY OF ROBERTO JOAQUIN.[16]

According to the petitioners, the respondent failed to show that the NLRC acted with grave abuse of discretion in denying her claim. The petitioners emphasize that the cause of Roberto's death was not among those listed as compensable under the POEA Standard Employment Contract. Considering that Roberto himself requested for his release from the contract of employment and was, thus, repatriated on October 21, 1993, he was no longer an employee of the petitioners at the time of his death. They contend that the respondent failed to show that Roberto's death was compensable, and that his death certificate is insufficient to show that he was ill when he was repatriated; that he was admitted to the hospital for the same illness; and that said illness caused his death.

The petitioners stress that Roberto's failure to comply with the post-medical examination requirement under Subsection 4-C, Section C, Part II of the POEA Standard Employment Contract prevented the allowance of the respondent's claim for death compensation.

For her part, Estella, the respondent, insists that the CA had judiciously resolved the pivotal issue of the compensability of Roberto's death; hence, it did not commit any error in ruling that it was compensable.

The pivotal issue for resolution is whether or not Roberto's death is compensable.

In petitions for review, only questions of law may be raised, except, if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin.[17] Due to the irreconcilable findings of the LA and the CA on the one hand, and the NLRC on the other, we are constrained to review the petition.

A review of Roberto's employment contract revealed that provision number two (2) specifically provided that the terms and conditions of the revised employment contract for seafarers approved by the POEA/DOLE on July 14, 1989 under Memorandum Circular No. 41, Series of 1989, and amendments shall apply.[18]

Pursuant to Memorandum Circular No. 41, Series of 1989, as incorporated in the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels, which was in force during the employment of Roberto, the beneficiaries of an employee who died during the effectivity of the contract may claim compensation and benefits in case of death during the term of his contract:

7. Compensation and Benefits:

a. In case of death of the seaman during the term of his contract, the employer shall pay his beneficiaries the PHILIPPINE CURRENCY EQUIVALENT TO THE AMOUNT OF:

...

c. IN ALL CASES, THE EMPLOYER SHALL PAY THE BENEFICIARIES OF SEAMEN THE PHILIPPINE CURRENCY EQUIVALENT TO THE AMOUNT OF US\$1,000 FOR BURIAL EXPENSES AT THE EXCHANGE RATE PREVAILING DURING THE TIME OF PAYMENT.

d. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel, the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work of the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days. For this purpose, 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 REPORTING REQUIREMENT SHALL RESULT IN HIS FORFEITURE OF THE RIGHT TO CLAIM THE ABOVE BENEFITS.[19]

In order to give effect to the aforequoted benefits, it must be shown that the employee died during the effectivity of the contract of employment. Per Memorandum Circular No. 41, Series of 1989, as incorporated in the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels, employment is deemed terminated in the following instances:

SECTION H. TERMINATION OF EMPLOYMENT

The employment of the seaman shall cease upon expiration of the contract period indicated in the Crew

Contract unless the Master and the Seaman, by mutual consent, IN WRITING, agree to an early termination. IN WHICH CASE THE SEAMAN IS ENTITLED TO EARNED WAGES AND BENEFITS ONLY.[20]

Upon the mutual consent of Roberto and the petitioners, he (Roberto) was repatriated on October 21, 1993, or merely twenty-eight (28) days after he was deployed. Thus, his employment had been effectively terminated on that particular date. Based on Memorandum Circular No. 41, Series of 1989, Section 5(a), as incorporated in the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels, Roberto is only entitled to earned wages and benefits. Considering that his employment had been terminated on October 21, 1993, he was no longer an employee of the petitioners when he died on June 25, 1994. Thus, the CA erred in applying Section 7 of Memorandum Circular No. 41, Series of 1989.

Moreover, death compensation benefits cannot be awarded unless there is substantial evidence showing that (a) the cause of Roberto's death was reasonably connected with his work; or (b) the sickness for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died.[21]

We note that Roberto died of chronic renal failure,[22] a disease not listed as a compensable illness under Appendix 1 of the Standard Employment Contract. In fact, the list is limited only to the loss of kidney and spleen and residuals of impairment of intra-abdominal organs which require regular aid and attendance that will enable the worker to seek any gainful employment and hernia secondary to trauma or strain. Similarly, the Employees' Compensation Commission does not list chronic renal failure as an occupational disease.[23]

For the increased risk theory to apply in compensation cases, we held in *Riño v. Employees' Compensation Commission*[24] that the claimant must adduce reasonable proof between the work of the deceased and the cause of his death, or that the risk of contracting the disease was increased by the deceased's working conditions:

Under the Labor Code, as amended, the beneficiaries of an employee are entitled to death benefits if the cause of death is sickness listed as occupational disease by the ECC; or any other illness caused by employment, subject to proof that the risk of contracting the same is increased by the working conditions.

The primary and antecedent causes of Virgilio Riño's death are not listed as occupational diseases. Hence, petitioner should have presented substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, showing that the nature of her husband's employment or working conditions increased the risk of uremia, chronic renal failure or chronic glomerulonephritis. This, the petitioner failed to do.

Petitioner did not adduce any proof of a reasonable connection between the work of the deceased and the cause of his death. There was no showing that the progression of the disease was brought about largely by the conditions in Virgilio's job. Indeed, petitioner presented no medical history, records or physician's report, in order to substantiate her claim that the working conditions at the Port Area increased the risk of uremia, renal failure or glomerulonephritis.

As we ruled in *Sante v. Employees' Compensation Commission*, "x x x a claimant must submit such proof as would constitute a reasonable basis for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. What kind and quantum of evidence would constitute an adequate basis for a reasonable man (not necessarily a medical scientist) to reach one or the other conclusion, can obviously be determined only on a case-to-case basis. That evidence must, however, be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by existing law is real x x x not merely apparent. ..." [25]

It, thus, behooved the respondent to show a reasonable connection between Roberto's work and the cause of his death; or that the risk of contracting chronic renal failure was increased by Roberto's working conditions. The

respondent must submit such proof as would constitute as a reasonable basis for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. However, the respondent failed to do so. There is no showing that the progression of the disease was brought about largely by the conditions in Roberto's job as a fisherman. His medical history, medical records, or physician's reports, were not even presented in order to substantiate the respondent's claim that the working conditions on board MV Bestow Ocean increased the risk of contracting chronic renal failure.

In Harrison's Principles of Internal Medicine, chronic renal failure is described in the following manner:

Chronic renal failure results from progressive and irreversible destruction of nephrons, regardless of cause (Chap. 237). This diagnosis implies that GFR is known to have been reduced for at least 3 to 6 months (see Table 233-1). Often a gradual decline in GFR occurs over a period of years. Proof of chronicity is also provided by the demonstration of bilateral reduction of kidney size by scout film, ultrasonography, intravenous pyelography, or tomography. Other findings of long-standing renal failure, such as renal osteodystrophy or symptoms of uremia, also help to establish this syndrome. Several laboratory abnormalities are often regarded as reliable indicators of chronicity of renal disease, such as anemia, hyperphosphatemia or hypocalcemia, but there are not specific (Chap. 235). In contrast, the finding of broad casts in the urinary sediment (Chap. 44) is specific for chronic renal failure, the wide diameters of these casts reflecting the compensatory dilation and hypertrophy of surviving nephrons. Proteinuria is a frequent but nonspecific finding, as is hematuria. Chronic obstructive uropathy polycystic and medullary cystic disease, analgesic nephropathy, and the inactive end stage of any chronic tubulointerstitial nephropathy are conditions in which the urine often contains little or no protein cells, or casts even though nephron destruction has progressed to chronic renal failure.[26]

We do not agree with the respondent's claim that by the issuance of a clean bill of health to Roberto, made by the physicians selected/accredited by the petitioners, it necessarily follows that the illness for which her husband died was acquired during his employment as a fisherman for the petitioners.

The pre-employment medical examination conducted on Roberto could not have divulged the disease for which he died, considering the fact that most, if not all, are not so exploratory.[27] The decrease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test.[28] In pre-employment examination, the urine analysis (urinalysis), which is normally included, measures only the creatinine,[29] the presence of which cannot conclusively indicate chronic renal failure.

The respondent claims that Roberto was repatriated due to illness. She relates that upon Roberto's arrival in the Philippines, he was already seriously ill and that his body was bloated.[30] She, however, failed to adduce substantial evidence that the aforesaid illness which led to Roberto's request to be repatriated was also the same disease that caused his death. Neither was it shown that Roberto's illness at the time he was repatriated was related to the cause of his death. In the absence of substantial evidence, Roberto's working conditions cannot be assumed to have increased the risk of contracting chronic renal failure. In its July 26, 1999 Resolution, the NLRC stated that the respondent should have submitted Roberto to a post-medical examination within three (3) working days upon his return or in case of his incapacity, a written notice to the agency within the same period, in accordance with Section 4-C, Section C, Part II of the Standard Employment Contract.

While we agree with the CA that compliance with Section 4-C, Section C, Part II of the Standard Employment Contract can be dispensed with, there must be a basis for the award of death compensation. The death of a seaman several months after his repatriation for illness does not necessarily mean that (a) the seaman died of the same illness; (b) his working conditions increased the risk of contracting the illness which caused his death; and (c) the death is compensable, unless there is some reasonable basis to support otherwise.

The respondent insists that as held by the CA, Roberto's condition prevented him from undergoing a medical

examination and that she could not be expected to travel from Lingayen, Pangasinan to Manila to notify the petitioners of her husband's condition. This may well have been the case; however, without a post-medical examination or its equivalent to show that the disease for which Roberto died was contracted during his employment or that his working conditions increased the risk of contracting the aforesaid ailment, the petitioners cannot be made liable for death compensation.

Similarly, the other benefits, such as burial benefits and those allegedly owing to the deceased's children cannot be made, especially considering that the respondent failed to substantiate her claim that the four (4) children are the minor children of deceased.

IN LIGHT OF ALL THE FOREGOING, the petition is hereby GRANTED and GIVEN DUE COURSE. The Decision of the Court of Appeals in CA-G.R. SP No. 54596 is REVERSED AND SET ASIDE. The July 26, 1999 Resolution of the National Labor Relations Commission is hereby REINSTATED.

SO ORDERED.

Puno, (Chairman), Tinga, and Chico-Nazario, JJ., concur.
Austria-Martinez, J., on official leave.

[1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Renato C. Dacudao and Andres B. Reyes, Jr., concurring.

[2] Rollo, p. 44.

[3] CA Rollo, p. 24.

[4] Id. at 25.

[5] By reason of Republic Act No. 8042, otherwise known as the Migrant Worker's and Overseas Filipinos Act, the case was transferred to the arbitration branch of the National Labor Relations Commission.

[6] CA Rollo, pp. 18-22.

[7] Section C. COMPENSATION AND BENEFITS

I.

1. In case of death of the seaman during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of US\$50,000 and an additional amount of US\$7,000 to each child under the age of twenty-one (21) but not exceeding four children at the exchange rate prevailing during the time of payment.

Where the death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.

[8] CA Rollo, p. 34.

[9] Id. at 38.

[10] Id. at 84.

[11] Now Subsection b(3), Section 20 of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels:

...

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel, the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seaman shall submit himself to a post employment medical examination by the company-designated physician within three (3) 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 reporting requirement shall result in the forfeiture of the right to claim the above benefits.

[12] CA Rollo, p. 83.

[13] Rollo, pp. 42-43.

[14] CA Rollo, p. 149.

[15] 307 SCRA 189 (1999).

[16] Rollo, p. 9.

[17] *Smith Kline Beckman Corporation v. Court of Appeals*, 409 SCRA 33 (2003).

[18] CA Rollo, p. 24.

[19] Section C, Part II of the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels.

[20] Section H, Part I of the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels.

[21] *Bonilla v. Court of Appeals*, 340 SCRA 760 (2000).

[22] CA Rollo, p. 25.

[23] Annex "A" of Presidential Decree No. 626.

[24] 331 SCRA 596 (2000).

[25] *Id.* at 601-603.

[26] *Harrison's Principles of Internal Medicine*, Vol. 2, 13th edition, p. 1253.

[27] *Sealanes Marine Services, Inc. v. NLRC*, 190 SCRA 337 (1990).

[28] *Supra*, at note 26, p. 2493.

[29] *Id.* at 2494.

[30] CA Rollo, p. 19.

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