

OCEAN BUILDERS CONSTRUCTION CORP., AND/OR DENNIS HAO, PETITIONERS, VS. SPOUSES ANTONIO AND ANICIA CUBACUB, RESPONDENTS.

G.R. No. 150898. April 13, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Bladimir Cubacub (Bladimir) was employed as maintenance man by petitioner company Ocean Builders Construction Corp. at its office in Caloocan City.

On April 9, 1995, Bladimir was afflicted with chicken pox. He was thus advised by petitioner Dennis Hao (Hao), the company's general manager, to rest for three days which he did at the company's "barracks" where he lives free of charge.

Three days later or on April 12, 1995, Bladimir went about his usual chores of manning the gate of the company premises and even cleaned the company vehicles. Later in the afternoon, however, he asked a co-worker, Ignacio Silangga (Silangga), to accompany him to his house in Capas, Tarlac so he could rest. Informed by Silangga of Bladimir's intention, Hao gave Bladimir P1,000.00 and ordered Silangga to instead bring Bladimir to the nearest hospital.

Along with co-workers Narding and Tito Vergado, Silangga thus brought Bladimir to the Caybiga Community Hospital (Caybiga Hospital), a primary-care hospital around one kilometer away from the office of the company.

The hospital did not allow Bladimir to leave the hospital. He was then confined, with Narding keeping watch over him. The next day, April 13, 1995, a doctor of the hospital informed Narding that they needed to talk to Bladimir's parents, hence, on Silangga's request, their co-workers June Matias and Joel Edrene fetched Bladimir's parents from Tarlac.

At about 8 o'clock in the evening of the same day, April 13, 1995, Bladimir's parents-respondent spouses Cubacub, with their friend Dr. Hermes Frias (Dr. Frias), arrived at the Caybiga Hospital and transferred Bladimir to the Quezon City General Hospital (QCGH) where he was placed in the intensive care unit and died the following day, April 14, 1995.

The death certificate issued by the QCGH recorded Bladimir's immediate cause of death as cardio-respiratory arrest and the antecedent cause as pneumonia. On the other hand, the death certificate issued by Dr. Frias recorded the causes of death as cardiac arrest, multiple organ system failure, septicemia and chicken pox.

Bladimir's parents-herein respondents later filed on August 17, 1995 before the Tarlac Regional Trial Court (RTC) at Capas a complaint for damages against petitioners, alleging that Hao was guilty of negligence which resulted in the deterioration of Bladimir's condition leading to his death.

By Decision of April 14, 1997, [1] Branch 66 of the Tarlac RTC at Capas dismissed the complaint, holding that

Hao was not negligent. It ruled that Hao was not under any obligation to bring Bladimir to better tertiary hospitals, and assuming that Bladimir died of chicken pox aggravated by pneumonia or some other complications due to lack of adequate facilities at the hospital, the same cannot be attributed to Hao.

On respondents' appeal, the Court of Appeals, by Decision of June 22, 2001, reversed the trial court's decision, holding that by Hao's failure to bring Bladimir to a better-equipped hospital, he violated Article 161 of the Labor Code. It went on to state that Hao should have foreseen that Bladimir, an adult, could suffer complications from chicken pox and, had he been brought to hospitals like St. Luke's, Capitol Medical Center, Philippine General Hospital and the like, Bladimir could have been saved.

Thus the appellate court disposed:

WHEREFORE, the decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Civil Case No. 349 dated April 14, 1997 is hereby REVERSED and SET ASIDE and a new one rendered holding the defendants solidarily liable to plaintiffs-appellants for the following:

- P50,000.00 for the life of Bladimir Cubacub;
- P584,630.00 for loss of Bladimir's earning capacity;
- P4,834.60 as reimbursement of expenses incurred at Quezon City General Hospital as evidenced by Exhibits "E" to "E-14" inclusive;
- P18,107.75 as reimbursement of expenses for the 5-day wake covered by Exhibits "F" to "F-17";
- P30,000.00 as funeral expenses at Prudential Funeral Homes covered by Exhibit "I";
- P6,700.00 for acquisition of memorial lot at Sto. Rosario Memorial Park covered by Exhibit "J";
- P50,000.00 as moral damages;
- P20,000.00 as exemplary damages;
- P15,000.00 as attorney's fees and
- Cost of suit.

SO ORDERED.[2]

The motion for reconsideration was denied by Resolution[3] of November 26, 2001, hence this petition.

Petitioners maintain that Hao exercised the diligence more than what the law requires, hence, they are not liable for damages.

The petition is meritorious.

At the onset, the Court notes that the present case is one for damages based on torts, the employer-employee relationship being merely incidental. To successfully prosecute an action anchored on torts, three elements must be present, viz: (1) duty (2) breach (3) injury and proximate causation. The assailed decision of the appellate court held that it was the duty of petitioners to provide adequate medical assistance to the employees under Art. 161 of the Labor Code, failing which a breach is committed.

Art. 161 of the Labor Code provides:

ART. 161. Assistance of employer. – It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or

sick employee in case of emergency. (emphasis and underscoring supplied)

The Implementing Rules of the Code do not enlighten what the phrase “adequate and immediate” medical attendance means in relation to an “emergency.” It would thus appear that the determination of what it means is left to the employer, except when a full-time registered nurse or physician are available on-site as required, also under the Labor Code, specifically Art. 157 which provides:

Article 157. Emergency Medical and Dental Services. - It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

(a)

The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aiders shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;

(b)

The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and

(c)

The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300). (emphasis and underscoring supplied)

In the present case, there is no allegation that the company premises are hazardous. Neither is there any allegation on the number of employees the company has. If Hao’s testimony[4] would be believed, the company had only seven regular employees and 20 contractual employees - still short of the minimum 50 workers that an establishment must have for it to be required to have a full-time registered nurse.

The Court can thus only determine whether the actions taken by petitioners when Bladimir became ill amounted to the “necessary assistance” to ensure “adequate and immediate medical . . . attendance” to Bladimir as required under Art. 161 of the Labor Code.

As found by the trial court and borne by the records, petitioner Hao’s advice for Bladimir to, as he did, take a 3-day rest and to later have him brought to the nearest hospital constituted “adequate and immediate medical” attendance that he is mandated, under Art. 161, to provide to a sick employee in an emergency.

Chicken pox is self-limiting. Hao does not appear to have a medical background. He may not be thus expected to have known that Bladimir needed to be brought to a hospital with better facilities than the Caybiga Hospital, contrary to appellate court’s ruling.

AT ALL EVENTS, the alleged negligence of Hao cannot be considered as the proximate cause of the death of Bladimir. Proximate cause is that which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces injury, and without which, the result would not have occurred.[5] An injury or damage is proximately caused by an act or failure to act, whenever it appears from the evidence in the case that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.[6]

Verily, the issue in this case is essentially factual in nature. The dissent, apart from adopting the appellate court's findings, finds that Bladimir contracted chicken pox from a co-worker and Hao was negligent in not bringing that co-worker to the nearest physician, or isolating him as well. This finding is not, however, borne by the records. Nowhere in the appellate court's or even the trial court's decision is there any such definite finding that Bladimir contracted chicken pox from a co-worker. At best, the only allusion to another employee being afflicted with chicken pox was when Hao testified that he knew it to heal within three days as was the case of another worker, without reference, however, as to when it happened.[7]

On the issue of which of the two death certificates is more credible, the dissent, noting that Dr. Frias attended to Bladimir during his "last illness," holds that the certificate which he issued - citing chicken pox as antecedent cause - deserves more credence.

There appears, however, to be no conflict in the two death certificates on the immediate cause of Bladimir's death since both cite cardio-respiratory arrest due to complications - from pneumonia per QCGH, septicemia and chicken pox per Dr. Frias'. In fact, Dr. Frias admitted that the causes of death in both certificates were the same.[8]

Be that as it may, Dr. Frias could not be considered as Bladimir's attending physician, he having merely ordered Bladimir's transfer to the QCGH after seeing him at the Caybiga Hospital. He thereafter left Bladimir to the care of doctors at QCGH, returning to Capas, Tarlac at 4 o'clock the following morning or eight hours after seeing Bladimir. As he himself testified upon cross-examination, he did not personally attend to Bladimir anymore once the latter was brought to the ICU at QCGH.[9]

It bears emphasis that a duly-registered death certificate is considered a public document and the entries therein are presumed correct, unless the party who contests its accuracy can produce positive evidence establishing otherwise.[10] The QCGH death certificate was received by the City Civil Registrar on April 17, 1995. Not only was the certificate shown by positive evidence to be inaccurate. Its credibility, more than that issued by Dr. Frias, becomes more pronounced as note is taken of the fact that he was not around at the time of death.

IN FINE, petitioner company and its co-petitioner manager Dennis Hao are not guilty of negligence.

WHEREFORE, the petition is GRANTED. The challenged Decision of the Court of Appeals is REVERSED, and the complaint is hereby DISMISSED.

WE CONCUR:

Brion, Villarama, Jr., and Sereno, JJ., concur.
Bersamin, J., I dissent.

[1] Rollo, pp. 55-67.

[2] Court of Appeals Decision, rollo, pp. 81-82. Penned by Associate Justice (now SC Justice) Presbitero J. Velasco, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr.

[3] Rollo, pp. 105-106. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justice Rodrigo V. Cosico and Juan Q. Enriquez, Jr.

[4] Vide TSN, Hearing on January 7, 1997, p. 8.

[5] Lasam v. Sps. Ramolete, G.R. No. 159132, Dec. 18, 2008, 574 SCRA 439.

[6] Ibid.

[7] Vide TSN, Hearing on January 7, 1997, p. 25.

[8] Vide TSN, Hearing on June 25, 1996, Direct Examination of Dr. Frias, records, p. 30.

[9] Vide, TSN, Hearing on June 25, 1996, id. at 35.

[10] *Philamlife v. CA*, 398 Phil. 599 (2000).

DISSENTING OPINION

BERSAMIN, J.:

I dissent.

I find myself unable to join my Honorable Brethren in the Third Division in the result to be reached herein. My review of the records constrains me to travel the lonely path, convinced to now forsake unanimity in order to urge giving just solace to the aggrieved parents of a poor employee who died from the complications of chicken pox after his employers forced him to continue on the job despite his affliction that, in the first place, he had contracted in the workplace from a co-employee. To me, his death was wrongful by reason of the employers' failure: (a) to isolate the co-worker to prevent the spread of chicken pox; (b) to provide to him the legally mandated first aid treatment; and (c) to extend adequate medical and other assistance for his affliction with chicken pox and the expected complications of the affliction (like letting him off from work in order to have complete rest).

Antecedents

This action concerns the damages claimed by the respondents, plaintiffs below, arising from the untimely death of their son, Bladimir Cubacub, while employed by Ocean Builders Construction Corporation (OBCC), then managed by petitioner Dennis Hao. Bladimir had contracted chicken pox and a cough and had later on collapsed in the workplace and rushed to the hospital. In its decision dated April 14, 1997, the RTC absolved the petitioners of any liability, and dismissed the complaint and the counterclaim, ruling that the proximate cause of Bladimir's death could not be attributed to the petitioners, particularly because the death certificate issued by the Quezon City General Hospital (QCGH) did not state chicken pox to be the cause of death, unlike the death certificate issued by Dr. Hermes Frias. The RTC observed that Bladimir, being already of age, had been responsible for his own act of reporting to work despite his illness; that chicken pox was not a serious disease requiring hospitalization, but a self-limiting one that would heal by itself if proper care of the patient was taken; and that the petitioners as employers were not mandated by any law to send Bladimir to a hospital.

The respondents appealed to the Court of Appeals (CA), which reversed the RTC. The CA held that the respondents established the petitioners' liability by preponderant evidence, and, accordingly, found that Bladimir's health had deteriorated because he had been made to work despite his illness and because Hao, as the manager of OBCC, had denied Bladimir's request to take a vacation; that prior to his collapse, Bladimir had been suffering from the complications of chicken pox and had needed immediate medical treatment; and that the petitioners did not extend the requisite assistance to Bladimir despite their employer's duty under Article 161 of the Labor Code to provide medical attention and treatment to an injured or sick employee in times of emergency.

The CA then disposed thuswise:

WHEREFORE, the decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Civil Case No. 349 dated April 14, 1997 is hereby REVERSED and SET ASIDE and a new one rendered holding the defendants solidarily liable to plaintiffs-appellants for the following:

- P50,000.00 for the life of Bladimir Cubacub;
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- P4,834.60 as reimbursement of expenses incurred at Quezon City General Hospital as evidenced by Exhibit "E" to "E-14" inclusive;
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- P6,700.00 for acquisition of memorial lot at Sto. Rosario Memorial Park covered by Exhibit "J";
- P50,000.00 as moral damages;
- P20,000.00 as exemplary damages;
- P15,000.00 as attorney's fees; and
- Cost of suit.

SO ORDERED. [1]

The petitioners sought reconsideration, but the CA rebuffed them.

Hence, this appeal, wherein the petitioners contend that the CA erred in concluding that they had not exercised the diligence of a good father of a family and in giving weight to the death certificate issued by Dr. Frias.

Submission

The appeal has no merit.

1.

CA must be upheld on its resolution because the appeal involves essentially factual issues

The petitioners, conscious that they hereby raise issues essentially factual in nature, submit that their appeal should be given due course as an exception pursuant to *Fuentes v. Court of Appeals* (G.R. No. 109849, February 26, 1997, 268 SCRA 703) because the factual findings of the CA conflicted with those of the RTC.

I am not persuaded that we should give due course to the appeal on that basis. The mere variance between the factual findings of the trial and appellate courts does not necessarily indicate that the CA's ruling was erroneous, or less worthy than the RTC's. The petitioners' burden was to present strong cogent reasons to convince the Court to reverse the CA, but their reasons were weak and contrary to the records. The CA, acting as the reviewing court vis-à-vis the RTC, reasonably considered and appreciated the records of the trial; hence, its appreciation and determination of the factual and legal issues are entitled to great respect. Thus, the CA's ruling should be affirmed, not reversed.

2.

Petitioners were guilty for the wrongful death of Bladimir

The respondents have anchored their action for damages on the provisions of the Civil Code on quasi-delict and human relations.

Under the concept of quasi-delict, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. [2] To sustain a claim based on quasi-delict, the following requisites must concur: (a) there must be damage caused to the plaintiff; (b) there must be negligence by act or omission, of which the defendant or some other person for whose acts the defendant must respond was guilty; and (c) there must be a connection of cause and effect between such negligence and the damage. [3]

Negligence, according to *Layugan v. Intermediate Appellate Court*, [4] is “the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, [5] or as Judge Cooley defines it, [6] ‘(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.’” [7]

The test for the existence of negligence in a particular case has been aptly put in *Picart v. Smith*, [8] thuswise:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences. [9]

Negligence is a relative term, not an absolute one, because its application depends upon the situation of the parties and the reasonable degree of care and vigilance that the surrounding circumstances reasonably impose. Consequently, when the danger is great, a high degree of care is required, and the failure to observe such degree of care amounts to want of ordinary care. [10]

The essential linkage between the negligence or fault, on one hand, and the injury or damage, on the other hand, must be credibly and sufficiently established. An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. [11]

According to the petitioners, the following acts of Hao proved that they were not negligent, namely: (a) it was at Hao’s instance that Bladimir was brought to the Caybiga Community Hospital; (b) before leaving for Hongkong,

Hao instructed Ignacio Silangga, another employee, to attend to the needs of Bladimir who had been admitted in the hospital; and (c) Hao advised Bladimir to take a rest for three days.

The Majority hold that all that Article 161 of the Labor Code, [12] upon which, among others, the CA anchored its decision against the petitioners, required of the petitioners as the employers of the ill Bladimir was to render “necessary assistance” to ensure “adequate and immediate medical ... attendance”; that Hao’s advice to Bladimir to take a 3-day rest, which he did, and to later have Bladimir brought to the nearest hospital constituted the adequate and immediate medical attendance Article 161 mandated; and that given that chicken pox was self-limiting, Hao, who did not appear to have a medical background, might not be expected to have known that Bladimir needed to be brought to a hospital with better facilities than the Caybiga Hospital.

The Majority further hold that the alleged negligence of Hao could not be the proximate cause of the death of Bladimir, because whatever he did or did not do played no substantial part in bring about or actually causing the injury or damage; hence, the death of Bladimir was neither the direct result nor a reasonably probable consequence of Hao’s act or omission; that there was nothing in the records to show that Bladimir had contracted the chicken pox from an afflicted co-worker whom Hao negligently did not bring to the nearest physician, or did not isolate from his co-workers; that both lower courts did not make any definite finding that Bladimir had contracted the chicken pox from a co-worker; and that the only allusion to another employee being afflicted with chicken pox was made by Hao when he testified that he had known that chicken pox would heal within three days “as was the case of another worker, without reference, however, as to when it happened.” [13]

I cannot accept the Majority’s holding.

The Majority’s favoring the petitioners disregards the records, which convincingly demonstrated and preponderantly established that Hao had failed to exercise the degree of care and vigilance required under the circumstances. Besides, the aforestated acts of Hao, objectively considered, did not warrant the petitioners’ absolution from liability.

Let me elucidate.

2.a.

Petitioners violated the requirements of the Labor Code and its implementing rules

It is good to start by unhesitatingly indicating that the petitioners as employers committed violations of the minimum standards of care that the law erected for the benefit of Bladimir and his co-workers.

The implementing rules of the Labor Code required OBCC to provide medical and dental services and facilities to its employees. Specifically, under Section 4(a), Rule 1 of the Implementing Rules of Book IV, OBCC had the legal obligation due to the number of its workers being at least 27 in number (that is, seven regular employees and 20 contractual ones, according to Hao) to employ at least a graduate first-aider, who might be one of the workers in the workplace; such graduate first-aider must be afforded immediate access to the first-aid medicines, equipment, and facilities. [14] The term first-aider refers to a person who has been trained and duly certified as qualified to administer first aid by the Philippine National Red Cross (PNRC) or any other organization accredited by the PNRC. [15] The term first-aid treatment means adequate, immediate, and necessary medical attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such an injury or illness is work-connected, before more extensive medical or dental treatment can be secured; it does not include continued treatment or follow-up treatment for any injury or illness. [16]

However, Hao admitted that OBCC did not have a clinic in the workplace, or a nurse or other competent person

who might assist an employee in an emergency, or that OBCC had any agreement with a nearby hospital to attend to a sick employee. [17] The admitted failure to provide to the employees, in general, and to Bladimir, in particular, any of the several free emergency medical and dental services and facilities the Labor Code and the implementing rules and regulations of the Department of Labor and Employment required removed the foundation for absolving the petitioners from liability.

Chicken pox, or varicella, is a highly contagious disease of childhood, caused by a large DNA virus and characterized by a well-defined incubation period, and a vesicular rash that typically occurs in successive crops and most marked on the trunk. In healthy children, the disease is usually mild with clinical symptoms limited to the skin; but in immunosuppressed children and adults, life-threatening illness caused by deep visceral involvement is not uncommon. [18] Among the known complications of varicella are: (a) secondary bacterial infection; (b) varicella pneumonia; (c) dissemination to other viscera; (d) central nervous system complications; (e) coagulation complications; and (f) rare complications such as varicella infection of the cornea, edema, Reyes' syndrome, or myocarditis. [19]

Chicken pox is a self-limiting disease that heals by itself when properly taken care of by giving the patient sufficient time to rest and administering symptomatic medications. Dr. Hermes Frias enlightened the trial court thereon:

COURT

Q:

He contracted chicken pox?

A:

Yes, your honor, which is a self limiting disease.

Q:

What do you mean by that?

A:

Meaning to say, your Honor, if it is properly taken care of, it will not reach to the point of seriously affecting the patient and there is a certain period wherein the chicken pox will heal. [20]

ATTY. SANTILLAN

Q:

That is you said if taken care of at the initial?

A:

Yes, sir. [21]

xxx

COURT

Q:

Will you clarify. You said that the disease is self limiting disease.

A:

Yes your honor.

Q:

So more or less, even without any medicine or without any medical attendance if it is self limiting disease, it will heal by itself, Isn't it?

A:

Yes, your Honor, if you would let me clarify on that thing, your Honor. Chicken pox has no medicine, it is being treated symptomatically. What I mean that it has no medicine. There are medicines that are being tested that claim to have anti-viral activities but it cannot be positively claimed that there is a medicine solely for chicken pox. So chicken pox, you, Honor, is being treated symptomatically. If the patient having chicken pox will have fever, he will be given anti-fever medicine and if the patient have pneumonia due to chicken pox, that is when the appropriate antibiotics is given.

Q:

If it is self limiting, doctor, can you not say you don't even have to confine him in the hospital?

A:

Yes, your honor, but the patient should be confined in bed. [22]

Based on the foregoing testimony of Dr. Frias, it is imperative that the chicken pox-afflicted patient should be confined in bed to rest during the initial stages of the disease; otherwise, the complications of chicken pox, which are deadly, may set in.

Dr. Frias explained the probability of the complications of chicken pox affecting the patient, viz:

A:

Among the complications of chicken pox especially in adults that contacted it is pneumonia, then another complication is the brain, encephalitis, those are the complications, sir.

Q:

In your medical opinion, doctor, when can these complications set in?

A:

There is no specific time on when these complications set in; but if the patient is properly taken care of during his illness having chicken pox, these complications usually do not set in. The book states that complications of pneumonia is around, if I am not mistaken, 20% to 30% of patients contacting chicken pox.

Q:

In your medical opinion also, doctor, if the patient who has chicken pox do(es) not rest and continue(s) working and without medication, would your answer still be the same as to the time when these complications will set in?

A:

Without proper rest and medication, your Honor, the chances of complication setting in is much higher than in a patient who is fully rested and receiving symptomatic medications. [23]

With the records showing that OBCC did not have the graduate first aider or clinic in the workplace, Bladimir received no first aid treatment from April 9, 1995 (when he contracted chicken pox) until April 12, 1995 (when he

was rushed to the community hospital after collapsing in the workplace). Also, Bladimir was not allowed to have bed rest, considering that Hao instead required him to continue on the job despite his affliction, denying the latter's request to be allowed to rest in his parents' home in Capas, Tarlac, all because Hao was due to leave for Hongkong for the Holy Week break and had no one else to remain in the premises in his absence. Hao's utter lack of concern and solicitude for the welfare of Bladimir not only contravened the letter and spirit of the Labor Code but also manifested a callous disregard of Bladimir's weakened condition.

It is not to be lost sight of, too, that, even assuming that Hao really told Bladimir to take a rest in the company barracks upon his affliction with chicken pox on April 9, 1995, the petitioners should still answer for the wrongful death because the barracks provided to Bladimir and others (free of charge, the Majority point out) were unsuitable for any employee afflicted with chicken pox to have the requisite complete rest. The barracks consisted of a small, cramped, and guardhouse-like structure constructed of wood and plywood that even raised the chances for chicken pox to spread. Under the circumstances, the petitioners' neglect of the welfare of Bladimir became all the more pronounced.

2.b.

Bladimir succumbed to complications of chicken pox
after petitioners refused to let him have complete rest

There are two sides of whether or not Bladimir was afforded the sufficient time to rest. The first is Hao's claim that Bladimir took a three-day rest, more particularly, on April 9, 10 and 11, 1995. The second is the respondents' insistence that Hao still required Bladimir to remain on the job from April 9 to April 12, 1995 despite Bladimir's several requests to be allowed to go to his parents' home in Capas, Tarlac to have the much needed rest, because Hao was then set to travel to Hongkong during the Holy Week break and desired Bladimir to man the premises in his absence.

The Majority adopts the first, despite Hao supporting his claim with only his mere say-so, but I incline towards the respondents' version, because of the objective confirmation of the version by two witnesses, who coincided in their declarations that Bladimir was on the job on April 11, 1995 and April 12, 1995, contrary to Hao's claim.

The first objective witness was Ariel Taruc, who was presented by the respondents. Taruc testified that he saw Bladimir working, cleaning the company premises and vehicles, and manning the gate on April 11, 1995. Taruc stated, too, that Bladimir, already looking weak and full of rashes in his body, wanted very much to go home to Capas, Tarlac to rest during the Holy Week break but his manager (Hao) did not give him permission to do so. I excerpt Taruc's relevant testimony, to wit:

Q:

Now on April 11, 1995, what time did you and Mr. Cubacub talk?

A:

9:00 o'clock in the morning, sir.

Q:

Can you tell this Honorable Court why you went there on April 11, 1995?

A:

I wanted to invite him to go home because that was a Holy Week, sir.

COURT

Holy Tuesday, you did not work on that day?

WITNESS

We did not have work on that day ma'am.

COURT

Alright, proceed.

ATTY. S. SANTILLAN:

Q:

In what particular place you met Bladimir Cubacub on April 11, 1995 at 9:00 o'clock in the morning?

WITNESS

A:

At the guard house, sir.

Q:

Guard house of what company if you know or what place?

A:

Ocean Builders, sir.

Q:

What was Bladimir doing there at the guard house when you arrived?

A:

He was assigned in that guard house, sir.

Q:

Can you tell this Honorable Court what you and Bladimir talked about during that meeting at 9:00 o'clock on April 11, 1995?

A:

I also invited Bladimir to go home on Holy Thursday, however, he informed me that he could not go home because he was not allowed by his manager to go home as his manager was going somewhere, sir.

Q:

Now, can you tell this Honorable Court also if you know what was the physical condition of Bladimir at the time you are talking to him?

A:

At that time, sir, his face was full of chicken pox, sir, and he looks weak, sir.

Q:

Now, was that the only subject of conversation between you and Bladimir Cubacub at the time you visited him?

A:

I was inviting him to go home that week, however he did not want to go home, in fact he showed his chicken pox in his stomach and he informed me that he will be going home when I come back for work, sir.

Q:

Will you tell the Court, you describe what those bulutong looks like?

A:

“Butil-butil” with pus and his face, both arms and his stomach were full of chicken pox, and they look like boil (pigsas), mam. [24]

The second objective witness was Ignacio Silangga, an employee of OBCC whom the petitioners presented on their side. Like Taruc, Silangga saw Bladimir working on April 11, 1995 by cleaning the company premises and vehicles, and opening and closing the gate of the premises, as the following excerpt of his testimony bears out:

Q:

On April 11?

A:

On April 11, I saw him, sir.

Q:

Also working in the premises?

A:

He was cleaning the vehicle, sir.

Q:

So aside from cleaning the premises, opening, closing the gate, you also see him cleaning the vehicles of the corporation, is that what you mean?

A:

Yes, sir, that is his duty or job.

COURT

Q:

Cleaning the vehicle is his job?

A:

Yes, ma'am. [25]

In addition, Silangga attested that Bladimir continued on the job on April 12, 1995, instead of resting. In fact, Silangga recalled Bladimir requesting to bring him home to Tarlac (“bring me to Tarlac”) because he wanted his own brothers and sisters to take care of him and to rest. The relevant excerpt of Silangga’s testimony follows:

Q:

Can you recall to us what date was that when you last saw him before you saw him at the hospital?

A:

On April 12, 1995, sir, I came from Manila because I secured the Plate Number of Mr. Dennis Hao, sir.

Q:

And, from Manila, where did you go?

A:

Upon entering the gate of your company, Bladimir was there and he was the one who opened the gate for me, sir.

Q:

And, when Bladimir opened the gate for you on April 12, 1995, was he in his ordinary self or usual ordinary self?

A:

Yes, sir.

Q:

Alright, so, after opening the gate of Ocean Builders, do you remember what happened next?

A:

Bladimir Cubacub calls me “Kuya”, sir, and he told me, “Kuya, can you bring me to Tarlac”, sir.

Q:

And, did Bladimir Cubacub tell you the reason why he wants to be brought to Tarlac?

A:

He told me that he wants to take a rest, sir.

Q:

And, did he also tell you the reason why he wanted to take a rest?

A:

He did not tell me the reason, sir. He just told me that he wants to take a rest, so, his brothers and sisters could take care of him, sir.

Q:

Did he not also tell you the reason why he wants his brothers and sisters to take care of him?

A:

What I know, he was suffering from chicken pox, sir. [26]

With the aforequoted testimonies definitely confirming that Bladimir worked until April 12, 1995 (at least) despite his greatly weakened condition, I wonder how and why the RTC still held that Bladimir was solely responsible for the fatal consequence of his affliction, and why the Majority agrees with the RTC and completely absolves the petitioners from responsibility and liability.

2.c.

Bladimir contracted chicken pox
from a co-employee

Citing the lack of any finding to that effect in the decisions of both lower courts, the Majority downplays the cause of Bladimir's chicken pox and ignores that Bladimir contracted the chicken pox from a co-worker.

I cannot go along with the Majority. It will be odd if the Court refuses to rectify the omission of both lower courts in missing out on such an important detail as the causation of the chicken pox and ignores the evidence to that effect. The silence of the lower courts ought not to impede the rectification, for ours is the foremost duty, as the ultimate dispenser of justice and fairness, to make judicial decisions speak the truth.

Thus, I excerpt from Hao's testimony the portion that incontrovertibly shows that he well knew that Bladimir had contracted his chicken pox from a co-worker, in order to show how Bladimir contracted the chicken pox from a co-worker, viz:

Q: Personally, have you experience from chicken pox (sic), do you know whether it is something serious or what kind disease?

A: Actually, before Bladimir Cubacub was afflicted with chicken pox from one of his co-employee who is also residing in the barracks who was afflicted with chicken pox, that is why I saw that chicken pox could ill in about three (3) days, sir. [27]

Clearly, it was Hao who himself confirmed that Bladimir had contracted his chicken pox from a co-worker.

2.d.

Hao's acts after Bladimir collapsed
and was rushed to the hospital
were superficial, too little, and too late

It is true that Hao directed Silangga to bring Bladimir to the community hospital after he collapsed in the workplace, giving P1,000.00 for Bladimir's medical bill. But Hao's solicitude was superficial (if not feigned), too little, and too late.

Superficial (if not feigned), for, although Bladimir, as a stay-in employee of OBCC under Hao's supervision, was Hao's responsibility, Hao had not earlier done anything to prevent Bladimir from contracting chicken pox by isolating Bladimir from contact with the afflicted co-worker. Instead, Bladimir and the afflicted co-worker were forced to stay together in their crowded barracks. In addition, Hao showed no further interest in seeing to the condition of Bladimir and in ascertaining whether the community hospital to where Bladimir had been rushed upon Hao's directive had the adequate facilities and medical personnel to attend to Bladimir. Obviously, the community hospital was not adequate, because Bladimir's condition deteriorated until he fell into coma on April 13, 1995, the day following his admission.

Too little, because P1,000.00 was a mere pittance when compared with OBCC's undeserved savings from not complying with its legally mandated obligation to provide first aid treatment to its employees, and from not doing more after Bladimir had been rushed to the community hospital by Silangga.

Too late, because by the time of rushing him to the community hospital Bladimir had already collapsed due to the irreversible effects of the deadly complications of the 3-days old affliction.

2.e.

Conclusion

Unlike the Majority, I find a direct link between the petitioners' acts and omissions and Bladimir's death. The chain of the events from the time when Bladimir was exposed to the chicken pox afflicting his co-worker due to their staying together in the cramped space of the workers' barracks, to the time when Hao directed Silangga to rush the collapsed Bladimir to the community hospital, and until Bladimir succumbed in QCGH indicated a natural and continuous sequence, unbroken by any efficient intervening cause, demonstrating how their gross neglect of their employee's plight led to or caused the wrongful death.

Contrary to the Majority's conclusion, Hao willfully disregarded Bladimir's deteriorating condition and prevented him from taking time off from his job to have the much needed complete rest. Hao's attitude enabled the complications of chicken pox, like pneumonia, to set in to complicate Bladimir's condition. Hao did not need to have a medical background to realize Bladimir's worsening condition and the concomitant perils, for such condition was not concealed due to Bladimir's body notoriously bearing the signs of his affliction and general debility. By the time Hao acted and had Bladimir brought to the community hospital, the complications of the disease were already irreversible.

Undoubtedly, the petitioners did not use that reasonable care and caution that an ordinarily prudent person would have used in the same situation.

3.

Dr. Frias' death certificate was
more reliable on the cause of death

The Majority do not consider the later death certificate issued by Dr. Frias (which included chicken pox among the causes of death) more reliable than the death certificate issued on April 17, 1995 by the QCGH (which did not include chicken pox among the causes of death), mainly because Dr. Frias could not be considered as Bladimir's attending physician, he having merely ordered Bladimir's transfer to the QCGH after seeing him at the Caybiga Community Hospital; and because the QCGH death certificate was a public document whose entries are presumed correct unless their inaccuracy is first shown by positive evidence.

I disagree with the Majority.

Although, concededly, any competent health professional can confirm that death has occurred, only a physician who attended the patient during his last illness can execute a death certificate. Anent the task, the physician provides an opinion on the cause of death and certifies to such cause of death, not to the fact of death. The physician is not required to confirm that life is extinct; or to view the body of the deceased; or to report the fact that death has occurred. The death certificate is not a medical document, but a civil one intended to serve various legal purposes.

Was Dr. Frias qualified to execute the second death certificate?

I answer in the affirmative.

I deem to be uncontroverted that Dr. Frias medically attended to Bladimir during his last illness, considering that Dr. Frias was the physician who coordinated Bladimir's transfer to QCGH from the Caybiga Community Hospital based on his professional assessment of the true medical condition of Bladimir and of the urgent need for the transfer to another medical institution with better facilities.

In contrast, the physician who executed on April 17, 1995 the death certificate for Bladimir in QCGH did not attend to Bladimir during his last illness. This fact is unquestionably borne out in the death certificate itself, in which the physician ticked the box denominated as Question No. 20 in the form for the death certificate, thereby

stating that he had not attended to the deceased. [28]

Moreover, Dr. Frias testified that the QCGH death certificate was prepared principally to enable the transport of the remains of Bladimir from Quezon City to Tarlac. Upon seeing the incompleteness of the QCGH death certificate on the causes of death, however, Dr. Frias felt compelled to execute another death certificate, as the following excerpt of his testimony reveals:

Q:

The Court would like to be clarified, Dr. Frias. Who is authorized to issue a death certificate based on the rules and regulations of the Department of Health?

A:

Attending physicians, your Honor, and any doctor who saw the patient.

COURT

Q:

Could you reconcile why there are two (2) death certificates in this case, one issued by the hospital where the patient died and one which you issued?

A:

They can be reconciled your Honor...

Q:

No, I'm not asking for reconciliation. I'm just asking why there are two death certificates?

A:

Yes, it was given to him so that the patient can be transported while I made the other one to show how seriously ill the patient was at the time of his death, anyway I initially saw the patient and I was with him all the way up to the time he was transferred to the Quezon City General Hospital, your Honor.

Q:

Did I hear you correctly when you said that you issued the certificate after you saw the death certificate issued by the Quezon City General Hospital?

A:

Yes, your Honor.

Q:

The Court is asking why is there a need for another death certificate when in fact you said there was already a death certificate that was already issued if it is for transporting the corpse?

A:

I made one, your Honor. The answer is I made one so to show the real cause of death of the patient. I think in my opinion, the death certificate of the Quezon City General Hospital is inadequate to show the real condition of the patient. [29]

Based on the foregoing, therefore, that Dr. Frias had the basic competence to execute the second death certificate,

and that such death certificate was the more reliable on the causes of Bladimir's death should be beyond debate.

ACCORDINGLY, I vote to deny the petition for review on certiorari, and to affirm the decision rendered on June 22, 2001 by the Court of Appeals.

[1] Supra, note 1.

[2] Article 2176, Civil Code.

[3] Vergara v. Court of Appeals, No. L-77679, September 30, 1987, 154 SCRA 564; FGU Insurance Corporation v. Court of Appeals, G.R. No. 118889, March 23, 1998, 287 SCRA 718, 720-721.

[4] No. L-73998, November 14, 1988, 167 SCRA 363.

[5] Citing Black Law Dictionary, Fifth Edition, 930.

[6] Citing Cooley On Torts, Fourth Edition, Vol. 3, 265.

[7] See also Jarco Marketing Corporation v. Court of Appeals, G.R. No. 129792, December 21, 1999, 321 SCRA 375, 386 (Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury.)

[8] 37 Phil 809.

[9] Bold underscoring supplied for emphasis.

[10] Pineda, Torts and Damages (Annotated), 2004 ed., pp. 8-9.

[11] Lasam v. Ramolete, G.R. No. 159132, December 18, 2008, 574 SCRA 439; citing Ramos v. Court of Appeals, 378 Phil. 1198 (1999).

[12] Article 161. Assistance of employer. - It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.

[13] Majority Opinion, p. 7.

[14] Section 4(a), Rule 1 of the Implementing Rules of Book IV provides:

Section 4. Emergency medical and dental services. – Any employer covered by this Rule shall provide his employees medical and dental services and facilities in the following cases and manner:

(a) When the number of workers is from 10 to 50 in a workplace, the services of a graduate first-aiders shall be provided who may be one of the workers in the workplace and who has immediate access to the first-aid medicines prescribed in Section 3 of this Rule.

xxx

[15] Section 2(c), Rule 1 of the Implementing Rules of Book IV reads:

Section 2. Definition. – As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

xxx

(c) "First-aiders" means any person trained and duly certified as qualified to administer first aid by the Philippine

National Red Cross or by any other organization accredited by the former.

xxx

[16] Section 2(a), Rule 1 of the Implementing Rules of Book IV states:

Section 2. Definition. – As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

(a) “First aid treatment” means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected, before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for any injury or illness.

xxx

[17] TSN dated January 28, 1997, Cross-Examination of Hao, pp. 25-27.

[18] Conn and Conn, Current Diagnosis 5, p. 145.

[19] Id., pp. 146-147. See also Harrison, Principles of Internal Medicine, Fifth Edition, pp. 1735-1736.

[20] TSN dated June 25, 1996, Direct Testimony of Dr. Frias, pp. 12-13.

[21] Id.

[22] Id., pp. 19-20.

[23] Id., pp. 17-19.

[24] TSN dated August 6, 1996, Direct Testimony of Taruc, pp. 7-10.

[25] TSN dated December 3, 1996, Cross Examination of Silangga, pp. 11-12.

[26] TSN dated November 12, 1996, Direct Testimony of Silangga, pp. 9-11.

[27] TSN dated January 7, 1997, Direct Testimony of Hao, pp. 24-25.

[28] Exhibit D.

[29] TSN dated June 25, 1996, Cross-Examination of Dr. Frias, pp. 41-43.

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