

MANILA. RAILROAD COMPANY, PETITIONER, VS. EMILIANA FERRER AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. 15454. September 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review on certiorari the decision dated February 20, 1959 of the Workmen's Compensation Commission as well as its resolution en banc of March 13, 1959.

On January 10, 1958, Isidro Mamaril filed with Regional Office No. 3 of the Department of Labor, a complaint alleging, inter alia, that he was employed by petitioner Manila Railroad Company as Trackman from February 1, 1946 up to April 15, 1957, when he was separated from the service due to physical disability; that his said disability was due to his having contracted pulmonary tuberculosis, as per the letter dated January 4, 1957 of petitioner's principal physician; that as per letter dated March 28, 1957 of said principal physician to petitioner's chief engineer, he was found to be suffering from "P. T. B. far advanced, right lung, and minimal, left lung," and that said physician recommended his retirement from the service due to physical disability; and that the sickness contracted by him (tuberculosis) "was contracted and caused by his employment" with petitioner and "aggravated by the nature of his employment" as trackman. He prayed that judgment be rendered in his favor, ordering petitioner to pay him from P4,000.00 to P5,000.00 as compensation under the Workmen's Compensation Act.[1]

On January 27, 1958, or 17 days after the filing of said complaint, Mamaril died. On January 30, 1958, respondent Emilia Ferrer, surviving spouse of Mamaril, filed with said Regional Office a petition for substitution of party claimants. On February 4, 1958, she filed an amended complaint.

On January 29, 1958, petitioner filed its answer alleging, by way of affirmative defense, that Mamaril's illness "was neither caused nor aggravated by the nature of his work, as (its) trackman," and that he contracted the same "from causes other than the nature of his work or employment" with it.

Issues having been joined, the case was heard and, after hearing, Hearing Officer Paulino S. Perez of the Regional Office, rendered a decision holding that "the deceased Isidro Mamaril contracted P. T. B. out of, and in the course of his employment as trackman, and that his ailment was aggravated by the nature of his work; hence, the herein claimants (respondent Ferrer and children) are entitled to death benefits under Act 3428, as amended." Petitioner was ordered to pay respondent the sum of P3,598.40 as compensation, and any amount which she may have spent for the treatment of the deceased.

On August 13, 1958, petitioner filed a petition for review of said decision. On February 20, 1959, the Workmen's Compensation Commission[2] affirmed said decision of the Hearing Officer, thus:

"DECISION

"This is a review of the decision of the Hearing Officer of Regional Office No. III declaring claimant entitled to compensation.

"The only issue to be resolved in this case is the causal connection of the pulmonary tuberculosis of Isidro Mamaril, with his employment as trackman of respondent Manila Railroad Company for over 11 years from February 1, 1946 to April 15, 1957, inclusive. He died of said sickness on January 27, 1958.

"A perusal of the records disclosed that the deceased as trackman was working outdoors on railroad tracks of respondent (herein petitioner). His work consisted mainly of the inspection of the tracks within his area of employment. He put out overgrowing grass on the railroad tracks and fixed the rails and ties whenever he found them out of order. At times, particularly after a storm and heavy rains, he performed strenuous work in the repairs of railroad tracks. While working, he was exposed to the heat of the sun and sometimes overtaken by rain.

"The first time Isidro Mamaril was found sick of tuberculosis was on November 19, 1953 when he was examined by the company physician. This examination showed that his tuberculosis in the left lung was active and in a moderately advanced stage. Subsequent examinations made on June 5, 1954, and on April 18, 1956 practically gave the same results. However, on December 3, 1956, the same company doctor found the deceased suffering from far advanced pulmonary tuberculosis in the left lung and moderately advanced in the right lung. In the examination made on March 27, 1957 when the deceased stopped working in the company his tuberculosis in the left lung was still in the far advanced stage.

"In view of the evidence adduced that he performed strenuous work especially after a storm and heavy rains, there is a strong indication that the worsening condition of his disease was brought about by the nature of his employment. The deceased must have been sick of tuberculosis long before November 19, 1953, otherwise his illness would not have been in a moderately advanced stage on that date. Notwithstanding the seriousness of his illness the deceased was allowed to continue working up to March 27, 1957, during which period his tuberculosis progressed to far advanced stage:

"WHEREFORE, the decision under review should be, as it is hereby affirmed and respondent ordered to pay an additional fee of P5.00 for this review pursuant to Section 55 of the Act.

"SO ORDERED." (italics supplied.)

On March 3, 1959, petitioner filed a motion for reconsideration alleging, inter alia, that Mamaril's disease was not aggravated by the nature of his work with petitioner; that the Hearing Officer committed a jurisdictional error by giving due course to Mamaril's claim, although it was filed beyond the 2-month statutory period for filing the same, that he, likewise, committed a jurisdictional error by giving due course to the claim, despite its motion for dismissal of the case, on the ground that respondent Ferrer was not Mamaril's wife; and that Mamaril's living condition caused and possibly aggravated his illness.

On March 13, 1958, said motion was denied by the Commission, in its resolution en banc^[3] stating:

"RESOLUTION

"Respondent seeks the reversal of the decision of the Chairman of the Commission which affirmed that of the Hearing Officer declaring claimants entitled to compensation.

"After a careful review of the records of the case, we find as a fact that Isidro Mamaril's employment as trackman of respondent was causally related to the progress of his pulmonary tuberculosis which subsequently resulted in his death.

"We cannot agree with the allegation of respondent that the Hearing Officer committed 'a jurisdictional error, tantamount to an abuse of discretion' when he gave due course to the claim allegedly filed beyond the 2-month period prescribed by the Workmen's Compensation Act, as amended. The case involves a death claim so that the reckoning of the period in filing it should start from the death of worker. Inasmuch as Isidro Mamaril died on January 27, 1958, the filing of the 'Petition for Substitution of Party Claimants' and the 'Petition to Admit Amended Complaint' on January 31 and February 13, 1958, respectively, is within the 3-month prescribed period.

"As regards the allegation of respondent that it was jurisdictional error on the part of the Hearing Officer to have given due course to the claim in spite of its motion to dismiss on the ground that claimant widow was not legally married to the deceased worker, the records disclose that there is evidence to establish such marriage. Besides, respondent did not adduce any evidence to the contrary. As a matter of fact, in its petition for review, it stated that it was 'laboring under the belief that Ferrer was Mamaril's legal wife, respondent (herein petitioner) did not interpose any objection to the substitution.' Certainly the failure of respondent to make timely objection to the evidence presented proving marriage of Emilia Ferrer to Isidro Mamaril should not be blamed on the Hearing Officer.

"IN VIEW OF ALL THE FOREGOING, the decision under review should be, as it is hereby, affirmed.

"SO ORDERED." (Italics supplied.)

On June 12, 1959, petitioner filed with us this present petition for review merely reiterating[4] the grounds relied upon in its motion for reconsideration and disposed of in the resolution just quoted.

We find no merit in the petition. The evidence on record shows that when the deceased Isidro Mamaril entered petitioner's employment, as trackman, on February 1, 1946, he was healthy and physically sound. As petitioner's trackman, he was assigned outdoors on petitioner's railroad tracks. His work consisted mainly in inspecting said tracks within the area assigned to him. He pulled out or cut overgrown grasses which he found on said tracks, and fixed the rails and ties therein, whenever he found them out of order. At times, especially when said tracks were damaged or washed out due to storms or heavy rains, he performed strenuous work in order to repair them. While performing his daily work, he was usually exposed to the elements. He worked day and night, as the exigencies of the service required it. So strenuous indeed, was the nature of his work that when examined physically by petitioner's physician on November 19, 1953, he was found to be suffering from pulmonary tuberculosis on the left lung, which was in an active and moderately advanced stage. Subsequent examinations by the same physician on June 5, 1954 and April 18, 1956, disclosed the same condition. However, on December 3, 1956, he was found to be suffering from far advanced pulmonary tuberculosis on the left lung, and moderately advanced on the right. In spite of the seriousness of his illness, petitioner allowed the deceased to continue working as trackman up to March 27, 1957. On this date, he was examined and found to be far advanced in tuberculosis of his left lung.' And finally on April 15, 1957, he was separated from the service due to physical disability.

We agree with respondent Commission that the strenuous work performed by the deceased worsened the condition of his disease. The facts that he was found to be suffering from lack of nourishment, upon examination by petitioner's physician on June 5, 1954, and that he was living in a small and crowded room, are not in themselves conclusive as causing the aggravation of his illness. If at all, they are merely contributory (not primary) factors, and could not counteract the established fact that the nature of his employment as petitioner's trackman, required him to perform strenuous work day and night, as the exigencies of the service required the same, exposing himself to the elements thereby aggravating his illness which he, undoubtedly contracted in the course of his employment by petitioner. Neither would the fact that when examined by petitioner's physician after 3 months of continuous work, the sick condition of his left lung remained stationary while his right lung regressed to minimal apparently showing some slight improvement of his condition, defeat his right to compensation. For

the fact remains that when he was examined on March 27, 1957, his left lung was found to be so far advanced in tuberculosis that he was recommended for retirement on the following day (March 28) due to physical disability and was actually separated on April 15, 1957, and died 9 months thereafter, on January 27, 1958.

Petitioner likewise, contends that respondent Commission erred in not holding that claimant Isidro Mamaril's claim is barred having been filed beyond the 2-month statutory period for filing the same.

The contention can not be sustained. In the first place, the records disclose that the employer knew all the time the condition of the health of the employee. Secondly, although Mamaril's claim (complaint) was filed only on January 10, 1958, or almost 9 months after he was separated from the service by petitioner, the same was converted into a death claim, when on January 30, 1958, i.e., 3 days after his death (on January 27) his widow, respondent Emilia Ferrer filed a petition for substitution as party claimants and an amended complaint on February 4, 1958. Being a death claim, it can be made by any person entitled to the compensation within 3 months after death, regardless of whether or not compensation was, claimed by the employee himself. (Sec. 24, Act No. 3423, as amended.) Clearly, the present claim was filed well-within the period prescribed by law.

As to the right of respondent Emiliana (Emilia) Ferrer and her children to the death benefits there is the express finding of the workmen's Compensation Commission that her marriage to the deceased has been duly proven.

Wherefore, finding no error in the decision and resolution appealed from, the same are hereby affirmed, with costs against the petitioner. So ordered.

Paras, C. J., Bengzon, Bautista Angela, Labrador, Concepcion, Reyes, J. B., L., Gutierrez David, Paredes, and Dizon, JJ, concur.

[1] Act No. 3423, as amended.

[2] Thru Commission Chairman Cesareo de Leon.

[3] With Commissioners Cesareo de Leon and Jose Sanchez concurring, and Commissioner Baens Del Rosario, dissenting in a separate opinion.

[4] Petitioner did not file a brief.

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