

**THE ESTATE OF POSEDIO ORTEGA, REPRESENTED BY HIS WIFE,
MARIA C. ORTEGA, PETITIONER, VS. THE COURT OF APPEALS, ST.
VINCENT SHIPPING, INC., AND/OR ENGR. EDWIN M. CRISTOBAL,
Respon...**

G.R. No. 175005. April 30, 2008

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-175005/>

TINGA, J.:

In the present petition for review, petitioner seeks the reversal of the decision and resolution of the Court of Appeals (19th Division) in C.A.-G.R. SP No.01127 dated 15 March 2006 and 18 September 2006,[1] respectively. Both issuances dismissed petitioner Estate's claim for contractual death benefits, damages, and attorney's fees.

The facts of the case follow.

Posedio Ortega (Ortega) was engaged by St. Vincent Shipping, Inc. as Second Engineer for the vessel M/V Washington Trader. He entered into a 12-month contract with basic monthly salary of \$1,000,[2] and boarded the vessel on 4 March 2003.

It had not gone two weeks since he boarded that Ortega got sick, complaining of occasional fever and cough with blood-streaked sputum. By 18 April 2003, he was admitted at St. Vincentius Hospital, Antwerp, Belgium where he was diagnosed with small cell lung cancer.[3] On 10 May 2003, Ortega was repatriated to the Philippines for further evaluation, treatment and management. He was admitted at the Marine Medical Services of the Metropolitan Hospital, Manila, referred to a pulmonologist therein and received chemotherapy and medication. On 14 May 2003, he was declared stable and cleared to go home to Iloilo where he can receive further treatment. On 30 July 2003, Ortega succumbed to lung cancer.[4]

The Estate of Poseido Ortega (respondent), represented by Ortega's wife, Maria C. Ortega, filed a claim for contractual death benefits, damages and attorney's fees against Saint Vincent and its manager, Mr. Edwin Cristobal (respondents) before the NLRC Sub-Arbitration Branch No. VI in Iloilo City.[5] In a decision dated 18 November 2004, the labor arbiter ruled that Ortega's illness was work-related and ordered respondents to jointly and solidarily pay the petitioner death benefits, burial allowance, sickness allowance and attorney's fees, all amounting to US\$60, 500.00.[6] Respondents appealed the decision to the National Labor Relations Commission (NLRC), but their appeal, as well as their subsequent motion for reconsideration were denied on 14 May 2005 and 28 June 2005, respectively.[7]

Respondents elevated the case to the Court of Appeals. In its 15 March 2006 Decision, the Court of Appeals set aside the decision and resolution of the NLRC. It observed that lung cancer, the cause of Ortega's illness is not an occupational disease, nor was it aggravated by his working conditions while on board M/V Washington Trader. According to the Court of Appeals, based on Ortega's medical history, medical records and physician's reports, his lung cancer was not work related. In fact, he himself admitted that he just recently quit smoking after almost twenty-five years of heavy smoking.[8] Moreover, the appellate court ruled that the certification that Ortega was

"fit for sea service" does not preclude a finding that a disease was not pre-existing.

The pre-employment medical examination underwent by Ortega before he went on board was merely routine and not so exploratory as to completely determine any illness that Ortega might have been carrying.[9] Petitioner sought reconsideration of the decision but its motion was denied by the Court of Appeals.[10]

Before us, petitioner posits that the Court of Appeals's finding that Ortega's lung cancer was not work-related and thus non-compensable is contrary to the POEA Rules, and POEA Standard Contract as well as jurisprudence. It adds that the POEA Standard Contract must be construed and applied fairly, reasonably and liberally in favor of the seamen and their dependents.

We resolve to deny the petition.

Petitioner claims that Ortega died during the term of his employment, considering that his employment contract which commenced on 4 March 2003 would have expired on 4 March 2004 had he not been repatriated on 10 May 2003. We disagree.

A party claiming benefits for the death of a seafarer due to a work-related illness must be able to show that: (1) the death occurred during the term of his employment, and (2) the illness is work-related. [11] Hence:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In the case of work-related death of the seafarer during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x.

Ortega did not die while he was under the employ of respondents. His contract of employment ceased when he was medically repatriated on 10 May 2003, whereas he died on 30 June 2003. Section 18 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (Standard Contract) states:

- The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs off from the vessel and arrives at the point of hire.
- The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:
 - when the seafarer signs off and is disembarked for medical reasons pursuant to Section 20(B) [5] of this Contract.

- xxx.

Thus, as we declared in *Gau Sheng Phils., Inc. v. Joaquin*, *Hermogenes v. Osco Shipping Services, Inc.*,^[12] *Prudential Shipping and Management Corporation v. Sta. Rita*, *Prudential Shipping and Management Corporation v. Sta. Rita*,^[13] and *Klaveness Maritime Agency, Inc v. Beneficiaries of Allas*,^[14] in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. On this basis alone, the petition should be dismissed.

Not even a resort to the liberal interpretation of the terms of the Standard Contract, following the pronouncement

that the Standard Contract is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels can save the case for petitioner. The ineluctability of the conclusion that Ortega's lung cancer and subsequent death are not work-related remains despite the flavor of liberality that permeates the contract.

Under the Definition of Terms found in the Standard Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied". An illness not otherwise listed in Section 32-A is disputably presumed work-related.[15] This presumption works in favor of petitioner, because it then becomes incumbent upon respondents to dispute or overturn this presumption.

Lung cancer is not one of the occupational diseases listed in the Standard Contract.[16] In fact, the only types of cancer on the list are "cancer of the epithelial lining of the bladder (papilloma of the bladder), and "cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product." [17] At most, there is only a disputable presumption that lung cancer is work-related. In determining whether an illness is indeed work-related, we will still use the requisites laid down by Section 32-A of the Standard Contract, to wit:

- The seafarer's work must involve the risks described herein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer.[18]

A review of the records of the case shows that Ortega did not die of a work-related illness.

Lung cancer is a disease in which malignant (cancer) cells form in the tissues of the lung. Its main cause is tobacco use, including smoking cigarettes, cigars, or pipes, now or in the past. While there are indeed other risk factors for lung cancer, their effect on lung cancer, even if said factors are taken together, is very small compared to the effect of tobacco smoking.[19]

Evidence presented by respondents indicates that Ortega's lung cancer could not have been caused by his work at MV Washington Trader. The medical report from St. Vincentius Hospital, Antwerp, Belgium shows that as of May 2003, Ortega admitted that he had only recently quit smoking.[20] His attending physician had already opined that his lung cancer was related to his smoking habits. Thus he states:

REGARDING MR. POSEDIO ORTEGA, HE WAS DIAGNOSED TO HAVE BRONCHOGENIC CANCER (SMALL CELL) ABROAD BY MEANS OF CT SCAN AND BRONCHOSCOPY. THIS IS RELATED TO HIS SMOKING HABITS. WE CONFIRM THAT THIS IS NOT WORK-RELATED. CONSIDERING THE AGGRESSIVE NATURE OF THIS DISEASE, HE WILL BE TOTALLY DISABLED. 6 CYCLES OF CHEMOTHERAPY IS THE MINIMUM TREATMENT OF CHOICE. IF NOT GIVEN, THE DISEASE CAN EASILY DISSEMINATE AND METASTASIZE TO OTHER ORGANS. EVEN IF HE UNDERGOES CHEMOTHERAPY, HIS DISABILITY WILL REMAIN THE SAME BECAUSE EVEN IF HE SHOWED GOOD RESPONSE, HE WILL BE ONLY ON REMISSION AND RELAPSE WILL OCCUR LATER. THE HISTORY OF PULMONARY TUBERCULOSIS HAVE NOTHING TO DO WITH HIS LUNG CANCER. [21]

For its part, petitioner merely claims that Ortega's exposure to smoke and fumes emitted by the vessel caused the development of pneumonia, which in turn aggravated or modified his lung cancer.[22] In addition, petitioner invokes the cases of *Wallem Maritime Services, Inc. v. NLRC*[23] and *Seagull Shipmanagement v. NLRC*,[24] to

support its claim of compensability.

In *Wallem*, the Court, after observing that the deceased had served nine months of his twelve (12) month contract as a utility man, ruled that the nature of his work contributed to the aggravation of his illness, finding a reasonable connection between his job and his lung infection. Meanwhile in *Seagull*, the Court awarded death benefits for the death of a radio officer who, after ten (10) months of working on board, needed an open heart surgery after suffering from bouts of coughing and shortness of breathing. The Court therein noted that the illness occurred during the employment contract and that the employer had admitted that the work of the seafarer exposed him to different climates and unpredictable weather which could trigger a heart attack or heart failure.

In both cases, the Court found a reasonable connection between the work actually performed by the deceased seafarers and their illnesses. We note however that in both cases, the seafarers had served their contracts for a significantly longer amount of time than what Ortega had spent on board *MV Washington Trader*. Likewise, in both cases, the Court held that the employment had contributed, even in a small degree to the development of the disease and in bringing about the seafarers' death. These cases do not find application in the instant case.

There is no showing that the cancer was brought about by his short stint on board respondent's vessel. As records show, he got sick barely two weeks after he boarded *M/V Washington Trader*, complaining of occasional fever and cough with blood-streaked sputum. He was diagnosed to have lung cancer barely a month after he boarded the vessel, thus it is unlikely that he acquired the illness because of the exposure to fumes and smoke emitted by the vessel, as claimed by petitioner. We are also not convinced that such exposure caused the pneumonia which aggravated his cancer. Pneumonia does not per se aggravate cancer; it is in fact a common symptom of lung cancer, along with a new cough, a change in an existing cough or a bloody cough, which Ortega suffered from two weeks into the employment contract.[25] Interestingly also, it appears that Ortega himself did not contest the finding that his lung cancer was not work-related. Neither is there a contrary finding from his physician in Iloilo.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, we have no choice but to deny the claim, lest we cause injustice to the employer.

On to another matter.

Petitioner argues that respondents are estopped from denying their claims for compensation because the latter declared Ortega fit to work after a complete medical examination and evaluation.[26] The argument fails.

Petitioner is actually referring to the Pre-Employment Medical Examination (PEME), a requirement before one is hired and deployed as a seafarer. We have already ruled that the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. Thus, as we held in *NYK-FIL Ship Management, Inc. v. NLRC and Lauro A. Hernandez*,[27]

While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[28]

We note that even Ortega's PEME report[29] has a notation stating that it does not cover diseases requiring special procedure and examination for their detection and those which are asymptomatic at the time of examination. Indeed, it was only after Ortega was subjected to several medical tests in Antwerp and subsequently in the Philippines after his repatriation that a definitive finding of lung cancer was made. Petitioner's reliance on the PEME as the source of respondent's being in "estoppel" has no basis.

In view of the foregoing, there is no basis for petitioner's claim of death benefits, damages and attorney's fees against respondent.

WHEREFORE, the petition is DENIED and the decision and resolution of the Court of Appeals dated 15 March 2006 and 18 September 2006, respectively are AFFIRMED.

SO ORDERED.

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

CONCHITA CARPIO MORALES

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ARTURO D. BRION

Associate Justice

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[2] Contract of Employment, rollo, p. 60.

[3] CA rollo, p. 112.

[4] Rollo, p. 75.

[5] Docketed as NLRC SRAB OFW Case No. (M) 03-12-0062.

[6] Decision of Labor Arbiter Rene G. Eñano, rollo, pp. 87-100.

[7] Decision, id. at 102-111, Resolution denying the motion for reconsideration, Records, pp. 45-46.

[8] Rollo, p. 36.

[9] Rollo, p. 37

[10] Resolution dated 18 September 2006, id. at 27-28.

[11] Section 20 of the Standard Contract.

[12] G.R. No. 141505, 18 August 2005, 467 SCRA 301. In this case, the Court, citing *NFD International Manning Agents v. National Labor Relations Commission*, 284 SCRA 239, 247 (1998), had the occasion to rule that:

x x it is clear from the provisions of the Standard Employment Contract that the only condition for compensability of a seafarer's death is that such death must occur during the effectivity of the seafarer's contract of employment.

[13] G.R. No. 166580, 8 February 2007. In this case, we ruled:

The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. However, if the seaman dies after the termination of his contract of

employment, his beneficiaries are not entitled to the death benefits enumerated above. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. However, if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits enumerated above.

[14] G.R. No. 168560.

[15] Section 20-B (4) Those illnesses not listed in Section 32 of this Contract are disputably presumed work-related.

[16] Sec 32-A, Standard Contract.

[17] Id.

[18] Id.

[19] <http://www.cancer.gov/cancertopics/pdq/screening/lung/patient/allpages/print>. date last visited, 10 April 2008.

[20] Rollo, p. 149. The medical report was attached as Annex "3" of respondent's Position Paper.

[21] Id. at 154. The certification issued by Dr. Edgardo O. Tanquieng was attached as Annex "5" of respondent's Position Paper.

[22] Id. at 14- 15.

[23] G.R. No. 130772, 19 November 1999, 318 SCRA 623.

[24] G.R. No. 123619, 8 June 2000, 333 SCRA 236.

[25] <http://www.csmc.edu/5270.html>, last visited 11 April 2008. The following are the other common symptoms of lung cancer: rib or shoulder pain, bone pain, hoarseness, loss of appetite and weight loss, facial swelling and headaches.

[26] Rollo, p. 19.

[27] G.R. No. 161104, September 27, 2006, 503 SCRA 595.

[28] G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

[29] Rollo, p. 72. The notation reads:

NOTE:

This certificate does not cover diseases that would require special procedure and examination for their detection such as bronchiectasis, which needs roinchography peptic ulcer/gall bladder diseases which need chole GI series, certain kidney problems which need IVP, and also those which are asymptomatic at the time of examination including pregnancy test.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.