

BENITO E. LORENZO, PETITIONER, VS. GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) AND DEPARTMENT OF EDUCATION (DEPED), RESPONDENTS.

G.R. No. 188385. October 02, 2013

Ponente: PEREZ, J.

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PEREZ, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks the reversal of the 24 February 2009 Decision[1] and 11 June 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 104853, affirming the 23 June 2008 Decision[3] of the Employees Compensation Commission (ECC), denying the petitioner's claim for death benefits under Presidential Decree (P.D.) No. 626, as amended, otherwise known as the Employees' Compensation Law.

The Facts

This case emanates from a simple claim for Employees' Compensation death benefits filed by the petitioner, surviving spouse of Rosario D. Lorenzo (Rosario), a Government Service Insurance System (GSIS) member with GSIS Policy No. CM-56244, who during her lifetime served as Elementary Teacher I at the Department of Education (DepEd) for a period covering 2 October 1984 to 27 December 2001.

The records of the benefit claim which was docketed as ECC Case No. GM-18068-0307-08, show that on 1 October 2001, Rosario was admitted at the Medical City Hospital due to Hematoma on the Tongue, Left Inner Lip and Right Cheek with Associated Gingival Bleeding.[4] It appears that prior to her hospitalization, she was previously diagnosed by the same hospital for Chronic Myelogenous Leukemia and was in fact confined therein on 31 July 2001 because of Pneumonia which was a result of immuno-compromise secondary to leukemia. Rosario's health condition was confirmed by means of a bone marrow examination which showed "hypercellular aspirate with marked myeloid hyperplasia."

There was no other document on record indicating any past medical, family and personal or social history of Rosario. On 27 December 2001, Rosario died of Cardio-Respiratory Arrest due to Terminal Leukemia.[5]

Petitioner, being the surviving spouse, claimed for Employees Compensation death benefits from the GSIS. It was denied on the ground that the GSIS Medical Evaluation and Underwriting Department (MEUD) found Rosario's ailments and cause of death, Cardio-respiratory Arrest Secondary to Terminal Leukemia, a non-occupational diseases contemplated under P.D. No. 626, as amended.

Unconvinced, petitioner elevated his Employee's Compensation claim to the ECC for review and reconsideration under the Amended Rules on Employees' Compensation provided in P.D. No. 626.

Upon review, the ECC found the denial of petitioner's claim to be in order, stating that:

Leukemia is listed as an occupational disease under P.D. 626, as amended. Under, Annex "A," Item No. 15 of

the Amended Rules on Employees' Compensation, Leukemia is considered compensable among operating room personnel due to exposure to anesthetics.

Considering the above-stated medical facts and the conditions for compensability under P.D. 626, as amended, the denial by the System of appellant's claim for EC Death Benefits is proper.

This Commission believes that the deceased's Chronic Myelogenous Leukemia is a result of a defective genetic expression in expanding hematopoietic stem cells (or blood cell precursors) resulting in the uncontrolled production of abnormal blood cells. "The diagnosis of Chronic Myelogenous Leukemia is established by reciprocal translocation between chromosomes 9 and 12. This translocation results in the head-to-tail fusion of the breakpoint cluster region (BCR) gene on chromosome 22q11 with the ABL gene located on chromosome 34. Untreated, the disease is characterized by the inevitable transition from a chronic phase to an accelerated phase and on to blastic crisis." (Harrison's Principles of Internal medicine, 16th Ed., Vol. I, pp. 637).

The nature of the deceased's occupation does not increase the risk of developing Chronic Myelogenous Leukemia because the work does not show frequent and sufficient exposure to substances established as occupational risk factors of the disease. Further, several non-occupational factors can also increase the risk of this disease. "There is a marked increase in the incidence of leukemia with age, and there is also a childhood peak which occurs around two to four years of age. Certain immunologic conditions, some of which are hereditary, appear to predispose to leukemia. Ionizing radiation and benzene exposure are established environment and occupational causes of leukemia." (Encyclopedia of Occupational Health and Safety: International Labor Organization, Geneva, 4th Ed., pp. 1, 4).[6]

Aggrieved, petitioner filed a petition for review of the decision of the ECC with the CA.

In a Decision promulgated on February 24, 2009, the CA affirmed the decision of ECC. The fallo of the decision reads:

WHEREFORE, in the light of the foregoing, the instant petition for review is DISMISSED. The assailed decision is AFFIRMED.[7]

The CA ruled that under the present law, leukemia, while listed as an occupational disease, is compensable only among operating room personnel due to exposure to anesthetics.[8] Being a school teacher who is not exposed to anesthetics, Rosario's disease, though listed under Annex "A" may not be compensable, unless, petitioner could prove that his wife's risk of contracting the disease was increased by the latter's working conditions, which the petitioner failed to do.

The CA went on to state that petitioner has not presented any medical information on the cause of his wife's illness, which could help in determining the causal connection between Rosario's ailment and her alleged exposure to muriatic acid, floor wax and paint - hardly considered as radiation exposure which may cause chronic myeloid leukemia.

Petitioner now seeks relief in this Court via a petition for review on certiorari insisting, inter alia, on the error allegedly committed by the CA in failing to appreciate that P.D. No 626, as amended, is a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in the loss of income. Such that, the ECC, SSS and GSIS as the official agents charged by law to implement social justice guaranteed by the Constitution, should adopt a liberal attitude in favor of the employee in deciding claims for compensability.

We are called to decide whether or not the ailment of the late Rosario Lorenzo is compensable under the present law on employees' compensation.

This Court's Ruling

We find the Petition unmeritorious.

Sickness, as defined under Article 167[9] (1) Chapter I, Title II, Book IV of the Labor Code of the Philippines refers to “any illness definitely accepted as an occupational disease listed by the Employees’ Compensation Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions.

In cases of death, such as in this case, Section 1(b), Rule III of the Rules Implementing P.D. No. 626, as amended, requires that for the sickness and the resulting disability or death to be compensable, the claimant must show: (1) that it is the result of an occupational disease listed under Annex “A” of the Amended Rules on Employees’ Compensation with the conditions set therein satisfied; or (2) that the risk of contracting the disease is increased by the working conditions.

Section 2(a), Rule III of the said Implementing Rules, on the other hand, defines occupational diseases as those listed in Annex “A” when the nature of employment is as described therein. The listed diseases are therefore qualified by the conditions as set forth in the said Annex “A,” hereto quoted:

OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- (1) The employee’s work must involve the risks described herein;
- (2) The disease was contracted as a result of the employee’s exposure to the described risks;
- (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- (4) There was no notorious negligence on the part of the employee.

x x x x

Occupational Disease

Nature of Employment

x x x

15. Leukemia and Lymphoma Among operating room personnel due to anesthetics

Gauging from the above, the ECC was correct in stating that, contrary to the earlier finding of the MEUD of the GSIS, Rosario’s disease is occupational, which fact, however, does not thereby result in compensability in view

of the fact that petitioner's wife was not an operating room personnel.

As correctly pointed out by the ECC, the coverage of leukemia as an occupational disease relates to one's employment as an operating room personnel ordinarily exposed to anesthetics. In the case of petitioner's wife, the nature of her occupation does not indicate exposure to anesthetics nor does it increase the risk of developing Chronic Myelogenous Leukemia. There was no showing that her work involved frequent and sufficient exposure to substances established as occupational risk factors of the disease.[10] Thus, the need for the petitioner to sufficiently establish that his wife's job as a teacher exposed her to substances similar to anesthetics in an environment similar to an "operating room." [11] This leans on the precept that the awards for compensation cannot rest on speculations and presumptions.[12]

Indeed, following the specific mandate of P.D. No. 626, as amended, and its Implementing Rules, the petitioner must have at least provided sufficient basis, if not medical information which could help determine the causal connection between Rosario's ailment and her exposure to muriatic acid, floor wax and paint as well as the rigors of her work. Instead, petitioner merely insists on the supposition that the disease might have been brought about by the harmful chemicals of floor wax and paint aggravated by the fact that the Manggahan Elementary School is just along the highway which exposed Rosario to smoke belched by vehicles, all contributing to her acquisition of the disease.

We find such factors insufficient to demonstrate the probability that the risk of contracting the disease is increased by the working conditions of Rosario as a public school teacher; enough to support the claim of petitioner that his wife is entitled to employees compensation. Petitioner failed to show that the progression of the disease was brought about largely by the conditions in Rosario's work. Not even a medical history or records was presented to support petitioner's claim.

In *Sante v. Employees' Compensation Commission*, [13] we held that "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 x x x 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."

At most, petitioner solely relies on a possibility that the demands and rigors of Rosario's job coupled with exposure to chemicals in paint or floor wax could result or contribute to contracting leukemia. This is but a bare allegation no different from a mere speculation. As we held in *Raro v. Employees Compensation Commission*: [14]

The law, as it now stands requires the claimant to prove a positive thing – the illness was caused by employment and the risk of contracting the disease is increased by the working conditions. To say that since the proof is not available, therefore, the trust fund has the obligation to pay is contrary to the legal requirement that proof must be adduced. The existence of otherwise non-existent proof cannot be presumed.

It is well to stress that the principles of "presumption of compensability" and "aggravation" found in the old Workmen's Compensation Act is expressly discarded under the present compensation scheme. As illustrated in the said *Raro* case, the new principle being applied is a system based on social security principle; thus, the introduction of "proof of increased risk." As further declared therein:

The present system is also administered by social insurance agencies – the Government Service Insurance System and Social Security System – under the Employees Compensation Commission. The intent was to

restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability.[15]

The case of *Sarmiento v. Employees' Compensation Commission*,[16] cited in *Raro* case, elaborates, thus:

X X X X

The new law establishes a state insurance fund built up by the contributions of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with a new neutral Employees' Compensation Commission which then determines on the basis of the employee's supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled.

On the other hand, the employer's duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own fund to meet these contingencies. It does not have to defend itself from spuriously documented or long past claims.

The new law applies the social security principle in the handling of workmen's compensation. The Commission administers and settles claims from a fired under its exclusive control. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.

Since there is no employer opposing or fighting a claim for compensation, the rules on presumption of compensability and controversion cease to have importance. The lopsided situation of an employer versus one employee, which called for equalization through the various rules and concepts favoring the claimant, is now absent. (Emphasis supplied).

All told, this is not to say, however, that this Court is unmindful of the claimant's predicament. While we sympathize with the petitioner, it is important to note that such sympathy must be balanced by the equally vital interest of denying undeserving claims for compensation.[17] Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur.[18]

In light of the foregoing, we are constrained to declare the non-compensability of petitioner's claim, applying the provisions of the law and jurisprudence on the purpose of the law.

WHEREFORE, the petition is hereby DENIED. The 24 February 2009 Decision and 11 June 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 104853 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Perlas-Bernabe, JJ., concur.
Brion, J., see concurring opinion.

[1] Rollo, pp. 96-103; Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta concurring.

[2] Id. at 120-121.

[3] Id. at 44-48; Penned by Executive Director Benjamin C. Vitasa..

[4] Id. at 37; Annex “C.”

[5] Id. at 41; Annex “F.”

[6] Id. at 46-47.

[7] Id. at 102.

[8] Amended Rules on Employees Compensation Annex “A” (17).

[9] The Article embodies the amendment of Title II, Book IV on Employees’ Compensation and State Insurance Fund of the Labor Code by P.D No. 626.

[10] Rollo, p. 47; ECC Decision.

[11] The ECC denied compensability based on non-compliance with the conditions that: 1) Rosario’s work must involve the risks described; 2) The disease was contracted as a result of the employee’s exposure to the described risks; 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4) There was no notorious negligence on the part of the employee.

[12] Jimenez v. Court of Appeals, 520 Phil. 20, 36-37 (2006).

[13] 256 Phil. 319, 327 (1989).

[14] 254 Phil. 846, 852 (1989).

[15] Id. at 853 citing Sulit v. Employees’ Compensation Commission, 187 Phil. 317 (1980); Armeña v. ECC, et al., 207 Phil. 726 (1983); Erese v. Employees’ Compensation Commission, 222 Phil. 491 (1985); De Jesus v. ECC, 226 Phil. 33 (1986); Sarmiento v. Employees’ Compensation Commission, 244 Phil. 323 (1988).

[16] 244 Phil. 323, 327-328 (1988).

[17] Riño v. Employees’ Compensation Commission, 387 Phil. 612, 620 (2000).

[18] Id. citing Government Service Insurance System v. Court of Appeals, 296 SCRA 514, 531-532, 25 September 1998.

SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the ponencia that petitioner Benito E. Lorenzo is not entitled to receive death benefits under Presidential Decree No. (PD) 626 (The Employees’ Compensation Law) for the demise of his wife, Rosario Lorenzo. I submit this Separate Concurring Opinion to state my own views and observations on the factual issue - whether Rosario’s working conditions increased her risk of contracting leukemia - at hand.

I base my concurrence with the ponencia’s conclusions on the following grounds:

a) This Court cannot review the uniform factual findings of the Government Service Insurance System (GSIS), the Employees’ Compensation Commission (ECC) and the Court of Appeals (CA) that there is no reasonable connection between Rosario’s leukemia and her employment as a teacher in a Rule 45 petition for review on certiorari.

b) Benito failed to adduce substantial evidence that would show that Rosario’s working conditions increased

her risk of contracting leukemia. The presumptions of compensability and aggravation that subsisted during the effectivity of Act No. 3428 (The Workmen's Compensation Act) no longer apply under PD 442 (The Labor Code of the Philippines), as amended by PD 626.

As a general rule, the Supreme Court can only review questions of law in a petition for review on certiorari

While I agree with the ponencia's conclusion, I am of the position that this Court should have denied the petition on the mere ground that it cannot review questions of fact in a Rule 45 petition. As a general rule, the factual findings of the appellate court are conclusive and binding on the parties when supported by substantial evidence, and are not reviewable by this Court.[1] "Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the [CA]."[2] However, we may probe and resolve questions of fact in a Rule 45 petition as exceptions to the general rule, to wit:

- (1) when the findings are grounded entirely on speculation, surmises or conjectures;
- (2) when the inference made is manifestly mistaken, absurd or impossible;
- (3) when there is grave abuse of discretion;
- (4) when the judgment is based on a misapprehension of facts;
- (5) when the findings of facts are conflicting;
- (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (7) when the findings are contrary to the trial court;
- (8) when the findings are conclusions without citation of specific evidence on which they are based;
- (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
- (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and
- (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[3]

None of these exceptions are present in this case. Thus, the ponencia should have restrained itself from reviewing the factual issue at hand because this is beyond the Court's scope of review. The ponencia should not have reviewed and evaluated the pieces of evidence all over again in the present case.

Benito failed to show by substantial evidence that Rosario's risk of contracting leukemia was increased by her working conditions

Despite my apprehension to the ponencia's review of the factual issue in this case, I fully agree with the ponencia that Benito failed to adduce substantial evidence that would show that Rosario's working conditions increased her risk of contracting leukemia. Benito's assertion that Rosario's leukemia was aggravated by her exposure to harmful chemicals, contained in muriatic acid, floor wax and paint, and to the smoke belch of the vehicles which passed along Manggahan Elementary School is insufficient to establish substantial evidence required by law, as fully discussed below.

A. The Presumptions of Compensability and Aggravation are Abandoned in the Present Labor Code

There are two classifications of “sickness” under Article 167(l), Chapter I, Title II, Book IV of the Labor Code.[4] The first classification is any illness definitely accepted as an occupational disease listed by the ECC. The second classification is any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions. In the current case, Benito’s claim for death benefits under the first classification cannot prosper because Annex A of the Amended Rules on Employees’ Compensation lists leukemia as a compensable disease only among operating room personnel due to anesthetics.[5] Consequently, Benito can only successfully base his claim on the basis of the increased risk doctrine under the second classification.

During the effectivity of Act No. 3428,[6] the Court adhered to presumptions of compensability and aggravation in applying the increased risk doctrine. The law presumed that the claim for compensation falls within the provisions of the law if the illness arose out of and in the course of employment. In effect, the employee did not have to prove the causation between the illness and the working conditions under the old law. In other words, the employer had the burden of proving that the employee’s illness did not arise out of or in the course of employment. Necessarily, the employee or his family had to litigate his right to compensation against the employer who would oppose the claim.[7]

On January 1, 1975, PD 442, as amended by PD 626, discarded these presumptions and, instead, adopted a system based on social security principles.[8] Currently, this system is administered by social insurance agencies — the GSIS and the Social Security System — under the ECC. In this setup, we have a social insurance scheme where employers pay regular premiums to a trust fund. In turn, claims are paid from the trust fund to those who can prove entitlement under the law.[9]

Unlike the old law, the employee does not have to litigate his right to compensation under the present Labor Code. The employee or his family simply files a claim with the ECC which determines whether compensation may be paid. The lopsided situation between the employer and the employee is now absent since the former no longer opposes the latter’s claim for compensation. Thus, presumptions of compensability and aggravation cease to have importance and are no longer applicable in claims for compensation.[10]

B. The Burden of Proof Required in Claims for Compensation is Substantial Evidence

In our new Labor Code, the degree of proof required in claims for compensation is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[11] Substantial evidence is not equivalent to direct causal relation. What the law requires is merely a reasonable connection between the illness and the working conditions.[12]

Congruent with the required degree of proof is the consideration that it is the trust fund that suffers if benefits are paid to claimants who are not entitled under the law. The reason is that the trust fund’s integrity would be endangered if we inadvertently or recklessly include diseases not covered by law. It is thus this Court’s duty to ensure the stability of the fund and make certain that the system can pay benefits when due to all who are entitled and in the increased amounts fixed by law.[13]

My concurrence with the ponencia lies on my position that the liberal interpretation of employees’ compensation does not dispense with the requirement that the employee or his family should present substantial proof that his risk of contracting an illness was increased by his working conditions. In other words, this Court cannot rely on Benito’s mere enumeration of chemicals to which Rosario was allegedly exposed precisely because exposure to these chemicals is not inherent in the nature of her profession. We cannot take judicial notice that teachers are constantly exposed to chemicals because this would open the floodgates for thousands of unwarranted similar claims and deplete the trust fund. To reiterate, Rosario was a teacher, and not a factory worker, an anesthesiologist

or a chemist. Thus, in *Bravo v. ECC*,^[14] we pronounced that mere enumeration of chemicals to which Evelio Bravo was allegedly exposed and reliance on the probability that those chemicals caused his cancer of the colon do not meet the substantial evidence required by law.

On this point, I would wish to emphasize the settled rule that this Court cannot rely on surmises and conjectures in awarding claims for compensation. For this Court to allow Benito's claim on the ground that medical experts cannot trace the exact etiology of leukemia is contrary to the legal requirement that substantial proof must be adduced. This Court as a court of law should not presume the existence of an otherwise non-existent proof.^[15] If we show compassion for the victims of diseases not covered by law, we then ignore the need to show a greater concern for the trust fund to which the tens of millions of employees and their families look for compensation whenever covered accidents, salary and deaths occur.^[16]

C. *Nemaria v. Employees' Compensation Commission* is not the Controlling Doctrine in the Present Case

In his petition, Benito posits that the Court should apply *Nemaria v. Employees' Compensation Commission* (*Nemaria*)^[17] to the present case. To briefly summarize the highlights of that case, Rosario Nemaria, a teacher, died of severe abdominal pains, anorexia, weight loss and jaundice, indicative of liver cancer, duodenal ulcer and breast cancer. Her illness was discovered in 1978. Subsequently, her spouse, Flaviano Nemaria, filed a claim for death benefits based on the theory of increased risk with the GSIS. The GSIS and the ECC denied the claim on the ground that the predisposing factors deemed largely responsible for the development of her illnesses were not peculiar to her employment as a teacher.

In a decision dated October 28, 1987, the Court found the petition meritorious. It stated that the uncertainty on Rosario Nemaria's cause of illness cannot eliminate the probability that her cancer was work-connected. It theorized that it is possible that she ate food with hepatic carcinogens while working in a far-flung rural area. It declared that a claimant must show a reasonable connection between the illness and the working conditions in cases where the cause of the illness can be determined or proved. However, a claimant is not duty bound to prove the work-connection where the cause of the illness is unknown or cannot be ascertained. For certainly, the law cannot demand an impossibility.^[18]

Contrary to Benito's position, we cannot apply *Nemaria* to the present case. First, although the factual circumstances of that case occurred during the effectivity of the present Labor Code, we applied the presumptions of compensability and aggravation in that case because we took account of the possibility that her cancer developed prior to January 1, 1975 or during the effectivity of Act No. 3428. Second, we expressly abandoned *Nemaria* in *Raro v. Employees' Compensation Commission* (*Raro*), an en banc ruling which was promulgated on April 27, 1989. We thus stated in *Raro*:

For the guidance of the administrative agencies and practicing lawyers concerned, this decision expressly supersedes the decisions in *Panotes v. Employees' Compensation Commission* [128 SCRA 473 (1984)]; *Mercado v. Employees' Compensation Commission* [127 SCRA 664 (1984)]; *Ovenson v. Employees' Compensation Commission* [156 SCRA 21 (1987)]; *Nemaria v. Employees' Compensation Commission* [155 SCRA 166 (1987)] and other cases with conclusions different from those stated above.^[19] (emphasis ours; italics supplied)

Raro is the landmark case where we finally settled that the presumptions of compensability and aggravation no longer apply in the present Labor Code. In that case, we denied Zaida Raro's claim for benefits on the ground that there was no substantial evidence that would show that her employment as a clerk in the Bureau of Mines and Geo-Sciences increased her risk of contracting brain tumor. We emphasized that the Labor Code requires "the claimant to prove a positive thing - the illness was caused by employment and the risk of contracting the disease is

increased by the working conditions.”[20] We thus unequivocally abandoned the presumptions of compensability and aggravation in cases where the claimant cannot prove the work-connection of the illness because its cause is unknown.

D. The Supreme Court Still Adheres to Raro

Subsequently, this Court promulgated *GSIS v. Court of Appeals, et al. (GSIS)*[21] on January 28, 2008. The case, a First Division ruling, reverted to presumptions of compensability and aggravation in cases where the cause of the illness was unknown. In that case, Abraham Cate was employed as a member of the Philippine Navy in 1974. Thereafter, he transferred to the Philippine Constabulary in 1986. He was subsequently absorbed as a member of the Philippine National Police from 1991 until his retirement in 1994. In 1993, Abraham suffered from Osteoblastic Osteosarcoma which eventually resulted in his demise in 1994.

Prior to his death, Abraham filed a claim for income benefits with the GSIS. He alleged that he was exposed to virus when he did some dirty jobs during his stint in the Philippine Navy. However, the GSIS denied his claim on the ground that there was no proof that his duties increased his risk of contracting Osteoblastic Osteosarcoma. Subsequently, Abraham’s surviving spouse and two children appealed the denial to the ECC. The ECC, however, affirmed the GSIS’ denial of the claim.

On appeal, the CA reversed the ECC ruling. In so ruling, the CA cited the dissenting opinions of Justices Abraham Sarmiento and Edgardo Paras in *Raro*. It stated that Abraham’s failure to present evidence showing the work-connection of his illness was due to the absence of available proof. It held that to deny compensation to Osteoblastic Osteosarcoma victims for their inability to produce proof is unrealistic.

The Court adopted the CA’s position and affirmed the CA’s ruling. It declared:

Considering, however, that it is practically undisputed that under the present state of science, the proof referred by the law to be presented by the deceased private respondent claimant was unavailable and impossible to comply with, the condition must be deemed as not imposed.

For this reason, the CA held, thus:

x x x x

It is not the intention of this decision to challenge the wisdom of the *Raro* case. What is being hoped for is to have a second look on the issue of compensability of those inflicted with osteosarcoma or like disease, where the origin or cause is still virtually not ascertained. The protection of the stability and integrity of the State Insurance Fund against non-compensable claims, is much to be desired. Nonetheless, to allow the presumption of compensability to Osteosarcoma victims, will not adversely prejudice such state policy. xxx. We believe that in the meantime that osteosarcoma’s cause and origin are not yet unearthed, the benefit of the doubt should be resolved in favor of the claim.

In main, We subscribe to the more compassionate and humane considerations contained in the dissenting opinions of Justices Sarmiento and Paras in the same *Raro* case xxx.

Stated otherwise, before the amendment, the law simply did not allow compensation for the ailment of respondent. It is under this set-up that the *Raro* case was decided. However, as the ECC decision noted, the law was amended and now “the present law on compensation allows certain diseases to be compensable if it is sufficiently proven that the risk of contracting is increased by the working conditions.” It, therefore, now allows compensation subject to requirement of proving by sufficient evidence that the risk of contracting the ailment is increased by the working conditions.

As earlier noted, however, in the specific case of respondent, the requirement is impossible to comply with, given the present state of scientific knowledge. The obligation to present such as an impossible evidence must, therefore, be deemed void. Respondent, therefore, is entitled to compensation, consistent with the social legislation's intended beneficial purpose.[22] (emphases and underscores ours; citations omitted)

In so ruling, the Court reverted to the discarded presumptions of compensability and aggravation in cases where the cause of the illness was unknown. However, GSIS is merely a stray case which did not overturn *Raro*, for the following reasons:

First, Section 4(3), Article 8 of the 1987 Constitution provides that "no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc." Consequently, GSIS which is a division ruling cannot overturn *Raro* which is an en banc ruling.

Second, the Court erred when it stated in GSIS that *Raro* was decided during the effectivity of Act No. 3428. As we have discussed earlier, *Raro* was decided under the present Labor Code. It is also the landmark case which specifically declared that the claimant must show a positive proof where the cause of the illness is unknown. Furthermore, what *Raro* requires is the presentation of substantial evidence and not impossible evidence. As we have explained, the claimant is not required to show a direct causal link between the illness and the working conditions where the cause of the illness is unknown.

Third, Article 167(l), Chapter I, Title II, Book IV of the Labor Code clearly provides that reliance on the increased risk doctrine is subject to proof that the risk of contracting the illness is increased by working conditions. Indeed, this Court cannot revive the discarded presumptions of compensability and aggravation lest we engage in judicial legislation.

Lastly, there is no reason for the Court to revert to the lenient rule established in *Nemaria* because the current scheme in the Philippines remains an insurance system.

Our recent promulgation of *Government Service Insurance System v. Bernadas* (Bernadas)[23] on February 11, 2010 confirms my stand that this Court still adheres to the doctrine laid down in *Raro*. In *Bernadas*, we stated that Rosalinda Bernadas has the burden of proving that her profession as a teacher increased her risk of contracting melanoma, a cancer of the skin. We observed that Rosalinda failed to show that she had a chronic long-term exposure to the sun like farmers, fishermen, or lifeguards.

This is not to say, however, that we are abandoning the liberality of the law in favor of labor, with the rejection of the presumptions of compensability and aggravation. No less than the Constitution itself, under the social justice policy, calls for a liberal and sympathetic approach to legitimate appeals of disabled public servants.[24] However, what we are emphasizing in the present case is that this liberality does not dispense with the legal requirement that a claimant should establish his entitlement to benefits under PD 626 by substantial evidence. To rule that awards of compensation can rest on speculations would result in the drain of the trust fund that is specifically created for the protection of labor.

For all these reasons, I vote to deny the petition.

[1] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[2] *Gatus v. Social Security System*, G.R. No. 174725, January 26, 2011, 640 SCRA 553, 564, citing *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353.

[3] *New City Builders, Inc. v. NLRC*, supra note 1, at 213.

[4] Article 167 (l2), Chapter I, Title II, Book IV of the Labor Code provides:

“Sickness” means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions. For this purpose, the Commission is empowered to determine and approve occupational diseases and work-related illnesses that may be considered compensable based on peculiar hazards of employment.

[5] Annex A of the Amended Rules on Employees’ Compensation provides:

OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- (1) The employee’s work must involve the risks described herein;
- (2) The disease was contracted as a result of the employee’s exposure to the described risks;
- (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- (4) There was no notorious negligence on the part of the employee.

x x x x

Occupational Disease

Nature of Employment

x x x x

15. Leukemia and Lymphoma Among operating room personnel due to anesthetics

[6] The Workmen’s Compensation Act took effect on June 10, 1928.

[7] *Raro v. Employees’ Compensation Commission*, 254 Phil. 846, 853-855 (1989); and *Jimenez v. Court of Appeals*, 520 Phil. 20, 33-35 (2006), citing *Orate v. Court of Appeals*, 447 Phil. 654, 660 (2003).

[8] The ECC was created under PD 442 on November 1, 1974. It, however, became operational with the issuance of PD 626 which took effect on January 1, 1975. PD 626 amended Title II of Book IV on Employees' Compensation and State Insurance Fund of PD 442.

[9] *Raro v. Employees' Compensation Commission*, supra note 7, at 853.

[10] *Id.* at 853-854, citing *Sarmiento v. Employees' Compensation Commission*, 244 Phil. 323.

[11] RULES OF COURT, Rule 133, Section 5.

[12] *Government Service Insurance System v. Besitan*, G.R. No. 178901, November 23, 2011, 661 SCRA 186, 194.

[13] *Raro v. Employees' Compensation Commission*, supra note 7, at 855.

[14] 227 Phil. 93 (1986).

[15] *Raro v. Employees' Compensation Commission*, supra note 7, at 852.

[16] *Id.* at 856.

[17] 239 Phil. 160 (1987).

[18] *Id.* at 167.

[19] *Supra* note 7, at 856.

[20] *Id.* at 852; italics supplied.

[21] 566 Phil. 361 (2008).

[22] *Id.* at 368-371.

[23] G.R. No. 164731, February 11, 2010, 612 SCRA 221.

[24] *GSIS v. CA*, 349 Phil. 357, 365 (1998), citing *Diopenes v. GSIS*, G.R. No. 96844, January 23, 1992, 205 SCRA 331.

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