

HEIRS OF MARCELIANO N. OLORVIDA, JR., REPRESENTED BY HIS WIFE, NECITA D. OLORVIDA, PETITIONER, V. BSM CREW SERVICE CENTRE PHILIPPINES, INC., AND/OR BERNHARD SCHULTE SHIP MANAGEM...

G.R. No. 218330. June 27, 2018

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REYES, JR., J:

This is a petition for review on certiorari[1] under Rule 45 of the Rules of Court, seeking the review of the Decision[2] dated January 13, 2015 and the Resolution[3] dated May 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133479. In these assailed issuances, the CA reversed the Decision[4] dated October 21, 2013 of the National Labor Relations Commission (NLRC) ordering BSM Crew Service Centre Philippines, Inc. (BSM Crew), its President, Narcissus L. Duran (Duran), and its foreign principal, Bernhard Schulte Ship Management (Cyprus) Limited (Bernhard Schulte) (collectively referred to as the respondents) to jointly and severally pay death benefits to the Heirs of Marceliano N. Olorvida, Jr. (petitioner). The NLRC, in turn, reversed the ruling of the Labor Arbiter (LA) dismissing the petitioner's claim for death benefits.[5]

Factual Antecedents

On October 4, 2012, the petitioner filed a complaint for death benefits against a local manning agency, respondent BSM Crew, its President, Duran, and its foreign principal, Bernhard Schulte.[6]

The petitioner claimed that the respondents employed Marceliano N. Olorvida, Jr. (Marceliano) as a seafarer from November 20, 2003 to November 11, 2009. During this period, Marceliano was assigned as a motorman on board various vessels, except from October 19, 2006 to May 29, 2007 when he worked as a wiper. [7]

His most recent employment contract was executed on December 8, 2008. Marceliano was hired as a motorman on board the vessel Cosco Vancouver, for a period of eight (8) months starting on January 7, 2009 until November 11, 2009.[8] Marceliano underwent a pre-employment medical examination, after which he was declared fit to work.[9]

Supposedly because of the stressful work conditions, the petitioner alleged that Marceliano suffered from severe coughing, chest pains, and shortness of breath. He allegedly relayed his health conditions to his wife, Necita D. Olorvida (Necita), and the captain of Cosco Vancouver. However, the captain, according to the petitioner, merely advised Marceliano to rest and take cough medicines.[10]

The petitioner further purported that when Marceliano's contract of employment expired on November 11, 2009, he returned to the Philippines and reported his deteriorating health condition to BSM Crew immediately. Allegedly, Marceliano was not referred to a company-designated physician, which constrained him to seek medical attention at his own expense on January 22, 2010.[11]

After numerous medical examinations, Marceliano was diagnosed with "Lung Adenocarcinoma Stage IV" (otherwise known as lung cancer) and "Brain Metastasis." [12] He later died on January 17, 2012 due to "Brain

Herniation" secondary to "Brain Metastases." [13] His heirs claimed death benefits from the respondents, arguing that the cause of Marceliano's death was a work-related illness. In particular, the petitioner alleged that his work as a motorman exposed him to harmful substances that eventually caused his lung cancer. [14] Their complaint also included a prayer for the payment of damages and attorney's fees. [15]

The respondents, for their part, argued that the claim for death benefits is unmeritorious, primarily because Marceliano died after the term of his employment. [16] They further posited that Marceliano's diagnosis was not a work-related illness, and he failed to comply with the mandatory reporting requirement. [17]

Ruling of the LA

The parties failed to arrive at an amicable settlement. [18] Thus, the LA rendered a Decision [19] dated July 2, 2013, which dismissed the petitioner's claim for lack of merit:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.

Other claims are hereby also dismissed for lack of merit.

SO ORDERED. [20]

The LA ruled that the governing regulation at the time Marceliano and the respondents executed the employment contract was the 2000 Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC). [21] As such, it is deemed written into the contract and the parties were bound to comply with its provisions. This includes the requirement provided under Section 20-B of the 2000 POEA-SEC, mandating the company-designated physician to medically examine the seafarer within three (3) days from repatriation. Marceliano's failure to comply with this requirement was considered fatal to the claim for death benefits. [22]

The LA further found that the petitioner was unable to substantiate their claim that Marceliano's medical condition was immediately reported to the respondents. Furthermore, since it was undisputed that Marceliano was a smoker, the LA ruled that his illness was not work-related. [23]

Aggrieved, the petitioner filed a Memorandum of Appeal with the NLRC on August 1, 2013. They argued that the medical findings of the company-designated physician is not part of the requirement for the grant of death benefits. [24] They also insisted that the illness of Marceliano is work-related, which Marceliano had acquired as a consequence of his constant exposure to toxic fumes during his employment as a motorman. [25] The petitioner also insisted that a claim for death benefits is allowed even after the termination of the employment contract, as long as it was established that the illness was acquired during the term of employment. [26]

Ruling of the NLRC

The NLRC reversed the LA's findings in its Decision [27] dated October 21, 2013 and ruled favorably for the petitioner:

WHEREFORE, premises considered, the Decision of the [LA] dated July 2, 2013 is REVERSED and SET ASIDE and a new one entered ordering [the respondents], jointly and severally to pay [the petitioner] the following: US\$65,000.00 representing death benefits, additional benefits for her minor children and burial expenses in Philippine currency at the prevailing rate of exchange at the time of payment; Php216,728.98, as reimbursement for Medical/Hospital Expenses; and attorney's fees equivalent to ten percent (10%) of the total monetary award.

All other claims are denied.

SO ORDERED.[28] (Emphases and underscoring in the original)

According to the NLRC, the mandatory reporting requirement is not the sole obligation of the seafarer. It is a reciprocal obligation that likewise requires the employer to conduct a meaningful and timely examination of the seafarer.[29] Without evidence that the employee blatantly refused to present himself for post-employment medical examination, there is no basis to deny outright the claim for death benefits.[30] The NLRC also ruled that Marceliano's work as a motorman was the proximate cause of his lung cancer, because he was constantly exposed to the fumes and chemicals in the engine room of the sea vessel.[31]

The respondents moved for the reconsideration of the NLRC's decision.[32] The NLRC, however, denied this motion in its Resolution[33] dated November 19, 2013, viz.:

WHEREFORE, the instant Motion for Reconsideration should be, as it is hereby DENIED for lack of merit. The decision dated October 21, 2013 STANDS undisturbed.

No further motion of similar nature shall be entertained.

SO ORDERED.[34]

On February 12, 2014, the NLRC issued an Entry of Judgment stating that its Resolution dated November 19, 2013 became final and executory on January 28, 2014.[35]

Due to the unfavorable ruling of the NLRC, the respondents filed a petition for certiorari with the CA, with a prayer for the issuance of an injunctive writ.[36] The respondents argued that since the petitioner admitted that Marceliano was a 37-pack year smoker, the NLRC gravely abused its discretion in ruling that his lung cancer was a work-related illness.[37] They also disagreed with the NLRC's decision as to the mandatory nature of the reporting requirement.[38]

Ruling of the CA

In a Decision[39] dated January 13, 2015, the CA granted the respondents' petition for certiorari and reinstated the Decision dated July 2, 2013 of the LA, thus:

WHEREFORE, based on the foregoing, the petition is GRANTED. The 21 October 2013 Decision and the 19 November 2013 Resolution of the NLRC in NLRC NCR OFW Case No. (M) 10-14992-12 [NLRC LAC (OFW-M) No. 08-000749-13] are REVERSED and SET ASIDE. The July 2, 2013 Decision of the [LA] dismissing the complaint for lack of merit is REINSTATED.

SO ORDERED.[40]

The CA's Decision dated January 13, 2015 agreed with the earlier ruling of the LA that the illness of Marceliano was not work-connected. According to the CA, it was undisputed that Marceliano was a 37-pack year smoker, who stopped smoking only in 2006, or five (5) years prior to his medical examination. And, since there was no evidence that Marceliano reported his supposed symptoms to the respondents during the period of his employment, the CA rejected the argument that his lung cancer was caused by his prior occupation as a motorman.[41]

The petitioner filed a motion for reconsideration from this decision, which the CA denied in its Resolution[42] dated May 18, 2015:

WHEREFORE, based on the foregoing, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[43]

Following this adverse ruling, the petitioner came to this Court via a Rule 45 petition, attributing grave errors on the part of the CA for reversing the decision of the NLRC. The petitioner again argues that Marceliano acquired lung cancer because his work as a motorman constantly exposed him to harmful chemicals in the vessel's engine room for prolonged periods of time.[44] Furthermore, they add that the employment of Marceliano aggravated his health condition, which then developed to lung cancer.[45]

Finally, according to the petitioner, the positive assertion that Marceliano submitted himself for medical examination upon repatriation, cannot be overcome by the respondents through simple denial.[46] Aside from the argument that the post-employment medical examination is not required to successfully claim disability or death benefits, the petitioner also posits that Marceliano was constrained to seek medical help at his own expense precisely because the respondents did not provide him with assistance.[47]

The Court is thus faced with resolving the issue on whether the CA committed a reversible error in dismissing the petitioner's claim for death benefits.

Ruling of the Court

The Court denies the petition for utter lack of merit.

The claim for death benefits was correctly denied for failure to establish that the cause of death was work-related.

The employment of seafarers is governed not only by the terms and conditions of their employment contract, but also by the relevant regulations of the POEA, more specifically referred to as the "Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships." The provisions of these rules are deemed integrated into every employment contract, which employers are bound to observe as the minimum requirements for the employment of Filipino seafarers.[48]

In this particular case, the applicable rule at the time the respondents employed Marceliano was the 2000 POEA-SEC. Section 20(A) of the 2000 POEA-SEC sets down the guidelines for obtaining compensation in cases of a seafarer's death, viz.:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

- In 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. (Emphasis Ours)

This provision thus placed the burden on the seafarer's heirs to establish that: (a) the seafarer's death was work-related; and (b) the death occurred during the term of employment.[49] These are proven by substantial evidence,[50] or such level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.[51]

The cause of Marceliano's death is not work-related.

The first requirement for claiming death benefits is to prove that the seafarer's death was work-related. This is accomplished by establishing that: (a) the cause of death was reasonably connected to the seafarer's work; or (b) the illness, which caused the seafarer's death, is an occupational disease as defined in Section 32-A of the 2000 POEA-SEC; or (c) the working conditions aggravated or exposed the seafarer to the disease, which caused his/her

death.[52]

Here, it is undisputed that Marceliano died of "Brain Herniation" as a result of his lung cancer. Lung cancer, however, is not one of the occupational diseases listed in Section 32-A of the 2000 POEA-SEC. Verily, there is a disputable presumption that the lung cancer of Marceliano was work-related.[53] The burden is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence. The Court's ruling in *Magsaysay Maritime Services, et al. v. Laurel*[54] is instructive on this matter:

Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work-related and compensable. Their posture does not persuade the Court.

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20 (B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands. In the case at bench, other than the alleged declaration of the attending physician that Laurel's illness was not work-related, the petitioners failed to discharge their burden. In fact, they even conceded that hyperthyroidism may be caused by environmental factor.[55] (Emphases Ours)

Remarkably, in the clinical abstract prepared by the Philippine General Hospital (PGH) at the time of Marceliano's admission to the hospital on May 26, 2010, it was established that Marceliano was a heavy smoker prior to being diagnosed with lung cancer.[56] This was corroborated by a later clinical abstract, when Marceliano was again admitted on January 9, 2011. This clinical abstract narrated Marceliano's personal/social history as follows: "37 pack-year smoker, [who] stopped 5 years ago; (+)alcoholic beverage drinker." [57]

By virtue of these pieces of evidence, the respondents overcame the presumption that the lung cancer of Marceliano was work-related. Furthermore, the documentary evidence of the petitioner failed to establish a reasonable connection between Marceliano's work as a motorman and his lung cancer. The medical records specifically identified the intensity of Marceliano's previous smoking habits in relation to his diagnosis. His work as a motorman—the alleged exposure to dangerous substances and exhaust—was not even mentioned as a contributing factor to his illness that caused his death.

Thus, the CA correctly found that there is dearth of evidence showing the reasonable connection between the cause of Marceliano's death and his employment.[58] The lung cancer of Marceliano was caused by his own smoking habits and not by his employment as a seafarer.

The death of Marceliano occurred outside the term of his employment.

The second requirement for successfully claiming death benefits on behalf of the deceased seafarer is proof that the seafarer died during the term of his contract. As an exception to this rule, the heirs of a deceased seafarer may still receive the death benefits when the seafarer was medically repatriated on account of work-related injury or illness.[59]

In this case, the death of Marceliano occurred way beyond the termination of his employment. His last employment contract with the respondents was for a period of eight (8) months, which started on January 7, 2009 and ended on November 11, 2009.[60] He unfortunately died on January 17, 2012,[61] or more than two (2) years after the end of his employment. For this reason, the Court cannot grant the petitioner's claim for death benefits.[62]

Neither is the exception applicable to the present case.[63] When Marceliano returned to the Philippines, it was because his contract of employment has expired. He was not medically repatriated to the Philippines. As a matter of fact, he served the full term of his employment provided in the contract.

While the petitioner alleged that Marceliano has repeatedly complained to his wife Necita and to the captain regarding his deteriorating health on board the sea vessel, there are no records to support this claim. All of the documentary evidence submitted by the petitioner are medical documents, which are dated after Marceliano returned to the Philippines—or, more precisely, after his employment ended on November 11, 2009. Hence, there is no basis for the petitioner's claim for death benefits. As the Court aptly held in *Balba, et al. v. Tiwala Human Resources, Inc., et al.*: [64]

In the present case, it is undisputed that Rogelio succumbed to cancer on July 4, 2000 or almost ten (10) months after the expiration of his contract and almost nine (9) months after his repatriation. Thus, on the basis of Section 20(A) and the above-cited jurisprudence explaining the provision, Rogelio's beneficiaries, the petitioners, are precluded from receiving death benefits.

x x x x

In the instant case, Rogelio was repatriated not because of any illness but because his contract of employment expired. There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death.[65] (Emphasis Ours)

Significantly, the Court has, in the past, taken judicial notice that the main cause of lung cancer is the use of tobacco through smoking cigarettes.[66] Taken together with the medical records of Marceliano, the Court finds no causal connection between Marceliano's employment and his lung cancer. The evidence is inadequate to support the petitioner's claim for death benefits. As such, the Court cannot simply assume that the working conditions of Marceliano made him susceptible to lung cancer.

It is indeed a policy to interpret labor contracts liberally in favor of the employee. Nonetheless, the Court cannot disregard the lack of evidence to support the petitioner's claim. Courts cannot make factual findings based on surmises and conjectures.[67] Ultimately, the Court is still required to resolve cases in accordance with the applicable law and extant jurisprudence, vis-à-vis the proven facts of the case.[68]

There being no ground to grant the claim for death benefits, it is unnecessary to discuss the other issues raised in this case.

WHEREFORE, premises considered, the present petition is DENIED for lack of merit. The Decision dated January 13, 2015 and Resolution dated May 18, 2015 of the Court of Appeals in CA-G.R. SP No. 133479 are AFFIRMED. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe, and Caguioa, JJ., concur.

[1] Rollo, pp. 28-75.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Mariflor P. Punzalan Castillo and Pedro B. Corales concurring; *id.* at 80-94.

[3] *Id.* at 96-98.

[4] *Id.* at 288-300.

[5] Id. at 243-253.

[6] Id. at 99-100.

[7] Id. at 102-103, 122.

[8] Id. at 103, 123, 220.

[9] Id. at 81, 244, 289

[10] Id. at 104.

[11] Id. at 132.

[12] Id. at 105-106, 132-167.

[13] Id. at 178.

[14] Id. at 108-114.

[15] Id. at 99-100, 114-116.

[16] Id. at 204-206.

[17] Id. at 206-211.

[18] Id. at 243.

[19] Rendered by LA Jonalyn M. Gutierrez; id. at 253.

[20] Id. at 253.

[21] POEA Memorandum Circular No. 9, series of 2000, re: Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (hereinafter, "2000 POEA-SEC" for brevity). N.B. This was later amended by POEA Memorandum Circular No. 10, series of 2010, re: Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

[22] Rollo, pp. 249-250.

[23] Id. at 251-252.

[24] Id. at 261-270.

[25] Id. at 272-278.

[26] Id. at 278-279.

[27] Id. at 288-300.

[28] Id. at 299.

[29] Id. at 293-294.

[30] Id. at 294-295.

[31] Id. at 297-299.

[32] Id. at 301-316.

- [33] Id. at 320-322.
- [34] Id. at 321.
- [35] Id. at 323.
- [36] Id. at 324-339.
- [37] Id. at 330-331.
- [38] Id. at 332-334.
- [39] Id. at 80-94.
- [40] Id. at 93.
- [41] Id. at 89-90.
- [42] Id. at 96-98.
- [43] Id. at 97.
- [44] Id. at 42-46, 51-56.
- [45] Id. at 46-49.
- [46] Id. at 58-65.
- [47] Id. at 65-70.
- [48] Canuel, et al. v. Magsaysay Maritime Corporation, et al., 745 Phil. 252, 261 (2014).
- [49] Id. at 262.
- [50] Agile Maritime Resources Inc., et al. v. Siador, 744 Phil. 693, 715-716 (2014).
- [51] Sea Power Shipping Enterprises, Inc., et al. v. Salazar, 716 Phil. 693, 705 (2013).
- [52] Yap v. Rover Maritime Services Corporation, et al., 741 Phil. 222, 234 (2014).
- [53] 2000 POEA-SEC, Section 20(8)(4), which reads:
- "Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related."
- [54] 707 Phil. 210 (2013).
- [55] Id. at 227-228.
- [56] Rollo, p. 141.
- [57] Id. at 149.
- [58] Id. at 89-90.
- [59] Canuel, et al. v. Magsaysay Maritime Corporation, et al., supra note 48, at 266.
- [60] Rollo, pp. 103, 123, 220.
- [61] Id. at 178.
- [62] Yap v. Rover Maritime Services Corporation, et al., supra note 52, at 228.

[63] Cf. *Canuel v. Magsaysay Maritime Corporation*, *supra* note 48, at 266.

[64] 784 Phil. 501 (2016).

[65] *Id.* at 510-511.

[66] *Ortega v. CA, et al.*, 576 Phil. 601, 607 (2008).

[67] *Sea Power Shipping Enterprises, Inc., et al. v. Salazar*, 716 Phil. 693, 705 (2013).

[68] *Klaveness Maritime Agency, Inc., et al. v. Beneficiaries of the late Second Officer Anthony S. Allas*, 566 Phil. 579, 589-590 (2008).

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