

LYDIA D. MILANO, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION, GOVERNMENT SERVICE INSURANCE SYSTEM (KATIPUNAN NATIONAL AGRICULTURAL SCHOOL, KATIPUNAN ZAMBOANGA DEL NORTE),...

G.R. No. 50545. May 23, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Employees' Compensation Commission which affirmed the decision of the Government Service Insurance System (GSIS) denying the claim for death benefits of Lydia D. Milano, widow of the late Samuel Milano.

The late Samuel Milano started working for the government in 1955 as a FACOMA bookkeeper. On October 1, 1958, he transferred to the Katipunan National Agricultural School at Katipunan, Zamboanga del Norte. After about seventeen (17) years working as a bookkeeper, he became an administrative assistant in the same institution on April 10, 1975.

In the early part of 1975, Milano started to feel vague signs of "epigastric pain" which were later diagnosed by Dr. Camilo Tomboc of the Perpetual Succor Hospital at Cebu City as "penetrating Duodenal Ulcer". On February 6, 1977, he was admitted at the Cebu Doctor's Hospital for "ascitis, marked weight loss, and epigastric discomfort". Dr. Gerardo Ypil of the hospital diagnosed his ailment as "cancer of the pancreas with metastases". On March 15, 1977, he was discharged from the hospital. On the same day, he died of cardiorespiratory arrest due to cancer of the pancreas.

On May 30, 1977, petitioner Lydia D. Milano filed with the GSIS a claim for death benefits. The claim was denied on the ground that the "decedent's illness could not be considered an occupational disease". A request for reconsideration was likewise denied. Consequently, the claimant appealed to the Employees' Compensation Commission. The respondent commission affirmed the GSIS decision and dismissed the appeal. Hence, this petition for review.

The petitioner filed her claim under Article 167, Title II, Book IV of the Labor Code, as amended, on the ground that the illness which resulted in the death of the employee was caused by his employment. This provision requires the claimant to prove that the risk of contracting the disease was increased by working conditions. As will be explained later, the petitioner failed to present any evidence to meet this requirement.

Since the petitioner's arguments are based on the presumption of compensability and the principle of aggravation which are both major grounds for entitlement under the former Workmen's Compensation Act, we have ascertained whether or not the claim may fall under the provisions of the old law.

The petitioner argues that the proximate cause of her husband's death was his duodenal ulcers which were first felt in the early part of 1975. She alleges that the process of acquiring ulcers "takes months or years" until eventually

the ulcer has eaten its way right through the wall of the stomach or duodenum thereby "causing agonizing pains of a severe peritonitis". (Petitioner's Memorandum, Rollo - p. 132) Hence, according to the petitioner, her husband's ulcers which resulted in the latter's death may be traced to the period before the New Labor Code took effect on January 1, 1975.

The above argument is a mere conjecture not borne by the evidence on record (see *Armeha v. Employees' Compensation Commission*, 122 SCRA 851). As held in the case of *Erese v. Employees' Compensation Commission* (G.R. No. L-45662, August 20, 1985):

"(N)owhere does it appear that Erese contracted his diseases or ailments before January 1, 1975. There are no medical findings, reports, affidavits, evidence, or any indication that he was suffering from any pain or discomfort prior to the effectivity of the Labor Code x x x."

In the case of *Labenia v. Workmen's Compensation Commission*, (G.R. No. L-42889, December 27, 1985) this Court held that:

"x x x for the presumption to arise, the illness must have supervened during the employment. There must be competent evidence to show when the illness was contracted."

The records disclose that Milano's earliest period of treatment was dated November 17, 1976 to November 29, 1976 (Annex "F", Petition for Review, Rollo, p. 27). Under "History of present illness", in the attending physician's certification submitted by the claimant, Milano was stated as suffering from "epigastric pain for 6 months duration relieved by milk and food intake."

Clearly therefore, Milano's ailments occurred after January 1, 1975 and are covered by the new law (*Corales v. Employees' Compensation Commission*, 88 SCRA 547). Rule III, Section 1 (b) of the Amended Rules on Employees' Compensation elucidates on Article 165 of the Labor Code. It states:

"Section 1. Grounds

xxx xxx xxx

(b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions."

Applying the law to the present case, cancer of the pancreas is not an occupational disease considering the decedent's employment as bookkeeper and eventually as administrative assistant. To be entitled, the petitioner must, therefore, prove that her husband's ailments were caused by his employment. More specifically, she must submit proof that the risk of contracting the disease is increased by the employee's working conditions."

As a general rule, cancer is a disease of still unknown origin which strikes people in all walks of life, employed or unemployed. There are certain predisposing factors such as working with chemicals, being exposed to radiation, handling asbestos fibers, etc. The claimant has failed to show and we are not aware of any medical literature to the effect that his work as a bookkeeper or clerk would increase the risk of contracting cancer of the pancreas.

The petitioner alleges that her husband had to take meals at odd hours or sometimes even completely forget about eating due to pressure of work. She states that because of this, her husband felt vague epigastric discomfort that eventually developed into penetrating duodenal ulcer and cancer of the pancreas.

The above allegation cannot serve as the basis for a finding that there was an efficient and competent producing cause for Samuel Milano's death. We agree with the Government Service Insurance System when it stated that:

"x x x Even on the assumption that it is true, we respectfully submit that the conditions, pictured by petitioner,

would apply also to other occupations. To be sure, the conditions are not peculiar to the occupation of a bookkeeper or administrative assistant. Many employees are exposed to such adverse conditions but have not contracted cancer of the pancreas.

"What is important is that the above conditions are not causative factors of cancer of the pancreas."

In several cases, this Court has held that the principles of aggravation and presumption of compensability are no longer grounds for compensation under the new law. (*Zozohrado v. Employees' Compensation Commission*, G.R. No. 65856, January 17, 1986; *Dela Rea v. ECC*, G.R. No. 66129, January 17, 1986; *Vda. de Silencio v. ECC* 131 SCRA 128; *Erese v. ECC*, *supra.*, *Armena v. ECC*, 122 SCRA 851). The petitioner's arguments more properly apply to claims falling under the old law.

WHEREFORE, the petition is DISMISSED. The decision of the Government Service Insurance System and the Employees' Compensation Commission denying the claim are affirmed. No costs.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Paras, JJ. concur.

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