

MILAGROS B. LA O, FOR HERSELF AND IN BEHALF OF HER MINOR CHILDREN, NAMELY, MARINA AND VIC-TORIA, BOTH SURNAMED LA O, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND THE P...

G.R. No. 50918. May 17, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for review of the decision dated March 22, 1979 of the Employees' Compensation Commission in ECC Case No. 0877, which affirmed the denial by the Government Service Insurance System of the claim for death benefits under P.D. 626, as amended, and dismissed aforesaid claim.

Petitioner Milagros B. LaO is the widow of Perfecto V. LaO who died on February 7, 1977 at the age of 55 years after more than 28 years of service in the government (pp. 3 & 4, rec.).

The records show that petitioner's late husband entered the government service on July 19, 1948 as property and accountable clerk in the municipal treasurer's office in Tayabas, Quezon. He went through six promotions until he became chief of the cash division, provincial treasurer's office in Lucena City (p. 1, ECC rec.). The decedent suffered abdominal pains on August 9, 1976 but still continued working until October, 1976 "when he became sick of liver ailment" (p. 5, ECC rec.; p. 4, rec.). According to Dr. Nomie A. Gagalang of the Quezon Memorial Hospital in Lucena City, the decedent was afflicted with hepatoma and was "a transferred patient from UST Hospital because of pain and enlarged mass at the right upper quadrant abdomen x xx. He was then transferred to QMH for purely conservative management with IV F's, blood transfusion and analgesics" (pp. 3 & 4, ECC rec.). "Apparently, the decedent's ailment at the time of his admission at the Quezon Memorial Hospital was already on its critical stage for six days after admission, he died. His death was attributed to hypobolemic shock due to bleeding esophageal varices, a condition apparently brought about by the terminal manifestation of his liver malady" (pp. 29 & 30, ECC rec.).

On May 13, 1977, petitioner filed her claim with the GSIS for income (death) benefits under Presidential Decree No. 626, as amended, which claim was denied on the same date (pp. 5 & 6, ECC rec.). Upon petitioner's request for reconsideration of aforesaid denial, the System in its letter-resolution of September 9, 1977 reiterated its previous action stating that

"Your claim was disapproved on May 13, 1977 because the ailment which resulted to your husband's death, though listed as an occupational disease, has failed to satisfy some conditions in order that the same could be made compensable. Under the present law on compensation, the listed occupational diseases are compensable when the conditions set therein are satisfied; otherwise, the claimant has to prove that the risks of contracting the ailment was increased by the working conditions attendant to the deceased's employment, or must be able to show, at least by substantial evidence that the development of the ailment was brought about largely by the working conditions present in the nature of employment. This is provided under Section 1(b), Rule 111 of the

Rules and Regulations implement-ing Presidential Decree No. 626 which took effect on January 1, 1975" (p. 8, ECC rec.; italics supplied).

In its letter-resolution of November 15, 1977, respondent GSIS reaffirmed its previous action denying petitioner's request for second reconsideration and thereafter, forwarded the records of this case to respondent Commission for review (pp. 21 & 22, ECC rec.).

Respondent Commission, in its decision dated March 22, 1977 thus ruled:

"x x Hepatoma, according to medical science, is a form of primary malignancy of the liver cell origin. In most cases, hepa-tomas account for 80% to 90% of liver cell carcinomas. Liver carcinoma is two to four times more frequent in men than in women. The cause of cancer of the liver is not known but medical authorities have observed that most cases are associated with liver cirrhosis, a form of liver pathology the basic lesion of which is diffused liver cell death and the major cause of which is chronic alcohol inges-tion plus impaired nutrition. x x

"Based on this medical treatise, we fully agree with the conclusion of respondent System that the deceased's ail-ment which caused his death is principally traceable to factors which are definitely not work-connected, and hence, not compensable. Neither can we accommodate the said ailment as employment-related under ECC Resolution No. 247-A, approved by the Commission on April 13, 1977, as the cancer of the liver contemplated thereunder is that arising from occupations whose working conditions expose workers to vinyl chloride and related substances similar to those obtaining in the plastic industry. x x x" (pp. 27 & 28, ECC rec.; italics supplied).

The aforequoted ruling was based on the recommendation of the ECC Medical Officer which states that --

"There is no proof to show that a direct causal relationship exists between the above diseases and the employee's occupation as Chief of Cash Division, Quezon Provincial Capitol, Lucena City. Neither was there an increased risk of contracting the above diseases in the working condi-tions. This case is not compen-sable and it is therefore recom-mended that the decision of the GSIS denying the claim be affirmed" (p. 23, ECC rec.).

Hence, this petition.

Petitioner alleges that "deceased was in the service for more than 28 years; that when he entered the service, he was in the best of health -- other-wise he would not have lasted that long; and, that he became sick sometime in October, 1976 of liver ailment -- 28 years after entering the service, shows very clearly that the disease was acquired during and in the course of employment" (p. 4, rec.). Likewise, petitioner claims that "the disease of my husband, liver carcinoma or cancer of the liver, was acquired at least four (4) or five (5) years before his death on February 7, 1977 because such disease develops very slowly and imperceptibly; that when the pain manifests itself in November, 1976 per the Medical Certificate of the attending physician at the Quezon Memorial Hospital, the liver abscess or the disease must have been already in its terminal stage. In other words, the disease of cancer of the liver must have started in 1971 or 1972 or earlier" (p. 64, rec.). In support of such allegation, she thus presents the record of leaves of absences of the deceased, on file in the office of the provincial treasurer (p. 64, rec.):

Dates of Absence Cause

Oct. 2 & 3, 1969 Stomach Trouble

Nov. 13, 14, 17, 1969 Fever & stomach trouble

May 19, 1971 Diarrhea
August 31, 1971 Diarrhea
Sept. 24, 1971 Sick of flu
Nov. 29, 1971 Sick of flu
Dec. 20, 1971 Stomach trouble
April 24, 1972 Indisposed
May 29, 1972 Sick of flu
June 7, 1972 Sick of flu
July 31, 1972 Diarrhea
Dec. 28, 1973 Sick of flu
Oct. 9 to 11, 1974 Sick of flu

Respondent Commission, thru the Solicitor General, on the other hand, maintains that "x x the death of Perfecto V. LaO, which is attributed to cardio-respiratory arrest, hypobolemic shock due to esophageal varices hepa-toma, considering the nature or conditions of his parti-cular work or employment as chief of cash division of the provincial treasurer's office, is not compensable under the provisions of existing laws governing employee's Compensation" (p. 43, rec.). "Upon a careful consideration of the facts of the case, respondent Commission finds that the deceased's hepatoma is not an occupational disease in his line of employment. There was no proof that the risk of contracting the same is increased by his working conditions, either" (p. 6, rec.).

Respondent Commission finally avers that the legal presumption of compensability under Section 44 of the Workmen's Compensation Act is no longer applicable to petitioner's claim since under the New Labor Code, the employee is required to show proof that the risk of contracting the ailment is increased by working condi-tions in cases of any illness caused by employment and which is not listed as an occupational disease (pp. 46 & 47, rec.).

Respondent GSIS adheres to the theory that the presumption of compensability and the principle of aggravation are not applicable to this case; that to be compensable, Article 167(1) of the New Labor Code and Section 1(b), Rule 111 of the Implementing Rules should apply; that the express provisions of compensability incorporated in Section 44 of the old Work-men's Compensation Act have not been carried over in the Labor Code that repealed the former act; and that the implication of the ruling in the Corales case is that the presumption of compensability and the principle of aggravation apply only to cases arising prior to the effectivity of the New Labor Code; and that findings of the ECC, being supported by substantial evidence and being founded upon the clear letter of the Labor Code are final and conclusive (pp. 54, 56, 57, 58, 60 & 61, rec.).

Respondent GSIS brings up another issue which this Court feels should be given some consideration --- that petitioner has no cause of action against the GSIS. Respondent System specifically alleges that

"The GSIS' action of denial not being under judicial review, it is respectfully submitted, therefore, that the GSIS is not a proper respondent in these proceedings. x x

"The GSIS was included by peti-tioner as a party respondent obviously because it initially rendered an adverse decision against them. How-ever, only the ECC decision matters for purposes of review. xx x

"The GSIS cannot even be deemed a necessary party because this pro-ceeding merely involves a judicial review of an administrative decision. x x" (pp. 52-53, rec.).

To firm up her allegation that her late husband contracted hepatoma (tumor of the liver) as early as 1971 or even earlier, petitioner thus claims:

"As Chief of the Cash Division from June 30, 1974, my husband had to make physical count of each and every piece of money whether paper or coins, and during pay days which are weekly (provincial employees are paid on the 7[th], 15[th], 22[nd] and 30[th] of every month) he had no time for me-rienda in the morning and in the afternoons; he had to work overtime balancing the actual count of the money and the payrolls, vouchers, etc. so that he eats at irregular hours. He has to handle and make physical count of literally all mutilated bills from all municipal treasurers (there are 50 municipali-ties in Quezon province) which are sent to the Central Bank for exchange of new ones. The handling of and touching all the dirty ill-smelling mutilated bills and irregular eating time most possibly aggravated his condition" (p. 65, rec.; italics supplied).

Hepatoma is tumor of the liver. Sabourin's term for a transition stage between adenoma and carcinoma of the liver (p. 668, Dorland's Illustrated Medical Dic-tionary, 24[th] Ed. [Asian Edition], 1965).

Tumor of the liver - Hepatic cancers may escape clinical recognition during life because they often occur in patients with underlying cirrhosis, and the symptoms and signs may initially suggest a progression of the underlying liver disease. Hepatomegally, with pain or tenderness, usually moderate in degree and localized to the upper abdomen or the right upper quadrant, is a major complaint in more than half the cases (p. 1615, Harrison's Principles of Internal Medi-cine, 8[th] Edition, 1978).

Clinical Types. On the basis of the presenting symptoms and the natural history of the disease, patients with primary hepatic carcinoma (primary carcinoma of the liver) may be divided into several groups: (1) those with clinically recognizable hepatic cirrhosis in whom there rapidly develops pain, hepatic enlargement, liver failure, and cachexia; (2) those who were previously well but who develop symptoms and signs of intra-abdominal malignant growth; (3) those with few symptoms, or without symptoms distinguishable from hepatic cirrhosis, in whom the malignant lesion is a surprise discovery; (4) those who suddenly display features of some acute abdominal catastrophe and succumb rapidly; (5) those with fever, an enlarged liver, and other clinical phenomena suggesting hepatic abscess; and (6) those whose symptoms are due predominantly to metastasis, the primary hepatic tumor being asymptomatic (p. 512, Gastroenterology, Henry L. Bockus, M.D., Vol. III, 2[nd] Ed., Reprinted April, 1966 and October, 1969).

The commonest clinical expression of the disease is that of an insidiously appearing but rapidly developing illness, the outstanding features of which are progressive loss of weight and strength, vague and indefinite upper abdominal dyspeptic symptoms, and abdominal pains that becomes increasingly more severe (pp. 512-513, supra).

Among the symptoms of hepatic carcinoma are abdominal pain (stomach pain) which is rarely severe until the disease is well advanced; weakness and fatigue; nausea and intermittent vomiting; occasional diarrhea; shortness of breath; hematemesis (vomiting of blood) and melena (passage of dark stools stained with blood pigments) from ruptured esophageal varices or gastric vessels (p. 513, supra; underscoring supplied).

It must be pointed out that from the aforestated record of absences of deceased (period covers from October, 1969 to October 11, 1974) he was consistently sick of stomach trouble, fever, diarrhea and flu. These ailments apparently showed a pattern which, at the moment, was not clinically or even physically recognizable. Hence, the decedent's ailments were readily dismissed as simple "stomach trouble" or "diarrhea" or "flu" which actually were or proved to be the onset of his malignant liver. Evidently, considering the imperceptible nature of hepatoma, the decedent suffered abdominal pains on August 9, 1976 when he still reported for work until October, 1976 and was finally confined in November, 1976 up to February 7, 1977, the day he succumbed to said ail-ment. Clearly, the ailment took its toll within six months (August, 1976 to February 7, 1977) which is its usual rapid and fatal course

upon clinical recognition.

"The course of the disease is fatal and usually rapid. Most patients die within 6 months from gastrointestinal hemorrhage, progressive cachexia, or hepatic failure" (p. 1616, Harrison's Principles of Internal Medicine, 8th Ed., 1978).

It must also be noted that the two medical certificates dated November 22, 1976 and January 13, 1977, issued by the Quezon Memorial Hospital indicate that decedent's ailment was "acquired" and that "there are no indications whatever that the disease named was due to immoral or vicious habits"; and that it "started 6 months with a progressive abdominal pain with enlargement." This report confirms the six-month fatal and rapid progression of the disease aforesaid (pp. 9 & 10, ECC rec.).

Consequently, the cause of action accrued as early as October 2 & 3, 1969 when the late Perfecto V. LaO contracted his illness and which slowly and imperceptibly progressed until its terminal stage on February 7, 1977 when he died. Indubitably, the cause of action accrued before the effectivity of the New Labor Code. And this Court ruled in *Corales vs. Employees' Compensation Commission, et al.* (88 SCRA 547 [1979]) that the governing law in the prosecution of the cause of action which accrued prior to the effectivity of a new law on the same subject matter, shall be the law in force at the time of the accrual of said cause of action. Since the Workmen's Compensation Act was then in full force and effect, then it should govern in the case at bar.

Moreover, this Court said:

"Petitioner's claim having accrued prior to the New Labor Code, the presumption of compensability, the principle of aggravation, the award of attorney's fees and the payment of administrative fees must be observed and applied. And the Employees' Compensation Commission as the successor of the defunct Workmen's Compensation Commission is duty-bound to observe and apply the foregoing principles in passing upon workmen's compensation x x x."

Since decedent's ailment supervened during the course of his employment, it is thus presumed that the same arose out of or at least was aggravated in the course of his employment in the absence of proof to the contrary which respondents failed to establish.

Significantly, also, this Court ruled in *Maria Cristina Fertilizer Corp. vs. WCC, et al.* (60 SCRA 228 [1974]) that:

"Cancer of the liver though not occupational disease may be deemed work-connected where there is strong probability that working conditions have so affected the employee's health and reduced his resistance to said disease. xx xx While the liver is not accessible through the respiratory system, nevertheless there is the strong possibility that the hazards in the laboratory where he worked for so many years so affected his health and reduced his body resistance that it could not withstand the infection of the liver, which later became cancerous. xx x"

Again, in *Mercado vs. WCC, et al.* (72 SCRA 260), this Court ruled that "if after 10 years of continuous work with the company he began to suffer pains in the stomach which turned out to be 'cirrhosis of the liver,' it is evident that the illness of the deceased supervened in the course of his employment or at least was aggravated by the same."

It should be stressed that as early as 1960, this Court, in the case of *MRR vs. WCC & Pineda*, ruled that compensability is not affected by the presence of extra-neous factors causing or accelerating a claimant's illness. In reiteration, it further stated that "while there is that possibility that factors other than the employment of the claimant may also have contributed to the aggravation of his illness this is not a drawback to its compensability. For, under the law, it is not required that the employment be the sole factor in the growth, development or acceleration of claimant's illness to entitle him to the benefits provided for. It is enough that his employment had

contributed, even if a small degree, to the development of the disease. It has been repeatedly held that under the Workmen's Compensation Law, it is not necessary for a claimant to carry the burden of proof to establish his case to the point of demonstration. It is sufficient to show that the hypothesis on which he bases his claim is probable (Abana, et al. vs. Quisumbing, L-23489, March 27, 1968, citing MRR vs. WCC & Pineda, supra). The aforesaid doctrine was later reaffirmed in the case of Mercado vs. WCC, et al. (L-42451, July 30, 1976).

In the Abana case, this Court further stated that the mere opinion of doctors regarding the non-causality of unknown illnesses cannot prevail over the presumption established by law. It is, therefore, clear, as in the instant case, that where the cause of the illness of the claimant or of the death of the deceased is not definitely determinable, the medical report of findings presented by respondent employer (the ECC or GSIS) does not or cannot constitute substantial evidence to prevail over the presumptions of compensability and aggravation and thus defeat the compensability of the claim.

In the recent case of Vda. de Laron vs. WCC, et al. (L-43344, Sept. 29, 1976), this Court, in finding malignant tumor of the abdomen compensable, declared that there is a presumption of compensability where working conditions contributed to the general weakening of bodily condition of the employee and lessening of his resistance to the growth of the malignancy.

Thus, too, in the more recent case of National Housing Corporation vs. WCC, et al. (L-37907, Sept. 30, 1977), this Court held gastric carcinoma compensable on the precept that probability and not ultimate degree of certainty is the test of proof in compensation proceedings.

Furthermore, in the case of Flores vs. WCC, et al. (L-43540, March 14, 1979), this Court emphatically ruled that the exact medical cause of the illness of an employee is not significant, for, granted for argument's sake, that the evidence of the claimant is insufficient to show a causal link between the nature of his employment and his ailment, it is to be presumed that the claimant's illness which supervened at the time of his employment, either arose out of, or was at least aggravated by, said employment, and that with this legal presumption, the burden of proof shifts to the employer, and the employee is relieved of the burdens to show causation.

And finally, in the latest case of Cristobal vs. WCC, et al. (L-49280, Apr. 30, 1980), this Court declared thus:

"In the instant case, it is evident that rectal cancer is one of those borderline cases. Likewise, it is clear that the purpose of the resolution is to extend the applicability of the provisions of P.D. 626, as amended, thereby affording a greater number of employees the opportunity to avail of the benefits under the law. This is in consonance with the avowed policy of the State, as safeguarded by the Constitution and embodied in the New Labor Code, to give maximum aid and protection to labor. The Employees' Compensation Commission, like the defunct Court of Industrial Relations and the Workmen's Compensation Commission, is under obligation at all times to give meaning and substance to the constitutional guarantees in favor of the workingman, more specially, the social justice guarantee; for otherwise, these guarantees would be merely a lot of meaningless patter."

This Court further said that --

"Therefore, to require the petitioner to show the actual causes or factors which led to decedent's rectal malignancy would not be consistent with this liberal interpretation. It is of universal acceptance that practically all kinds of cancer belong to the class of clinical diseases where the exact etiology, cause or origin is unknown."

"As pointed out by no less than the respondent ECC itself in its Comment dated January 5, 1978 -

"It may not be amiss to mention that the ECC has time and again expanded the list of occupational diseases. This comes about after continuing studies made by the ECC. Indeed, cancer has already been included as a

qualified occupational disease in certain cases --

'Occupational Diseases

Nature of Employment

'1. Cancer of the epithelial lining of the bladder (Papiloma of the bladder)

work involving exposure to alphanaphtylamine, betanaphthylamine, or benzidine or any part of the salts; and auramine or magenta

'2. Cancer epithellomatoma or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin or any compound product or residue of any of these substances.

The use or handling of, exposure to tar, pitch, bitumen, mineral oil (include paraffin) soot or any compound product or residue of any of these substances

XX XX XX XX

'16. Cancer of the stomach and other lymphatic and forming vessels; nasal cavity and sinuses

Woodworkers; wood products industry carpenters, loggers and employees in pulp and paper mills and plywood mills

'17. Cancer of the lungs, liver and brain

Vinyl chloride workers, plastic workers'"

(Cristobal vs. WCC, et al., supra).

Conformably, the GSIS now recognizes that certain types of cancer are work-connected and hence, compensable, which findings were previously challenged by the ECC and by the System itself. Thus, from the foregoing, the compensability of decedent's ailment has been clearly established.

On the claim of respondent GSIS that petitioner has no cause of action against it since its action of denial is not under judicial review, this Court is of the opinion that respondent System, as the ultimate implementing agency of the ECC's decision, is a proper party in this case. The fact that this Court chose to require respondent GSIS to comment is an indication that it is a necessary party. It must be noted that the law and the rules refer to the said System in all aspects of employee compensation including enforcement of decisions (Article 182 of Implementing Rules).

The GSIS, not the employee's agency, now pays the compensation income benefits.

IN VIEW OF THE FOREGOING, THE DECISION OF RESPONDENT EMPLOYEES' COMPENSATION COMMISSION IS HEREBY SET ASIDE AND THE PROVINCIAL GOVERNMENT OF QUEZON IS HEREBY ORDERED

- TO PAY HEREIN PETITIONER THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DEATH BENEFITS;
- TO REFUND PETITIONER'S MEDICAL AND HOSPITAL EXPENSES DULY SUPPORTED BY PROPER RECEIPTS; AND
- TO PAY PETITIONER BURIAL EXPENSES IN THE AMOUNT OF TWO HUNDRED (P200.00) PESOS.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and De Castro, JJ., concur.

Melencio-Herrera, J., took no part.

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