

EMILIA VDA. DE INGUILLO, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND THE GOVERNMENT SERVICE INSURANCE SYSTEM (MINISTRY OF EDUCATION AND CULTURE), RESPONDENTS.

G.R. No. 51543. June 06, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A review is sought herein of the Decision of the Employees' Compensation Commission (ECC) affirming that of the Government Service Insurance System (GSIS) denying the claim for death benefits filed by the widow of a public school janitor, who died of cancer of the esophagus and pneumonia.

Petitioner's husband, the late Enrique V. Inguillo, during his lifetime, worked as a janitor at the E. Jacinto Elementary School in Tondo, Manila. He was in the government service for thirty-one (31) years.

From 24 February to 5 June 1978, he was confined at the Veteran's Memorial Hospital on "complaints of difficulty in swallowing of food, solid and liquid, accompanied by chest pains, difficulty of breathing, fever and productive cough." He died on 20 June 1978, at the age of 52, the cause of death being attributed to "Terminal malignancy, Poorly differentiated Esophageal Edencarcinoma with Bone and Cervical Metastasis, Pneumonia" (Certificate of Death, Annex "A", Petition).

The surviving spouse, Emilia Inguillo, filed a claim for death benefits with the GSIS. The claim was denied on the ground that the cause of death, cancer of the esophagus, is not an occupational disease. A motion for reconsideration of the GSIS decision having been denied, claimant-petitioner appealed to respondent ECC.

On 9 August 1979 respondent ECC affirmed the GSIS denial and dismissed petitioner's claim.

Hence, this petition for review.

Petitioner's position is anchored on the provisions of the Workmen's Compensation Act, particularly, on the rule on controversion, the presumption of compensability, and the principle of aggravation.

Considering, however, that the deceased was confined in the hospital from 24 February 1978 to 5 June 1978, and that he later died on 20 June 1978, and absent any evidence as to when his ailment was contracted, it is the new Labor Code that becomes the governing law. As specifically provided in Article 208 of said Code, its provisions cover "injury, sickness, disability or death occurring on or after January 1, 1975." The recent case of Rosales vs. ECC (G.R. No. 46443, June 28, 1988) implemented that provision when it held that "in workmen's compensation cases, the governing law is determined by the date on which the claimant contracted his illness."

The concepts relied on by petitioner under the former Workmen's Compensation Act, therefore, have ceased to apply, having been expressly discarded under the compensation scheme in the new Labor Code (Sarmiento vs. ECC, et al., G.R. No. 65680, May 11, 1988).

We come now to the primary issue, that is, whether or not the death of petitioner's husband is compensable under the Labor Code.

Article 167(I) of the Labor Code defines compensable "sickness" thus:

"(I) 'Sickness' means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee 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 (PD 1368, May 1, 1978)

Section 1(b), Rule III of the Amended Rules on Employees' Compensation further amplifies:

"(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."

Definitely, "esophageal adenocarcinoma with bone and cervical metastasis" can not be considered as an occupational disease since it is not one of those listed under Annex "A" of the mentioned Rules. In the recent case of *Raro vs. Employees' Compensation Commission* (G.R. No. 58445, April 27, 1989), it was held that cancer ailments, except for a specified few, are not compensable. It is a disease that strikes people in general. The nature of a person's employment appears to have no relevance. In *Navalta vs. Government Service Insurance Systems* (G.R. No. 46684, April 27, 1988), this Court further elucidated that unless it be shown that a particular form of cancer is caused by specific working conditions (e.g. chemical fumes, nuclear radiation, asbestos dust, etc.) we can not conclude that it was the employment which increased the risk of contracting the disease.

We note, however, that respondent ECC failed to adequately take into consideration that there was another cause of death, which was "pneumonia," Under the same Annex "A" of the Amended Rules on Employees' Compensation, pneumonia is a qualifiedly occupational disease "under all the following conditions:"

"(a) There must be an honest and definite history of wetting and chilling during the course of employment, also industrial injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.

"(b) There must be a direct connection between the offending agent or event and the worker's illness.

"(c) The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be twenty-four (24) hours after the injury.

"(d) The patient must present one of the following findings within a few days of the accident:

- (1) Severe chill and fever.
- (2) Headache and pain, agonizing in character in the side.
- (3) Short, dry painful cough with blood-tinged expectoration.
- (4) Physical signs of consolidation with fine rates" (ECC Resolution No. 432 dated July 20, 1988).

Noteworthy is the fact that the decedent's complaint of "difficulty in swallowing of food, solid and liquid" was accompanied by "chest pains, difficulty of breathing, fever and productive cough." The latter are clearly some of the above-specified symptoms of pneumonia, which by itself can also be a killer disease (Harrison's Principles of Internal Medicine, 8th ed., pp. 802-804). Further, a review of the deceased's work activities, as janitor, will show that they included the regular use of "deleterious substances" such as muriatic acid, the fumes from which are

inhaled when used in cleaning and clearing of toilet bowls and unclogging of toilet pipes and plumbing connections. The deceased also performed other varied manual work such as sweeping, scrubbing and mopping school corridors, with the resultant inhalation of a lot of dust, lifting heavy objects, painting classrooms, preparing seats for pupils during school programs, as well as going to and from his place of work thus exposing him to occasional "wetting and chilling" from downpours and rains. The combination of all these, coupled with the fact that the decedent was working in Tondo, a depressed and congested area characterized by unsanitary conditions and heavy pollution, must have lowered his resistance to fight the microbes causative of pneumonia. The risk of contracting the said disease, therefore, was increased by his working conditions, thereby satisfying an additional condition for compensability.

While, concededly, "all" of the qualifying conditions to consider pneumonia compensable do not concur, there is substantial compliance therewith, added to the fact that punctilious adherence to stringent technical rules may be relaxed in the interest of the working man, who has less in life, and in consonance with the avowed policy of the State to give maximum aid and protection to labor (*Acosta vs. Employees' Compensation Commission*, L--55464, November 12, 1981, 109 SCRA 209).

WHEREFORE, the Decision appealed from is hereby REVERSED, and public respondents are hereby ordered to pay petitioner and/or her heirs the proper benefits for the death of Enrique V. Inguillo, plus attorney's fees of ten (10%) percent of the amount recoverable. No costs.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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