

LUZ LATAGAN, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION & GOVERNMENT SERVICE INSURANCE SYSTEM (PHILIPPINE NAVY), RESPONDENTS.

G.R. No. 55741. September 11, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Petitioner, a pauper litigant,[1] seeks compensation benefits under P.D. 626 for the death of her husband, T/Sgt. Josue A. Latagan, who was employed in the Philippine Navy from 1949 up to the time he died in 1978. She claims that his fatal ailment known as bronchogenic carcinoma was caused by his employment, and that the risk of contracting the disease was aggravated by the working conditions attendant to his duties as gunnersmate in the Philippine Navy.

The medical history of the deceased is narrated in the medical summary report[2] issued by his attending physician thus-

"This is the case of Josue A. Latagan x x x who was admitted for the first time on February 23, 1976 because of chest pains x x x x started 3 months prior to admission as cough, chest pains and body weakness x x x x associated with loss of weight and insomnia x x x x having low grade afternoon fevers x x x x asthmatic and hypertensive since 1955 x x x x A chest X-ray x x x x revealed findings consistent with Bronchogenic Ca with metastasis x x x x referred to the EENR Service for several times because of Otitis Media x x x x transferred from Ward 10B (Tumor Service) to Ward 21, where patient expired after almost 2 years of stay in the hospital x x x x Laboratory: x x x x Scalene node biopsy: Fibro-Collagenous tissue with slight evidence of fibrosis.

"Serial Chest X-ray, February 23, 1976: Homogenous density involving the medial segment of the right lobes as well as multiple rounded densities seen on both intraclavicular regions. These were the same findings on repeat Chest X-ray done May, 1976. Impression then was Bronchogenic Carcinoma with metastasis lung lesion. A repeat Chest X-ray done March '77 revealed progression of the parenchymal lesions in the left lung field. The right hemithorax was now homogenously dense throughout without significant shift on the mediastinal shadow. Impression then was hydrothorax, right, with probable concomitant atelectatic lobes or segments, probably secondary to bronchogenic Ca with involvement of the left lung. A repeat Chest X-ray done in July '77 revealed same findings, this time with pleural effusion, massive, right."

Petitioner's husband died on 29 January 1978. Subsequently, she filed a claim for death benefits with the Survivorship Benefits Department, Government Service Insurance System (GSIS). On 14 March 1978, GSIS denied her claim, and on 15 December 1978 her motion for reconsideration. On 27 September 1979, respondent Employees' Compensation Commission (ECC), in ECC Case No. 1221, rendered a decision on appeal[3] affirming the denial by GSIS, thus -

"After a careful perusal of the records, we find no reason to reverse the decision of the respondent System. When the illness is admittedly not an occupational disease, the law requires proof that the risk of contracting the illness is increased by the working conditions. As already ruled by the respondent System, substantial

evidence must show that the development of the ailment which caused the death of appellant's husband was brought about largely by the conditions present in the decedent's employment. The evidence, however, failed to warrant a reversal of the respondent System's denial decision x x x x"

Petitioner now assails the denial of her claim for death benefits on the ground that respondent ECC committed reversible error in sustaining the position of GSIS that the fatal ailment of her husband was not an occupational disease, hence, not compensable, and in affirming the denial sans formal hearing.

It is the position of petitioner that bronchogenic carcinoma, otherwise known as lung cancer, is regarded as an occupational disease. She invokes *Avendaño v. ECC*[4] which held:

"The respondent ECC itself, in its comment dated January 5, 1978 in the case of *Cristobal v. ECC, et al.* (No. L-49280, April 30, 1980), admitted that it has expanded its list of occupational diseases, including certain types of cancer, and, while considering that such types of cancer have no known etiology, still they are regarded as occupational, thus: '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 Disease: x x x x 17. Cancer of the lungs, liver and brain; Nature of Employment x x x x Vinyl chloride workers, plastic workers. Worth noting is the fact that the above types of cancer have no known etiology. Yet, they are regarded as occupational. The clear implication is that the law merely requires a reasonable work connection.'"

Unfortunately for petitioner, the *Avendaño* doctrine is not availing in the case at bar since the ruling applied the old Workmen's Compensation Act. The illness therein was contracted prior to the effectivity of the New Labor Code. Under the old law, once it was established that the illness supervened during employment, there existed a rebuttable presumption that such illness arose out of the employment or was at least aggravated by it. Consequently, the employer assumed, by force of this presumption, the burden of establishing the contrary by substantial evidence.[5] But this rule has been abandoned under the compensation scheme in the present Labor Code, which took effect 1 January 1975.

Article 167, par. (1), of the Labor Code, as amended, defines a compensable sickness as "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." Thus, in *Tanedo v. Employees' Compensation Commission*,[6] this Court ruled:

"Neither may an award in petitioner's favor be justified upon any presumption that illness causing death or disability arose out of the employment or was at least aggravated by such employment. That presumption was laid down by the old statute. It is however now a thing of the past, abolished on effectivity of the new law on January 1, 1975. Awards of compensation benefits for death or disability can now no longer be made to rest on presumption, but on a showing that the causative disease is among those listed by ECC, or on substantial evidence that the risk of contracting said disease is increased by the employee's working conditions."

The records show that T/Sgt. Josue A. Latagan died on 29 January 1978, or about three years after the effectivity of the Labor Code. There is no showing that his illness was contracted prior to the effectivity of the new law, in which case, the presumptions of compensability and aggravation under the old law would have applied. What is clear is that the decedent was admitted to the hospital for the first time on 23 February 1976 for chest pains, and that such condition started, according to the attending physician, three (3) months before his admission to the hospital.

Contrary to petitioner's assertion, the cause of her husband's death, bronchogenic carcinoma, is not an

occupational disease. Her reliance on Avendaño, where cancer of the lungs was listed as occupational disease, is misplaced because lung cancer, as shown in the list therein, is occupational only in respect to "vinyl chloride workers" and "plastic workers".[7]

Admittedly, petitioner failed to present substantial evidence to prove that the decedent's working conditions as gunnersmate increased the risk of his contracting the fatal illness. Consequently, We quote with approval the findings of respondent ECC -

"x x x According to medical authorities, bronchogenic carcinoma is the commonest primary malignant tumor of the lung and it is rapidly fatal if untreated. It is predominantly a disease of the male sex, about 90% of all tumors occurring in men. In this sex, it is the commonest cause of death from cancer. Approximately 95% of all cases occur between the ages of 40 and 70. Etiology: The incidence of carcinoma has been reported to be unusually high among workers in chromate, uranium, arsenic, certain nickel and copper ores in which arsenic occurs as an impurity, and in asbestos. Apparently all types of dust cannot be incriminated because the incidence is not higher in miners with anthracosilicosis. Wynder and Graham in the USA and Don and Hill in England reported a higher incidence of cancer of the lung among heavy cigarette smokers. Shortly after this, Hammond and Hore showed that the incidence of death rate from cancer of the lung were higher among heavy cigarette smokers. Thus, there appears to be a definite relationship between cigarette smoking and cancer of the lung. (Reference: C.A. Moyer: Surgery, Principles and Practice: Lippincott: P.A. 3rd ed., 1965; p.1348).

"Based on the aforementioned findings, it is very clear that the disease involved in the instant case, bronchogenic carcinoma, is neither causally related to the occupation of the deceased nor to the working conditions attendant to his employment. It cannot also be attributed to his duties as a Gunnersmate and his inhalation of gunpowder in the armory. (Letter of the Surviving-spouse, dated May 8, 1979). Even his attending physician, Dr. Rolando Villaroma, did not attempt to comment on whether the ailment of the deceased was directly caused by his duties and conditions of work. Moreover, the additional evidences in the form of a certification issued by Lt. Willie Vergara, Chief Policy and Development Program Branch, N-5 Division, PN, failed to elaborate on the factors which may have caused the contraction of the questioned ailment. Due to the circumstances surrounding this case which strongly militate against the claim, particularly appellant's failure to relate the decedent's ailment and employment appellant's claim for compensation must fail."[8]

Indeed, a careful review of the records show that petitioner did not present any evidence to establish work connection. She relied solely on the theory of aggravation and presumption of compensability under the old compensation law. In the absence of proof, and none appears on record, We cannot conclude that the employment of the decedent increased the risk of his contracting the disease.[9]

As regards the contention of petitioner that she was denied a formal hearing and thus deprived of an opportunity to present additional substantial evidence to support her claim, Our ruling in Sulit v. ECC[10] is enlightening -

"The filing with the GSIS of a claim for income benefits is in its inception not an adversary proceeding. The claim is filed on a prescribed form. The claimant may present with the claim supporting papers or proof that the disability or death was work-connected or that the risk of contracting the disease involved in the claim was increased by the working conditions.

"The claim is processed by the GSIS. No formal hearing is required in the processing of the claim.

"If after processing, the GSIS finds, as in this case, that on its face the claim has no basis, then it is rejected outright. The claim becomes controversial when the claimant appeals to the Employees' Compensation Commission, or when an aggrieved party appeals from the Commission to this Court (Arts. 180 and 181, Labor Code; Secs. 3 to 5, Rule XVIII and sec. 1, Rule XVII, Amended Rules on Employees' Compensation."

Petitioner, in the instant case, was afforded the fair and reasonable opportunity to prove that her husband's death was work-connected. The respondent agencies appear to have taken into account her application for death benefits, her supporting documents, her motion for reconsideration of the denial of her claim, and her appeal before respondent ECC. Unfortunately, however, We cannot like respondents find any legal justification for a favorable award on her claim.

WHEREFORE, the petition is DENIED for lack of merit, and the decisions of respondents Government Service Insurance System (GSIS) and Employees' Compensation Commission (ECC) are hereby AFFIRMED. No costs.

SO ORDERED.

Griño-Aquino and Medialdea, JJ., concur.

Cruz, J., (Chairman), on leave.

[1] Resolution of 19 December 1980; Rollo, p. 60.

[2] Rollo, pp. 6-8.

[3] ECC Decision, pp. 3-5; Rollo, pp. 56-57.

[4] No. L-48593, 30 April 1980; 97 SCRA 464, 470-71.

[5] Avendaño, *supra*, p. 468.

[6] G.R. No. 62300, 25 September 1987; 154 SCRA 288, 292-293.

[7] See List of Occupational Diseases, Annex "A" to the Amended Rules on Employees' Compensation.

[8] ECC Decision, pp. 4-5; Rollo, pp. 57-58.

[9] Kirit, Sr. v. GSIS, No. L-48580, 6 July 1990, 187 SCRA 224, 227, citing *Vda. de Inguillo v. ECC*, G.R. No. 51543, 6 June 1989.

[10] No. L-48602, 30 June 1980; 98 SCRA 483, 486.

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