

EASTERN SHIPPING LINES, INC., PETITIONER, VS. JOSEPHINE LUCERO, NATIONAL SEAMEN BOARD, NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 60101. August 31, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for review filed by the Eastern Shipping Lines, Inc. to set aside the decision of the National Labor Relations Commission, which affirmed the judgment rendered by the National Seamen Board, the dispositive portion of which reads as follows:

"WHEREFORE, respondent is hereby ordered to pay complainant her monthly allotments from March, 1980 up to the amount of P54,562.00 within ten (10) days from receipt of this decision. Respondent is likewise further ordered to pay complainant her future monthly allotment up to the arrival of the M/V EASTERN MINICON in the port of Manila or after four (4) years when the presumptive death established by law takes effect."

The material facts that gave rise to this petition are as follows: On October 31, 1979, Capt. Julio J. Lucero, Jr. was appointed by petitioner Eastern Shipping Lines, Inc., Company for short, as master/captain to its vessel M/V Eastern Minicon, plying the Hongkong/Manila route, with the salary of P5,560.00 exclusive of ship board allowances and other benefits. Under the contract, his employment was good for one (1) round trip only, i.e., the contract would automatically terminate upon arrival of the vessel at the Port of Manila, unless renewed. It was further agreed that part of the captain's salary, while abroad, should be paid to Mrs. Josephine Lucero, his wife, in Manila.

On February 16, 1980, while the vessel was enroute from Hongkong to Manila where it was expected to arrive on February 18, 1980, Capt. Lucero sent three (3) messages to the Company's Manila office:

First Message:[1]

"February 16, 1980 0700 GMT Via Intercom

EMINICON

Urgent

Eastship Manila

REGRET TO INFORM YOU ENCOUNTERED BOISTEROUS WEATHER WITH STRONG NORTHEASTERLY WINDS WITH GAIL FORCE CAUSING THE VESSEL ROLLING AND PITCHING VIOLENTLY VESSEL NOW INCLINING 15 TO 20 DEGREES PORT FEARING MIGHT JETTISON CARGO ON DECK IF EVERYTHING COME TO WORSE SITUATION HOWEVER TRYING UTMOST BEST TO FACILITATE EVERYTHING IN ORDER STOP NO FIX POSITIONS FROM NOON 15th UP TO

0600 HRS TO DATE NEED ASSISTANCE APPROXIMATE DR POSITIONS AT 0600 HRS 10TH WITHIN THE VICINITY LATITUDE 20-02, ON LONGITUDE 110-02, OE COURSE 120 DEGREES REGARDS ...

LUCERO"

Second Message:[2]

"February 16/80 1530 GMT VIA INTERCOM

EMICON

EASTSHIP MANILA

RYC NOTED ACCORDINGLY SINCE WASTE PAPER CARGO ON PORT SIDE AND HAD BEEN WASH OUT VESSEL AGAIN LISTING ON STARBOARD SIDE REGRET WE HAVE TO JETTISON STARBOARD SIDE WASTE PAPER CARGO IN ORDER TO BALANCE THE VESSEL NOW ALMOST BACK TO NORMAL POSITION HOWEVER VESSEL STILL LABORING VIOLENTLY REGARDS

LUCERO"

Third Message:[3]

"FEBRUARY 16/80 2150 HRS

PHILIPPINE COAST GUARD

NEED IMMEDIATE ASSISTANCE POSITION 19-35 N 116-40 E SEAWATER ENTERING INSIDE HATCH VESSEL INCLINING 15 TO 20 DEGREES PORT IF POSSIBLE SEND IMMEDIATE ASSISTANCE VESSEL IN DANGER PREPARING TO ABANDON ANYTIME

MASTER"

Acting on these radio messages, the Company, respondent below, took the following steps:

"RESPONDENT informed of the grave situation, immediately reported the matter to the Philippine Coast Guard for search and rescue operation and the same was coordinated with the U.S. Air Force based at Clark Air Base. Respondent also released radio messages to all vessels passing the Hongkong/Manila route requesting them to be very cautious and vigilant for possible survivors and to scan the area whether there are signs of debris from the ill-fated vessel "EASTERN MINICON" which has foundered. In the meantime, two (2) vessels of the respondent were also dispatched to the area last reported by the Master for search and rescue operation, but the collective efforts of all parties concerned yielded negative results." (p. 79, Rollo)

Subsequently, the Lloyds of London, insurer of the M/V Eastern Minicon, through its surveyors, confirmed the loss of the vessel. Thereafter, the Company paid the corresponding death benefits to the heirs of the crew members, except respondent Josephine Lucero, who refused to accept the same.

On July 16, 1980, Mrs. Lucero filed a complaint with the National Seamen Board, Board for short, for payment of her accrued monthly allotment of P3,183.00, which the Company had stopped since March 1980 and for continued payment of said allotments until the M/V Minicon shall have returned to the port of Manila. She contended that the contract of employment entered into by her husband with the Company was on a voyage-to-voyage basis, and that the same was to terminate only upon the vessel's arrival in Manila.

Upon the other hand, the Company maintained that Mrs. Lucero was no longer entitled to such allotments because: [a] the Lloyds of London had already confirmed the total loss of the vessel and had in fact settled the

Company's insurance claim and [b] the Company, with the approval of the Board, had likewise paid the corresponding death benefits to the heirs of the other seamen. The Company further invoked the provision of Article 643 of the Code of Commerce, to wit:

"Art. 643. If the vessel and her cargo should be totally lost, by reason of capture or wreck, all rights shall be extinguished, both as regards the crew to demand any wages whatsoever, and as regards the ship agent to recover the advances made.

x x x ."

On May 19, 1981, the Board rendered the aforecited judgment in favor of Mrs. Josephine Lucero and against petitioner Company. The Board held that the presumption of death could not be applied because the four-year period provided for by Article 391(1) of the Civil Code had not yet expired; and that the payment of death benefits to the heirs of the other crew members was based upon a voluntary agreement entered into by and between the heirs and the Company, and did not bind respondent Mrs. Lucero who was not a party thereto.

On appeal, the respondent National Labor Relations Commission affirmed the said decision. It held that:

"Within the context of the foregoing circumstances, the only recourse is to presume the vessel totally lost and its crew members dead. But in this connection, the question that comes to the fore is: When will the presumption arise? Article 391 of the Civil Code provides the answer, to wit:

Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane; x x x

"By the aforequoted law, it is quite clear that the person to be presumed dead should first "not been heard of for four years since the loss of the vessel" before he can be presumed dead for all purposes. Applied to Capt. LUCERO, it is evidently premature to presume him dead as four years has not yet expired. Thus, even in Judge Advocate General vs. Gonzales, et al., (CA) 48 O.G. 5329, the very case cited by the respondent herein, the court said in the case of the missing soldier that although nothing was heard of him since 7 May 1942, the fact of his death is not presumed until seven years after 1942.

"Since Capt. LUCERO cannot yet be presumed dead as demonstrated hereinabove, it logically follows that as of now, he is presumed alive. It is of no moment to Us that the vessel was conceded by the Lloyds of London to have been totally lost which, in the first place, was admittedly merely based on presumption as even the whereabouts of the vessel remains unknown. Similarly, even the agreement, which formed the basis of the Decision of the NSB ordering payment of death benefits to the heirs of some of the crew must have been predicated upon a presumption of death of the crewmembers concerned. Such circumstances do not suffice to establish the actual death of Capt. LUCERO.

x x x x x x x x

"Indeed, by the terms of the appointment of Capt. LUCERO, his engagement terminates upon the return of the vessel at the Port of Manila. He is considered to be still working entitling his spouse to allotment until the vessel returns or until it is officially declared totally lost, or until the presumption of his death becomes effective in which case the burden of proving that he is alive is shifted to his wife for purposes of continuing her allotment."

We are unable to agree with the reasoning and conclusion of the respondent NLRC.

It is undisputed that on February 16, 1980, the Company received three (3) radio messages from Capt. Lucero on

board the M/V Eastern Minicon, the last of which, received at 9:50 p.m. of that day, was a call for immediate assistance in view of the existing "danger": "sea water was entering the hatch"; the vessel "was listing 50 to 60 degrees port," and they were "preparing to abandon the ship any time." After this message, nothing more has been heard from the vessel or its crew until the present time.

There is thus enough evidence to show the circumstances attending the loss and disappearance of the M/V Eastern Minicon and its crew. The foregoing facts, quite logically, are sufficient to lead Us to a moral certainty that the vessel had sunk and that the persons aboard had perished with it. Upon this premise, the rule on presumption of death under Article 391(1) of the Civil Code must yield to the rule of preponderance of evidence. As this Court said in *Joaquin vs. Navarro*[4] "Where there are facts, known or knowable, from which a rational conclusion can be made, the presumption does not step in, and the rule of preponderance of evidence controls."

Of similar import is the following pronouncement from American Jurisprudence:[5]

"Loss of Vessel. -- Where a vessel sets out on a voyage and neither the vessel nor those who went in her are afterward heard of, the presumption arises, after the utmost limit of time for her to have completed the voyage and for news of her arrival at any commercial port of the world to have been received, that the vessel has been lost and that all on board have perished. The presumption of death in such cases does not rest on the fact alone that the person in question has been absent and unheard from for a specific length of time, but also on the fact that the vessel has not been heard from. The question, moreover, is not whether it is impossible that the person may be alive, but whether the circumstances do not present so strong a probability of his death that a court should act thereon. The presumption of death from absence of tidings of the vessel on which the absentee sailed is strengthened by proof of a storm to which the vessel probably was exposed. The presumption is even stronger where it appears affirmatively that the vessel was lost at sea, that nothing has been heard of a particular person who sailed thereon, and that a sufficient time has elapsed to permit the receipt of news of any possible survivors of the disaster."

In *People vs. Ansang*[6] where, in open sea, the appellant aboard a vinta ignited three home-made bombs and threw them at the boat occupied by the victims, and the said boat was later washed ashore and the passengers thereof were never heard or seen again by anybody, this Court convicted the appellant of multiple murder, holding that the victims were dead.

Similarly, in *People vs. Sasota*,[7] the claim of the appellants therein that there was no conclusive evidence of death of the victim because his body was never found was overruled by this Court in this wise:

"In a case of murder or homicide, it is not necessary to recover the body or to show where it can be found. There are cases like death at sea, where the finding or recovery of the body is impossible. It is enough that the death and the criminal agency be proven. There are even cases where said death and the intervention of the criminal agency that caused it may be presumed or established by circumstantial evidence.

"Moreover, it may be remembered that in several treason cases decided by this Court, where besides the act of treason the accused is held responsible for the death of persons he had arrested or tortured and later taken away, where the victims were never later seen or heard from, it has been presumed that they were killed or otherwise criminally disposed of or liquidated by the accused, this, for the purpose of fixing the penalty."

If in the foregoing criminal cases, where the proof required for conviction must be beyond reasonable doubt, the rule of presumption was not applied and the fact of death was deemed established, with more reason is this Court justified in entering a finding of death. Indeed, We cannot permit Article 391 to override, or be substituted for, the facts established in this case which logically indicate to a moral certainty that Capt. Lucero died shortly after he had sent his last radio message at 9:50 p.m. on February 16, 1980.

In view of the conclusion arrived at above, We deem it unnecessary to discuss the other issues raised in this case,

they being mere adjuncts to the principal issue already disposed of.

WHEREFORE, the decision of the NLRC subject of this petition is hereby set aside, and the complaint of respondent Josephine Lucero dismissed. However, Mrs. Lucero is entitled to death benefits. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Gutierrez, Jr., JJ., concur.

Aquino, J., concurs, Mrs. Lucero is entitled to death benefits.

Abad Santos, J., on leave.

De Castro, J., on sick leave.

[1] Annex "1"

[2] Annex "1-A"

[3] Annex "1-B"

[4] 93 Phil. 257.

[5] 16 Am. Jr., 25-26.

[6] 93 Phil. 44.

[7] 91 Phil. 111.

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