

JOSE P. MERCADO JR., PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE INSURANCE SYSTEM (REFUSE TO ENVIRONMENTAL SANITATION CENTER, CITY OF MANILA), RESPONDENT...

G.R. No. 60346. October 11, 1985

Ponente: MAKASIAR, C.J.

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MAKASIAR, C.J.:

Before Us is a motion for reconsideration filed on March 22, 1984 by the respondent Government Service Insurance System (GSIS) on the following arguments:

"Reasonable work-connection is required by the law for all employees' compensation claims, the alleged fact of impossibility of proof notwithstanding.

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"No reasonable work-connection exists in petitioner's case" (pp. 155 & 158, rec.).

Respondent contends

"xx x that to declare as compensable all ailments whose causes are unknown, would be to place the claimants with such types of ailments in a far better position than those whose causes are known but cannot be connected to the employment.

"xx x that the standard of reasonable work-connection established by this Honorable Court becomes meaningless if ailments with unknown causes be made compensable; for, in such cases, all ailments will and should logically become compensable — an interpretation which is not yet contemplated by law.

"xx x that under the facts presented xx xx there is absolutely no reasonable work-connection between his ailment and his employment" (pp. 154-155, rec.).

Significantly, the motion cites three resolutions of the First Division which apparently run counter to the decision now under review. The three resolutions — *Timbang vs. ECC* (G.R. No. 59676, February 15, 1984); *Planas vs. ECC* (G.R. No. 65020, February 20, 1985); and *Ceballo vs. ECC* (G.R. No. 63816, February 29, 1984) — denied employee compensation claims there being no proof that the ailments in question were work-connected, i.e., either the ailments were contracted as a result of the employment or the risk of contracting the same was increased by the working conditions. *Planas* — promulgated on exactly the same day the decision under review was promulgated — impliedly agreed with therein respondents' proposition that:

"x x x The fact that the cause of the ailment is unknown, cannot relieve a claimant of the burden of proof; otherwise, we arrive at the illogical or absurd result that claimants with ailments whose causes are unknown, are better off than those whose causes are known and cannot be connected to the employment. The petition itself recognizes that there should at least be a reasonable work-connection between the ailment and the employment. That standard becomes meaningless if ailments with unknown causes are compensable. For, in

such a case, all ailments will and should become compensable. We respectfully submit that at this time, such an interpretation is not yet contemplated by the law" (pp. 4-5, Comment in G.R. No. 65020).

WE cannot reverse.

It is not disputed that the etiology of intracranial new growth or brain tumor is as obscure as that of neoplasm elsewhere in the body; that (brain) tumor is a disease of such nature that the developments of medical science up to now cannot fully explain its causes and the factors that may aggravate or alleviate its causes and progress.

Neither is it disputed that the petitioner, who had served the government for 34 years prior to his forced retirement, entered the government service and, for the most part, stayed therein, free from any kind of disease.

Finally, it is also not disputed that petitioner was exposed to unhygienic working conditions during his tenure in government, and specially at least, during his early employment as laborer, special laborer and watchman with the Department of Health of Manila in 1945 when Manila was still in ruins, dusty, unsanitary, with destroyed water system and without any system of garbage collection.

The present case is similar to *Cristobal vs. ECC* (L-49280, Feb. 26, 1981, 103 SCRA 329). There, We granted Compensation consonant with the following observations:

"The deceased died of rectal cancer on May 27, 1977. Concededly, the exact cause or etiology of this disease is still unknown. x x x Its cause and development are insidious, imperceptible to the naked eye, and defies expert analysis. Therefore, whether or not the disease rectal cancer was caused or the risk of contracting the same was increased by the decedent's working conditions remains uncertain. This uncertainty, of course, cannot eliminate the probability that the ailment was work-connected as it had been established that the deceased was exposed to unhygienic working conditions, various chemicals and intense heat which are generally considered as predisposing factors of cancer. At this point, there is need to reiterate that when the deceased started working in 1964, he was free from any kind of disease."

Concededly, in the case at bar, petitioner failed to provide direct proof that his brain tumor was work-connected. This failure however was simply due to the undisputed fact that the causes of intracranial new growth is not known even to medical science.

Nonetheless, the probability that petitioner's brain tumor was work-connected is bolstered by the facts that the petitioner had been working with the government for 34 years before he was forced by his ailment to retire from employment, that he joined the government service in good health, and that he was undoubtedly exposed to unhygienic working conditions (generally considered as a predisposing factor of cancer) during his tenure with the government.

This probability coupled with the constitutional guarantees of social justice and protection to labor lead Us to no other conclusion but to grant petitioner's compensation claims. Again, in *Cristobal*, We said:

"In urging that the disease rectal cancer is not compensable since its nature or cause is unknown and petitioner was not able to show proof of direct causal relation, respondents would instruct us to ignore the (above) provision of law and the policy of the State of giving maximum aid and protection to labor (as We have stated earlier in the main decision). As the agents charged by the law to implement the social justice guarantee secured by both the 1935 and 1973 Constitutions, respondents should adopt a more liberal attitude in deciding claims for compensation especially when there is some basis in the facts for inferring a work-connection (103 SCRA 329, 336; underlining supplied).

While the presumption of compensability and the theory of aggravation espoused under the Workmen's Compensation Act "may have been abandoned under the new Labor Code (the constitutionality of such

abrogation may still be challenged), it is significant that the liberality of the law, in general still subsists. All these factual and legal grounds were considered in relation to each other constituting substantial evidence clearly convincing Us to resolve that rectal cancer is compensable" (Cristobal vs. ECC, supra).

It is non sequitur to state, as respondent avers, "that to declare as compensable all ailments whose causes are unknown, would be to place the claimants with such types of ailments in a far better position than those whose causes are known but cannot be connected to the employment." The point is that it is grossly inequitable to require as a condition for an award of compensation that the claimant demonstrate that his ailment — the cause or origin of which is unknown to and undetermined even by medical science — was, in fact caused or the risk of contracting the same enhanced by his working conditions. Plainly, the condition would be an impossible one, specially considering that said claimant is most probably not even conversant with the intricacies of medical science and the claimant invariably bereft of the material resources to employ medical experts to demonstrate the connection between the cause and the disease. Considering the liberal character of employment compensation schemes, the impossible condition should be deemed as not having been intended and/or imposed.

Verily, by permitting compensation notwithstanding the absence of any showing of causal link between the ailment whose causes are unknown and the working conditions which may be the probable origins of said ailment, We merely accede to the dictates of the social justice provision of the Constitution. Where the causes are known, determined or determinable the claimant must prove reasonable work-connection in order to receive compensation — otherwise, the parity or balance between the competing interests of employer and employee with respect to workmen's compensation is destroyed (Sulit vs. ECC, L-48602 [June 30, 1980]). Where however the causes of an ailment are unknown to and/or undetermined event medical science, the requirement of proof of any causal link between the ailment and the working conditions should be liberalized so that those who have less in life will have more in law.

Henceforth, the standard of reasonable work-connection established by this Court is hereinabove read in its proper perspective. And the same is not rendered meaningless by the grant of compensation in the present case.

Considering that the causes and/or origin of intracranial new growth is unknown and undetermined, it is easy to see that respondent's contention that "x x x there is absolutely no reasonable work-connection between his ailment and his employment" is without basis. Because the causes and/or origin of the ailment are unknown and undetermined, then it cannot categorically be stated that there is absolutely no reasonable work-connection between petitioner's ailment and his working conditions. The probability that petitioner's ailment is work-connected cannot be completely and totally disregarded.

Even the Employees' Compensation Commission recognizes this probability. While it is a universally accepted fact that the exact etiology of cancer, of which intracranial new growth or brain tumor is a specie, is still unknown, We take judicial notice of the fact that even the ECC has expanded its list of occupational diseases to include certain types of cancer. The progressive stance of ECC persuades Us to be more liberal in allowing compensation in the case at bar.

The conservative posture of respondent GSIS is not consistent with the liberal interpretation of the Labor Code and the social justice guarantee embodied in the Constitution in favor of the workers (Cabanero vs. ECC, et al., L-50255 [January 30, 1982]; Cristobal vs. ECC, et al., supra). It clashes with the injunction in the Labor Code (Article 4, New Labor Code) and the Civil Code (Article 1702, New Civil Code) that all doubts should be resolved in favor of the claimant-employee.

The degree of proof required to establish work-connection between the disabling ailment and the working conditions is merely substantial evidence, or "such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion" (Cristobal vs. ECC, supra; Ang Tibay vs. The Court or Industrial Relations, et al., 69 Phil. 635). Probability not certainty is the touchstone in testing evidence of work-connection (Laron vs. WCC, 73 SCRA 84).

And as We have earlier discussed, the probability that the petitioner's brain tumor is work-connected is supported by the facts of the case.

Basic rules of equity and fair play behoove Us to grant petitioner's claim. Petitioner, by law and by virtue of his employment with the City of Manila, had been a member of the System since 1945 (Section 4, Commonwealth Act No. 186, as amended). As such, he had contributed (by compulsion of law — Sec. 5, Commonwealth Act No. 186) to the funds of respondent for 34 years until his forced retirement. In turn, the respondent should comply with its duty to give him the fullest protection, relief and compensation benefits as guaranteed by law. Under the Employees' Compensation Act (Article 168) and its predecessor, the Workmen's Compensation Act (Section 3), petitioner, by virtue of his membership in the respondent System, is entitled to the benefits he now claims under the Employees' Compensation Act. The claimant is not asking for a doleout, nor for charity; he is simply demanding for what is his by law.

Finally, respondent urges Us to reduce the award of attorney's fees to five percent (5%). WE are not persuaded.

There is no prohibition against imposing attorney's fees on the employer for the benefit of claimant's counsel (Marte vs. ECC, L-46362 [January 30, 1982]). In Cristobal, supra, We ruled:

"A close examination of the aforequoted provision (Art. 203, Labor Code) reveals that the intent of the law is to free the award from any liability or charge so that the claimant may enjoy it to the fullest. It is the claimant who is exempt from liability for attorney's fees. The defaulting employer or government agency remains liable for attorney's fees because it compelled the claimant to employ the services of counsel by unjustly refusing to recognize the validity of the claim of petitioner. This actually is the rationale behind the prohibition. Nothing is wrong with the Court's award of attorney's fees which is separate and distinct from the other benefits awarded. Besides, in the instant case, the participation of petitioner's counsel was not limited to the preparation or filing of the claim but in appealing petitioner's case before this Court necessitating submission of pleadings to establish his cause of action and to rebut or refute the arguments of herein respondents. Fairness dictates that the counsel should receive compensation for his services; otherwise, it would be entirely difficult for claimants, majority of whom are not learned in the intricacies of the law, to get good legal service. To deny counsel compensation for his professional services would amount to deprivation of property without due process of law."

Respondent's reliance on the case *Duran vs. ECC* (L-52363, 113 SCRA 389 [March 30, 1982]) is misplaced. The award of five percent attorney's fees in said case was subsequently increased to ten percent (10%) in a later resolution in the consolidated cases of *Corales, Villones, Cañeja, Barga, Duran, Calvero, Delegente, Cenita vs. ECC and GSIS* (126 SCRA 136 [Nov. 29, 1983]).

WE find it apropos to reiterate Our instructions in *Godizano vs. ECC* (No. 62354, May 9, 1985):

"Issues already resolved by Us in very similar cases as the case herein should not be repeatedly raised. Time is most essential for the claimants and their counsel. The currency has repeatedly suffered depreciation and may depreciate again as time passes. Its purchasing power has tremendously diminished."

WHEREFORE, FOR LACK OF MERIT, THE MOTION FOR RECONSIDERATION IS HEREBY DENIED WITH FINALITY.

SO ORDERED.

Concepcion, Jr., Abad Santos, Escolin, Cuevas, and Alampay, JJ., concur.

Aquino, J., (Chairman), no part.

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