

**EULALIO MORA, JR., IN REPRESENTATION OF HIS DECEASED WIFE,
LETICIA ADOR MORA, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND THE GOVERNMENT SERVICE
INSURANCE SYSTEM (BUR...**

G.R. No. 62157. December 01, 1987

Ponente: PARAS, J.

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PARAS, J.:

This petition for review on certiorari seeks to set aside and annul the decision dated July 29, 1982 of respondent Employees' Compensation Commission (ECC) in ECC Case No. 1524, which affirmed the decision of respondent Government Service Insurance System, denying petitioner's claim for compensation benefits under the New Labor Code, for disability and subsequent death of Leticia Mora.

The undisputed factual background is as follows:

The late Leticia Mora was from 1963 until December 25, 1979 a telegraph operator of the Bureau of Telecommunications in Tacloban City. During the course of her employment, and more particularly in January 1978, she complained of frequent epigastric pain radiating to the periumbilical region. Biopsy conducted at the St. Paul's Hospital in Tacloban City revealed a diagnosis of adenocarcinoma of the ileocaecal junction (a certain portion of the small intestine). She underwent "exploratory laparotomy with resection of ileocaecal junction" but her ailment continued to recur. She filed a claim for disability benefits under PD 626, as amended, with respondent Government Service Insurance System (GSIS). The claim was, however, denied by the GSIS on the ground that her ailment is not an occupational disease considering her particular employment as telegraph operator. Not satisfied, she sent a letter to the Chairman of respondent Employees' Compensation Commission (ECC) Minister Blas F. Ople, requesting for a review of her case. She averred that her cancer should be considered by the system as work-connected since she acquired the same during her sixteen (16) years of employment. On Nov. 22, 1980, Leticia Mora died. Her appeal to the ECC which was prosecuted by her husband after her death, was denied, the ECC ruling that the illness which caused Leticia Mora's death is not work-connected.

Hence, this petition which We find to be meritorious.

The law applicable to the case at bar is the New Labor Code, PD 442, as amended, which covers injury, sickness, disability or death occurring on or after January 1, 1975. The new law on employee's compensation makes compensable disability or death arising from an ailment under any of the following grounds namely: (a) when the illness is definitely accepted as an occupational disease by the Employees' Compensation Commission, or (b) when said illness is caused by employment subject to proof that the risk of contracting the same is increased by the work conditions.

Thus, the New Labor Code particularly Art. 167 (1) as amended by PD 1368, defining compensable illness,

provides:

"(1) 'Sickness' means any illness definitely accepted as 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." (As amended by Sec. 1, PD 1368).

Implementing the foregoing provision, the Employees' Compensation Commission promulgated its amended Rules, Section 1(b), Rule III, of which provides:

"Sec. 1(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."

The cause of the decedent's death, is not listed in said Annex "A" as occupational disease. To be compensable thereby the law requires that the risk of contracting the disease is increased by the employment of the de-deceased. But this requisite proof can be given only if the cause of the disease- cancer- can itself be known. However, despite scientific advances on the matter, even professional experts have not as yet determine its cause. All that they can say regarding the ailment of the deceased is the following:

"Adenocarcinoma, ileocaecal junction is malignancy affecting a certain portion of the small intestines.

Carcinoma of the small intestine occurs more frequently in the male sex with the highest incidence in the fourth, fifth and sixth decades. Histologically, these carcinomas are classified into four types: adenocarcinoma, medullary, scirrhus and colloid.

The clinical manifestations are variable and depend upon the location, size and character of the tumor and the degree of malignancy. They are predominantly those of intestinal obstruction. A history of abdominal distress and pain is frequent. When the tumor becomes sufficiently large, a movable, palpable mass may be present." (Cecil and Loeb, A Textbook of Medicine, 10th ed., p. 854). (Cited in Comment of respondent ECC, p. 34).

As stated in Our decisions in *Mercado, Jr. v. Employees Compensation Commission*, 139 SCRA 270 citing *Cristobal v. ECC*, 103 SCRA 329, and *Flaviano Nemaria, v. Employees' Compensation Commission and Government Service Insurance System* (Ministry of Education and Culture promulgated on October 28, 1987, the necessity of proof is present only when the cause of the disease is known. If not known, there is no duty to present proof, for the law does not demand an impossibility. Thus in the *Mercado, Jr. v. Employees Compensation Commission* case, We held:

"While the presumption of compensability and the theory of aggravation espoused under the Workmen's Compensation Act may have 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.

"x x x As agents charged by the law to implement social justice guaranteed and secured by both 1935 and 1973 Constitutions, respondents should adopt a more liberal attitude in deciding claims for compensability especially where there is some basis in the facts for inferring a work connection, 103 SCRA 329, 336).

"x x x Where however, the causes of an ailment are unknown to and or undetermined even by medical science, the requirement of proof of any casual link between the ailment and the working conditions should be liberalized so that those who have less in life will have more in law x x x.

"x x x 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. (139 SCRA, pp. 275-276).

"x x x As an employee, he had contributed to the funds of respondent for 34 years until his forced retirement. In turn respondent should comply with its duty to give him the fullest protection, relief and compensation benefits as guaranteed by law." (Ibid., pp. 277).

In the more recent case of *Flaviano Nemaria, v. Employees' Compensation Commission and Government Service Insurance System (Ministry of Education and Culture)*, supra) we stated that:

"Thus the requirement that the disease was caused or aggravated by the employment or work applies only to an illness where the cause can be determined or proved. Where cause is unknown or cannot be ascertained, no duty to prove the link exists. For certainly, the law cannot demand an impossibility."

PREMISES CONSIDERED, the petition is hereby GRANTED. The decision of the respondent Employees Compensation Commission is SET ASIDE and another is rendered ordering the respondents to pay the herein petitioner the full amount of compensation under Presidential Decree No. 626 as amended.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

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