

FLERIDA OVENSON, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

G.R. No. 65216. December 01, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a Petition to Review the decision of the Employees Compensation Commission (ECC) in ECC Case No. 2009 dated August 30, 1983, affirming the decision of the Government Service Insurance System (GSIS), to wit:

Flerida Ovenson, appellant herein, elevated her case to this Commission for review of the decision of the respondent Government Service Insurance System (GSIS) denying her claim for benefits under PD 626, as amended, for the death of her husband due to adenocarcinoma of the rectum.

Records show that the late Serafin Ovenson started working in 1955 as laborer in the Central Bank of the Philippines and later on rose to various posts until he was appointed senior trade analyst. His duties include: assisting the supervising trade examiner in reviewing the verification, examination and evaluation work made by a group of trade analysts on reports of foreign sales, export declarations/permits and mark-up computation reports of embroidery exporters; preparing reports and memoranda on findings relative to pricing, payment terms and other conditions of sale which do not conform to export regulations; preparing periodic accomplishment reports and other duties that may be assigned to him by his superior from time to time.

On March 29, 1981, Ovenson was confined at the Delos Santos General Hospital due to on-and-off LBM which started about one-and-a-half months before. This symptom was later accompanied by rise of temperature in the afternoon. Dr. Violeta Roda, diagnosed his condition as "septicemia, adenocarcinoma, rectum and hypothyroidism." The patient was sent home on May 4, 1981 after undergoing proctoscopy and chemotherapy. Two days later, on May 6, he succumbed to adenocarcinoma of the rectum at the age of 49 years.

The claim for death benefits filed by the widow under PD 626, as amended, was denied by the respondent System based on its medical evaluation that the fatal ailment, a malignant newgrowth of the rectum which commences in the mucous membrane and gradually invades the deeper structure is attributed to genetic influence.

Appellant requested reconsideration of respondent's adverse ruling. However, her request was also turned down by respondent reiterating its previous stand that the ailment which resulted in the decedent's death is not in the least causally related to his duties and conditions of work. Hence, this appeal.

We have carefully reviewed the records and we believe that respondent System did not err in disallowing the instant claim. From our study of the etiology of the ailment in question, we failed to find any basis for attributing the same to the deceased's employment.

According to medical authorities, adenocarcinoma of the rectum and lower sigmoid comprises approximately 7% of all malignant tumors of the body. Men are affected more commonly than women in the ratio of 3:2.

While no age is exempt, the most common decade for the occurrence of this form of cancer is 50-60, although many cases have been reported under the age of 30 years.

Though the true etiology of cancer is as yet unknown, certain lesions may be considered pre-malignant in the rectum. This is particularly true with multiple or single polyps.

Malignant lesions of the rectum are spread by direct extension, and venous and lymphatic channels.

Reference: Textbook of Surgery, 3rd edition, edited by Moseley, 1959.

It is evident from the foregoing medical definition that cancer of the rectum could not be caused by decedent's employment factors. We have taken into consideration the decedent's duties as senior trade analyst at the Central Bank but we could not come up with any possible link between his work and his employment (sic). Even the decedent's working environment would not to our mind contribute in any manner to the contraction of his ailment.

As regards the deceased's other ailments of septicemia and hyperthyroidism, the contraction of which being not traceable to decedent's employment are not compensable under the law.

In view of the foregoing, we have no recourse but to affirm respondent's decision denying the instant claim.

FOR ALL THE FOREGOING, the decision appealed from, should be as it is hereby, AFFIRMED and the instant case dismissed.

SO ORDERED.

Manila, Philippines.

The sole issue postulated on appeal is whether or not cancer of the rectum was contracted by Serafin Ovenson by reason of his employment.

Petitioner contends that the decision of the ECC overlooked the nature and conditions of employment of her late husband Serafin Ovenson. To convince Us that the illness causing the death of her husband was work-related, petitioner argues that cancer diseases may be caused by chemical, physical and parasitic carcinogens present in a man's environment. That her late husband was exposed to all these is confirmed by an examination of his employment records, petitioner alleging that during the early days of her husband's employment at the Central Bank, he worked as laborer and janitor. Petitioner claims that in those capacities, her late husband was exposed to different chemicals in his painting jobs and in cleaning comfort rooms of the building with acids and disinfectants, not to mention possible parasitic infestation because of insanitary working environment. This exposure to health hazards was compounded by physical and mental stress in employment, the same stress which some scientists believe may have a much larger role in helping cancer cells to grow and that according to some experts, stress such as tension and agitation weaken the body's protective immune systems which hold some potential cancers in check (Times Journal, April 1, 1982)."[1]

Claimant's contentions are palpably meritorious. Under the law[2] a "compensable sickness" means (1) any illness definitely accepted as an occupational disease listed by the ECC, or 2) any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions.

A cursory reading of the law shows that cancer of the rectum is not listed by the ECC as one of the compensable diseases. The next question therefore is whether the working conditions of claimant's deceased husband predisposed him to contract cancer of the rectum.

The record reveals that the husband of the claimant contracted the fatal disease only in 1981 or after 16 years from

the time he started to work as laborer in 1955. Respondent GSIS, relying on its medical evaluation, found that the fatal illness of the deceased is attributed to genetic influence. Respondent ECC ruled that although the true cause of cancer is yet unknown, certain lesions may be considered pre-malignant in the rectum and may be aggravated during the course of employment if there is sufficient proof presented by the claimant. But as ruled by Us, this duty to prove exists only when the cause of the disease is known. In a case like the present one, even medical experts have not determined its cause, and therefore the duty to prove does not exist for it is absurd for the law to require an impossibility. Thus in the case of *Mercado, Jr. v. Employees Compensation Commission*, 139 SCRA 270 citing *Cristobal v. ECC*, 103 SCRA 329, We ruled as follows:

"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., p. 277).

In the more recent case of *Flaviano Nemaria¹*, Petitioner versus Employees' Compensation Commission and Government Service Insurance System (Ministry of Education and Culture), Respondents, promulgated October 28, 1987 and following the rule We enunciated in the *Mercado* case, We stated:

"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.

[1] Rollo, p. 11.

[2] Art. 1167(I), P.D. 626 as amended).

1 G.R. No. 57889

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