

JOSE B. ATIENZA, PETITIONER, VS. PHILIMARE SHIPPING AND EQUIPMENT SUPPLY, TRANS OCEAN LINER (PTE.) LTD., PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND NATIONAL LABOR RELATIO...

G.R. No. 71604. August 11, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The facts of this case are not disputed. Even the legal issues are simple and are soon resolved.

Joseph B. Atienza was engaged by Philimare Shipping and Equipment Supply, as agent for Trans Ocean Liner Pte. Ltd. of Germany, based in Singapore, to work as Third Mate on board the MV Tibati for the stipulated compensation of US\$850.00 a month from January 20, 1981 to January 20, 1982.[1] The Crew Agreement signed by the parties on January 3, 1981, provided for insurance benefits "as per NSB Standard Format" and was validated and approved by the National Seamen Board on January 14, 1981.[2]

On May 12, 1981, Atienza died as a result of an accident which befell him while working on the vessel in Bombay, India.[3] In due time, his father, the herein petitioner, filed a claim for death benefits computed at the rate of 36 months times the seaman's monthly salary plus ten per cent thereof in accordance with the Workmen's Compensation Law of Singapore, for a total of \$30,600.00. The private respondents, while admitting liability, contended that this was limited to only P40,000.00 under Section D(1) of the NSB Standard Format.

On November 6, 1984, the Philippine Overseas Employment Administration sustained the private respondent and held that the applicable law was Philippine law.[4] On appeal, the decision was affirmed by the National Labor Relations Commission except that it increased the award to P75,000.00 pursuant to NSB Memorandum Circular No. 71, Series of 1981.[5]

In the petition before us, we are asked to reverse the public respondent on the ground that Singaporean law should have been applied in line with our ruling in *Norse Management Co. v. National Seamen Board*,[6] where the foreign law was held controlling because it provided for greater benefits for the claimant. For their part, the private respondents question the application of NSB Memorandum Circular No. 71, Series of 1981, which they say became effective after the seaman's death.[7]

On the first issue, our ruling is that *Norse* is not applicable to the present petition. The reason is that in that case, it was specifically stipulated by the parties in the Crew Agreement that "compensation shall be paid to employee in accordance with and subject to the limitations of the Workmen's Compensation Act of the Philippines or the Workmen's Insurance Law of the registry of the vessel, whichever is greater." [8] That was why the higher benefits prescribed by the foreign law were awarded. By contrast, no such stipulation appears in the Crew Agreement now under consideration. Instead, it is clearly stated therein that the insurance benefits shall be "as per NSB Standard Format," in the event "of death of the seaman during the term of his contract, over and above the benefits for

which the Philippine Government is liable under Philippine law." [9]

The petitioner argues that the Standard Format prescribed only the minimum benefits and does not preclude the parties from stipulating for higher compensation. That may be true enough. But the point is that the parties in this case did not provide for such higher benefits as the parties did in the Norse case. There was no stipulation in the Crew Agreement of January 3, 1981, that the employee would be entitled to whichever greater insurance benefits were offered by either Philippine law or the foreign law; on the contrary, it was plainly provided that insurance benefits would be determined according to the NSB Standard Format then in force. The consequence is that the petitioner cannot now claim a higher award than the compensation prescribed in the said format.

As we said in *Bagong Filipinas Overseas Corporation v. NLRC*: [10]

We hold that the shipboard employment contract is controlling in this case. The contract provides that the beneficiaries of the seaman are entitled to P20,000.00 'over and above the benefits' for which the Philippine Government is liable under Philippine Law.

Hongkong law on workmens' compensation is not the applicable law. The case of *Norse Management Co. v. National Seaman Board*, G.R. No. 54204, September 30, 1982, 117 SCRA 486 cannot be a precedent because it was expressly stipulated in the employment contract in that case that the workmen's compensation payable to the employee should be in accordance with Philippine Law or the Workmen's Insurance Law of the country where the vessel is registered "whichever is greater."

The next issue involves the effectivity of NSB Memorandum Circular No. 71, which appears to have been retroactively applied by the NLRC in increasing the compensation from P40,000.00. The amended award was based by the POEA on NSB Memorandum Circular No. 46, which became effective in 1979. [11] The NLRC, apparently laboring under the belief that Memorandum Circular No. 71 was already effective at the time of the seaman's death on May 12, 1981, increased the death benefits to P75,000.00 as provided thereunder. The fact, though, is that the new rule became effective only in December 1981, as certified by the POEA itself, [12] or seven months after Atienza's fatal accident.

On the petitioner's claim that the award should be adjusted in view of the decrease in the purchasing power of the Philippine peso, it suffices to cite the following relevant ruling of the Court in *Sta. Rita and Well Run Maritime SA Ltd. v. NLRC*: [13]

Regarding the third contention of the petitioners, the records show that when Sta. Rita died on September 14, 1981, NSB Memorandum Circular No. 46 (Series of 1979) was the applicable law. Pursuant to this circular, in case of a seaman's death during the terms of his contract, the company shall pay his beneficiaries the amount of P30,000.00. On November 18, 1981 or more than one month after Sta. Rita's death the administrative regulations were amended to increase death compensation for seamen to P50,000.00, effective December 1, 1981.

Considering that the applicable law governing death compensation for seamen at the time of Sta. Rita's death was Memorandum Circular No. 46, Series of 1979, the petitioner's liability should be limited to P30,000.00. Moreover, if manning agents or shipping corporations secure employer's insurance to cover their liabilities for death, total disability and sickness of officers and ratings on board foreign going vessels, the extent of the coverage is based on the applicable law at the time. It would be unjust to compel them to pay benefits based on a law not yet in effect at the time the contingency occurs.

WHEREFORE, the decision of the NLRC dated 15 July 1985 is SET ASIDE and that of the POEA is REINSTATED, without any pronouncement as to costs. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Annex "A2," Rollo, p. 20.

[2] Annex "A," Rollo, p. 18; Annex "A3," Rollo, p. 21.

[3] Rollo, pp. 4-5.

[4] Ibid., pp. 22-24.

[5] Id., pp. 25-28.

[6] 117 SCRA 486.

[7] Rollo, p. 33.

[8] 117 SCRA 491.

[9] Sec. D (1) of the NSB Standard Format.

[10] 135 SCRA 278.

[11] B. Sta. Rita and Well Run Maritime S.A. Ltd. v. NLRC, G.R. No. 69132, 11 March 1985, First Division Resolution.

[12] Annex "1," Rollo, pp. 72-73; Annex "2," Rollo, p. 74.

[13] Supra, note 11.

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