

## JOSEPHINE L. LUCERO, PETITIONER, VS. HON. NATIONAL LABOR RELATIONS COMMISSION AND EASTERN SHIPPING LINES, INC., RESPONDENTS.

*G.R. No. 74197, October 28, 1991*

Ponente: MEDIALDEA, J.

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### MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul the resolution of the National Labor Relations Commission, which dismissed the appeal of petitioner from the decision of the Philippine Overseas Employment Administration (POEA) for having been filed out of time.

The antecedent facts of the case are as follows:

Julio Lucero was hired on October 31, 1979 by the Eastern Shipping Lines, Inc., respondent company, as Master of the vessel M/V Eastern Minicon.

On February 16, 1980, while enroute from Hongkong to Manila, the said vessel encountered rough weather which prompted Captain Lucero to send three urgent messages to respondent company in Manila asking for immediate assistance and informing the latter that the ship's crew shall be abandoning the vessel anytime. Thereafter, nothing more was heard or seen of the vessel and its crew. When all search and rescue operations failed, the insurer of the M/V Eastern Minicon confirmed the loss of the vessel. The bodies of Lucero and that of the other crew members were never recovered. Hence, respondent company paid the death benefits to the heirs of the crew members.

Lucero's wife, petitioner herein, refused the payment by respondent company of the death benefits. On July 16, 1980, she filed instead a complaint with the National Seamen Board for payment of accrued monthly allotments and for continued payment thereof until the vessel shall have returned to Manila.

On May 19, 1981, the National Seamen Board ruled in favor of the petitioner holding that the presumption of death cannot be applied in the case of Julio Lucero because the four-year period provided for by Article 391(1) of the Civil Code had not yet expired. On appeal to the National Labor Relations Commission, the decision of the National Seamen Board was affirmed. Not satisfied with the decision, respondent Eastern Shipping Lines, Inc. filed with this Court a petition for certiorari to set aside the decision of the respondent Commission docketed as G.R. No. 60101. On August 31, 1983, this Court in the said case, rendered a decision reversing and setting aside the ruling of the respondent Commission. This Court however stated therein that petitioner, Josephine Lucero is entitled to death benefits.

Petitioner then filed her claim with the Philippine Overseas Employment Administration (POEA) contending that although the loss of the vessel M/V Eastern Minicon occurred on February 16, 1980, the presumption of death of Julio Lucero will occur only after four (4) years under the Civil Code so that the death benefits that should be awarded to her should be in the amount based on the new Standard Format for Filipino seamen which became

effective on February 1, 1984.

On May 16, 1985, the POEA rendered a decision which ruled that petitioner's claim for death benefits should be based on the Old Standard Format, which was the applicable rule in 1980 when the loss of the vessel M/V Eastern Minicon and its crew occurred. The decision partly states:

"Paragraph 2 of Section D of the Old Standard Format provides as follows:

'2. In lieu of paragraph 1 above, the liability of employer of a Philippine registered vessel and vessel bareboat chartered to a Philippine shipping company shall be governed by existing Philippine laws over and above the benefits granted under Philippine laws on social security and employees compensation benefits provided that Philippine registered vessel and any vessel bareboat chartered to a Philippine company shall be manned by full Filipino crew.'

"x x x.

"We find that as to the contention of complainant that she had to wait for four (4) years before she could file the present claim for death benefits because the presumption of death will only occur after the lapse of four (4) years after the last voyage of the vessel which was on February 16, 1980, this matter has been ruled upon by the Supreme Court in G.R. No. 60101 in its Decision of August 31, 1983, stating to wit:

'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 normal 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.'

"With this ruling, in relation to the ruling of the National Seamen Board in the cases filed by the heirs of the other crewmembers of M/V EASTERN MINICON, as aforecited, we are left with no other conclusion but that the accrual of the complainant's cause of action regarding her claim for death benefits would legally be reckoned at the time of the loss of the vessel and her crew which was on February 18, 1980. x x x There is similarly no basis for us to apply the New Standard Format, as invoked by complainant, because the same does not provide of a case whereby it can be given a retroactive effect. What the complainant therefore can only recover, under the circumstances and under the facts of the case, is the sum of P12,000.00 and the peso equivalent of US \$500 as death compensation benefits and compensation for loss of personal effects, respectively.

"CONFORMABLY TO THE FOREGOING, judgment is rendered ordering the respondent Company to pay to the complainant the sum of TWELVE THOUSAND (P12,000.00) PESOS Philippine Currency as death benefits and the sum of FIVE HUNDRED DOLLARS (US \$500.00), or its peso equivalent at the time of actual payment, as compensation for loss of personal effects; and to pay to complainant's counsel on record, Atty. Pedro L. Linsangan, the amount equivalent to ten percent (10%) of the total award due the complainant in this case, representing attorney's fees. Payment of these amounts should be coursed through this Office.

"Complainant's claim for moral and exemplary damages is hereby DENIED for lack of jurisdiction.

"SO ORDERED." (pp. 35-36, Rollo)

Petitioner appealed to the respondent Commission. On October 23, 1985, the latter issued a resolution which reads in part:

"Records show that a copy of the assailed decision was received by complainant, through counsel, on May 29, 1985, but the appeal was filed on June 11, 1985 (by registered mail) which is beyond the reglementary period adverted to above.

"Failure to comply with this requirement, which vitiates the appeal, this Commission cannot give due course to the same.

"WHEREFORE, the instant appeal is hereby dismissed for being filed out of time.

"SO ORDERED." (p. 53, Rollo)

Hence, this petition was filed with the petitioner alleging grave abuse of discretion on the part of respondent Commission.

The issues to be resolved in this petition are: 1) whether or not the appeal of petitioner was properly dismissed by respondent Commission on ground of late filing and 2) whether or not petitioner is entitled to death benefits in the amount based on the new Standard Format which became effective in 1984, four years after the loss of the vessel and death of petitioner's husband.

Anent the first issue, petitioner contends that although her counsel received a copy of the decision of the POEA on May 29, 1985, the tenth or last day to appeal to the respondent Commission fell on a Saturday, June 8, 1985; so that when petitioner's counsel filed the appeal on June 11, 1985, a Tuesday, the appeal was filed only one (1) day late since it should have been filed on June 10, 1985 which was Monday. Petitioner also submits that the failure to file a timely appeal was due to fraud, accident, mistake and excusable negligence since the lawyer handling the case was under medication for hypertension during that time and therefore cannot properly attend to the appeal of the case.

Petitioner's contention is devoid of merit. The ten (10)-day period for appeal to the NLRC contemplates calendar days and not working days (*Vir-jen Shipping v. NLRC, et al.*, G.R. Nos. 58011-12, July 20, 1982, 115 SCRA 347; *Firestone v. Lariosa*, G.R. No. 70479, February 27, 1987, 148 SCRA 187). This general rule however is not without an exception. Where the 10th or last day to appeal falls on a Sunday or legal holiday, the appeal may be filed on the next succeeding business day (*SM Agri and General Machineries v. NLRC, et al.*, G.R. No. 74806, January 9, 1989, 169 SCRA 20; *Imperial Victory Shipping Agency v. NLRC, et al.*, G.R. No. 84672, August 5, 1991). However, We noted in these cases the fact that Saturday, unless declared a holiday, is considered a business day and therefore, if the last day to appeal falls on a Saturday, the act is still due on that day and not on the next succeeding business day. In the case at bar, the last day for petitioner to appeal was June 8, 1985 which was a Saturday. When petitioner filed her appeal on June 11, 1985, which was already a Tuesday, the decision of the POEA had become final and executory as the appeal was two days late of the 10-day reglementary period. It is settled that the perfection of appeal is not only mandatory but also jurisdictional (*Narag v. NLRC*, No. 69628, October 28, 1987, 155 SCRA 199).

The argument of petitioner that since the lawyer handling her case was sick during the time the appeal should have been promptly filed, the procedural rules on appeal should be liberally construed in her favor so as not to deny her due process, cannot be given credence. Firstly, petitioner's counsel on record is the law firm itself and not only one of its lawyers. If the lawyer who was assigned to handle the case became physically incapable to attend to it, then it is the duty and responsibility of the law firm, being the counsel on record, to be vigilant of the developments of its clients' cases. Secondly, the right to appeal is neither a natural right nor part of due process. It is a statutory right and not a constitutional right (*Tropical Homes Inc. v. National Housing Authority*, No. L-48672, July 31, 1987, 152 SCRA 540; *Victorias Milling v. Office of Presidential Assistant for Legal Affairs*, No. 73705, August 27, 1987, 153 SCRA 317). Although this Court had allowed the filing of appeal in some cases where a stringent application of the rules would have denied it, this liberal practice is done only when it would serve the demands of substantial justice and in the exercise of the court's equity jurisdiction. When the petitioner's case is unmeritorious, as in the case at bar, the relaxation of the rules shall not be allowed.

This brings us to the second issue raised by petitioner as to the amount of death benefits to which she is entitled. Petitioner submits that she is entitled to the amount of P220,000.00 as death benefits, based on the Standard Format which became effective in 1984.

The rule is settled that the material date in determining the amount of death compensation benefits is the date of death of the seaman, not the amount provided by law at the time of payment (*Imperial Victory Shipping Agency v. NLRC, et al.*, G.R. No. 84672, August 5, 1991). In the case at bar, the amount pegged under the Standard Format at the time of the seaman's death which was computed by the POEA as P12,000.00 as death benefits and the peso equivalent of US \$500.00 as compensation for loss of personal effects, should be the amount awarded to petitioner and not the amount provided for in the new Standard Format which took effect after the death of petitioner's husband. Besides, the delay in the recovery of the death compensation benefits is attributable to petitioner and not to respondent corporation (*Imperial Victory Shipping Agency v. NLRC, supra*).

ACCORDINGLY, the petition is DISMISSED and the resolution of respondent National Labor Relations Commission dated October 23, 1985 is hereby AFFIRMED.

**SO ORDERED.**

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

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