

IMPERIAL VICTORY SHIPPING AGENCY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND TOMAS FANEGA, SR., RESPONDENTS.

G.R. No. 84672. August 05, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari to nullify the decision of respondent National Labor Relations Commission in POEA Case No. (M) 85-12-0972 dated May 30, 1988 setting aside the earlier decision dated December 11, 1987 and ordering the petitioner Imperial Victory Shipping Agency, Inc., together with Christiacco Compania de Navera, to pay jointly and severally, the respondent Tomas Fanega, Sr. the sum of P130,000.00 under the POEA Standard Employment Contract as death compensation benefit of his son who died on December 26, 1982, plus ten (10%) percent thereof as attorney's fee.

Tomas Fanega, Jr. was hired as a seaman by a Greek company, the Christiacco Compania de Navera through its agent, petitioner Imperial Victory Shipping Agency. He was assigned on board M/V Rhodian Sailor, which unfortunately sank somewhere in Taiwan on December 26, 1982. As his body was not recovered, he was presumed dead together with twenty-one other Filipino crew members.

Tomas Fanega, Sr. immediately filed his claim for death benefits. During the hearing in the National Seaman Board, the P & I Club,* as insurer for the shipowner, offered to pay private respondent the amount of P52,500.00 as death benefits in accordance with the POEA Standard Employment Contract. Private respondent's lawyer, however, advised him not to accept the amount because it was allegedly too small compared to what he can recover if the case will be filed against the principal abroad. Accordingly, private respondent refused the offer and agreed to the filing of the claim abroad. However, he was not able to collect the insurance benefits of his son in Greece due to the alleged bankruptcy of the insurance company. Thus, private respondent filed this case with the Philippine Overseas Employment Administration on December 16, 1985, well within the period of prescription of three years from the date the cause of action accrued on December 26, 1982.

From January 20, 1986 up to March 4, 1987, hearings were conducted on the case. Atty. Joseph Capuyan, as counsel for private respondent declared under oath during the hearing of February 18, 1987 as follows:

"(1) He admits that Tan Sapalo Law Offices was handling complainant's case immediately after the death of complainant's son;

"(2) That there was actually an offer made by respondents before to pay complainant of his death benefits;

"(3) That they actually filed a claim abroad in behalf of complainant;

"(4) That complainant, about two (2) years ago, manifested to them that he intended to withdraw his claim abroad;

"(5) That as per advise of complainant, Atty. Capuyan advised the American Lawyer to withdraw Fanega's claim;

"(6) That they would be submitting copy of the complaint and other necessary papers in due time to support the foregoing statements." (POEA Decision, Rollo, p. 27)

For failure of private respondent to comply with what is incumbent upon him to do so regarding the submission of the papers referred to above, the POEA concluded that the suit filed abroad was still pending. It ruled that complainant cannot sue in two fora simultaneously for the same cause of action. It also ruled that the claim is barred by laches. The pertinent portion of the POEA decision states:

"x x x. The declarations of both the complainant and his counsel clearly established their refusal of the offer of payment made immediately after the death of the former's son. Likewise, it supports respondent's theory that they cannot now be liable without extreme prejudice for the reason that long before the sinking of "MV Rhodian Sailor", respondent's manning agreement with its principal had already been terminated. The condition now of respondent had so changed (the foreign principal's whereabouts now unknown both to respondents herein and the P & I Club) that it would be most iniquitous to allow complainant after all these time and circumstances, to recover from it. In the light of the foregoing, complainant cannot now be allowed.

"PREMISES CONSIDERED, let the above-entitled case be, as it is hereby ordered, DISMISSED for lack of merit."

These findings were affirmed in NLRC's first decision dated December 11, 1987 which held as follows:

"This action of the complainant of instituting separate complaints involving the same parties and the same cause of action is not allowed by law. The flimsy excuse of the complainant that they were compelled to file the instant case before the POEA almost three (3) years from its accrual considering that no positive result was obtained in his behalf by the Tan Sapalo law firm does not alter Our finding that the instant case is already barred by the filing of the first case abroad. As aptly pointed out by the POEA, the complainant cannot sue in two fora simultaneously for the same cause of action.

"We affirm.

"WHEREFORE, premises considered, let the appeal be, as it is hereby, DISMISSED for lack of merit and the appealed decision Affirmed." (NLRC Decision dated December 11, 1987, Rollo, pp. 34-35)

On motion for reconsideration of private respondent, the NLRC reversed and set aside the aforesaid decision on May 30, 1988. We quote from the latter decision the reason for the reversal.

"The fact of complainant's failure or inability to collect the insurance benefit from the insurer of the sunk vessel has not been denied nor rebutted. Also, there is no dispute that complainant's son had died on December 26, 1982 while on board M/V Rhodian Sailor which sank somewhere in Taiwan. Such being the case, We believe there would be no obstacle to complainant's recovering from the employer under the POEA Standard Employment Contract.

"What the law prohibits is recovering from two fora for the same cause of action. The right to choose from which forum he would recover belongs to the complainant, and having failed to recover therefrom in one forum does not bar him from proceeding against his respondent employer under the standard provision in the employment contract of his deceased son. Neither does the fact that he rejected the previous offer of payment to him by Pandiman (P & I Club) affect his right to collect from herein respondents. This is simply giving meaning and effect to the legal and constitutional protection to labor and obedience to the call of justice.

"WHEREFORE, premises considered, We hereby set aside our decision dated December 11, 1987, and another judgment entered, ordering the respondents to pay jointly and severally the complainant the sum of

P130,000.00 under the POEA Standard Employment Contract as death compensation benefit of his son who died on December 26, 1982, plus ten (10%) percent thereof as attorney's fee. In the absence of evidence that the deceased's body was actually recovered and buried, no burial expense(s) is awarded." (NLRC Decision dated May 30, 1988, Rollo, pp. 37-38)

Hence, this petition by Imperial Victory Shipping Agency.

Petitioner argues that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it reversed its original decision dismissing the case for lack of merit. First, it claims that the NLRC's decision of December 11, 1987 is final and executory as private respondent's motion for reconsideration was filed on the 11th day. Private respondent received a copy of the aforesaid decision on January 14, 1988 and filed his motion for reconsideration on January 25, 1985.

It appears, however, that the 10th day fell on a Sunday. Thus, the motion for reconsideration was timely filed on the next working day. This Court has had the occasion in *SM Agri and General Machineries v. NLRC*, G.R. No. 74806, January 9, 1989, 169 SCRA 20, to explain the ruling in *Vir-Jen Shipping v. NLRC, et al.*, G.R. Nos. 58011-12, July 20, 1982, 115 SCRA 347, which was cited by petitioner in support of its argument. In said *SM Agri and General Machineries* case, this Court held that the ruling in the *Vir-Jen Case* does not apply where the legal holiday is coincidentally the 10th or the last day to appeal for in such instances, Section 31, Article VIII of the Revised Administrative Code must be applied and said Section 31 provides that where the day or the last day for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day.

The Court therein explained that the ruling in *Vir-Jen Shipping* case contemplates a situation where one is burdened with the task of computing a ten-day period which includes a Saturday, Sunday or Legal Holiday and not when the tenth day falls on a Sunday or Legal Holiday. To be noted is the fact that Saturday (unless legally 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.

Thus, while the Court upheld therein the interpretation made in *Vir-Jen Shipping Case* that the 10-day period fixed by Article 223 of the Labor Code contemplates calendar days and not working days, it recognized an exception to this general rule, i.e., where the 10th day is a Sunday or a Legal Holiday, in which event, the appeal can be filed on the next business day. Consequently, in such case as in this case, the supposedly last day to appeal will not be deemed the last day because it happens to be a Sunday or Legal Holiday. Instead, the act can be done on the next business day following that Sunday and Legal Holiday.

Secondly, petitioner claims that the principle of laches bars recovery by private respondent. While admitting that the complaint before the POEA was filed within the three-year prescriptive period, it argues that it cannot now be liable without extreme prejudice for the reason that long before the sinking of *M/V Rhodian Sailor*, petitioner's manning agreement with its principal had already been terminated. The condition now of petitioner had so changed as the foreign principal's whereabouts are now unknown. It concludes that it would be most inequitable to allow respondent after all these time and circumstances to recover from it. It cites Article 1897 of the New Civil Code which provides that an agent who acts as such is not personally liable to the party with whom he contracts and argues that there is much less reason for a non-agent to be so held.

We are not impressed with these arguments of petitioner. Laches is a doctrine in equity while prescription is based on law. Our courts are basically courts of law not court of equity. Thus, laches cannot be invoked to resist the enforcement of an existing legal right. We have ruled in *Arsenal v. Intermediate Appellate Court*, G.R. No. 66696, July 14, 1986, 143 SCRA 40 that it is a long standing principle that equity follows the law. Courts exercising

equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. In *Zabat, Jr. v. Court of Appeals*, G.R. No. L-36958, July 10, 1986, 142 SCRA 587, this Court was more emphatic in upholding the rules of procedure. We said therein:

"As for equity, which has been aptly described as 'a justice outside legality,' this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequetas nunquam contravenit legis*. The pertinent positive rules being present here, they should pre-empt and prevail over all abstract arguments based only on equity."

Thus, where the claim was filed within the three-year statutory period, recovery therefore cannot be barred by laches. Courts should never apply the doctrine of laches earlier than the expiration of time limited for the commencement of actions at law.

In the same vein, the cause of action of private respondent not having prescribed, the liability of petitioner as manning agent subsists notwithstanding that it is no longer the manning agent at the time the cause of action was filed. The crucial factor is whether it was the manning agent responsible for the employment of the seaman. In the affirmative, the liability of the agent with the principal is solidary in accordance with Section 1, Rule II of the Rules and Regulations of the Philippine Overseas Employment Administration.

Petitioner next attacks the second decision of May 30, 1988 for making a finding that the foreign suit was withdrawn on the mere assertion of private respondent that he abandoned his claim because he failed to recover therefrom and for shifting the burden of proof upon it to refute the same.

Petitioner correctly assessed that the case is simple. To get the death benefits, all that was necessary to show is that he was the father of the dead boy. The issues herein raised on the effects of delay and the prohibition against double recovery are matters of defense. Thus, the petitioner, being the party asserting those facts or issues generally has the burden of proof as to such facts or issues. It must take the initiative to prove them or its defenses will fail. The test for determining on whom burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence on such matters were given.

Petitioner tried to avoid the burden of proving double recovery by invoking the presumption of pendency of foreign suit. It is true that petitioner has in its favor said presumption of pendency of the foreign suit which is an undisputed and admitted fact. This is consistent with the Rules of Court, Rule 131, Section 3 on disputable presumptions, to wit:

"Rule 131, Section 3. Disputable Presumptions. -- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.

x x x.

(e.e) That a thing once proved to exist continues as long as is usual with things of that nature."

Thus, while the presumption relieved the petitioner of the burden of proving the fact of pendency of the foreign suit, it cannot help in petitioner's defense. It is not the pendency of a foreign suit that bars recovery, What the law prohibits is recovery from two fora for the same cause of action.

Likewise, petitioner explains its failure to prove double recovery by arguing that the question of whether the foreign suit was withdrawn, peculiarly lies with the private respondent as he alone, together with his counsel, can tell in which court in Greece the suit was filed. We are not convinced. The mere difficulty in discharging a burden of making proof should not relieve the party having the burden of evidence from the necessity of producing evidence as it is in its power to produce. As the manning agent of *Christiaco Compania de Navera*, or even as an

erstwhile agent thereof, it is not precluded from securing the necessary proof. Its inability is the result of its own lack of initiative to secure the necessary proof. Thus, in the face of the categorical assertion of private respondent that he has failed to collect the insurance benefit from the insurer of the sunk vessel abroad, without any evidence to the contrary being presented by petitioner, the respondent Commission committed no grave abuse of discretion in reversing its decision and granting private respondent compensation benefits for the death of his son.

However, worthy of note is the Solicitor General's view that the amount of death benefits to be awarded to private respondent should either be only P50,000.00, the amount pegged under the POEA Standard Format at the time of the seaman's death, or the amount of P52,500.00, the amount offered by the P&I Club soon after the tragedy but was refused by private respondent. He pointed out that to order petitioner to pay private respondent the amount of P130,000.00 plus ten per cent (10%) thereof as attorney's fees would be inequitable and constitutive of unjust enrichment because the amount of P130,000.00 as death benefits became effective only in 1984, a fact not rebutted by private respondent.

Indeed, 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. Accordingly, the private respondent is entitled only to P50,000.00 which is the amount of death compensation benefits under the POEA Standard Format in 1982. Besides, the delay in the recovery of the death compensation benefits is attributable to private respondent, not to petitioner.

Anent the denial of funeral and burial benefits by the respondent Commission, the Solicitor General is of the belief that private respondent should be awarded these benefits even though the body of the deceased seaman was not found. He argues that denial of these benefits would create a dangerous precedent as there would be no serious efforts exerted on the part of the principals or agencies similarly situated to search for or produce the bodies of deceased overseas workers. Noteworthy also is the private respondent's argument that despite the absence of the corpse, rituals were performed in accordance with the Roman Catholic practice. Notwithstanding the plausibility of these arguments, We cannot award burial and death benefits to private respondent in view of latter's failure to question timely the decision of the respondent Commission. No affirmative relief can be awarded to a party who has not appealed.

ACCORDINGLY, the decision dated May 30, 1988 of respondent National Labor Relations Commission is hereby AFFIRMED with the modification that the award of P130,000.00 death compensation benefits be reduced to P50,000.00, plus ten (10%) percent thereof as attorney's fees.

SO ORDERED.

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

* Otherwise identified in the records as PNI or Pandiman.

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