

**SEALANES MARINE SERVICES, INC., AND MARINE &
TRANSPORTATION SERVICES (SAUDIA), LTD., PETITIONERS, VS. THE
HON. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE
OVERSEAS EMPLOYMEN...**

G.R. No. 84812. October 05, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Sometime in April, 1986, Capt. Santiago Arante, Jr., husband of private respondent, applied for a job with the office of Southeast Asia Shipping Corp. (SEASCORP), the manning agent of petitioner, Marine and Transportation Services (SAUDIA), Ltd. (MATTS). Having passed the usual interview and after the company physician declared him physically fit for the job, he was hired on May 13, 1986, as master of M/V "Zuluf 8" a vessel owned by petitioner MATTS, for a period of one (1) year with a fixed monthly salary of US \$800.00 and US \$300.00 as overtime pay. On May 20, 1986, Capt. Arante left Manila for Saudi Arabia to join the vessel and started working thereat upon arrival on May 21, 1986. While working on board said vessel on July 19, 1986, he felt a severe pain in his abdomen and on the same day he was confined at As-Salama Hospital in Al-Khobar, Saudi Arabia. His sickness was diagnosed as "gastro-duodenitis." Upon the request of MATTS, he was discharged from the hospital on July 21, 1986. At about 8:00 in the morning of July 31, 1986, while the vessel was refuelling at West Pier, Rastamura, he was relieved as master and at 2:00 p.m. of the same day, he received instructions to return to the Philippines and he was given a plane ticket. He protested to the manning superintendent of the vessel who told him that a telex had been sent to SEASCORP in Manila instructing it to arrange for his medical check-up upon arrival. Before he left the vessel, MATTS computed his earned wages totalling US \$1,239.00. However, MATTS deducted the amount of US \$344.00 paid for his plane ticket from Dharam to Manila. Upon arrival, he reported to the office of the president of SEASCORP. He was told that the company will not shoulder his hospitalization expenses but he was referred to the company physician who in turn referred him to the University of the East Ramon Magsaysay (UERM) hospital where he was admitted on August 6, 1986. He was medically examined and was found to be suffering from "non-functioning GALL BLADDER" due to NIDDM (Non-Insulin Dependent Diabetes Mellitus). He was discharged on August 13, 1986 but he was advised to have weekly medical check-up. He was again confined at St. Paul's Hospital in Iloilo City on September 2, 1986 and discharged on September 13, 1986. He was readmitted at the UERM hospital on January 8, 1987 where additional medical analysis revealed that he was suffering from cancer of the pancreas.

On January 31, 1987, he filed a complaint with the POEA against SEASCORP and petitioner MATTS for illness allowance, hospitalization expenses, separation pay due to illness/sickness, reimbursement expenses for medicine and refund of air fare expenses. He was transferred to the Manila Medical Center on March 11, 1987 and then to the Iloilo Doctors Hospital on March 20, 1987 where he died on June 29, 1987. By reason of his death, his wife, herein private respondent, pursued the complaint. Petitioner Sealanes Marine Services Inc. was likewise substituted for respondent SEASCORP because it assumed all monetary liabilities of SEASCORP that may arise

by reason of its being a manning agent of petitioner MATTS.

On March 16, 1988, then POEA Administrator Tomas Achacoso rendered a decision, the dispositive portion of which ordered petitioner to pay private respondent.

"1. The sum of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) as death compensation;

"2. The sum of TWENTY THOUSAND PESOS (P20,000.00) as/burial allowance (sic);

"3. The sum of SIXTY SEVEN THOUSAND FORTY FIVE PESOS & 73/100 (P67,045.73) as reimbursement of duly proved medical/hospitalization expenses;

"4. The sum of THREE HUNDRED FORTY FOUR US DOLLARS (US \$344.00) or its equivalent in Philippine currency at the time of payment, as airticket refund;

"5. The sum of FOUR THOUSAND FOUR HUNDRED US DOLLARS (US \$4,400.00) or its Philippine peso equivalent at the time of payment, representing sickness' wages for 120 days;

"6. For and as attorney's fees, the sum equivalent to 5% of the total judgment award." (pp. 32-33, Rollo)

Administrator Achacoso justified his award stating that the compensability of the illness of Capt. Arante Jr. which he contracted while his contract with MATTS was in force, is not dependent upon whether or not it is work connected and it is sufficient that he contracted the same during the term of his contract. He discarded petitioners' defense that Capt. Arante was dismissed for cause after a work evaluation report. He found the report unworthy of consideration and even doubtful because Capt. Arante was not informed about it and he was merely recommended to be replaced but which was not carried out because he was allowed to work until July 31, 1986, the date when he was repatriated. He concluded that even if his relation with MATTS was severed by reason of his repatriation, MATTS' obligations to pay Mrs. Arante, illness wages, medical and hospitalization expenses, death benefits and burial expenses under the standard format of the employment contract of her husband remained in force.

Petitioner appealed the decision to respondent commission which affirmed the same on June 30, 1988 (pp. 53-58, Rollo).

Hence the petition.

Petitioners claim that respondent commission rendered the questioned decision with grave abuse of discretion amounting to lack of jurisdiction and that said decision is not in accordance with existing laws and applicable jurisprudence. They allege that the illness of Capt. Arante is not compensable because he was suffering therefrom prior to his employment with MATTS; that his disease is of unknown origin which strikes people in all walks of life, employed or unemployed (*Milano v. EEC*, 142 SCRA 52, 55) and is detectable only at its advanced stages (*Vda. de Tumolva v. EEC*, 141 SCRA 78,83) and therefore, it cannot be said that his work at the vessel increased the risk of contracting the disease; and that the pre-employment medical examination of Capt. Arante did not rule out the possibility that his disease existed before he was hired.

Petitioners further contends that the conclusion of Administrator Achacoso, which was adopted by respondent commission that it was while working on board the vessel particularly on July 19, 1986 when Capt. Arante contracted his illness unreasonably disregarded the fact that he died of cancer of the pancreas because his illness diagnosed on July 19, 1986 as gastro-duodenitis with manifested symptom and later on discovered to be non-functioning gall bladder due to NIDDM were all the result of the metastatic spread of cancer of the pancreas which is non-compensable. Petitioners assert that gastro-duodenitis can be traced from cancer of the pancreas. Gastro-duodenitis is a disease involving both the stomach and the duodenum (p. 470, Webster's New Collegiate Dictionary, 1973 Ed.); that the head of the pancreas is cradled next to the duodenum just past the stomach and a

tumor mass in this organ may be detected by seeing its pressure effect on the abdomen (p. 60, Family Health & Medical Guide, 1980 Ed.); that radiologic procedure may show the encroachment of the pancreatic lesion on other organs (Harrison's Principle of Internal Medicine, 8th Ed., p. 1644); and changes in the configuration of the abdominal loop of the stomach rarely appear early but are merely signs of advanced disease (Ibid, p. 1644).

Petitioners added that the initial sickness of Capt. Arante (gastro-duodenitis) which was later diagnosed to be non-functioning gall bladder due to NIDDM and uncovered thereafter as cancer of the pancreas only shows that he had cancer before he was employed with MATTS considering that before diagnosis is made obvious by massive or metastatic growth, cancer is suggested by a finding of an enlarged gall bladder (Harrison, Principles of International Medicine, p. 1644) and patients with gall bladder problems may have jaundice with or without additional symptoms (Ibid, p. 63) for jaundice which co-exists with cancer of the body of the pancreas (Tumulva v. EEC, supra) is a symptom of one of a number of different diseases and disorders of the liver, gall bladder and blood (Miller Encyclopedia and Dictionary of Medical and Nursing, p. 505).

Petitioners further alleged that the illness of Arante is not an occupational disease, therefore, he had the burden of proving that his working condition increased the risk of contracting the disease. They also assail the literal interpretation of the so-called standard format contract which was the basis of the award to Capt. Arante as unreasonable and destructive of the fundamental precept that the law in protecting the rights of the laborer authorize neither oppression nor self-destruction of the employer (PAL v. PALEA, 57 SCRA 489). According to them, the entire award would wipe out the entire capital of petitioner SEALANES despite the fact that it was able to employ Arante for only two (2) months before he died. Petitioners further allege that MATTS had the right to legally terminate the services of Arante even before his contract expired because of his incapacity.

To petitioners, the rule formulated by the POEA as contained in Sec. D, Part II of POEA standard format contract for seamen to the effect that compensability of the death/illness of seamen need not be dependent upon whether it is work connected or not as it is sufficient that it was contracted during the term of the employment contract, is dangerous and oppressive. They claim that E.O. No. 797, the law creating the POEA does not authorize the latter to determine the amount of death compensation that is distinct and substantially different from the rules on the same matter under the Labor Code and that the Executive Order does not provide a sufficient standard on how POEA should enforce its own rules and neither does it contain specific limitations on how the rules should be implemented by it and so, Memorandum Circular No. 2 series of 1984 issued pursuant to said Executive Order, which imposed the adoption of a standard format contract for seamen and making them liable for the payment of inordinate sums such as those awarded to private respondent violates the principle of undue delegation of legislative power.

Private respondent maintains that the findings of fact by respondent commission are supported by evidence and therefore entitled to respect by this Court; that the POEA standard format contract for seamen particularly Section C, Part II thereof does not require that the illness of her husband be work connected to be compensable considering the ruling of the Court in NB Shipping Corp. v. NLRC, G.R. No. 83299, January 23, 1989, that the standard format for overseas workers on board foreign-going vessels which govern the relation between petitioner and its principal on the one hand, and the deceased on the other, does not require that the illness or injury causing death or disability be an occupational disease or that the working conditions shall have increased the risk of contracting the disease as it is sufficient that the disease or disability occurred during the term of employment (pp. 184-85, Rollo); that the standard format contract was the result of tripartism between the government, manning industry and the seafarers, who were represented during the deliberation thereof before its formulation.

The issues to be resolved are: a) whether or not POEA Memorandum Circular No. 2, Series of 1984 violates the principle of undue delegation of legislative powers; b) whether or not the sickness and eventual death of Capt.

Arante is compensable under the provisions of the so called standard format contract for seamen formulated by the POEA pursuant to E.O. No. 797, the law creating it.

Petitioners' assertions that Memorandum Circular No. 2 is violative of the principle of undue delegation of legislative powers and that POEA cannot independently formulate rules, such as those contained in the standard format contract in question, which are substantially different from those established by the Labor Code, are untenable.

In *Eastern Shipping Lines, Inc. v. POEA*, G.R. No. 76633, October 18, 1988, 166 SCRA 533 where this issue was raised, it was held:

"But the petitioner questions the validity of Memorandum Circular No. 2 itself as violative of the principle of non-delegation of legislative power. It contends that no authority had been given the POEA to promulgate the said regulation; and even with such authorization, the regulation represents an exercise of legislative discretion which, under the principle is not subject to delegation.

"The authority to issue the said regulation is clearly provided in Section 4(a) of Executive Order No. 797, reading as follows:

'x x x The governing Board of the Administration (POEA), as hereunder provided, shall promulgate the necessary rules and regulations to govern the exercise of the adjudicatory functions of the Administration (POEA).'"

As to the alleged lack of sufficient standard to guide respondent POEA in the exercise of its authority provided for in Executive Order No. 797, the Court in the same case said:

"Memorandum Circular No. 2 is one such administrative regulation. The model contract prescribed thereby has been applied in a significant number of the cases* without challenge by the employer. The power of the POEA (and before it the National Seamen Board) in requiring the model contract is not unlimited as there is a sufficient standard guiding the delegate in the exercise of the said authority. That standard is discoverable in the executive order itself which, in creating the Philippine Overseas Employment Administration, mandated it to protect the rights of overseas Filipino workers to 'fair and equitable employment practices.' "

We now come to the second issue, Section D, Part II of the standard format contract for seamen, provides that the compensability of the death or illness of seamen need not be dependent upon whether it is work connected or not as it is sufficient that it was contracted during the term of the employment contract (p. 29, Rollo).

There is no controversy as to the fact that the immediate cause of Capt. Arante's death was "pancreatic CA; antecedent cause - pancreatic CA of the head; metastatic DM, secondary; underlying cause - severe anemia." (p. 25, Rollo) As a general rule, cancer is a disease of still unknown origin which strikes people in all walks of life, employed or unemployed. Cancer of the pancreas, the disease which caused the death of the husband of private respondent, as the Court held in *Vda. de Tumolva v. EEC*, has the following characteristics:

"G. Adenocarcinoma of Pancreas. Cancer of the pancreas is increasing in frequency. It usually develops between age 40 and 60. The disease is rarely curable because it has extended or metastasized by the time it is detected x x x (Schrock, *Handbook of Surgery*, 7th ed., p. 332).

"Pancreas. Malignant tumors arise from the ducts and acinar cells as adenocarcinoma. Adenocarcinoma in the head of the pancreas usually cause painless jaundice, anorexia, nausea and weight loss. A tumor in the body of the pancreas causes gnawing pain which radiates to the back and is worse after the patient eats and when he lies down; weight loss and anorexia are late consequences. Tumors in the tail of the pancreas are often silent until they spread locally, especially to the spleen. Prognosis is very poor since pancreatic tumors are advanced when detected. Metastases to the stomach, liver and lung are common. (Berkow, *supra*, p. 830)

"Severity of Problem. Fifty percent of those with pancreatic cancer die in less than three months from the time of diagnosis. Two percent or less survive for three years. Usually the cancer is so well advanced when detected that little can be done to fight it. (Pescar, Medical Ref. Library; Symptoms and Illness, p. 76)." (141 SCRA 78, 82)

As aforesaid in the same case, cancer of the pancreas is one of those rare diseases which are already at their advanced stages when detected such that the chances for their effective cure become nil and there are no findings that this illness does not progress gradually. From the foregoing, it is clear that Capt. Arante could not have contracted cancer of the pancreas while working on board the vessel for only two (2) months. The conclusion is inevitable that when he was diagnosed to be suffering from gastro-duodenitis, the same was merely the result of the metastatic spread of his original disease of cancer of the pancreas. It cannot be said that the disease, which caused his death, occurred during his employment. The pre-employment medical examination conducted upon him could not have divulged his disease considering the fact that most, if not all, such examinations are not so exploratory. Therefore, it would be unfair to hold petitioners liable for the amount of death compensation provided for under the standard format contract for such award is unwarranted under the circumstances.

It cannot be denied however, that Capt. Arante started manifesting symptoms of his sickness and he became ill while working on board the vessel. Under the standard format contract, which governs the relation between (SEACORP) and its principal MATTS on the one-hand and the deceased on the other, the latter is entitled to certain benefits among which are: reimbursement of duly proven hospitalization and medical expenses, which, as in this case, is the amount of P67,045.73; burial expenses in the fixed amount of P20,000.00 (Sec. C[2-c]); expenses in case of repatriation by reason of injury or illness, equivalent to US \$344.00, the amount deducted by petitioner MATTS from the total wages of the deceased in payment of his airplane ticket (Sec. 4[4-d]); and the amount of US \$1,100.00 as illness allowance for a period of 120 days (Sec. 4 [4-c]). Petitioner SEALANES cannot escape liability under the contract as it has assumed responsibility for all claims that may arise thereunder.

The argument of petitioners that since cancer of the pancreas is not an occupational disease it was incumbent upon Capt. Arante to prove that his working conditions increased the risk of contracting the same, is not meritorious. It must be noted that his claims arose from the stipulations of the standard format contract entered into between him and SEACORP which, per Circular No. 2, Series of 1984 of respondent POEA was required to be adopted and used by all parties to the employment of any Filipino seamen on board any ocean-going vessel. His claims are not rooted from the provisions of the New Labor Code as amended. Significantly, under the contract, compensability of the death or illness of seamen need not be dependent upon whether it is work connected or not. Therefore, proof that the working conditions increased the risk of contracting a disease or illness, is not required to entitle a seaman who dies during the term thereof by reason of such disease or illness, of the benefits stipulated thereunder which are, under Section C(2) of the same Circular No. 2, separate and distinct from, and in addition to whatever benefits which the seaman is entitled to under Philippine laws.

ACCORDINGLY, the petition is GRANTED in so far as the assailed decision awarded death compensation in the amount of P250,000.00 is concerned, which is hereby SET ASIDE. The decision appealed from is AFFIRMED in all other respects. The temporary restraining order issued by the Court on October 12, 1988 is hereby LIFTED.

SO ORDERED.

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

* Bagong Filipinas Overseas Corp. v. NLRC, 135 SCRA 278; Virgen v. NLRC, 125 SCRA 577; Norse Management v. NSB, et al., 117 SCRA 486; Virgen v. NLRC, 115 SCAR 347

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