

## **JUANITA NITURA, PETITIONER, VS. EMPLOYEES' COMPENSATION COMMISSION AND GOVERNMENT SERVICE INSURANCE SYSTEM (PHILIPPINE ARMY), RESPONDENTS.**

*G.R. No. 89217. September 04, 1991*

Ponente: PARAS, J.

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### **PARAS, J.:**

This is a petition for review on certiorari of the decision of respondent Employees' Compensation Commission (hereinafter referred to as ECC for brevity) dated May 24, 1989 in ECC Case No. 3470 entitled "Juanita Nitura, Appellant, vs. Government Service Insurance System (Philippine Army), Respondent", which affirmed the denial by the Government Service Insurance System (hereinafter referred to as GSIS for brevity) of the claim of herein petitioner Juanita Nitura for the benefits under Presidential Decree No. 626, as amended, on account of the death of her son, Pfc. Regino S. Nitura.

The facts of the case are as follows:

The deceased Pfc. Regino S. Nitura, 681349 P.A., started his military service on October 5, 1978 when he was called for military training in the Philippine Army. At the time of his death on March 3, 1986, he was assigned to the "D" Coy 44<sup>th</sup> Inf. Bn., 1st Inf., (TABAK) Division, stationed at Basagan, Katipunan, Zamboanga del Norte.

In the evening of March 2, 1986, he was instructed to go to Barangay San Jose, Dipolog City, which is more or less one (1) kilometer from the Command Post of his Company, to check on several personnel of the Command who were then attending a dance party. This instruction was attested to by his Battalion Commander, Col. Loreto M. Deus, 0-90573 Inf., (GSC) PA, in his affidavit dated July 8, 1986 (Annex "A" of the Petition, Rollo, p. 15). On his way back to the camp, he passed, crossed and fell from a hanging wooden bridge connecting Barangay San Jose, Dipolog City and Barangay Basagan, Katipunan, Zamboanga del Norte, his head hitting the stony portion of the ground. His death certificate (Annex "B" of the Petition, Rollo, p. 16) shows that he died of "cardio-respiratory" arrest, shock, traumatic due to hemorrhage, intracranial due to severe concussion of the brain due to accidental fall".

Herein petitioner Juanita Nitura filed a death claim for compensation benefits under Presidential Decree No. 626, as amended, with the GSIS. In a letter dated October 27, 1986 signed by Oscar R. Marcelino, Manager, Employees' Compensation Department (Annex "C" of the Petition, Rollo, p. 17), petitioner's claim was denied on the ground that the condition for compensability, that the injury and the resulting disability or death must be the result of an accident arising out of and in the course of the employment, has not been satisfied. Her request for reconsideration was likewise denied on the ground that her son was not at his place of work nor performing his official function as a PA soldier when the accident occurred (Annex "D" of the Petition, Rollo, p. 18).

On July 15, 1987, petitioner's claim was elevated to the respondent ECC for review and docketed as ECC Case No. 3470.

As aforementioned, respondent ECC affirmed the denial of petitioner's claim by the GSIS. Respondent ECC reasoned out that:

"The deceased was not at his place of work nor was he performing his official function as member of the Philippine Army when the incident occurred. He was, as appellant admits, coming from a dance party. Despite appellant's contention, recreation is no longer an employee's duty nor is it connected to the performance of an employee's official function. For to rule otherwise, would negate Rule III, Section 1.

Furthermore, even assuming that attending a dance party is still a work-connected activity, we believe that the deceased acted with notorious negligence, for although he was already intoxicated, he still proceeded to attend the dance at a nearby barrio with full knowledge that it would be dangerous to cross the hanging bridge in the dark." (ECC Decision, Rollo, p. 23).

Hence, this petition.

The sole issue in the case at bar is whether or not the death of Pfc. Regino S. Nitura is compensable pursuant to the applicable statutes and regulations.

Respondent ECC avert that it is undisputed that when the incident happened, the late Pfc. Regino S. Nitura had just come from a dance party and was on his way back to the camp. Attending a dance party is not a part of an employee's duty nor is it connected with the performance of his official functions. To rule otherwise would negate the provisions of Presidential Decree No. 626, as amended, that for the injury to be compensable, it must be the result of an accident arising out of and in the course of employment. While his Battalion Commander, Col. Loreto Deus, attested to the fact that the deceased was instructed to check on several personnel of the command then attending the dance party, he failed to state in his affidavit the reason why the deceased was given such instruction. This is fatal to petitioner's case as it cannot be determined if the instruction was indeed official and had something to do with his duties as a soldier.

Respondent ECC insisted that even assuming that the deceased was performing his duty when the incident occurred, he was at that time intoxicated and acted with notorious negligence in crossing the bridge. These facts according to the respondent ECC bar petitioner's claim for benefits pursuant to Section 1, Rule IV of the Amended Rules on Employees' Compensation which provides that:

"Section 1. Limitation — No compensation shall be allowed to the employee or his dependents when the injury, sickness, disability or death was occasioned by any of the following:

- (1) his intoxication;
- (2) his willful intention to injure or kill himself or another; or
- (3) his notorious negligence."

(Memorandum for Public Respondent, Rollo, pp. 107-109).

Public respondent ECC concurs with public respondent GSIS that the injury did not arise out of and in the course of his employment as it happened when the deceased was crossing the bridge after attending a dance party. Although the deceased had been instructed to check on several personnel of the command then attending the party, the incident happened after the same had purportedly been accomplished. The ECC continues — assuming that he was not notoriously negligent in crossing the bridge, still, the same cannot be removed from the prohibitive mantle of Section 1, Rule IV of the Amended Rules on Employees' Compensation which considers the employee's intoxication as a ground for denial of the claim (Memorandum for Respondent GSIS, Rollo, pp. 119-121).

The petition is impressed with merit.

In resolving this issue in a similar case, this Court ruled that the Employees' Compensation Act is basically a social legislation designed to afford relief to the working men and women in our society. While the presumption of compensability and the theory of aggravation under the Workmen's Compensation Act may have been abandoned under the New Labor Code, it is significant that the liberality of the law in general in favor of the working man still subsists. As an official agent charged by law to implement social justice guaranteed and secured by the Constitution, the ECC should adopt a liberal attitude in favor of the employee in deciding claims for compensability especially where there is some basis in the facts for inferring a work connection with the incident. This kind of interpretation gives meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations should be resolved in favor of labor." The policy then is to extend the applicability of the decree (P.D. 626) to as many employees who can avail of the benefits thereunder, which includes protection to employees for a reasonable period of time prior to or after working hours and for a reasonable distance before reaching or after leaving the work premises (*Lazo v. ECC*, 186 SCRA 574-575 [1990]).

Section 1, Rule III of the Amended Rules on Employees' Compensation provides that:

"Section 1. Grounds — (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of an employment accident satisfying all the following conditions:

- (1) The employee must have been injured at the place where his work require him to be;
- (2) The employee must have been performing his official functions; and
- (3) If the injury is sustained elsewhere, the employee must have been executing an order of the employer."

The concept of a "work place" referred to cannot always be literally applied to a soldier in active duty status, as if he were a machine operator or a worker in an assembly line in a factory or a clerk in a particular fixed office. A soldier must go where his company is stationed (*Hinoguin v. ECC*, 172 SCRA 350 [1990]). In the case at bar, Pfc. Nitura's station was at Basagan, Katipunan, Zamboanga del Norte. But then his presence at the site of the accident was with the permission of his superior officer having been directed to go to Barangay San Jose, Dipolog City. In carrying out said directive, he had to pass by the hanging bridge which connects the two places. As held in the *Hinoguin* case (*supra.*), a place where soldiers have secured lawful permission to be at cannot be very different, legally speaking, from a place where they are required to go by their commanding officer.

As to the question of whether or not he was performing an official function at the time of the incident, it has been held that a soldier on active duty status is really on a 24 hours a day official duty status and is subject to military discipline and military law 24 hours a day. He is subject to call and to the orders of his superior officers at all times, seven (7) days a week, except, of course, when he is on vacation leave status. Thus, a soldier should be presumed to be on official duty unless he is shown to have clearly and unequivocally put aside that status or condition temporarily by going on an approved vacation leave. Even vacation leaves may, it must be remembered, be preterminated by superior orders (*Hinoguin v. ECC. supra.*). In the instant case, the deceased was neither on vacation leave nor on an overnight pass when the incident occurred. In fact, he was directed by his superior to check on several personnel of the command then attending the dance party, as attested to by his Battalion Commander. Hence, since Pfc. Nitura was not on vacation leave, he did not effectively cease performing "official functions".

More than that, it was correctly pointed out by petitioner Juanita Nitura that the contention of the GSIS and the ECC that the deceased did not sustain the injury while performing the instructions of his superior would put to naught an actual fact-finding and evaluation undertaken by the military that the death of Pfc. Regino S. Nitura was

in line of duty. She pointed out that the Line of Duty Board of Officers which convened on March 4, 1986 at the Hqs. 44[th] Inf. Bn., 1st Inf. (TABAK) Division, PA at Anastacio, Polanco, Zamboanga del Norte made the following findings:

"x x a careful analysis of the situation surrounding the death of Pfc. Regino S. Nitura 681349 PA of the Delta Coy, 44[th] Inf. Bn., IID, PA, proves that he was performing official duties with this unit." (Annex "F" of the Petition, Rollo, p. 24).

Hence, General Orders No. 109 dated November 19, 1986 declared that:

"3. Death of Private First Class Regino S. Nitura 681349, Philippine Army of 44[th] Infantry Battalion, 1st Infantry Division, Philippine Army who died on March 3, 1986 due to cardio-respiratory arrest at Katipunan, San Jose, Zamboanga del Norte is declared in Line of Duty."

(Annex "G" of the Petition, Rollo, p. 25).

Consequently, Leon O. Ridao, Assistant Secretary, Legal Affairs, in his 3[rd] Indorsement to the Administrator, Philippine Veterans Affairs Office, dated January 26, 1988 (Annex "H" of the Petition, Rollo, p. 26) ordered the payment of the death gratuity under the provisions of Republic Act No. 610, as amended, to his rightful heirs, as may be determined by the Claims Division, OTJAG, AFP (Memorandum for the Petitioner, Rollo, pp. 93-95).

With regard respondents' contention that the claim is precluded by the fact that the deceased was drunk and acted with notorious negligence, it has been held that even if it could be shown that a person drank intoxicating liquor it is incumbent upon the person invoking drunkenness as a defense to show that said person was extremely drunk. This is so because a person may take as much as several bottles of beer or several glasses of hard liquor and still remain sober and unaffected by the alcoholic drink. Thus, intoxication which does not incapacitate the employee from following his occupation is not sufficient to defeat the recovery of compensation, although intoxication may be a contributory cause to his injury. It must be shown that the intoxication was the proximate cause of death or injury and the burden of proof lies on him who raises drunkenness as a defense (*Vda. de Yohanan v. Balena and WCC*, 78 SCRA 348 [1977]). While it may be admitted that the deceased drank intoxicating liquor at the dance party, respondents ECC and GSIS have not established that the state of drunkenness of the deceased is the proximate cause of his death.

On the other hand, notorious negligence has been defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety. Disobedience to rules, orders, and/or prohibition does not in itself constitute notorious negligence, if no intention can be attributed to the injured to end his life (*Luzon Stevedoring Corporation v. WCC*, 105 SCRA 675 [1981] reiterating *Paez v. WCC*, 7 SCRA 588 [1963]). As stressed by the petitioner, it was not shown that the deceased had any intention to end his life. Crossing a hanging bridge may seem dangerous to an ordinary man but the deceased was a soldier who had been trained and prepared for this kind of work. As explained by his mother, petitioner herein, the deceased had seen the worse and was not afraid or intimidated by the fact that he had to pass through a hanging bridge. Facing danger had become second nature to him (Rollo, pp. 98-99).

PREMISES CONSIDERED, the petition is GRANTED, the decision of respondent ECC dated May 24, 1989 is REVERSED and SET ASIDE and the petitioner and the illegitimate minor children of the deceased, namely Regina and Rogian, are AWARDED the full benefits pursuant to the provisions of Presidential Decree No. 626, as amended.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.  
Sarmiento, J., on leave.

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