

## SECOND DIVISION

[G.R. No. 116629. January 16, 1998]

NFD INTERNATIONAL MANNING AGENTS and BARBER INTERNATIONAL A/S, *petitioners*, vs. THE NATIONAL LABOR RELATIONS COMMISSION and NELIA MISADA, for herself and in behalf of her minor children CAESAR and ALPHA JOY, all surnamed MISADA and HIMAYA ENVIDIADO, for herself and in behalf of her minor children HENREA, HAZEL, and HENDRICK, all surnamed ENVIDIADO, *respondents*.

## D E C I S I O N

PUNO, J.:

This special civil action for *certiorari* seeks to annul and set aside the decision dated April 25, 1994 of the National Labor Relations Commission which ordered petitioners to pay a total of U.S.\$26,641.42 as death benefits to private respondents.

Petitioner NFD International Manning Agents, Inc., a domestic manning corporation, engaged the services of Eduardo P. Misada and Enrico A. Envidiado to work for petitioner Barber International A/S (Barber), a Norwegian shipping company. Misada and Envidiado were hired as second and third officers, respectively, on board the vessel M/V Pan Victoria. They were to travel from Sweden to South Korea for a period of ten months from January 1991 to November 1991.

On July 5, 1991, private respondent Nelia Misada received notice that her husband, Eduardo Misada, died on June 28, 1991 while on board the M/V Pan Victoria. On July 12, 1991, private respondent Himaya Envidiado likewise received notice that her husband, Enrico Envidiado, died on board the vessel.

As heirs of the deceased seamen, private respondents, in their behalf and in behalf of their minor children, filed for death compensation benefits under the Philippine Overseas Employment Agency (POEA) Standard Contract of Employment and the Norwegian National Insurance Scheme (NIS) for Filipino Officers. Their claims were denied by petitioners.

Private respondents filed separate complaints before the POEA Adjudication Office. They prayed for U.S.\$13,000.00 each as death compensation under the POEA Standard Contract of Employment and U.S.\$30,000.00 for each wife and U.S.\$8,000.00 for each child under eighteen years under the Norwegian NIS.<sup>[1]</sup>

In their Answer, petitioners claimed that private respondents are not entitled to death benefits on the ground that the seamen's deaths were due to their own willful act. They alleged that the deceased were among three (3) Filipino seamen who implanted fragments of reindeer horn in their respective sexual organs on or about June 18, 1991; that due to the lack of sanitary conditions at the time and place of implantation, all three

seamen suffered "severe tetanus" and "massive viral infections;" that Misada and Envidiado died within days of the other; that the third seaman, Arturo Fajardo, narrowly missed death only because the vessel was at port in Penang, Malaysia at the time the tetanus became critical.<sup>ii[2]</sup>

The complaints were consolidated and the parties filed their respective position papers and documentary evidence. On October 20, 1993, the POEA Administrator dismissed the case for lack of merit.

Private respondents appealed to respondent Commission. During the pendency of the appeal, private respondents submitted additional documentary evidence in support of their Memorandum on Appeal.

On April 25, 1994, respondent Commission reversed the POEA Administrator and ordered petitioners to pay private respondents the following:

"(a) To complainant Nelia F. Misada and her two minor children, Julius Caesar and Alpha Joy, all surnamed Misada:

(1) Death compensation of U.S.\$13,000.00 under the POEA Standard Format;

(b) To complainant Himaya G. Envidiado and her three (3) minor children, Henrea, Hazel and Hendrick, all surnamed Envidiado;

(1) Death compensation of U.S.\$13,000.00 under the provisions of the POEA Rules and Regulations; and

(2) Backwages as of July 1991 amounting to U.S.\$641.42 or its peso equivalent.

SO ORDERED."<sup>iii[3]</sup>

Hence this petition. Petitioners claim that:

"I

FIRSTLY, THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING DOCUMENTS WHICH DO NOT FORM PART OF THE EVIDENCE IN THE INSTANT CASE, THEREBY DEPRIVING PETITIONERS OF DUE PROCESS;

II

SECONDLY, THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT OVERTURNED WHAT HAS BEEN ESTABLISHED BY CIRCUMSTANTIAL AND DOCUMENTARY EVIDENCE ON THE BASIS OF DOCUMENTS WHICH AT BEST ARE HEARSAY; and

### III

THIRDLY, THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE POEA DECISION ON THE BASIS OF DOCUMENTS WHICH AT BEST ARE NOT CONCLUSIVE AS TO THE CAUSE OF DEATH OF SUBJECT SEAMEN."<sup>iv[4]</sup>

Petitioners claim respondent Commission gravely abused its discretion in admitting private respondent's additional evidence on appeal. Petitioners allege that the additional evidence were "surreptitiously" submitted in violation of petitioner's right to due process.

The submission of additional evidence before the respondent Commission is not prohibited by the New Rules of Procedure of the NLRC. After all, rules of evidence prevailing in courts of law or equity are not controlling in labor cases.<sup>v[5]</sup> The NLRC and labor arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice.<sup>vi[6]</sup> In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal.<sup>vii[7]</sup> The submission of additional evidence on appeal does not prejudice the other party for the latter could submit counter-evidence.<sup>viii[8]</sup>

In the case at bar, the additional evidence was submitted by private respondents before the respondent Commission in their Memorandum on Appeal dated November 8, 1993. The decision of respondent Commission was rendered on April 25, 1994, i.e., six (6) months after the additional documents were submitted. Petitioners had ample opportunity to object and refute the documents. They had the chance to submit counter-evidence during this period but they did not do so. It was only when they moved for reconsideration of the decision of respondent Commission that they questioned the admission of these evidence.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side.<sup>ix[9]</sup> It is also an opportunity to seek a reconsideration of the action or ruling complained of.<sup>x[10]</sup> It is not the denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law.<sup>xi[11]</sup>

Procedural matters having been disposed of, the substantive issue in this case is whether respondent Commission gravely erred in finding that the deaths of the two seamen, Eduardo Misada and Enrico Envidiado, did not come as a result of their willful and deliberate act.

Part II, Section C, No. 1, Paragraph 1 of the POEA "Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels"<sup>xii[12]</sup> provides that:

"1. In case of death of the seaman during the term of this Contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of U.S.\$50,000.00 and an additional amount of U.S.\$7,000.00 to each child under the age of twenty-one (21) but not exceeding four children at the exchange rate prevailing during the time of payment.

x x x."xiii[13]

Part II, Section C, No. 6 of the same Standard Employment Contract also provides:

"6. No compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to him."xiv[14]

The death of a seaman during the term of his employment makes the employer liable to the former's heirs for death compensation benefits. The POEA Standard Employment Contract fixes the amount at U.S.\$50,000.00 and an additional amount of U.S.\$7,000.00 for each child, not exceeding four, under twenty-one years of age. The employer becomes liable once it is established that the seaman died during the effectivity of his employment contract. This rule, however, is not absolute. The employer may be exempt from liability if he can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act.xv[15]

In the instant case, petitioners claim that the deaths of the two seamen came as a result of their self-inflicted injuries. As proof, petitioners presented written statements from the master of the M/V Pan Victoria, the medical reports of Misada, Envidiado and Arturo Fajardo, the seaman who survived the infection, and the written statements of three (3) officers of the vessel taken during a special inquiry conducted after their deaths.

Petitioners contend that Misada and Envidiado and Arturo Fajardo implanted fragments of the horn of a reindeer or antelope in their respective sexual organs while on a voyage on board the M/V Pan Victoria. The horn was left by a Greek officer from a previous voyage. Misada found the horn and asked for it from the Chief Officer. Misada gave the horn to the Second Engineer to carve and shape for implantation. Thereafter, shaped fragments of the horn were inserted by Misada and Envidiado subcutaneously into their respective sex organs on June 19, 1991 while that of Fajardo was implanted two or three days later. The implantations were made surgically in the absence of sanitary and sterile facilities.

Several days later, Misada complained of difficulty in swallowing and breathing. He had severe tonsillitis and was suffering from spasms and convulsions.xvi[16] The ship captain was compelled to alter course and drop anchor at Colombo, Sri Lanka for medical treatment.xvii[17] Misada, however, died on board the vessel on June 28, 1991. His dead body was examined at the Colombo General Hospital, Colombo, Sri Lanka, where the

cause of his death was placed as "acute laryngo-trachea bronchitis with pneumonia due to viral infection."<sup>xviii[18]</sup>

It was after the vessel left Colombo on June 30, 1991 that Envidiado started exhibiting the same symptoms as Misada. The ship captain had to drop anchor at the nearest port which was Galle, Sri Lanka.<sup>xix[19]</sup> Envidiado was brought ashore and admitted to hospital. He died a few days later.

On July 3, 1991, Arturo Fajardo started exhibiting the same symptoms as the two other seamen. On inquiry, the master of the vessel learned that Misada, Envidiado and Fajardo implanted pieces of reindeer horn in their sex organs. Fajardo's condition worsened and the master was compelled to drop anchor at Penang, Malaysia where Fajardo was admitted to hospital on July 5, 1991. He was diagnosed to be suffering from tetanus and given medication for said illness. Fajardo recovered two weeks later.<sup>xx[20]</sup>

As a result of this chain of events, the master of the vessel conducted a formal inquiry to verify the cause of the seamen's deaths and illness. Written testimonies as to the events leading to their deaths were taken from the master, the Chief Officer, Second Engineer and Second Cook.

The testimonies of the officers are insufficient to prove the fact that Misada's and Envidiado's deaths were caused by self-inflicted injuries. The testimonies were given by people who merely observed and narrated the circumstances surrounding the deaths of the two seamen and the illness of Fajardo. Fajardo himself did not submit any testimony regarding the implantation. The testimonies of the officers are, at best, hearsay. Moreover, the officers did not have the competence to make a medical finding as to the actual cause of the deaths. No autopsy report was presented to corroborate their testimonies. On the contrary, Eduardo Misada was medically diagnosed to have died of "acute laryngo-trachea bronchitis with pneumonia probably due to viral cause."<sup>xxi[21]</sup> This was declared in his "Cause of Death Form" after his dead body was examined on June 29, 1991 by Dr. Sydney Prematirat, a Judicial Medical Officer at Colombo, Sri Lanka.

Enrico Envidiado was not issued a "Cause of Death Form." While still alive, he was examined in Galle, Sri Lanka by Consultant Physician Chandima de Mel who found a wound in his penis and diagnosed his illness as "severe tetanus."<sup>xxii[22]</sup> His "Certificate for Removal of A Dead Body" dated July 8, 1991 issued by Dr. T.L. Seneviratne, Chief Medical Officer of Health, Municipal Council, Colombo, Sri Lanka,<sup>xxiii[23]</sup> and "Certificate of Embalming" dated July 8, 1991 issued by Keith Anthony Raymond<sup>xxiv[24]</sup> stated that Envidiado died of "viral myocarditis-- natural causes."

The "Certificate for Removal of a Dead Body" and "Certificate of Embalming" are not proofs of the real cause of death. Their probative value is confined only to the fact of death.<sup>xxv[25]</sup> These documentary evidence, however, did not at all indicate that Envidiado died of tetanus as previously diagnosed by Dr. de Mel. And despite Dr. de Mel's allegedly correct diagnosis, Envidiado died a few days later.

As correctly found by respondent Commission, petitioners' evidence insufficiently proves the fact that the deaths of the two seamen were caused by their own willful and deliberate act. And even if the seamen implanted fragments of reindeer horn in their sex organs, the evidence does not substantially prove that they contracted tetanus as a result of the unsanitary surgical procedures they performed on their bodies. Neither does the evidence show that the tetanus was the direct cause of their deaths.

**IN VIEW WHEREOF**, the petition is dismissed and the decision of respondent National Labor Relations Commission in NLRC CA No. 006490-94 is affirmed.

SO ORDERED.

*Regalado, (Chairman), Mendoza, and Martinez, JJ., concur.*

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i[1] POEA Case No. Adj.(M)91-11-1305, Records, pp. 1-8; POEA Case No. Adj.(M)91-11-1306, Records, pp. 1-13.

ii[2] Answer, pp. 2-3, Records, pp. 43-45; Petition, p. 6, *Rollo*, p. 7.

iii[3] NLRC Decision, pp. 8-9, *Rollo*, pp. 34-35.

iv[4] Petition, pp. 11-12, *Rollo*, pp. 12-13.

v[5] Labor Code, Article 221.

vi[6] *Id.*

vii[7] *New Valley Times Press v. National Labor Relations Commission*, 211 SCRA 509, 514 [1992]; *Bristol Laboratories Employees' Association v. National Labor Relations Commission*, 187 SCRA 118, 121 [1990]; *Phil. Telegraph and Telephone Corp. v. National Labor Relations Commission*, 183 SCRA 451, 457-458 [1990]; *Columbia Dev. Corp. v. Min. of Labor*, 146 SCRA 421, 427-428 [1986].

viii[8] *Precision Electronics Corp. v. National Labor Relations Commission*, 178 SCRA 667, 670 [1989].

ix[9] *Stayfast Phil. Corp. v. National Labor Relations Commission*, 218 SCRA 596, 601 [1993]; *Robusta Agro Marine Products, Inc. v. Gorombalem*, 175 SCRA 93, 98 [1989].

x[10] *Id.*

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**xi[11]** *Marquez v. Sec. of Labor*, 171 SCRA 337, 343 [1989]; *Almoite v. Pacific Architects & Eng'rs. Inc.*, 142 SCRA 623, 628 [1986].

**xii[12]** Approved in 1989 and revised in 1996 by POEA Memorandum Circular No. 55, Series of 1996.

**xiii[13]** Now Section 20 [A], No. 1, Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels which reads:

"1. In case of death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

**xiv[14]** Now Section 20 [B] [D], Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels which also reads:

"D. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

**xv[15]** *Mabuhay Shipping Services, Inc. v National Labor Relations Commission*, 193 SCRA 141, 145 [1991].

**xvi[16]** Annex "1" to petitioners' Position Paper, Records, pp. 226-227.

**xvii[17]** *Id.*

**xviii[18]** "Cause of Death Form," Annex "2" to Petitioners' Position Paper, Records, pp. 234.

**xix[19]** Annex "1-B" to Petitioners' Position Paper, Records, p. 225.

**xx[20]** *Id.*, p. 217.

**xxi[21]** Exhibit "1" to Private Respondents' Memorandum on Appeal, Records, p. 323.

**xxii[22]** Annex "3" to Petitioners' Position Paper, Records, p. 219.

**xxiii[23]** Exhibit "7" to Misada's and Envidiado's Memorandum on Appeal, NLRC Records, p. 317.

**xxiv[24]** Exhibit "8" to Misada's and Envidiado's Memorandum of Appeal, NLRC Records, p. 317.

**xxv[25]** *Insular Life Assurance Co. v. Suva*, 62 Phil. 346, 351 [1935]; *Sison v. Sun Life Assurance Co. (CA)* 47 O.G. 1954, 1967 [1949]; also cited in Regalado, *Remedial Law Compendium*, vol. 2, pp. 525-526 [1989], and in Francisco, *Evidence*, p. 516 [1996].