

## SECOND DIVISION

[G.R. No. 141505. August 18, 2005]

**NORMA HERMOGENES, *petitioner*, vs. OSCO SHIPPING SERVICES, INC., *respondent*.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA), dated May 31, 1999, in CA-G.R. SP No. 52389 which denied due course and dismissed herein petitioners petition for *certiorari*; and its November 29, 1999 Resolution<sup>[2]</sup> denying petitioners motion for reconsideration.

The facts of the case, as found by the CA, are as follows:

It appears that the petitioner Norma Hermogenes is the surviving spouse of the late Ciriaco A. Hermogenes who, prior to his death, was a seaman employed in foreign vessels from 1973 to 1991. His last employment was with the Osco Shipping A/S Co. of Norway, represented by respondent Osco Shipping Services (Philippines), Inc., as Chief Cook of the M/T Cedar Bow. Prior thereto, he was also employed as a Chief Cook on the vessels M/T Geroro and M/T Gracechurch Star, also owned by the same company.

On March 2, 1991, while serving on the M/T Gracechurch Star, he was confined at the Ospedale Internazionale Case Di Cura at Naples, Italy, and was operated on due to continuous bleeding of his intestines (also described as severe gastric hemorrhage) arising from an ulceratic lesion at the prepyloric region. He was also diagnosed to be suffering from gastric ulcer with chronic gastritis, calculosis of the gall bladder, diabetes mellitus, hypertension, and ieschaemic cardiopathy. Thereafter, he was repatriated back to Manila and confined at the Metropolitan Hospital where he underwent postoperative medical attention by Dr. Robert D. Lim. He was discharged shortly thereafter when he was on the way to recovery.

In the meantime, Ciriaco Hermogenes was given sick wage allowance by respondent Osco equivalent to four (4) months salary.

In September, 1991, he was again employed as Chief Cook of the M/T Cedar Bow. However, his contract was terminated on November 9, 1991.

On November 13, 1994, Ciriaco Hermogenes was confined at the National Kidney Institute where he was treated for:

- : Cardiopulmonary Arrest secondary to Sepsis secondary to Urinary Tract Infection
- : Pneumonia
- : Toxic Epidermal Necrolysis
- : Acute Renal Failure on top of Chronic Renal Insufficiency secondary to Diabetic Nephropathy.

He underwent Peritoneal Dialysis, but on November 21, 1994, he died.

The petitioner filed a claim for death compensation benefits under the POEA Standard Format, which provides for a US\$50,000.00 death benefit plus US\$7,000.00 for each minor child, and US\$1,000.00 for burial assistance. She also asked for P60,000.00 as expenses for medication and hospitalization, plus attorneys fees. The claim was opposed by the respondent.<sup>[3]</sup>

After hearing, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision finding herein respondent liable for burial assistance and medication and hospitalization expenses but not for death benefits and attorneys fees.<sup>[4]</sup> The dispositive portion of the Labor Arbiters decision reads as follows:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding respondent Osco Shipping Services (Phils.), Inc. liable to pay complainant the following:

- a) US\$1,000.00 or its equivalent in pesos as burial expenses; and
- b) P60,000.00 as continued medication and hospitalization expenses.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[5]</sup>

Herein petitioner appealed the Labor Arbiters decision with the National Labor Relations Commission (NLRC). In a Decision promulgated on July 24, 1996, the NLRC affirmed the assailed decision of the Labor Arbiter and dismissed herein petitioners appeal for lack of merit.<sup>[6]</sup>

Aggrieved by the Decision of the NLRC, herein petitioner filed a petition for *certiorari* directly with this Court.<sup>[7]</sup>

Subsequently, the parties were required to file various pleadings with this Court including comments to the petition by respondent Osco Shipping Services, Inc. (Osco)<sup>[8]</sup> and the Office of the Solicitor General (OSG),<sup>[9]</sup> petitioners reply to these comments,<sup>[10]</sup> as well as respondents rejoinder to the reply.<sup>[11]</sup>

In a Resolution dated February 3, 1999, this Court referred the instant case to the CA for appropriate action and disposition in accordance with this Courts decision in St. Martin Funeral Homes vs. National Labor Relations Commission, et al.<sup>[12]</sup>

On May 31, 1999, the CA rendered the herein assailed decision denying due course to the petition and dismissing the same for lack of merit.<sup>[13]</sup> Petitioners motion for reconsideration was denied in the questioned Resolution of November 29, 1999.<sup>[14]</sup>

Hence, this petition filed by Norma Hermogenes contending that:

[T]he Honorable Court of Appeals committed serious errors when it dismissed the petition for *certiorari* of the petitioner and denied her Motion for Reconsideration without due regard to the merits of the same and despite the clear wordings of the law and of the parties contract.<sup>[15]</sup>

Prefatorily, it bears to emphasize that under the prevailing law, jurisdiction over claims arising out of any law or contract involving overseas Filipino workers, whether land-based or sea-based, is now vested in the NLRC, pursuant to Section 10 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, which took effect on July 15, 1995. In the present case, the complaint was filed with the NLRC on August 15, 1995. Hence, at the time of the filing of the complaint, jurisdiction over the case is already vested in the NLRC.

Going into the main issues raised, petitioner claims that the CA erred in declaring that Ciriacos death is not compensable because it only occurred after his repatriation. Petitioner claims that the very reason why Ciriaco was repatriated was that he was then suffering from various illnesses which he contracted during the term of his contract with Osco.

The petition is without merit.

Memorandum Circular No. 41, Series of 1989, which provides for the Standard Employment Contract Governing the Employment of Filipino Seamen On Board Ocean-Going Vessels, and which was in force at the time Ciriaco was employed by Osco, states that for the death of a seafarer to be compensable, the same must have occurred during the term of his contract. Paragraph No. 7 of the said Memorandum provides:

## 7. Compensation and Benefits:

- a. **In case of death of the seaman during the term of his Contract**, the employer shall pay his beneficiaries the PHILIPPINE CURRENCY EQUIVALENT TO THE AMOUNT OF:

US\$15,000 for master and chief engineers;  
US\$13,000 for other officers including radio operators and master electricians;  
US\$11,000 for ratings

AT THE EXCHANGE RATE PREVAILING DURING THE TIME OF PAYMENT. (Emphasis supplied)

In the present case, evidence shows that the last contract of employment entered into by Ciriaco prior to his death was with Osco. The contract was signed on September 14, 1991, for a duration of ten months.<sup>[16]</sup> Hence, Ciriacos contract of employment with Osco should have effectively ended ten months from September 14, 1991 or on July 14, 1992. However, it is undisputed that Ciriacos contract was terminated on November 9, 1991, barely two months after it was signed. There is no indication that he was subsequently re-employed by Osco. Significantly, there is no evidence presented to show the reason for the early termination of Ciriacos contract. Ciriaco died on November 21, 1994, more than three years after his contract of employment was abruptly ended. Hence, his beneficiaries are not entitled to the death benefits enumerated above.

Even if we are to consider petitioners argument that her husbands death is compensable because the illness which caused his death was acquired during the term of his employment with Osco, we find no substantial evidence to prove petitioners contention that the illness which caused the death of Ciriaco was contracted during the term of his contract with Osco. It is noted that when Ciriaco got ill on March 2, 1991, he was confined at a hospital in Italy and was found to be suffering from gastric ulcer with chronical gastritis, calculosis of the gall bladder, diabetes mellitus, hypertension and ischaemic cardiopathy.<sup>[17]</sup> He was treated and, thereafter, was repatriated and underwent further medical treatment in the Philippines. Subsequent thereto, he was able to secure another contract of employment with Osco. Hence, the only logical conclusion that we could arrive at from the fact of his subsequent employment is that Ciriaco was able to totally recover from his illness. If Ciriaco was indeed still ill or unfit to work at the time that he underwent pre-employment medical examination, then he should not have been allowed to sign a contract of employment. Petitioner, herself, admitted in the present petition that [a]ll seafarers undergo a pre-employment medical examination which they have to pass before they can be contracted.<sup>[18]</sup>

The fact that Ciriacos contract was terminated barely two months into his employment does not necessarily prove that he was ill. We find no evidence on record as to how and why his contract of employment was cut short. Neither was there any allegation from the pleadings of both petitioner and respondent that Ciriacos contract was terminated by reason of illness. Three years after, or on November 21, 1994, Ciriaco died due to the following: immediate cause -- cardiopulmonary arrest secondary to sepsis; antecedent cause -- toxic epidermal necrolysis; underlying cause pneumonia; other significant causes contributing to death acute renal failure on top of chronic renal insufficiency secondary to diabetic nephropathy.<sup>[19]</sup> In the absence of evidence, we cannot assume that the illnesses that directly and indirectly caused the death of Ciriaco

were acquired during his last employment with Osco, which started on September 14, 1991 and ended on November 9, 1991. Neither can we conclude, without competent medical proof, that his death was a product of his illnesses that were diagnosed during his previous employment which ended in March 1991. Indeed, the death of a seaman several months after his repatriation for illness does not necessarily mean that: (a) the seaman died of the same illness; (b) his working conditions increased the risk of contracting the illness which caused his death; and (c) the death is compensable, unless there is some reasonable basis to support otherwise.<sup>[20]</sup> In the present case, we find no reasonable basis to award the death compensation benefits prayed for by the beneficiaries of Ciriaco.

Moreover, we are not persuaded by petitioners argument that if we were to follow the ruling of the CA that the beneficiaries of Ciriaco are not entitled to death benefits under the Standard Employment Contract because Ciriacos death occurred after the term of his contract ended, then it would mean that the deaths of seafarers which are subject to compensation are only those which occur while the seafarers are still on board the vessel in which they are assigned.

Petitioners reasoning is flawed. It is clear from the provisions of the Standard Employment Contract that the only condition for compensability of a seafarers death is that such death must occur during the effectivity of the seafarers contract of employment.<sup>[21]</sup> Nothing in the said Standard Employment Contract requires that the seafarer must have died while on board the sea vessel. Hence, it is possible that death may happen even if the seafarer is not on board the vessel, as in cases where the seafarer has to be taken off the vessel and confined in a land-based medical treatment facility, and yet the death is compensable.

Petitioner contends that if the beneficiaries of Ciriaco are not entitled to death benefits, then in the alternative, they should be awarded permanent total disability compensation.

We are not convinced.

The OSG correctly observed that petitioner did not seek payment of disability benefits in her affidavit-complaint filed with the labor arbiter. A reading of the said affidavit-complaint shows that she only sought payment of death compensation benefits including financial assistance for their minor child as well as burial assistance. In addition, petitioner also prayed for the reimbursement of the expenses they have incurred for the continued medication and hospitalization of Ciriaco. However, nothing in her complaint shows that she raised before the labor arbiter or the NLRC the issue of her or her husbands entitlement to permanent and total disability benefits and it was only in her amended petition filed with the CA that petitioner raised this issue. The resolution of this issue requires the admission and calibration of evidence and since petitioner did not specifically raise this matter in the proceedings before the labor arbiter and even the NLRC, these tribunals were not given a chance to pass upon it in their assailed decisions. Hence, the issue of whether or not Ciriaco or his beneficiaries are entitled to disability benefits can no longer be passed upon on appeal because it was not raised in the tribunals *a quo*. Well-settled is the rule that issues not raised below

cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice.<sup>[22]</sup>

It is true that the beneficent provisions of the Standard Employment Contract are liberally construed in favor of Filipino seafarers and their dependents.<sup>[23]</sup> However, in the present case, we find that the factual circumstances do not justify the grant of death or disability benefits as prayed for by the beneficiaries of Ciriaco.

**WHEREFORE**, the petition for review on *certiorari* is DENIED. The assailed Decision of the Court of Appeals dated May 31, 1999 and its Resolution dated November 29, 1999 in CA-G.R. SP No. 52389 are AFFIRMED.

**SO ORDERED.**

*Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.*

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<sup>[1]</sup> Penned by Associate Justice Hector L. Hofilea (now retired) and concurred in by Justices Omar U. Amin (now retired) and Presbitero J. Velasco, Jr. (now Court Administrator of this Court).

<sup>[2]</sup> *CA Rollo*, pp. 196-197.

<sup>[3]</sup> *Id.*, pp. 161-162.

<sup>[4]</sup> *Id.*, pp. 38-45.

<sup>[5]</sup> Records, p. 45.

<sup>[6]</sup> *Id.*, pp. 65-71.

<sup>[7]</sup> *CA Rollo*, p. 3.

<sup>[8]</sup> *Id.*, p. 70.

<sup>[9]</sup> *Id.*, p. 100.

<sup>[10]</sup> *Id.*, pp. 86 and 113.

<sup>[11]</sup> *Id.*, pp. 129 and 138.

<sup>[12]</sup> 295 SCRA 494 (1998).

<sup>[13]</sup> *Supra*.

<sup>[14]</sup> *Supra*.

<sup>[15]</sup> *Rollo*, p. 12.

<sup>[16]</sup> Annex D, Records, p. 8.

<sup>[17]</sup> Annex E, Records, pp. 9-11.

<sup>[18]</sup> *Rollo*, p. 13.

<sup>[19]</sup> Annex G, Records, p. 13; Annex D, *CA Rollo*, p. 20.

<sup>[20]</sup> *Gau Sheng Phils., Inc. vs. Joaquin*, 437 SCRA 608, 621 (2004).

<sup>[21]</sup> *Id.*, p. 617; [NFD International Manning Agents vs. NLRC](#), 284 SCRA 239, 247 (1998).

<sup>[22]</sup> [R.P. Dinglasan Construction, Inc. vs. Atienza](#), 433 SCRA 263, 271 (2004).

<sup>[23]</sup> [Phil. Transmarine Carriers vs. NLRC](#), 353 SCRA 47, 54 (2001); [Wallem Maritime Services, Inc. vs. NLRC](#), 318 SCRA 623, 634 (1999).