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## THIRD DIVISION

[ G.R. No. 175491, December 10, 2012 ]

**CREW AND SHIP MANAGEMENT INTERNATIONAL INC. AND SALENA INC., PETITIONERS, VS. JINA T. SORIA, RESPONDENT.**

### DECISION

#### **MENDOZA, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the May 31, 2006 Decision<sup>[1]</sup> and the November 14, 2006 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 85350, which set aside the April 30, 2004 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC), dismissing the complaint of Jina T. Soria<sup>[4]</sup> (*respondent*), on behalf of her late husband Zosimo J. Soria (*Zosimo*), for death compensation benefits.

#### **The Factual and Procedural Antecedents**

On August 7, 1995, Zosimo entered into a one-year contract of employment<sup>[5]</sup> with Salena Inc., through its local manning agent, Crew and Ship Management International Inc. (*petitioners*). He was employed as an Assistant Cook on board *M.V. Sofia*, later renamed *M.V. Apollo*, with a basic monthly salary of US\$200.00.

On June 5, 1996, Zosimo, during his routine duty inside *M.V. Apollo's* engine room, suffered burns on his left knee when it accidentally brushed the hot engine. The vessel's medical officer immediately attended and treated Zosimo's injury with the appropriate medication.

On June 9, 1996, *M.V. Apollo* arrived at New Orleans from Masinloc, Zambales, Philippines. On June 16, 1996, *M.V. Apollo* departed New Orleans and reached Guayaquil, Ecuador, on June 26, 1996. From June 9, 1996 to June 26, 1996, there were no reported complaints from Zosimo.

On June 28, 1996, per *M.V. Apollo's* Master's Report,<sup>[6]</sup> Zosimo requested for medical attention. Subsequently, Zosimo was confined in a hospital in Ecuador where the cleaning and dressing of the wound and skin grafting over the burn areas with skin taken from the left lateral aspect of the left thigh were performed. On July 10, 1996, Zosimo was discharged from the hospital and deemed fit for repatriation.

Upon his repatriation to the Philippines, Zosimo immediately went to Legaspi City. On July 13, 1996, Zosimo sought medical attention for his burn wounds in Ago General Hospital, Legaspi City. In the Medical Certificate,<sup>[7]</sup> Zosimo was diagnosed with a "Healed Wound With Viable Skin Graft, Non-Infected; Dried Wound At Harvest Site, Lateral Aspect Of Left Thigh."

On July 19, 1996, or nine days after repatriation to the Philippines, Zosimo reported to petitioner's office in San Juan, Metro Manila, for payment of his contractual receivables. He was referred to Fatima Medical Clinic (FMC), the petitioners' designated hospital. FMC's Medical Report<sup>[8]</sup> disclosed that Zosimo's "wound is dry not infected with viable skin graft."<sup>[9]</sup> The same medical report also declared that Zosimo complained of "slight difficulty in flexing of left knee joint."<sup>[10]</sup> He was advised to return for another check-up after one week.

On July 31, 1996, Zosimo died at the *Ospital ng Makati*. As stated in the Medico-Legal Report<sup>[11]</sup> of the Philippine National Police (PNP) - Crime Laboratory, the cause of Zosimo's death was "*Pneumonia with Congestion of all visceral organs.*"

On July 7, 1999, respondent filed a Complaint<sup>[12]</sup> for death compensation benefits, child allowance, burial expenses, moral and exemplary damages, and attorney's fees against petitioners before the Labor Arbiter (LA). Respondent alleged, among others, that Zosimo died of tetanus from the burns he sustained on board *M.V. Apollo*.

In the Decision,<sup>[13]</sup> dated January 31, 2000, LA Fatima Jambaro-Franco (*LA Jambaro-Franco*) dismissed the complaint for lack of merit. LA Jambaro-Franco reasoned in this wise:

x x x x.

A perusal of the death certificate of seaman Zosimo Soria shows that the cause of death was "Pneumonia with Congestion of All Visceral Organs." Even the Medico-Legal Report No. M-1197-96 dated August 5, 1996 also confirmed that the cause of Soria's death was "Pneumonia with Congestion of All Visceral Organs." Verily, the cause of seaman Soria's death was not the burn he suffered on his left knee but was due to pneumonia which he could have contracted locally while he was in his province. Under these circumstances, it would be unfair and unjust to hold respondent liable for his death benefits inasmuch as his illness was not work-related.

Moreover, the records show that when seaman Soria died, his employment contract had already lapsed/expired. Under Section 20 (A) of the terms and conditions of the POEA Standard Employment Contract, it provides that "in case of the death of his seafarer during the term of his contract, the employer shall pay his beneficiaries x x x." Verily, considering that seaman Soria died after his contract was already terminated, it follows that his employer is not liable to pay his beneficiaries.

In trying to justify her claims, complainant advanced the theory that her husband died of tetanus. However, except for her bare allegation that the death was due to tetanus, no evidence was adduced in support thereof. Mr. Soria's Medical Report, Death Certificate and Autopsy Report, do not state that he died of tetanus. On the other hand, said documents unequivocally stated that the cause of his (Soria's) death was pneumonia. Thus, negating complainant's claim.

Pneumonia has been defined as a disease of the lungs characterized by inflammation and consolidation followed by resolution and caused by infection

and irritants while tetanus is an acute infectious disease characterized by tonic spasms of voluntary muscles especially of the jaw and caused by the specific toxin of a bacillus. Evidently, pneumonia and tetanus are two different illnesses.

Furthermore, pneumonia is not in anyway related to the burn injury on his left knee [that] seaman Soria suffered. The latter could have acquired this illness while on vacation in his province after his disembarkation. Evidently, his death is not at all compensable.

x x x x.<sup>[14]</sup>

Not satisfied with the ruling, respondent appealed to the NLRC. The NLRC, after referring the case to LA Thelma M. Concepcion (*LA Concepcion*), reversed LA Jambaro-Franco's ruling in its October 20, 2003 Decision.<sup>[15]</sup>

The NLRC, based on the report and recommendation of LA Concepcion, ruled that Zosimo's death was compensable. It held that the infection of the skin burns that required skin grafting led to the inception of tetanus which ripened into pneumonia. Clearly, the infection of the skin burns which caused the onset of tetanus took place during the term of Zosimo's employment. It reasoned out that the petitioners failed to show that the pneumonia was not a late complication of tetanus from his skin burns.

Petitioners moved for reconsideration of the NLRC's October 20, 2003 Decision.

In its April 30, 2004 Resolution,<sup>[16]</sup> the NLRC granted petitioners' Motion for Reconsideration and reinstated the LA's January 31, 2000 Decision. In reversing itself, the NLRC explained:

It cannot be gainsaid that the rights and obligations of the parties to this case are primarily governed by the terms and conditions of employment embodied in the POEA Standard Employment Contract Governing the Employment of Seafarers on board Ocean Going Vessels.

More particularly, Section 18. (B) [1] of the Standard Contract provides that the employment of the seafarer is terminated when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B) [4], and arrives at his point of origin. Section 20 (B) [4] in turn provides for the liability of the employer for the full cost of repatriation.

When the seafarer was thus repatriated on July 10, 1996 after undergoing surgery and treatment and declared fit to be repatriated, the above-cited contractual provisions became operative. The contract, accordingly, was deemed terminated.

That the seafarer subsequently died cannot be sufficient basis to hold respondents liable for benefits under the contract. The seafarer's admitted failure to report to the respondent agency for post-deployment medical examination within the mandatory 72-hours reportorial period militates against his right, or that of his beneficiary, to demand compliance with the so-called

residual obligations of the employer. On the contrary the evidence adduced by complainant establishes that the deceased had proceeded to the province.

x x x.

Given all the attending circumstances as confirmed by the documentary evidence on record, we are convinced, as duly concluded by the Labor Arbiter that the cause of the seafarer's death cannot be traced to the burns or injuries sustained while he was on board the vessel.

Indeed, the complainant has not established a causality between the injury sustained on board the vessel, and the cause of death.

We assiduously perused the records and conclude that the complainant has failed to prove that her husband, subsequent to his repatriation, had experienced and/or manifested the symptoms of tetanus the source of which could be ascribed to the 3rd degree burns he had suffered on board.

Moreover, the seafarer's act of proceeding to the province without reporting to the respondent agency must be deemed as a supervening event that adversely limits his right or that of his beneficiaries to claim benefits under the contract.

Where, as in this case, the cause of death has not been evidently shown to be due to the injury suffered on board and during the term of the contract, no liability can be adjudged against the employers for the subsequent death of the seafarer.

In so ruling, we simply defer to the basic rule in evidence that each party must prove his affirmative allegation. While technical rules are not followed in the NLRC, this does not mean that rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least.

Accordingly, complainant's unsubstantiated allegations that her husband had manifested and complained of symptoms of tetanus, being wanting in evidentiary support cannot outweigh and overcome the probative value of the medical certificates, autopsy findings and medical reports indubitably showing that the deceased had died of pneumonia.

And, while it may be conceded that pneumonia can be caused by or traced to tetanus, as what the complainant has attempted to establish, such conclusion may not be drawn in this case as to render the death compensable, considering the attendance of the supervening event, and the fact that no such reference to a possible infection has been made in any of the medical reports that would link the injuries resulting from the burns, to the actual cause of death.

x x x.<sup>[17]</sup>

[Underscoring supplied]

Aggrieved by the NLRC Resolution, respondent elevated the case to the CA via a petition for certiorari under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part

of the NLRC in dismissing her claim for death benefits.

In its Decision, dated 31 May 2006, the CA set aside the questioned NLRC Resolution and ordered petitioners to pay the claimed benefits of respondent, the dispositive portion of the Decision reads:

**WHEREFORE**, the instant petition is **GRANTED**. The assailed NLRC Resolution dated April 30, 2020<sup>4</sup> (sic) is **SET ASIDE**. The NLRC decision promulgated on October 20, 2003 is **REINSTATED** with **MODIFICATION**. Thus, private respondents are hereby ordered to pay petitioner the claimed death benefits, child allowances, and burial expenses in the total amount of US\$65,000.00 or its peso equivalent, to be computed at the time of payment, plus ten percent (10%) of the aforementioned total monetary award as attorney's fees.

**SO ORDERED.**

The CA was of the view that petitioners failed to negate the causal confluence of the burn injury suffered by Zosimo while on board the vessel, the onset of tetanus and the complication of pneumonia which was indicated as Zosimo's cause of death. It stressed that "strict rules of evidence, x x x, are not applicable in claims for compensation and disability benefits."<sup>[18]</sup> The CA emphasized that it was enough that the hypothesis on which the employee's claim was based was probable. Zosimo's failure to report for post employment medical examination at petitioner's office within the mandatory period of seventy two (72) hours from his return to the Philippines, as required by the Philippine Overseas Employment Administration (POEA) Standard Employment Contract<sup>[19]</sup> (SEC), should not be automatically taken against him. The CA cited *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,<sup>[20]</sup> which justified the exception from the application of the 72-hour requirement, by showing that a seaman who was terminally ill and in need of medical attention could not be expected to immediately comply with the medical examination and thus given the right to claim benefits due him.

Petitioners moved for reconsideration, but their motion was denied by the CA in its November 14, 2006 Resolution.

Hence, this petition.

**THE ISSUE**

**WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING DEATH BENEFITS TO THE RESPONDENT.**

**Petitioners' argument**

In support of their position, petitioners assert that respondent's declaration that the death of Zosimo was compensable because the latter died due to tetanus had no factual basis. Tetanus was never established, much less existed, in the case. Based on the Autopsy Report<sup>[21]</sup> submitted by respondent, the cause of death was "Pneumonia with congestion of

all visceral organs,” not a burn injury or tetanus. Moreover, the death of Zosimo occurred outside, and not during the term, of the seaman’s contract as the seafarer signed-off and was disembarked for medical reasons pursuant to Section 18 (B) 1 of the POEA SEC.<sup>[22]</sup> For said reason, it is not compensable.

### Respondent’s contention

Respondent counters that the entitlement to the benefits by Zosimo’s family should not be defeated by the fault of the people who failed to indicate in the proper documents that Zosimo indeed died of tetanus. Zosimo’s death, on July 31, 1996, was still within the contract period as he joined the M.V. Apollo on September 7, 1995, for a 12-month employment contract.

### **The Court’s Ruling**

The petition is meritorious.

In petitions for review on *certiorari*, only questions of law may be raised, the only exception being when the factual findings of the appellate court are erroneous, absurd, speculative, conjectural, conflicting, or contrary to the findings culled by the court of origin.<sup>[23]</sup> Considering the conflicting findings of the LA and the NLRC and those of the CA, the Court is constrained to resolve the factual issues together with the legal ones.

The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired, as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.<sup>[24]</sup>

POEA Memorandum Circular No. 41, series of 1989, or the “Revised Standard Employment Contract of All Filipino Seamen On Board Ocean-Going Vessels,” as amended by POEA Memorandum Circular No. 05, series of 1994,<sup>[25]</sup> was the applicable contract then between Zosimo and petitioners. It provided for the minimum requirements prescribed by the government for the Filipino seafarer’s overseas employment.

Significantly, Section C (4) (c) of the 1989 POEA SEC states:

#### SECTION C. COMPENSATION AND BENEFITS

x x x

4. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

x x x

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work or the degree of

permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred-twenty (120) days. **For this purpose, the seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**  
[Emphases and underscoring supplied]

From the records, it appears that Zosimo failed to comply with the mandatory 72-hour post-employment medical examination deadline as provided for in said Section C(4)(c) of the 1989 POEA SEC. It was only on July 19, 1996, or nine days upon his arrival to the Philippines, that Zosimo sought medical attention from FMC, petitioners' designated physician.

The mandate of the aforementioned provision is to make the post-employment examination within three (3) working days from the seafarer's arrival/repatriation to the Philippines compulsory, except when the seafarer is physically incapacitated to do so, before a claim for disability or death benefits can validly prosper. The purpose of the 3-day mandatory reporting requirement can easily be ascertained. Within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

In this case, the respondent did not adduce evidence to justify Zosimo's non-compliance with the mandatory rule. Considering, however, that he had a physical infirmity, the Court gives respondent the benefit of the doubt. Nonetheless, the Court is of the considered view that respondent likewise failed to adduce substantial evidence showing that the pneumonia, which her husband contracted, was caused by tetanus as a result of the burn injury.

The rule is that, in labor cases, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is more than a mere scintilla.<sup>[26]</sup> Any decision based on unsubstantiated allegations cannot stand as it will offend due process.<sup>[27]</sup>

In arguing for the compensability of Zosimo's death, respondent claims that the burn injury suffered by him on board M.V. Apollo brought about the tetanus infection which eventually led to pneumonia causing his death.

The Court, however, finds difficulty in accepting this.

The injury sustained by Zosimo on board the vessel was undeniably a burn injury defined as "injuries of skin or other tissue caused by thermal, radiation, chemical, or electrical contact."<sup>[28]</sup> On the other hand, the various pieces of documentary evidence<sup>[29]</sup>



categorically and solely establish that Zosimo died of pneumonia, "a breathing (respiratory) condition in which there is an infection of the lungs."<sup>[30]</sup> Respondent, however, failed to adduce even a speck of evidence to establish any reasonable connection between the burn injury and pneumonia. Logically, the Court cannot and should not jump into the unwarranted conclusion that pneumonia was related to, or was brought about by his burn injury.

Respondent attempted to impress upon the Court that Zosimo suffered tetanus, an acute poisoning from a neurotoxin produced by *Clostridium tetani*,<sup>[31]</sup> which was a complication of his burn injury that eventually led to pneumonia. There is, however, absolutely no evidence in the records of this case to substantiate her position, except her bare allegation. Respondent could not present any medical report, medical opinion, or medical certificate that, at the very least, contained the word tetanus to support her claim. Even her husband's own physician did not indicate such probable connection. Thus, the Court agrees with the NLRC when it wrote:

And, while the seafarer may have undergone medical consultation, the evidence on record unequivocal[b]ly shows that the injury that caused his repatriation **had healed, and there is no showing, nor can any reasonable inference be made, that the deceased had complained about any symptoms of tetanus. Considering that the July 13, 1996 medical certificate was issued by the deceased's physician,** and not by the respondents' designated physician, the same may not be impugned as coming from a polluted source, and accordingly, the declarations therein are binding upon the seafarer and his beneficiaries. Hence, the finding that the wound is "not infected" must be given full weight and credence.

Additional evidence on record likewise establish the fact that when the seafarer reported to the respondent agency on July 19, 1996 and was referred to the **latter's designated physician, no proof of infection** was elicited from the medical examination. The medical report issued by the company-designated physician is consistent with that provided by the seafarer's physician. In like manner, there is no showing that the seafarer had complained or manifested symptoms of tetanus. The fact that said **medical report sustains the independent doctor's finding that there is no infection** on the wound bolsters the respondent's assertion that the injury did not cause, nor did it contribute to the cause of death.

Given all the attending circumstances as confirmed by the documentary evidence on record, we are convinced, as duly concluded by the Labor Arbiter that the cause of the seafarer's death cannot be traced to the burns or injuries sustained while he was on board the vessel. <sup>[32]</sup> [Emphases supplied]

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on conjectures and probabilities. When there is no evidence on record to permit compensability, the Court has no choice but to deny the claim, lest injustice is caused to the employer.<sup>[33]</sup>



The Court emphasizes that Its commitment to the cause of labor does not prevent it from finding for the employer when it is right and just. The Court is always mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.<sup>[34]</sup>

**WHEREFORE**, the petition is **GRANTED**. The May 31, 2006 Decision and the November 14, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 85350, are hereby **REVERSED and SET ASIDE**. The January 31, 2000 Decision of the Labor Arbiter is **REINSTATED**.

**SO ORDERED.**

*Brion, \* Peralta, (Acting Chairperson), \*\* Abad, and Leonen, JJ., concur.*

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\* Designated additional member, per Special Order No. 1395 dated December 6, 2012.

\*\* Per Special Order No. 1394 dated December 6, 2012.

[1] *Rollo*, pp. 36-51. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring.

[2] *Id.* at 53-54.

[3] *Id.* at 220-228. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

[4] Also referred to as Gina T. Soria in the petition for review.

[5] *Id.* at 170.

[6] *Id.* at 256.

[7] *Id.* at 171. Executed by Dr. Romulo Del Rosario of Ago General Hospital, Legazpi City.

[8] *Id.* at 172.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 174-175. Prepared by Police Senior Inspector Olga M. Bausa, M.D., Medico-Legal Officer.

[12] *Id.* at 230-233.

[13] *Id.* at 176-182. Penned by Labor Arbiter Fatima Jambaro-Franco.

[14] Citations omitted.

[15] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

[16] *Rollo*, pp. 220-228. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

[17] *Id.* at 224-227. (Citations omitted).

[18] *Id.* at 42-43.

[19] Sec.20 (B)

2. x x x the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[20] 376 Phil. 738 (1999).

[21] *Rollo*, pp. 174-175.

[22] SECTION 18. TERMINATION OF EMPLOYMENT

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B)[5] of this Contract.

x x x.

[23] *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157, 167.

[24] *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010, 621 SCRA 361, 369.

[25] "Adjustment in Rates of Compensation and Other Benefits Provided Under the POEA Standard Employment Contract for Seafarers."

[26] *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 678-679.

[27] *Aya-ay, Sr. v. Arpaphil Shipping Corporation*, 516 Phil. 628, 642, (2006), citing *De*

*Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91, 102 (1999).

[28] [http://www.merckmanuals.com/professional/injuries\\_poisoning/burns/burns.html?qt=skin%20burn%20injury&alt=sh](http://www.merckmanuals.com/professional/injuries_poisoning/burns/burns.html?qt=skin%20burn%20injury&alt=sh) (visited December 3, 2012).

[29] *Rollo*, pp. 171-175. Consisting of the Medical Certificate issued by Zosimo's physician, the Medical Report issued by the company-designated physician, the Medico-Legal Report, and the Death Certificate.

[30] <http://www.nlm.nih.gov/medlineplus/ency/article/000145.htm> (visited December 3, 2012).

[31] [http://www.merckmanuals.com/professional/infectious\\_diseases/anaerobic\\_bacteria/tetanus.html?qt=tetanus&alt=sh](http://www.merckmanuals.com/professional/infectious_diseases/anaerobic_bacteria/tetanus.html?qt=tetanus&alt=sh) (visited December 4, 2012).

[32] *Rollo*, pp. 224-227. (Citations omitted).

[33] *The Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 660.

[34] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 380-381.



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