739 PHIL. 774

FIRST DIVISION

[G.R. No. 198388, July 28, 2014]

JORAINA DRAGON TALOSIG, PETITIONER, VS. UNITED PHILIPPINE LINES, INC., FERNANDO LISING [President], HOLLAND AMERICAN LINE WASTOURS, INC., RESPONDENTS.

R E S O L U T I O N

SERENO, C.J.:

Joraina Dragon Talosig (petitioner) filed a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Appeals' (CA) Decision[2] dated 26 May 2011 and Resolution[3] dated 26 August 2011 in CA-G.R. SP No. 111146.

The antecedents of this case are as follows:

Petitioner is the widow of Vladimir Talosig (Talosig), a seafarer hired as an assistant butcher in the ship *MS Zuiderdam*. The vessel is owned by respondent Holland American Line Wastours, Inc. through its local manning agent, respondent United Philippine Line, Inc.

On 22 August 2005, Talosig and respondent executed a Contract of Employment[4] incorporating the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels[5] (Standard Employment Contract) as prescribed by the Philippine Overseas Employment Administration (POEA). The duration of the contract was twelve (12) months.

Talosig underwent the required Pre-Employment Medical Examination (PEME) prior to his deployment. He passed the PEME and was declared "fit to work." He boarded MS *Zuiderdam* on 26 August 2005.

During his employment with respondent, he was confined in the South Miami Hospital sometime in December 2005 after suffering a month of rectal bleeding and lower abdominal pain. He was then diagnosed with a "malignant neoplasm infiltrating colonic mucosa." Subsequently, he was medically repatriated. Upon arrival in the Philippines on 24 December 2005,[6] he was immediately confined at the Asian Hospital. There he was diagnosed to be suffering from colon cancer, Stage IV- the most advanced stage thereof. After months of confinement and treatment for his illness, he was eventually transferred to Cardinal Santos Medical Center (CSMC) on 13 June 2006.[7] Sixteen days thereafter, he passed away as a result of cardiopulmonary arrest secondary to sepsis and multiple organ failure secondary to colon cancer, Stage IV (bone metastasis).[8]

Petitioner thereafter filed a Complaint with the National Labor Relations Commission (NLRC) for death benefits, damages and attorney's fees.[9]

On 26 June 2007, the labor arbiter (LA) rendered a Decision in favor of petitioner and ordered respondents to pay USD 50,000 as death benefits, USD 7,000 as entitlement of one minor child, and USD 1,000 as burial benefits. The LA held that petitioner had failed to establish that Talosig's death was reasonably connected to his work; however, it took judicial notice of the fact that the diet of the ship's crew seldom contained vegetables and high-fiber foods, likely contributing to the worsening of petitioner's condition.[10]

Upon appeal, the NLRC reversed the ruling of the LA. It likewise denied the Motion for Reconsideration filed by petitioner. It ruled that the LA erred when it formed its own scenarios, surmises and conclusions on what could have caused petitioner's colon cancer on board the vessel. These scenarios were not even raised by petitioner in her Position Paper, nor was there any evidence to prove the relation of the work of Talosig to his death. Furthermore, the NLRC found that his death occurred after the termination of his contract, a fact that should have been the ground for the outright dismissal of petitioner's claim.

A Petition for Certiorari was filed by petitioner with the CA. The appellate court affirmed the NLRC and held that the death of a seafarer is compensable only if it occurs during the term of his contract of employment. Upon Talosig's medical repatriation, the obligation to pay the death benefits ceased in accordance with the parties' employment contract. The CA further held, contrary to the findings of the LA, that Talosig's illness was not one of the occupational diseases enumerated in the POEA Standard Employment Contract for seafarers. It also stated that petitioner failed to provide sufficient proof that the illness was reasonably connected to Talosig's work, or that colon cancer was an accepted occupational disease.

The appellate court likewise denied the Motion for Reconsideration filed by petitioner.

ASSIGNMENT OF ERRORS

Petitioner raises the following errors allegedly committed by the CA:

> The Honorable Court of Appeals committed reversible error in the questioned decision and resolution sufficient to warrant the exercise of this Honorable Court's discretionary appellate jurisdiction. The Court of Appeals gravely abused its discretion in finding that petitioner is not entitled to death benefits under the POEA Standard Employment Contract.
>
> The Court of Appeals made manifest error in not awarding attorney's fees to herein petitioner.[11]

THE COURT'S RULING

The denial of petitioner's claim is based on two grounds: (1) that at the time of his death, Talosig was no longer under the employment of respondents; and (2) that there was neither any showing that the cause of his death was one of those covered by the POEA Standard Employment Contract, nor was there any proof that it was work-related.

It is undeniable that the death of a seafarer must have occurred during the term of his contract of employment for it to be compensable.

Records show that the contract of Talosig was for the duration of 12 months commencing on the date of his actual departure from point of hire;[12] he was, however, repatriated for medical reasons on 24 December 2005. The CA ruled that upon his repatriation, his employment was effectively terminated pursuant to Section 18 B(1) of the POEA Standard Employment Contract.[13] Parenthetically, petitioner does not question the fact of the termination of Talosig's employment; she alleges, though, that the obligation of respondents to the seafarer subsists even after his repatriation.

Section 32-A of the POEA Standard Employment Contract considers the possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness. But for death to be compensable, under this provision, the claimant must fulfill all the requisites for compensability.

Further, petitioner is correct in that a disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of his contract is provided under Section 20 B(4)[14] of the POEA Standard Employment Contract. This disputable presumption works in favor of the employee pursuant to the following mandate under Executive Order No. 247 dated 21 July 1987, under which the POEA-SEC was created: "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and "to protect the well-being of Filipino workers overseas." Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[15]

In this case, we agree with the CA that colon cancer is not one of those types of cancer that are compensable under Section 32 of the POEA Standard Employment Contract. We are aware that we previously ruled that death caused by colon cancer may be compensable. In *Leonis Navigation Co. Inc. v. Villamater,*[16] we ruled:

> It is true that under Section 32-A of the POEA Standard Contract, only two types of cancers are listed as occupational diseases – (1) Cancer of the epithelial lining of the bladder (papilloma of the

bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances. Section 20 of the same Contract also states that those illnesses not listed under Section 32 are disputably presumed as work-related. Section 20 should, however, be read together with Section 32-A on the conditions to be satisfied for an illness to be compensable, to wit:

For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established:

1. The seafarer's work must involve the risk described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

Colon cancer, also known as colorectal cancer or large bowel cancer, includes cancerous growths in the colon, rectum and appendix. With 655,000 deaths worldwide per year, it is the fifth most common form of cancer in the United States of America and the third leading cause of cancer-related deaths in the Western World. Colorectal cancers arise from adenomatous polyps in the colon. These mushroom-shaped growths are usually benign, but some develop into cancer over time. Localized colon cancer is usually diagnosed through colonoscopy.

Tumors of the colon and rectum are growths arising from the inner wall of the large intestine. Benign tumors of the large intestine are called polyps. Malignant tumors of the large intestine are called cancers. Benign polyps can be easily removed during colonoscopy and are not life-threatening. If benign polyps are not removed from the large intestine, they can become malignant (cancerous) over time. Most of the cancers of the large intestine are believed to have developed as polyps. Colorectal cancer can invade and damage adjacent tissues and organs. Cancer cells can also break away and spread to other parts of the body (such as liver and lung) where new tumors form. The spread of colon cancer to distant organs is called metastasis of the colon cancer. Once metastasis has occurred in colorectal cancer, a complete cure of the cancer is unlikely.

Globally, colorectal cancer is the third leading cause of cancer in males and the fourth leading cause of cancer in females. The frequency of colorectal cancer varies around the world. It is common in the Western world and is rare in Asia and in Africa. In countries where the people have adopted western diets, the incidence of colorectal cancer is increasing.

Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.

Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.

A person's genetic background is an important factor in colon cancer risk. Among first-degree relatives of colon-cancer patients, the lifetime risk of developing colon cancer is 18%. Even though family history of colon cancer is an important risk factor, majority (80%) of colon cancers occur sporadically in patients with no family history of it. Approximately 20% of cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents.

The aforesaid case requires that Section 20 B(4) should be read in relation to Section 32-A of the POEA Standard Employment Contract.[17]

In *Quizora v. Denholm Crew Management (Phils.), Inc.*,[18] this Court categorically declared:

> [P]etitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the 2000 POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.
>
> [T]he disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.
>
> In other words, the claimant must not merely rely on the disputable presumption, but must be able to present no less than substantial evidence to support her claim. Substantial evidence is more than a mere scintilla. It must reach the level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.[19]

As aptly ruled by the CA, petitioner did not present any proof of a causal connection or at least a work relation between the employment of Talosig and his colon cancer. Petitioner merely relied on presumption of causality. She failed either to establish or even to mention the risks that could have caused or, at the very least, contributed to the disease contracted by Talosig.

To support her claim, petitioner simply stated that Talosig had been continuously hired by respondents from 1999 to 2005 and declared "fit to work" after the usual PEME before he contracted a disease on board the vessel.[20] Admittedly, it was the LA who "took the pain of making his own research about colon cancer."[21] Albeit unsubstantiated, the claim for death benefits was granted. In contrast, the Court in *Leonis Navigation Co. Inc. v. Villamater*[22] found substantial arguments in Villamater's pleading as early as the proceeding before the LA, where the risk factors - such as dietary provisions on board, as well as the age of the seafarer and his job - were raised.

On that note, we emphasize that making factual findings based only on presumptions[23] and absent the quantum of evidence required in labor cases[24] is an erroneous application of the law on compensation proceedings. This Court has ruled in *Gabunas, Sr. v. Scanmar Maritime Services, Inc.,*[25] citing *Government Service Insurance System v. Cuntapay,*[26] that claimants in compensation proceedings must show credible information that there is probably a relation between the illness and the work. Probability, and not mere possibility, is required; otherwise, the resulting conclusion would proceed from deficient proofs.[27]

Petitioner argues that respondents are now estopped from claiming that the seafarer did not contract the illness on board the vessel, as he was presumably fit by virtue of the PEME. Anent this contention, this Court has already settled that the PEME cannot be a conclusive proof that the seafarer was free from any ailment prior to his deployment.[28] The PEME is not exploratory in nature. It is not intended to be a totally in-depth and thorough examination of an applicant's medical condition. It merely determines whether one is "fit to work" at sea or "fit for sea service"; it does not state the real state of health of an applicant.[29] Thus, we held in *NYK-FIL Ship Management, Inc. v. NLRC*[30] as follows:

> While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.

Medical bulletins show that colorectal cancer is often found after symptoms appear; most people with early colon or rectal cancer have no symptoms of the disease. [31] Accordingly, symptoms usually appear only at a more advanced stage of the disease. Thus, in this case in which Talosig was diagnosed with the most advanced stage of colon cancer, Stage IV, it cannot be conclusively said that the disease was contracted during his stint of

employment with respondents, without any indication or allegation of risk factors in the nature of his work.

In sum, absent of any substantial proof of the causal connection between the disease of Talosig and his work, this Court cannot grant death benefits to his heirs based on mere presumptions.

WHEREFORE, premises considered, the instant Petition is **DENIED.**

SO ORDERED.

Leonardo-De Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[1] *Rollo,* pp. 22-42.

[2] Id. at 44-52; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr.

[3] Id. at 54-55.

[4] CA *rollo,* p.63.

[5] http://www.poea.gov.ph/docs/sec.pdf (visited 7 May 2014).

[6] CA Decision states that Talosig was repatriated on 24 December 2006; *rollo,* p. 45.

[7] Annex "G" of the Petition for Review on Certiorari, Medical Abstract from CSMC, id. at 61.

[8] An undated and unauthenticated medical report attached as Annex "J" states that his date of death is 28 June 2006. The CA Decision, on the other hand, states that he died on 6 July 2006. However, the Medical Abstract of CSMC states that Talosig was admitted on 13 June 2006 and died 16 days thereafter.

[9] Annex "I;" *rollo,* p. 64.

[10] CA *rollo*, pp. 123-131.

[11] *Rollo*, pp. 28-29.

[12] Section 2 of the POEA Standard Employment Contract, provides that the employment contract between the employer and the seafarer shall commence upon the actual departure of the seafarer from the airport or seaport in the point of hire. However, both parties never alleged the actual departure of Talosig from the point of hire in Manila. Thus, it may be presumed that the departure from point of hire was sometime between the execution of the Contract of Employment on 22 August 2005 and the time he boarded the vessel MS Zuiderdam on 26 August 2005.

[13] SECTION 18. TERMINATION OF EMPLOYMENT

x x x x

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.

[14] SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

[15] *David v. OSG Shipmanagement Manila, Inc.,* G.R. No. 197205, 26 September 2012, 682 SCRA 103.

[16] G.R. No. 179169, 3 March 2010, 614 SCRA 182, 196-198.

[17] Id.

[18]G.R. No. 185412, 16 November 2011, 660 SCRA 309, 319.

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

[20] CA *rollo*, Petitioner's Position Paper, pp. 40-60.

[21] *Rollo,* p. 34; Petition for Review on Certiorari.

[22] Supra note 16.

[23] *Spouses Aya-ay v. Arpaphil Shipping Corp.,* 516 Phil. 628, 641 (2006).

[24] *Jebsens Maritime, Inc. v. Undag*, supra note 19.

[25] G.R. No. 188637, 15 December 2010, 638 SCRA 770.

[26] 576 Phil. 482 (2008).

[27] *Sea Power Shipping Enterprises, Inc. v. Salazar*, G.R. No. 188595, 28 August 2013.

[28] *Magsaysay Maritime Corporation v. NLRC,* G.R. No. 186180, 22 March 2010, 616 SCRA 362, 373-374.

[29] *Estate of Posedio Ortega v. Court of Appeals*, 576 Phil. 601, 609-610 (2008).

[30] 534 Phil. 725, 739 (2006).

[31] http://www.cancer.org/cancer/colonandrectumcancer/moreinformation/colonandrectumcancerearlydetection/colorectal-cancer-early-detection-finding-crc-early (visited 8 May 2014).