

FIRST DIVISION

[G.R. No. 199052, June 26, 2019]

**JEBSEN MARITIME INC., VAN OORD SHIPMANAGEMENT B.V.
AND/OR ESTANISLAO SANTIAGO, PETITIONERS, VS. TIMOTEO
GAVINA, SUBSTITUTED BY HIS HEIRS, REPRESENTED BY
SURVIVING SPOUSE NORA J. GAVINA, RESPONDENT.**

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] dated August 25, 2011 and Resolution^[3] dated October 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 113608, filed by Jebesen Maritime, Inc., Van Oord Ship Management B.V. and/or Estanislao Santiago (petitioners).

Facts of the Case

This case arose from a disability complaint filed by seaman Timoteo O. Gavina (Timoteo substituted by his heirs, represented by the surviving spouse, Nora J. Gavina, herein referred to as respondent) against petitioners.^[4]

The respondent averred that on May 5, 2007, Timoteo embarked on vessel M/V Volvos Terranova as a fitter for a four-month employment contract. This was his 17th employment term after having been a seafarer for 34 years. As a fitter, Timoteo is engaged in welding all piping materials, including the cutting of iron pipes, grinding and/or sanding of iron pipes necessary for fittings.^[5]

On July 11, 2007, his employment contract was cut short as he was repatriated due to persistent cough and difficulty in breathing. He arrived in Manila on July 12, 2007 and proceeded to the PHILAMCARE Health Systems, Inc. for a check up on July 14, 2007. The initial results of the check-up showed him having pneumonia and bronchiectasis.^[6]

On September 27, 2007, Dr. Dennis C. Teo (Dr. Teo), Timoteo's attending physician, issued a certification that "the patient is no (sic) condition to work." He was certified to be unfit for sea service with disability grade I.^[7] On October 24, 2007, Timoteo filed the instant complaint to the Labor Arbiter (LA). After a series of further tests, he was diagnosed of having lung cancer.^[8]

Upon request of petitioners, on January 11, 2008, Timoteo was seen by Dr. Rhoel

Salvador (Dr. Salvador) of the Manila Doctor's Hospital with the same diagnosis of lung cancer. On February 26, 2008 and during the pendency of the case, Timoteo died.^[9]

For their part, petitioners alleged that while it was true that Timoteo embarked the vessel as a fitter in May of 2007, nevertheless, he disembarked and signed off due to the end of his employment term and was not medically repatriated. Timoteo never consulted with the company-designated physician in compliance with the three-day mandatory reportorial requirement under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).^[10]

Petitioners insisted that it was only several months after disembarkation that Timoteo filed the complaint. Petitioners asked Timoteo to support his claim of disability but to no avail. After much probing, it was only in January 2008 that Timoteo agreed to be checked up by the company-designated physician, Dr. Salvador who confirmed the earlier diagnosis of Dr. Teo that Timoteo suffered from lung cancer.^[11]

Petitioners argued that lung cancer is not work-related, hence, the complaint should be dismissed.

On May 28, 2008, the LA rendered its Decision^[12] dismissing the complaint. The LA held that Timoteo was not able to establish the essential link between lung cancer and his employment as a fitter. Moreover, while lung cancer was listed as an occupational disease, it is compensable only among vinyl chloride workers and plastic workers.

Respondent filed an appeal to the National Labor Relations Commission (NLRC) which overturned the LA Decision on October 22, 2009 and held petitioners liable to pay respondent US\$50,000.00 as death benefits, US\$2,526.00 as sickness allowance, reimbursement of hospital expenses and ten percent (10%) of the judgment award as attorney's fees.^[13]

Both parties moved for reconsideration, hence, on February 26, 2010, the NLRC issued a Resolution specifying the medical expenses to be paid to respondent in the amount of P564,099.15. The NLRC also awarded moral damages amounting to P50,000.00; exemplary damages amounting to P50,000.00 and ten percent (10%) attorney's fees.^[14]

Aggrieved, petitioners filed a petition for *certiorari* to the CA.

In its August 25, 2011 Decision,^[15] the CA affirmed the Decision and Resolution of the NLRC except that Estanislao Santiago, Jebson's former Assistant Vice President cannot be held personally liable because his employer's obligations and responsibilities are separate and distinct from the people compromising it.^[16]

The CA was convinced that Timoteo was able to prove that he contracted the illness during the term of his employment with petitioners. It banked on the fact that Timoteo was exposed to iron dusts, diesel fumes and other toxic substances throughout his employment. Moreover, the CA opined that petitioners failed to substantiate their claim

that Timoteo was a heavy smoker and that his cigarette smoking was the only cause of his lung cancer.^[17]

Still aggrieved, petitioners filed a motion for reconsideration which was denied via a Resolution^[18] dated October 19, 2011.

Hence, this petition.

Issues

The issues raised by petitioners are the following:

1. Whether the death caused by lung cancer after the employment contract had terminated is compensable;
2. Whether the award of medical reimbursement is proper; and
3. Whether damages and attorney's fees are proper.

Ruling of the Court

The death of Timoteo due to lung cancer was proven to be work-related

Contrary to what petitioners wanted this Court to believe, Timoteo was not able to finish his four-month contract because he was medically repatriated only two months into the same. There was sufficient proof of the fact that Timoteo arrived in the Philippines on July 12, 2007 and proceeded to the hospital for a check up on July 14, 2007.

While Timoteo died after the supposed completion of his employment contract, nevertheless, such death was a result of his lung cancer which was substantially proven by respondents to be work-related.

According to Section 20-B of the POEA-SEC:

In case of work-related 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.

In *Heirs of Marceliano N. Olorvida, Jr., et al. v. BSM Crew Service Centre Philippines, Inc., et al.*,^[19] the Court ruled that:

This provision thus placed the burden on the seafarer's heirs to establish that: (a) the seafarer's death was work-related; and (b) the death occurred during the term of employment. These are proven by substantial evidence, or such level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.^[20]

While the POEA-SEC does not expressly define what "work-related death" means, it could be deduced that such term refers to the seafarer's death resulting from work-related injury or illness. Hence, contrary to what petitioners insist, the principle that those illnesses not listed in Section 32 of the POEA SEC are disputably presumed as work-related shall stand.

Section 32-A of the POEA-SEC provides for the conditions in determining whether an illness of a seafarer is work-related. Thus,

1. The seafarer's work must involve the risks 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 other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

In *Nonay v. Bahia Shipping Services, Inc., Fred Olsen Lines and Mendoza*,^[21] the Court held that:

Settled is the rule that for an illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.^[22] (Citation omitted)

The disputable presumption that a seafarer's sickness is work-related does not mean that he would only sit idly while waiting for the respondent to dispute the presumption. What the law requires is for the seafarer to show a causal connection between the illness and the work for which he was contracted.

Here, Timoteo was shown to have been inevitably exposed to iron dusts, diesel fumes and other toxic substances because of the nature of his work as a fitter.^[23] More than 30 years of being exposed to these will definitely take a toll on his health.

It was undisputed that since 1997 until his last assignment in 2007 as a fitter or in the last ten years prior to his demise, Timoteo was deployed by respondent Jebsen Maritime Inc. as his manning agency.

In a study by Siew, Kauppinen, Kyyronen, Heikkila and Pukkala (2008),^[24] it was found that the relative risks for lung cancer increased as the cumulative exposure to iron and welding fumes increased. Even in the medical certificate issued by Dr. Salvador, he did

not categorically set aside the fact that exposure to carcinogens may still cause lung cancer. It was stated that, "Cancer of the lung has a multifactorial pathogenesis that generally includes genetic predisposition as well as exposure to carcinogens."^[25]

As to the allegation that Timoteo was a heavy smoker, petitioners presented a certification from the master of the vessel that during his nine weeks stay in the vessel, Timoteo purchased five boxes of cigarettes containing 200 pieces wherein he concluded that Timoteo smoked about 15 cigarettes a day. The same could not be given much weight because it could not be concluded with certainty whether he consumed the five boxes in nine weeks. The fact remains that while cigarette smoking is the leading cause of lung cancer, other causes are not discounted especially for those exposed to toxic substances for more than three decades. It bears stressing that the fact that Timoteo's work condition is a contributing factor to the development of lung cancer, even to a small degree, cannot be discounted.

The award of medical expenses is proper, however, there is a need to recompute the amount actually expended

Under Section 20-A-2 of the POEA-SEC, "if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician."

Petitioners, not having been able to provide the necessary medical attention to Timoteo, and respondent shouldering the expenses in connection with Timoteo's illness, the amount of laboratory procedures, hospitalization bills, doctors' professional fees, medicines and medical apparatus should be reimbursed to respondents.

However, upon checking the receipts^[26] presented by respondent, it is proper to recompute the same, hence, the correct medical expenses to be reimbursed to respondent should be P309,156.93.

The award of moral damages, exemplary damages and attorney's fees are proper

As stated by the NLRC in its Decision, "After the check-up, disability benefits (sic) was not extended to the deceased seaman. This to us (sic) evinced is bad faith on the part of the respondent."

Bad faith is not simply bad judgment or negligence. "[I]t imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."^[27]

Verily, since petitioners are in bad faith, the award of moral damages amounting to fifty thousand pesos (P50,000.00) is proper.

As to the award of exemplary damages, the New Civil Code provides that, "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."^[28]

To discourage other employers who may be emboldened to follow the example of petitioners in trying to evade liability, the award of exemplary damages amounting to fifty thousand pesos (P50,000.00) is proper.

Lastly, as to the attorney's fees, the Supreme Court provides that, "The Court also holds that [respondent] is entitled to attorney's fees in the concept of damages and expenses of litigation. Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest."^[29]

Moreover, under Article 2208 of the New Civil Code, attorney's fees may be recovered in actions for indemnity under workmen's compensation and employer's liability laws.

Hence, the award of attorney's fees ten percent (10%) of the aggregate monetary awards is warranted.

WHEREFORE, the instant petition is **DENIED**. The Decision dated August 25, 2011 and Resolution dated October 19, 2011 of the Court of Appeals in CA-G.R. SP No. 113608 is **AFFIRMED WITH MODIFICATION**. Petitioners Jebesen Maritime, Inc. and Van Oord Ship Management B.V. are **ORDERED** to pay respondent P309,156.93 as reimbursement for medical expenses, aside from the other awards granted by the National Labor Relations Commission in its Decision dated October 22, 2009 and Resolution dated February 26, 2010.

SO ORDERED.

*Bersamin, C.J., (Chairperson), Del Castillo, and Gesmundo, JJ., concur.
Jardeleza, J., on official leave.*

* On official leave.

^[1] *Rollo*, pp. 39-70.

^[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *id.* at 18-35.

^[3] *Id.* at 37.

^[4] *Id.* at 109.

^[5] *Id.* at 110.

[6] Id. at 111.

[7] Id. at 113.

[8] Id. at 114.

[9] Id. at 114-115.

[10] Id. at 187-188.

[11] Id. at 188-189.

[12] Id. at 271-274.

[13] Id. at 21.

[14] Id. at 22.

[15] Id. at 79-97.

[16] Id. at 95.

[17] Id. at 90.

[18] Id. at 37.

[19] G.R. No. 218330, June 27, 2018.

[20] Id.

[21] 781 Phil. 197 (2016).

[22] Id. at 216-217, citing *Dayo v. Status Maritime Corporation, et al.*, 751 Phil. 778, 789 (2015).

[23] *Rollo*, p. 425.

[24] Siew, S., Kauppinen, T., Kyyronen, P., Heikkila, P., & Pukkala, E. (2008). Exposure to iron and welding fumes and the risk of lung cancer. *Scandinavian Journal of Work, Environment and Health*. Vol. 34, No. 6 (December 2008), pp. 444-450.

[25] *Rollo*, p. 408.

[26] Id. at 163-183.

[27] *Sharpe Sea Personnel, Inc., Monte Carlo Shipping and Moises R. Florem, Jr. v. Macario Mabunay, Jr.*, G.R. No. 206113, November 6, 2017, 844 SCRA 18, 41.

[28] New Civil Code, Article 2229.

[29] *Santiago v. CF Sharp Crew Management, Inc.*, 554 Phil. 63, 76 (2007).



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