

Shipping and the Law

Supreme Court rules illness to be compensable must be work-related

By: Ruben Del Rosario, Managing Director, Del Rosario Pandiphil Inc., September 29, 2004

Summary

Seafarer was repatriated due to illness 28 days after boarding vessel. He was covered under the (old) POEA Standard Employment Contract. He died eight months later due to chronic renal failure. The Supreme Court held that the death was not compensable as there must be work-relation in order for the death to be compensable. Claimant failed to prove that the illness of chronic renal failure was work-related. No medical records or reports were submitted to prove work-relation. Also, chronic renal failure is not listed as an occupational disease under the contract and under the Employees Compensation Commission. Further, although seafarer was declared "fit to work" in his pre-employment medical examination (PEME), he still cannot claim compensation as there is no proof that his illness was acquired during employment. The PEME is not so exploratory and no test was conducted to determine renal failure. In any event, under the POEA Standard Employment Contract, the death must occur "during the term of the contract". In this particular case, death did not occur during the term of the contract as it occurred eight months after the termination of the contract. The seafarer's repatriation 28 days after boarding the vessel effectively terminated his contract.

Facts

Seafarer was hired as a fisherman on board the MV Bestow Ocean under the (old) POEA contract. He boarded the vessel on September 23, 1993 and was repatriated 28 days later due to illness. He was not treated by agents. He had to go home to his home province for treatment. He died eight months later due to chronic renal failure.

His widow filed for death compensation contending that her husband became ill during employment and died during the effectivity of the contract. Agents and vessel owners denied liability contending that it was impossible to acquire chronic renal failure on board the vessel for a period of 28 days. Further, complainant failed to prove that said illness was contracted on board the vessel and that the risk of contracting said illness was increased by his working conditions. Also, the Employees Compensation Commission did not include chronic renal failure as an occupational disease. In any event, his death is not compensable as he died eight months after he was repatriated and not during the term of the contract.

The Labor Arbiter ruled in favor of the complainant stating that her husband's illness was contracted during employment since the latter was issued a clean bill of health in his pre-employment medical examination. On appeal, the NLRC reversed the Labor Arbiter. The NLRC ruled that seafarer failed to submit to post-medical examination after his repatriation. Also, the fact that seafarer was repatriated 28 days after deployment and he died of chronic renal failure does not necessarily mean that he did not have kidney trouble before he sought employment. Further, complainant failed to submit evidence as to support her claim for death compensation aside from the death certificate and no evidence was presented that her husband contracted the disease during the term of his employment.

Complainant filed a petition for certiorari with the Court of Appeals.

The Court of Appeals reversed the NLRC. The Court of Appeals ruled that in order for an employee to recover compensation, it is not required that he be in perfect condition or health at the time he received the ailment or that he be free from disease. If the illness or injury is the proximate cause of the employee's death, the employer is liable even if the employee had a previous physical condition. The Court of Appeals ruled that there "was at least a reasonable connection between seafarer's job and his kidney infection, which eventually developed into chronic renal failure and eventually caused his death". The fact that the seafarer failed to comply with the 72 hr. post-medical examination cannot be used to avoid payment as seafarer cannot be expected to travel from his home province to Manila considering his condition. In any event, the POEA contract must be fairly, reasonable and liberally applied in favor of the seafarer and their dependents.

Agents and owners filed a petition for review with the Supreme Court.

Decision

Callejo, SR., J.:

The Supreme Court reversed the Court of Appeals and held the death of the seafarer not compensable for the following reasons:

1. Per the (old) POEA contract, death must occur "during the term of his contract". In this instance, seafarer was repatriated on October 21, 1993 or after 28 days on board the vessel on mutual consent of the parties. Thus, his employment was effectively terminated on repatriation. Seafarer was no longer an employee when he died on June 25, 1994. He is therefore no longer entitled to death benefits.

2. **Death compensation cannot be awarded unless there is substantial evidence showing that (a) the cause of Roberto's death was reasonably connected with his work; or (b) the sickness for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died.** Chronic renal failure is not listed as a compensable illness under Appendix I of the Standard Employment Contract. Similarly, the Employees Compensation Commission does not list chronic renal failure as an occupational disease.

For the increased risk theory to apply in compensation cases, the claimant must adduce **reasonable proof between the work of the deceased and the cause of his death, or that the risk of contracting the disease was increased by the deceased's working conditions.** This the claimant failed to do. There is no showing that the progression of the disease was brought about largely by his job as a fisherman. His medical history and medical records were not even presented to substantiate the claim.

3. The Court cannot agree to the claim that with the issuance of clean bill of health in the pre-employment medical examination, it necessarily follows that the illness was acquired during employment. The pre-employment medical examination conducted on seafarer could not have divulged the disease for which he died, considering the fact that most, if not all, are not so exploratory. The decrease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test. In pre-employment medical, the urine analysis (urinalysis), which is normally included, measures only creatinine, the presence of which cannot conclusively indicate chronic renal failure.

In conclusion, the Supreme Court ruled that "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."

Gau Sheng Phils, Inc. et.al. vs. Estrella Joaquin, G.R. No. 144665, September 8, 2004

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