

THIRD DIVISION

[G.R. No. 231096, August 15, 2018]

LORNA B. DIONIO, PETITIONER, V. ND SHIPPING AGENCY AND ALLIED SERVICES, INC., CARIBBEAN TOW AND BARGE (PANAMA) LTD., RESPONDENTS.

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* seeking to reverse and set aside the February 21, 2017 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 05007. The CA affirmed the September 29, 2009 Decision^[2] and November 27, 2009 Resolution^[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. OFW-VAC-08-000046-09. The NLRC vacated and set aside the May 29, 2009 Decision^[4] of the Labor Arbiter (LA) in SRAB Case No. 06-OFW(M)-08-11-0042, a case for death benefits and attorney's fees of a seafarer.

The Antecedents

On May 9, 2006, Gil T. Dionio, Jr. (*Gil*), the husband of Lorna B. Dionio (*petitioner*), was hired by ND Shipping Agency and Allied Services, Inc. (*ND Shipping*), for its foreign principal, Caribbean Tow and Barge (Panama), Ltd., collectively referred as respondents, to serve as a Second Engineer on board the vessel MT Caribbean Tug. He had a basic monthly salary of US\$772.00 and the period of his employment contract was six (6) months.^[5] Before assuming his employment, Gil had a clean bill of health evidenced by his Medical and Laboratory Examination Result.^[6]

Upon the expiration of his employment contract, respondents and Gil mutually consented to extend the latter's contract until February 13, 2007.^[7]

On January 30, 2007, while in the course of his extended employment, Gil suffered from a Urinary Tract Infection (*UTI*) and prostate enlargement. While the vessel was in Turk and Caicos Islands, he was examined by Dr. Victoria Smith (*Dr. Smith*). In the Medical Report^[8] dated January 31, 2007, Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Dr. Smith also advised that Gil be assessed by another physician specializing on surgery and prostate examination. On February 13, 2007, Gil was medically repatriated.

On February 14, 2007, Gil arrived in the Philippines. He immediately went to ND Shipping's office where he was issued a Referral Slip^[9] for medical examination at the Micah Medical Clinic and Diagnostic Laboratory. The referral slip, however, stated that the expenses shall be paid for by Gil.

On the same day, a representative of the ND Shipping sent an email^[10] to K. Arnesen Shipping, the owner of the vessel, requesting for the medical check-up of Gil at the ship owner's expense. The request was denied and stated that Gil must arrange for his own medical check-up. Thus, Gil was never examined by the company-designated physician.

Gil's health condition became worse. Sometime in February 2007, he went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna at his own expense.

On April 2, 2007, Gil signed a Release, Waiver and Quitclaim^[11] in favor of respondents and he received the total amount of P31,200.00. It stated that he was discharging ND Shipping, its stockholders, directors and/or its employees from any and all actions in connection with his employment with respondents. According to petitioner, her husband was in a hapless condition when he signed the waiver.

As Gil's health was deteriorating, he went home to his hometown in Iloilo. On June 5, 2007, he was admitted at the Iloilo Doctor's Hospital. In the Medical Certificate^[12] dated June 20, 2007, Dr. Glenn Maclang (*Dr. Maclang*) diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." He also remarked that Gil undergo bilateral orchiectomy.

Due to his worsening condition, on March 12, 2008, Gil was again hospitalized at the Seamen's Hospital - Iloilo. In the Medical Certificate^[13] dated March 24, 2008, Dr. Suset Gargalicana (*Dr. Gargalicana*) diagnosed him with "Prostatic Cancer with Bone Metastasis." She recommended the treatment of blood transfusion. Nonetheless, Dr. Gargalicana could not determine the period of his healing.

On March 26, 2008, Gil was again admitted at the West Visayas State University Medical Center. In the Medical Certificate^[14] dated April 12, 2008, Dr. Elma Marañon (*Dr. Marañon*) diagnosed Gil with "Prostatic Cancer Stage IV with Bone Metastasis and Cord Compression Anemia Secondary" which caused the paralysis of his lower extremities.

On May 4, 2008, after more than a year of battling cancer, Gil succumbed to his illness. In the Death Certificate^[15] issued by Dr. Rhodelyn Almenana (*Dr. Almenana*), it was stated that Gil died due to cardiopulmonary arrest secondary to multiple organ failure. The underlying cause of his death was due to prostatic malignancy with pulmonary metastasis while other significant conditions contributing to his death were pneumonia in the immunocompromised host and UTI.

Thus, petitioner, the legal wife of Gil, filed a complaint before the LA for payment of death benefits, sickness allowance, burial expenses, moral and exemplary damages, and attorney's fees.

For their part, respondents denied any liability. They contended that Gil's death is not compensable because he did not die during the term of his contract and his illness is not one of those listed as an occupational disease under Section 32 of the 2000 Philippine Overseas Employment Administration – Standard Employment Contract (*POEA-SEC*). Respondents also argued that Gil failed to submit himself for a post-employment medical examination within three (3) days after repatriation even though he was issued a referral slip to the company-designated physician.

The LA Ruling

In its decision dated May 29, 2009, the LA ruled in favor of petitioner. It held that it was clear that Gil was declared unfit for work on January 31, 2007 and he was medically repatriated on February 13, 2007, hence, he was entitled to sickness allowance. The LA held that respondent was wrong when it turned down the request of Gil to be medically evaluated and treated. It emphasized that Gil was forced to submit himself to further medical examination at his own expense. The LA observed that the illness of Gil was work-related because he was medically repatriated due to his prostate ailment and his cause of death was prostatic malignancy with pulmonary metastasis. It ruled that it is not required that the seafarer's ailment be acquired during his employment for it is sufficient that his employment contributed, even in a small measure, to the development of the disease. The *fallo* of the LA ruling states:

WHEREFORE, premises considered[,] respondent is hereby directed to pay complainant the following:

- | | |
|--|------------------------|
| 1. Sickness allowance | US\$3,088.00 |
| 2. Death Benefits | US\$50,000.00 |
| [3.] Additional Compensation for Two children of the deceased Below 21 years old | US\$14,000.00 |
| 4. Burial Expenses | <u>US\$1,000.00</u> |
| | US\$68,088.00 |
| Or its Philippine peso equivalent of | Php3,234,180.00 |
| 5. Attorney's fees | <u>323,418.00</u> |
| Total | <u>Php3,557,598.00</u> |

The rest of the claims are dismissed for lack of merit.

SO ORDERED. ^[16]

Aggrieved, respondents appealed to the NLRC.

The NLRC Ruling

In its decision dated September 29, 2009, the NLRC granted the appeal and reversed and set aside the LA ruling. It held that Gil failed to submit himself to the medical examination of the company-designated physician within three (3) days from repatriation, hence, he violated the POEA-SEC. The NLRC stated that Gil was given a referral slip but he did not go to the company-designated physician. It also found that petitioner failed to present sufficient evidence to prove that Gil's illness was work-related. The dispositive portion of the NLRC ruling reads:

WHEREFORE, premises considered, the decision of ELA Danilo C. Acosta is hereby vacated and set aside. A NEW Decision is entered dismissing this case for lack of merit.

The monetary award in the assailed decision is hereby deleted for lack of legal and factual basis.

SO ORDERED.^[17]

Petitioner moved for reconsideration but it was denied by the NLRC in its resolution dated November 27, 2009.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

In its resolution dated October 26, 2010, the CA dismissed the petition for not having been filed within the 60-day reglementary period. In its resolution dated June 21, 2011, the CA declared that the October 26, 2010 resolution had attained finality.^[18]

Petitioner filed a motion for reconsideration and recall of entry of judgment. In its February 29, 2012, the CA recalled its June 21, 2011 resolution. However, in its February 1, 2013 resolution, the CA eventually denied petitioner's motion for reconsideration because it was not persuaded to relax the procedural rules.^[19]

Unconvinced, petitioner filed a petition for review on *certiorari* before the Court, docketed as G.R. No. 206063, entitled *Lorna B. Dionio v. NLRC*.

In its resolution dated October 8, 2014, the Court found compelling reasons to relax the procedural rules and required the CA to tackle the case on the merits. The dispositive portion of the Court's resolution states:

WHEREFORE, the petition is GRANTED. The October 26, 2010 and February 1, 2013 Resolutions of the Court of Appeal (CA) in CA-G.R. CEB SP No. 05007 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals for proper disposition of the merits of the case.^[20]

Respondents filed a motion for reconsideration but it was denied by the Court in its resolution dated March 16, 2015.^[21] Hence, the case was remanded to the CA.

The CA Ruling

In its decision dated February 21, 2017, the CA denied the petition on the merits. It held that petitioner failed to prove with substantial evidence that the illness of Gil was work-related. The CA ruled that petitioner cannot simply rely on the disputable presumption that the illness of a seafarer is work-related. Further, it opined that Gil failed to comply with the mandatory post-employment medical examination within three (3) days upon repatriation. The CA observed that petitioner did not sufficiently establish that ND Shipping refused to pay for Gil's medical examination. It disposed the case in this wise:

IN LIGHT OF ALL THE FOREGOING, the petition for *certiorari* is DISMISSED. The Decision dated September 29, 2009 and the Resolution dated November 27, 2009 of the National Labor Relations Commission, Seventh Division, in NLRC Case No. OFW-VAC-08-000046-09, dismissing the complaint for payment of death benefits and other money claims filed by petitioner Lorna B. Dionio, are AFFIRMED.

SO ORDERED.^[22]

Hence, this petition raising the sole issue:

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI FILED BY PETITIONER UNDER RULE 65 OF THE RULES OF COURT ON CA-G.R. CEB SP No. 05007 FOR FAILING TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENT PROVIDED UNDER THE POEA-SEC.^[23] (italics supplied)

Petitioner argues that Gil complied with the mandatory post-employment medical examination within three (3) days upon repatriation but the company-designated physician ignored him because ND Shipping did not heed his request to shoulder the medical expenses. Thus, Gil was forced to seek medical examination to different hospitals at his own expense. Petitioner also underscored that a seafarer is allowed to seek the opinion of his physician of choice.

Further, petitioner avers that Gil's illness was work-related. She highlighted that while on board respondents' vessel, her husband Gil was already diagnosed with UTI and prostate enlargement and he later died of prostate cancer. Petitioner emphasized that UTI and prostate enlargement are symptoms of prostate cancer and he should have been immediately treated by respondents upon repatriation. She also contends that by the nature of Gil's work on board the vessel, he was naturally exposed to stress and strains that are calculated to have affected his health and, even on a small degree, contributed to the development of his disease.

In their Comment,^[24] respondents countered that petitioner raises issues that would require an examination of the records and that the Court cannot entertain questions of fact. They also alleged that Gil's illness was not work related because petitioner failed to prove that his work on board the vessel was the cause of his illness or that his work aggravated his condition. Respondents further averred that Gil failed to comply with the mandatory post-employment examination with the company-designated physician. They are also doubtful that Gil's health was deteriorating because he was still able to travel from Biñan, Laguna to Iloilo City for his medical examinations. Respondents insisted that the findings of the CA must be given due respect.

In her Reply,^[25] petitioner reiterated that Gil complied with the mandatory post-examination requirement because he immediately reported to ND Shipping upon his arrival in the Philippines. However, ND Shipping refused to shoulder his medical expenses as evidenced by the referral slip to the company-designated physician.

The Court's Ruling

The Court finds the petition meritorious.

Generally, a question of fact cannot be entertained by the Court; exceptions

Petitioner chiefly raises the issue of whether Gil complied with the mandatory post-employment examination and work-relatedness of his illness. The questions posited are evidently factual because it requires an examination of the evidence on record. Well-settled is the rule that the Court is not a trier of facts. The function of the Court