

THIRD DIVISION

[G.R. No. 210791, November 19, 2018]

**DAYLINDA ALBARRACIN,* PETITIONER, VS. PHILIPPINE
TRANSWORLD SHIPPING CORP. AND/OR UNIX LIN PTE LTD.**
AND/OR ERLINDO M. SALVADOR, RESPONDENTS.**

DECISION

REYES, JR., J:

Before this Court is a petition for review on *certiorari* assailing the July 16, 2013 Decision^[1] of the Court of Appeals (CA) granting the petition for *certiorari* in CA-G.R. SP No. 116706 thereby reversing and setting aside the Decision^[2] of the National Labor Relations Commission (NLRC) and reinstating the Decision^[3] of the Labor Arbiter dismissing the complaint in NLRC NCR OFW Case No. (M) 12-17226-08 for death benefits, medical expenses, and attorney's fees. Also assailed is the January 13, 2014^[4] Resolution denying the motion for reconsideration thereon.

The Facts

Respondent Philippine Transworld Shipping Corp. (Transworld) is a domestic corporation engaged in the recruitment of seafarers for its foreign principal, respondent Unix Lin Pte. Ltd. (Unix).

On September 5, 2006, Rex Miguelito Albarracin (Albarracin) was hired by Transworld, acting for and in behalf of Unix, as Second Officer on board the latter's tanker-type vessel, M/T Eastern Neptune, under a Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC)^[5] with the following terms and conditions:

Duration of Contract	:	9 months
Position	:	Second Officer
Basic Monthly Salary	:	USD1,000.00
Hours of Work	:	48 hours per week
Overtime	:	USD300.00 fixed overtime 105 hrs.
Vacation Leave with Pay	:	3 days/month of service or pro-rata
Allowances	:	USD150.00 each as Tanker Allowance, Special Allowance, Extra Allowance, and Command Bonus

Prior to his employment, Albarracin was made to undergo a rigorous pre-employment medical examination (PEME). Despite the fact that his Treadmill Stress Test showed that he had an Abnormal Resting ECG and was found to have "uninterpretable STT wave changes for ischemia due to left ventricular hypertrophy x x x,"^[6] he was nonetheless declared "fit for sea duty."^[7] Thus, in October 2006, Albarracin left the Philippines and joined the complement of M/T Eastern Neptune.

Upon completion of his contract, Albarracin disembarked in Thailand and returned to the Philippines on May 22, 2007. Thereafter, he reported to Transworld but only for debriefing and to signify his interest to be rehired.

In line with Albarracin's desire for reemployment, he underwent PEME on July 18, 2007. It was then discovered that he is suffering from Hepatitis Band was suspected of having Hepatocellular Carcinoma (HCC).

On March 31, 2008, Albarracin died leaving behind his wife, Daylinda (petitioner), and minor child Rexlyn.

On December 11, 2008, the petitioner filed the complaint below against Transworld, Unix, and Transworld's president, Erlindo M. Salvador (hereafter, respondents). She alleged, in essence, that Albarracin's work constantly subjected the latter to mental and physical pressure and exposed him to gases, fumes, and vapors from chemicals and other substances that are toxic to the heart, lungs, kidneys, and liver such that, while Albarracin was on board M/T Eastern Neptune, the latter experienced pain in his stomach, suffered headaches, lost his appetite, and had difficulty standing and walking. Despite the same, nobody brought him to a hospital or took care of him. When Albarracin arrived in Manila after repatriation, he considerably lost weight, began having fever at night, and had dry cough. Albarracin requested the respondents to refer him to the company doctor for medical examination and treatment but the respondents initially denied the request and acceded only on July 16 and 17, 2007. When an examination was conducted on Albarracin, it was then discovered that he has liver parenchymal disease with a mass on his right lobe.

The petitioner averred that, despite the above findings, the respondents did not give Albarracin any medical treatment and, thus, the latter was left without a choice but to go home to the province. Examinations conducted on him by the Chong Hua Hospital revealed that he has suspected HCC. He was then referred to the Cebu Doctors University for further evaluation and treatment where he was diagnosed with "Liver: Hepatocellular Carcinoma, Grade 1" and underwent Right Hepatic Lobectomy. The treatment, however, proved futile as he subsequently succumbed to his illness. The petitioner claimed that, after Albarracin's death, she requested respondents to pay Albarracin's death benefits and burial expenses but the latter refused to do so. Asserting that the respondents' refusal is unjust, malicious, and in bad faith, she prayed that the respondents be held liable not only for death benefits and burial expenses but also for reimbursement of medical expenses and for damages.^[8]

The respondents denied the petitioner's claims that Albarracin suffered or complained of illness during his employment and that the latter sought for, but was

refused, medical examination and assistance after disembarkation. They countered that Albarracin did not report any illness all throughout his employment; that the latter did not advise them during the debriefing of any illness or disease that he has or may have acquired and even signified his interest to be rehired; and that Albarracin did not report for post-medical examination within three working days from disembarkation. They contended that their refusal to pay the petitioner's claims was justified because Albarracin did not undergo post-medical examination within three working days from disembarkation and his death occurred long after the employment contract with them had expired, that is, one year and seven months from the time of repatriation, and no illness was even reported by Albarracin at the time of employment. Moreover, Albarracin's death is not work-related considering that no evidence was presented showing that HCC is work-related and, in Albarracin's case, his HCC was Hepatitis B virus-related, a disease that can be contracted only through blood transfusion or sexual contact. They also denied that Albarracin's work as Second Officer exposed him to gases, fumes, and vapors from chemicals and other substances that are toxic to the heart, lungs, kidneys, and liver that may contribute to the development of HCC and averred that, as Second Officer, Albarracin's job deals with navigational charts or instruments and assisting the Chief Officer. Insisting that the petitioner's claims are without merit, they prayed that the complaint be dismissed.

The Labor Arbiter Decision

On June 24, 2009, the Labor Arbiter dismissed the petitioner's complaint upon a finding that Albarracin's death occurred after the termination of the employment contract; that the cause of the death was not work-related; and that the petitioner's claim is barred in view of Albarracin's failure to comply with the post-employment examination requirement within three days from disembarkation.^[9]

Dissatisfied, the petitioner elevated the matter to the NLRC.

The NLRC Disposition

On August 9, 2010, the NLRC rendered its Decision reversing the ruling of the Labor Arbiter upon a finding that, although HCC or liver cancer is not listed as an occupational disease under Section 32-A of the POEA-SEC, such illness is presumed as work-related under Section 20-B (4) of POEA-SEC. It ratiocinated that Albarracin's illness is work-related because the latter's work as Second Officer on board the tanker vessel constantly exposed him to harmful gases, fumes, and vapors from the chemicals and other substances present in the vessel that are harmful to the heart, lungs, liver and kidneys. It then declared that, while Albarracin's death did not occur during the term of the latter's employment, the same is still compensable since Albarracin contracted the illness during the term of his employment and the illness was work-related. The *fallo* of its disposition thus reads:

WHEREFORE, premises considered, the Decision of the Labor Arbiter dated June 24, 2009 is REVERSED and SET ASIDE and a new one is entered into [sic] ordering the respondents appellees PHILIPPINE TRANSWORLD SHIPPING CORP. and/or UNIX LIN PTE. LTD. and/or ERLINDO M. SALVADOR to pay, jointly and severally, complainant-

appellant's claims for death benefits in the amount of US\$50,000.00, additional death benefits of US\$7,000.00 for the minor child of seaman Albarracin, burial expenses of US\$1,000.00, in Philippine currency at the prevailing rate of exchange at the time of payment; reimbursement of medical expenses in the amount of P328,601.52, plus the amount equivalent to ten percent (10%) of the total monetary award as attorney's fees.

All other claims are DISMISSED.

SO ORDERED.^[10]

The respondents moved for, but failed to obtain, a reconsideration.^[11] Hence, they filed a petition for *certiorari* before the CA.

The CA Ruling

On July 16, 2013, the CA resolved to grant the petition. It ruled that the NLRC gravely abused its discretion as it applied the presumption of compensability and completely ignored the fact that HCC disease has no connection with Albarracin's work as Second Officer or to his lifestyle on board the vessel. It explained that there are only two ways to acquire HCC: through viral hepatitis and cirrhosis. In Albarracin's case, his Death Certificate categorically indicated that the immediate cause of his death is *Hepatocellular Carcinoma (Hepatitis B Related)*^[12] which meant that Albarracin acquired HCC through viral hepatitis which is, in turn, caused by Hepatitis B Virus, a virus that can be transmitted perinatal (from mother to baby at birth) or through child-to-child transmission, unsafe injections and transfusions, or sexual contact. It then concluded that, given the modes by which HCC may be acquired, it is not surprising that the respondents failed to produce direct evidence as to how and when Albarracin contracted Hepatitis B. The decretal portion of the disposition thus reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision of the NLRC dated August 9, 2010 in NLRC-LAC Case No. 08-000161-09/NLRC Case No. NCR (M)-12-17226-08 is **REVERSED** and **SET ASIDE**, and the decision of the Labor Arbiter dated June 24, 2009 dismissing the case is hereby **REINSTATED**.

Accordingly, the dismissal of the case carries with it the denial of the prayer for injunctive relief.

SO ORDERED.^[13]

The petitioner filed a motion for reconsideration, but the same was denied.^[14] Undaunted, she filed the instant petition for review on *certiorari*.

The Issues

- 1) THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISION OF THIS HONORABLE COURT IN *NEMARIA VS. ECC*, G.R. NO. L-57889, OCTOBER 28, 1987[,] IN REVERSING THE DECISION OF THE NLRC FINDING THAT THE DEATH OF THE LATE SEAMAN ALBARRACIN IS COMPENSABLE.
- 2) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE ILLNESS OF SEAMAN ALBARRACIN, HEPATOCELLULAR CARCINOMA, IS WORK-RELATED AND/OR PRESUMED AS SUCH AND THE PRESUMPTION OF COMPENSABILITY HAS NOT BEEN OVERTURNED BY THE PRIVATE RESPONDENTS.^[15]

To support her prayer for a reversal, the petitioner argues that the CA erred in stating that HCC can be acquired only through viral hepatitis or cirrhosis and posits that there are various non-viral causes of HCC, such as obesity, diabetes, non-alcoholic steatohepatitis, smoking, and food products containing Aflatoxin B1, which is a major metabolite of certain molds. Accordingly, there is no basis for the CA's conclusion that Albarracin's HCC was not due to cirrhosis; hence, the same was caused by viral hepatitis.

Moreover, the petitioner contends that the CA erred in not applying the ruling in *Nemaria v. Employees Compensation Commission*^[16] where it was declared that liver cancer, though not an occupational disease, may be deemed work-connected since it is not required that the employment be the sole factor in the growth or acceleration of a claimant's illness but, rather, it is enough that his employment had contributed thereto even in a small degree. She insists that Albarracin's HCC was work-related reiterating that Albarracin's work exposed him to gases, fumes, and vapors from chemicals and other substances that are toxic to the heart, lungs, kidneys, and liver as well as to different climates and unpredictable weather that also cause stress and, thus, contributed to the development of HCC.

Finally, the petitioner maintains that the CA erred in not applying the presumption that the illness was work-related and in not ruling that the presumption of compensability was not overturned by the respondents. She asserts that the CA should have adopted a liberal attitude in deciding her claim for compensability especially since there is some basis for inferring that her husband's illness was work-related.

For their part, the respondents aver that death benefits are payable only when two conditions are met: 1) death occurred during the term of the contract; and 2) when the illness, injury, or death was work-related. In Albarracin's case, his death occurred long after the term of the employment has expired and the cause of his death was not proven to be work-related. They contend that the petitioner erred in not presenting evidence that the cause of Albarracin's death was work-related and, instead, in relying on the presumption of compensability provided under POEA-SEC as it was already explained by the Supreme Court in various jurisprudence to mean that a claimant must still present substantial evidence that there is a causal connection between the nature of the seafarer's employment and the seafarer's illness or that the risk of contracting the illness was aggravated by his working