

THIRD DIVISION

[G.R. No. 179226, June 29, 2015]

**MA. SUSANA A. AWATIN, AND ON BEHALF OF THE
HEIRS/BENEFICIARIES OF DECEASED ALBERTO AWATIN,
PETITIONER, VS. AVANTGARDE SHIPPING CORPORATION AND
MRS. DORA G. PASCUAL, OFFSHORE MARITIME MANAGEMENT
INT'L, INC. (SWITZERLAND), SEABLUK TRESURE ISLAND,
RESPONDENT.**

DECISION

PERALTA, J.:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court of petitioners Ma. Susana A. Awatin, and on behalf of the heirs/beneficiaries of deceased Alberto Awatin that seeks to reverse and set aside the Decision^[1] and Resolution of the Court of Appeals, dated March 21, 2007 and August 3, 2007, respectively.

The facts follow.

Alberto B. Awatin (Awatin) was recruited and hired as Master for the vessel M/V Seabulk Treasure Island by private respondent Avantgarde Shipping Corporation (Avantgarde), for its principal, Offshore Marine Management International, Inc. (Switzerland) on January 16, 2001. The Contract of Employment provided, among others, for a term of six (6) months, a monthly basic salary of US\$1,750.00, fixed overtime pay of US\$700.00 per month and vacation leave pay of US\$350.00. Awatin joined the vessel M/V Seabulk Treasure Island on January 21, 2001 after submitting the required pre-employment medical examination where he was declared "fit to work" by the company designated physician.

Before his employment with M/V Seabulk Treasure Island, Awatin claimed to have been continuously and exclusively employed by Avantgarde under successive contractual service as "Master" for various cargo vessels since May 28, 1997.

Awatin was repatriated back to the Philippines on July 29, 2001 after completing his employment contract. Awatin's wife, Susana Awatin (petitioner), claimed that her husband underwent medical check-up at the Camiguin General Hospital in Mambajao, Camiguin, due to difficulty in breathing, coupled with hard and painful cough. He was treated by Dr. Joseph Chrysler Beja and diagnosed to have "Massive Ascitis, Secondary to Adenocarcinoma, Moderate Pleural Effusion, Right Lung" and "repeated abdominal paracentesis due to recurrent ascitis."

On September 10, 2001, Awatin reported back to Avantgarde's office for redeployment and was subjected to the mandatory pre-employment medical examination where he was declared "unfit to work" due to a finding of "Minimal PTB

right upper lung." He was then confined at the St. Dominic Medical Center, Bacoor, Cavite from November 7 to 9, 2001 because of difficulty in breathing; and at the Doctor's Sabal Hospital, Inc. from June 8 to 27, 2002 in Cagayan de Oro City because of "Adenocarcinoma primary etiology unknown with massive Ascitis;" and at the Camiguin General Hospital from July 2 to 4, 2002 for the same illness. Eventually, Awatin died of "multi-organ failure and adenocarcinoma" on July 12, 2002.

Thereafter, on October 9, 2002, petitioner, for herself and on behalf of her two (2) minor children (collectively called petitioners), filed a complaint for recovery of death benefits, burial allowance, sickness allowance, additional benefits for her two (2) minor children, reimbursement of medical and hospitalization expenses, moral and exemplary damages and attorney's fees against private respondents Avantgarde, its officer, Ms. Dora Pascual, Offshore Marine Management Int'l., Inc. (Switzerland) and Seabulk Treasure Island (collectively called private respondents) before the National Labor Relations Commission (NLRC), docketed as NLRC OFW Case No. (M) 02-10-2605-00.

According to private respondents, petitioners' claim for death benefits was not granted because the late Awatin was no longer in their employ at the time of his death and that his death arose from an illness which was not work-related. Petitioners' claim for sickness allowance and reimbursement of medical expenses were also denied because according to the same private respondents, the deceased Awatin was not repatriated by reason of illness and for medical treatment.

However, petitioners insist that the late Awatin was repatriated due to illness that resulted to his death and that under the POEA Standard Employment Contract, it is sufficient that the illness occurs during the term of the contract to make a seafarer's death compensable.

The Labor Arbiter, on May 30, 2003 rendered a Decision^[2] in favor of petitioners upon a finding that the late Awatin's illness was contracted during his employment with the private respondents. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, ordering the respondents Avantgarde Shipping Corporation/Dora G. Pascual/Offshore Marine Management International, Inc./Switzerland/Seabulk Treasure Island to pay complainants the amount of NINETY THOUSAND TWO HUNDRED US DOLLARS (US\$90,200.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of the actual payment representing the death benefit, burial expenses, sickness wages of the deceased Master Alberto B. Awatin and attorney's fees.

The respondents are further ordered to pay complainant the amount of THREE HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED EIGHTY-EIGHT PESOS & 50/100 (P347,188.50) representing reimbursement of medical expenses.

All other claims are DISMISSED for lack of merit.

SO ORDERED.^[3]

Private respondents appealed to the NLRC which reversed and set aside the findings of the Labor Arbiter. The NLRC ruled as follows:^[4]

Records show that the evidence submitted by complainant in support of her claim for death benefits consist of medical results and medical certificates. Except for the chest x-ray conducted on May 5, 1998, the rest of the examinations conducted on complainant were done after he was repatriated on July 29, 2001. Further, the results of the examinations and the certificate issued merely speaks of medical finding of Awatin's lung problem. There were no showing that his lung cancer has reasonable connection with the nature of his work. It is to be noted that Awatin was employed by respondents as master of their vessel. And, according to complainant, as Master of the vessel the latest of which was the "Seabulk Treasure Island," her husband oversees the general control, operation and management of the vessel which was used for delivering the supplies needed by respondents' customers in the oil rigs which consist of high grade industrial pipes and drilling equipment. Complainant claims that the exposure of her husband to the toxic residues of oil and industrial equipment aggravated his lung cancer. Such claim of complainant deserves scant consideration. Besides being hearsay, not a single evidence was submitted by complainant to buttress such claim.

In fine, considering that the disease for which Awatin died is not work-related, complainant's claim for death benefits must fail.

WHEREFORE, premises considered, the Decision dated May 30, 2003 is hereby SET ASIDE and a new one entered dismissing the instant complaint for lack of merit.

SO ORDERED.

The motion for reconsideration was denied by the NLRC in its Resolution dated January 31, 2006.^[5] Hence, petitioner filed a petition for *certiorari* under Rule 65 with the CA and in its decision^[6] dated March 21, 2007, the CA dismissed the case and affirmed the decision of the NLRC. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant petition is DISMISSED. The assailed Decision of the NLRC dated October 28, 2005 and its Resolution dated January 31, 2006 in NLRC NCR CA No. 036686-03 are hereby AFFIRMED.

SO ORDERED.

The CA, in a Resolution^[7] dated on August 3, 2007, denied petitioners' motion for reconsideration. Hence, the present petition.

Petitioners argue that Section 20 (A) 1 and (4) of the POEA SEC was primarily designed to be construed, together with Section 20(B) of the POEA SEC to compensate all claims for a seafarer or his beneficiary for the seafarer's injury, illness and death upon a seafarer's return from deployment in the Philippines pursuant to the local recruiter's use of deployment license in implementing the contract of employment itself pursuant to existing labor and social legislation for the