

## FIRST DIVISION

[ G.R. No. 188595, August 28, 2013 ]

**SEA POWER SHIPPING ENTERPRISES, INC., AND/OR BULK CARRIERS LIMITED AND SPECIAL MARITIME ENTERPRISES, AND M/V MAGELLAN, PETITIONERS, VS. NENITA P. SALAZAR, ON BEHALF OF DECEASED ARMANDO L. SALAZAR, RESPONDENT.**

### DECISION

**SERENO, C.J.:**

Before this Court is a Rule 45 petition,<sup>[1]</sup> seeking a reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> in CA-G.R. SP No. 104593. The CA awarded death benefits, minor child's allowance and burial expenses on top of the sickness allowance, hospitalization expenses, moral damages, and attorney's fees granted by the National Labor Relations Commission (NLRC) to respondent Nenita P. Salazar (Salazar) as the beneficiary of the deceased seafarer, Armando L. Salazar (Armando).

The antecedent facts are as follows:

On 11 April 2003, Armando was employed<sup>[4]</sup> as an Able Seaman by petitioner Sea Power Shipping Enterprises, Inc. (agency) on behalf of its principal, Atlantic Bulk Carriers Limited, for a term of nine months plus a three month-consented extension. At the time of his employment, he had already passed his pre-employment medical examination and had been declared "fit to work."

On 20 April 2003, Armando boarded the *M/V Magellan*. After 17 months, his contract ended, and on 8 September 2004, he returned to our shores.<sup>[5]</sup> Two days after, he was taken to the Tanza Family General Hospital, where he was confined in the Intensive Care Unit (ICU) for three days. According to medical reports, he suffered from pneumonia.

Because of his confinement, Armando was unable to see the agency's physician for a post-employment medical examination (PEME) that was supposed to be conducted within 72 hours from his repatriation. Nevertheless, on the 7<sup>th</sup> or 8<sup>th</sup> day of Armando's confinement, Salazar informed petitioners of her husband's condition and even asked them for the insurance proceeds. The agency denied her claims. It reasoned that without the requisite PEME required by the 2005 Philippine Overseas Employment Administration Standard Employment Contract for Seafarers (POEA Contract), his beneficiaries could not avail themselves of the sickness allowance.

Armando checked in and out of several hospitals thereafter. At the Philippine General Hospital where he was transferred in October 2004, he was diagnosed as suffering from lung carcinoma with brain metastases.<sup>[6]</sup> On 1 March 2005, he succumbed to

metastatic lung carcinoma and died of cardio-respiratory arrest, secondary to acute respiratory failure, and secondary to multi-organ failure.<sup>[7]</sup>

Subsequently, his widow instituted before the labor arbiter (LA) a collection suit<sup>[8]</sup> against petitioners for seafarer benefits under Section 20 of the POEA Contract. Salazar sought the payment of hospitalization and medical expenses, burial expenses, compensation and death benefits, minor child's allowance for their daughter Alice, moral and exemplary damages, and attorney's fees.

Salazar insisted that the agency owed her both death and illness benefits, because her husband died of an illness that he had contracted while he was at sea. She narrated that Armando used to work as an Able Seaman in the ship cargo without any protective gear. She further alleged that his work environment exposed him to deleterious elements emanating from the cargo.

In turn, these conditions caused him to suffer constant headaches, which led to the worsening of his health.

Petitioners denied liability. According to the agency, claims for death benefits, minor child's allowance, and burial expenses under Section 20(A) of the POEA Contract (Death Benefits) would only prosper if the seafarer died during his employment term. Considering that Armando died six months after his repatriation, it argued that Salazar could not claim death benefits.

The agency further disputed the benefits under Section 20(B) of the POEA Contract, consisting of medical expenses and sickness allowance (Illness Benefits). In support of its allegation, it highlighted the fact that Armando never reported or complained of any health problem while at sea. As regards the causality between his lung cancer and his work, it categorically denied that he had been exposed to effluvia or emission from any machinery that would have triggered the formation of cancer. The agency contended that as an Able Seaman, Armando only worked as a deck contingent.<sup>[9]</sup> Unfortunately, as per the records, none of the parties or the courts *a quo* provided any reference depicting his actual tasks.

In her Decision,<sup>[10]</sup> the LA denied all of respondent's monetary claims. The LA explained that for the benefits under the POEA Contract to arise, a claimant must show that the death of the seafarer, as well as the illness that caused his death, (1) transpired during his service and (2) resulted from his work conditions.

In this case, the LA appreciated that Armando could not have contracted lung cancer during his service, since there was no report in the ship's records of any of his alleged health problems. Since he died after his repatriation, respondent's claim for death benefits was denied. Lastly, the LA ruled that the beneficiaries of Armando were prevented from claiming benefits under the POEA Contract, because the seafarer had not gone through the mandatory PEME within 72 hours from his repatriation.

Aggrieved, respondent appealed to the NLRC. Citing Internet websites, she included in her appeal the job description of an Able Seaman as reasonable proof that the work of Armando increased the risk of his lung cancer.<sup>[11]</sup> She also highlighted the statements in her own Affidavit to bolster her claim that Armando suffered from

constant headaches while at sea.<sup>[12]</sup>

This time around, respondent obtained a favorable ruling from the NLRC, which awarded her illness benefits.<sup>[13]</sup> It ruled that the immediate confinement of Armando a mere two days after his arrival could only mean that he was already in a deteriorating physical condition when he disembarked.

As regards the lack of a medical report during his service, the NLRC took judicial notice of the “evil practice” of denying sick seafarers “the necessary medical attention during the period of their employment so that their employers could later on disclaim liability for their injury, illness or death on the ground that they did not sustain any injury or suffer any illness during the period in question.”<sup>[14]</sup>

Finally, the NLRC held that petitioners failed to dispute the legal presumption in Section 32 in relation to Section 20(B)(4) of the POEA Contract characterizing lung cancer as a work-related illness. Thus, the NLRC ordered petitioners to pay respondent the following amounts:<sup>[15]</sup>

1. The amount of P47,144.00 representing the cost of seafarer Salazar’s medicines and hospitalization;
2. The equivalent in Philippine currency at the time of actual payment of US\$1,540.00 representing seafarer Salazar’s sickness allowance (US\$385 x 4 mos. = US\$1,540.00);
3. The amount of P500,000.00 as moral damages; and
4. Ten percent (10%) of the total judgment award as and for attorney’s fees.

Noticeably, the NLRC did not award death benefits to respondent. It simply stated that the death of Armando was not compensable, because he did not die during the term of his contract.

Dissatisfied with the grant of illness benefits only, Salazar filed a Motion for Reconsideration<sup>[16]</sup> in order to claim death benefits. For their part, petitioners filed a Motion for Reconsideration,<sup>[17]</sup> praying that the LA Decision denying all of respondent’s claims be reinstated. In a minute Resolution,<sup>[18]</sup> the NLRC denied both motions.

Through a Rule 65 petition, respondent assailed before the CA the denial of death benefits by the LA and the NLRC.<sup>[19]</sup> On the other hand, petitioners no longer instituted an action for certiorari. At this point therefore, the NLRC’s grant of monetary awards consisting of illness benefits, moral damages, and attorney’s fees are already final and binding on both parties.

In the original action for certiorari, Salazar argued that since the NLRC already found that Armando had contracted a work-related illness, it must also grant her death benefits, notwithstanding that her husband died after his repatriation. Petitioners no longer filed a comment or memorandum to address her argument.<sup>[20]</sup>

In its assailed Decision, the CA granted respondent's additional claim for death benefits, thereby reversing the rulings of both the LA and the NLRC. Heavily relying on *Wallem Maritime Services, Inc. v. NLRC*,<sup>[21]</sup> the CA pieced together these various circumstances to conclude that the death of Armando resulting from a work-related illness was compensable: (1) he was declared fit to work at the start of his service; (2) he handled the cargo of the ship and was thus exposed to hazardous elements; and (3) he was confined in the ICU two days after his repatriation. After making this inference, the CA no longer gave significance to the fact that he failed to report his health problems while he was at sea, and that he did not go through the mandatory PEME within 72 hours from his repatriation. The CA explained thus:<sup>[22]</sup>

While it may be true that there was no record to prove that Armando was ill while on board the vessel as there was no report of any illness on his part, nor did he ask for medical attention during the term of his contract, medical history and human experience would show that lung carcinoma does not just develop in one day or much less, deteriorate that fast. The fact that Armando was hospitalized and confined at the ICU two days after he was repatriated, would prove that Armando's illness was already in its advance [sic] stage. While his death may have occurred after his contract was terminated, it is safe to presume that his illness was work-related or that his work aggravated his illness.

x x x x

Admittedly, Armando did not report to private respondents within the required period of 72 hours upon his arrival. However, for a person who is terminally ill, such as Armando, it is understandable, as he is physically incapacitated to do it. The mere fact that he was confined at the ICU two days after his repatriation bespeaks of his condition. Private respondents cannot deny that they were notified of this fact as petitioner Salazar went to their office on the 7<sup>th</sup> or 8<sup>th</sup> day of Armando's first confinement and asked for her husband's insurance proceeds and assistance only to be rebuffed. This is more than sufficient notice to private respondents of Armando's condition. (Underscoring supplied)

Moreover, the CA rejected the contention that Armando died after his service in this wise:<sup>[23]</sup>

x x x. It would be error to conclude that death benefits are recoverable only when the seafarer's death occurs during the period of his contract when evidence show that at the time he was repatriated he was already terminally ill but was not given medical attention. From the time he was confined at the ICU he never recovered and was in and out of the hospital several times. He may not have died during the period of his contract, but it is enough that the employment had contributed even in a small degree to the development of the disease and in bringing about his death.

As a result, the CA granted respondent death benefits consisting of the following:<sup>[24]</sup>

1. US\$50,000.00 as death benefits;
2. US\$7,000.00 as the minor child's allowance; and
3. US\$1,000.00 as burial expenses.

Petitioners moved for reconsideration, but their motion was denied by the CA.<sup>[25]</sup> Consequently, they filed the present Rule 45 petition. They strongly refute not only the additional grant of death benefits, but also the award of illness benefits already given by the NLRC.

Petitioners harp on the absence of substantial evidence to prove that the illness of Armando during his service, if it already existed at the time, was work-related. They also fault the CA for only making a "safe presumption" that his alleged work-related illness led to his demise. Aside from emphasizing respondent's lack of proof, petitioners advance the argument that death benefits cannot be awarded to respondent, because her husband did not die during the term of his contract. In turn, respondent counters in her Comment<sup>[26]</sup> that since the NLRC found that Armando contracted a work-related illness resulting in the grant of illness benefits, it then follows that death benefits are likewise due to her.

Through this Petition for Review on Certiorari, this Court now reviews whether the CA correctly deemed that the LA and the NLRC committed a grave abuse of discretion amounting to the lack or excess of jurisdiction in refusing to award death benefits on top of the illness benefits allegedly due to respondent.

## **RULING OF THE COURT**

In compensation proceedings for seafarers, this Court refers to the provisions of the POEA Contract as it memorializes the minimum rights of a seafarer and the concomitant obligations of an employer.<sup>[27]</sup> Section 20(A) thereof pertinently discusses the rules on granting death benefits. Nevertheless, on account of the liberal interpretation permeating seafarer's agreements,<sup>[28]</sup> we also consider the possibility of compensation for the death of the seafarer under Section 32-A of the POEA Contract.

### ***Death Benefits under Section 20(A) of the POEA Contract***

Section 20(A) of the POEA Contract, and a long line of jurisprudence explaining the provision,<sup>[29]</sup> require that for respondent to be entitled to death benefits, Armando must have suffered a work-related death during the term of his contract. The provision reads:

#### **SECTION 20. COMPENSATION AND BENEFITS**

##### **A. COMPENSATION AND BENEFITS FOR DEATH**

1. 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