

## THIRD DIVISION

[ G.R. No. 175491, December 10, 2012 ]

### CREW AND SHIP MANAGEMENT INTERNATIONAL INC. AND SALENA INC., PETITIONERS, VS. JINA T. SORIA, RESPONDENT.

#### DECISION

##### MENDOZA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the May 31, 2006 Decision<sup>[1]</sup> and the November 14, 2006 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 85350, which set aside the April 30, 2004 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC), dismissing the complaint of Jina T. Soria<sup>[4]</sup> (*respondent*), on behalf of her late husband Zosimo J. Soria (*Zosimo*), for death compensation benefits.

##### The Factual and Procedural Antecedents

On August 7, 1995, Zosimo entered into a one-year contract of employment<sup>[5]</sup> with Salena Inc., through its local manning agent, Crew and Ship Management International Inc. (*petitioners*). He was employed as an Assistant Cook on board *M.V. Sofia*, later renamed *M.V. Apollo*, with a basic monthly salary of US\$200.00.

On June 5, 1996, Zosimo, during his routine duty inside *M.V. Apollo's* engine room, suffered burns on his left knee when it accidentally brushed the hot engine. The vessel's medical officer immediately attended and treated Zosimo's injury with the appropriate medication.

On June 9, 1996, *M.V. Apollo* arrived at New Orleans from Masinloc, Zambales, Philippines. On June 16, 1996, *M.V. Apollo* departed New Orleans and reached Guayaquil, Ecuador, on June 26, 1996. From June 9, 1996 to June 26, 1996, there were no reported complaints from Zosimo.

On June 28, 1996, per *M.V. Apollo's* Master's Report,<sup>[6]</sup> Zosimo requested for medical attention. Subsequently, Zosimo was confined in a hospital in Ecuador where the cleaning and dressing of the wound and skin grafting over the burn areas with skin taken from the left lateral aspect of the left thigh were performed. On July 10, 1996, Zosimo was discharged from the hospital and deemed fit for repatriation.

Upon his repatriation to the Philippines, Zosimo immediately went to Legaspi City. On July 13, 1996, Zosimo sought medical attention for his burn wounds in Ago General Hospital, Legaspi City. In the Medical Certificate,<sup>[7]</sup> Zosimo was diagnosed with a "Healed Wound With Viable Skin Graft, Non-Infected; Dried Wound At Harvest Site, Lateral Aspect Of Left Thigh."

On July 19, 1996, or nine days after repatriation to the Philippines, Zosimo reported to petitioner's office in San Juan, Metro Manila, for payment of his contractual receivables. He was referred to Fatima Medical Clinic (FMC), the petitioners' designated hospital. FMC's Medical Report<sup>[8]</sup> disclosed that Zosimo's "wound is dry not infected with viable skin graft."<sup>[9]</sup> The same medical report also declared that Zosimo complained of "slight difficulty in

flexing of left knee joint.”<sup>[10]</sup> He was advised to return for another check-up after one week.

On July 31, 1996, Zosimo died at the *Ospital ng Makati*. As stated in the Medico-Legal Report<sup>[11]</sup> of the Philippine National Police (PNP) - Crime Laboratory, the cause of Zosimo’s death was “*Pneumonia with Congestion of all visceral organs.*”

On July 7, 1999, respondent filed a Complaint<sup>[12]</sup> for death compensation benefits, child allowance, burial expenses, moral and exemplary damages, and attorney’s fees against petitioners before the Labor Arbiter (*LA*). Respondent alleged, among others, that Zosimo died of tetanus from the burns he sustained on board *M.V. Apollo*.

In the Decision,<sup>[13]</sup> dated January 31, 2000, LA Fatima Jambaro-Franco (*LA Jambaro-Franco*) dismissed the complaint for lack of merit. LA Jambaro-Franco reasoned in this wise:

x x x x.

A perusal of the death certificate of seaman Zosimo Soria shows that the cause of death was “Pneumonia with Congestion of All Visceral Organs.” Even the Medico-Legal Report No. M-1197-96 dated August 5, 1996 also confirmed that the cause of Soria’s death was “Pneumonia with Congestion of All Visceral Organs.” Verily, the cause of seaman Soria’s death was not the burn he suffered on his left knee but was due to pneumonia which he could have contracted locally while he was in his province. Under these circumstances, it would be unfair and unjust to hold respondent liable for his death benefits inasmuch as his illness was not work-related.

Moreover, the records show that when seaman Soria died, his employment contract had already lapsed/expired. Under Section 20 (A) of the terms and conditions of the POEA Standard Employment Contract, it provides that “in case of the death of his seafarer during the term of his contract, the employer shall pay his beneficiaries x x x.” Verily, considering that seaman Soria died after his contract was already terminated, it follows that his employer is not liable to pay his beneficiaries.

In trying to justify her claims, complainant advanced the theory that her husband died of tetanus. However, except for her bare allegation that the death was due to tetanus, no evidence was adduced in support thereof. Mr. Soria’s Medical Report, Death Certificate and Autopsy Report, do not state that he died of tetanus. On the other hand, said documents unequivocally stated that the cause of his (Soria’s) death was pneumonia. Thus, negating complainant’s claim.

Pneumonia has been defined as a disease of the lungs characterized by inflammation and consolidation followed by resolution and caused by infection and irritants while tetanus is an acute infectious disease characterized by tonic spasms of voluntary muscles especially of the jaw and caused by the specific toxin of a bacillus. Evidently, pneumonia and tetanus are two different illnesses.

Furthermore, pneumonia is not in anyway related to the burn injury on his left knee [that] seaman Soria suffered. The latter could have acquired this illness while on vacation in his province after his disembarkation. Evidently, his death is not at all compensable.

x x x x.<sup>[14]</sup>

Not satisfied with the ruling, respondent appealed to the NLRC. The NLRC, after referring the case to LA Thelma M. Concepcion (*LA Concepcion*), reversed LA Jambaro-Franco's ruling in its October 20, 2003 Decision.<sup>[15]</sup>

The NLRC, based on the report and recommendation of LA Concepcion, ruled that Zosimo's death was compensable. It held that the infection of the skin burns that required skin grafting led to the inception of tetanus which ripened into pneumonia. Clearly, the infection of the skin burns which caused the onset of tetanus took place during the term of Zosimo's employment. It reasoned out that the petitioners failed to show that the pneumonia was not a late complication of tetanus from his skin burns.

Petitioners moved for reconsideration of the NLRC's October 20, 2003 Decision.

In its April 30, 2004 Resolution,<sup>[16]</sup> the NLRC granted petitioners' Motion for Reconsideration and reinstated the LA's January 31, 2000 Decision. In reversing itself, the NLRC explained:

It cannot be gainsaid that the rights and obligations of the parties to this case are primarily governed by the terms and conditions of employment embodied in the POEA Standard Employment Contract Governing the Employment of Seafarers on board Ocean Going Vessels.

More particularly, Section 18. (B) [1] of the Standard Contract provides that the employment of the seafarer is terminated when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B) [4], and arrives at his point of origin. Section 20 (B) [4] in turn provides for the liability of the employer for the full cost of reparation.

When the seafarer was thus repatriated on July 10, 1996 after undergoing surgery and treatment and declared fit to be repatriated, the above-cited contractual provisions became operative. The contract, accordingly, was deemed terminated.

That the seafarer subsequently died cannot be sufficient basis to hold respondents liable for benefits under the contract. The seafarer's admitted failure to report to the respondent agency for post-deployment medical examination within the mandatory 72-hours reportorial period militates against his right, or that of his beneficiary, to demand compliance with the so-called residual obligations of the employer. On the contrary the evidence adduced by complainant establishes that the deceased had proceeded to the province.

x x x.

Given all the attending circumstances as confirmed by the documentary evidence on record, we are convinced, as duly concluded by the Labor Arbiter that the cause of the seafarer's death cannot be traced to the burns or injuries sustained while he was on board the vessel.

Indeed, the complainant has not established a causality between the injury sustained on board the vessel, and the cause of death.

We assiduously perused the records and conclude that the complainant has failed to prove that her husband, subsequent to his repatriation, had experienced and/or manifested the symptoms of tetanus the source of which

could be ascribed to the 3rd degree burns he had suffered on board.

Moreover, the seafarer's act of proceeding to the province without reporting to the respondent agency must be deemed as a supervening event that adversely limits his right or that of his beneficiaries to claim benefits under the contract.

Where, as in this case, the cause of death has not been evidently shown to be due to the injury suffered on board and during the term of the contract, no liability can be adjudged against the employers for the subsequent death of the seafarer.

In so ruling, we simply defer to the basic rule in evidence that each party must prove his affirmative allegation. While technical rules are not followed in the NLRC, this does not mean that rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least.

Accordingly, complainant's unsubstantiated allegations that her husband had manifested and complained of symptoms of tetanus, being wanting in evidentiary support cannot outweigh and overcome the probative value of the medical certificates, autopsy findings and medical reports indubitably showing that the deceased had died of pneumonia.

And, while it may be conceded that pneumonia can be caused by or traced to tetanus, as what the complainant has attempted to establish, such conclusion may not be drawn in this case as to render the death compensable, considering the attendance of the supervening event, and the fact that no such reference to a possible infection has been made in any of the medical reports that would link the injuries resulting from the burns, to the actual cause of death.

x x x.<sup>[17]</sup>

[Underscoring supplied]

Aggrieved by the NLRC Resolution, respondent elevated the case to the CA via a petition for certiorari under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part of the NLRC in dismissing her claim for death benefits.

In its Decision, dated 31 May 2006, the CA set aside the questioned NLRC Resolution and ordered petitioners to pay the claimed benefits of respondent, the dispositive portion of the Decision reads:

**WHEREFORE**, the instant petition is **GRANTED**. The assailed NLRC Resolution dated April 30, 20204 (sic) is **SET ASIDE**. The NLRC decision promulgated on October 20, 2003 is **REINSTATED** with **MODIFICATION**. Thus, private respondents are hereby ordered to pay petitioner the claimed death benefits, child allowances, and burial expenses in the total amount of US\$65,000.00 or its peso equivalent, to be computed at the time of payment, plus ten percent (10%) of the aforementioned total monetary award as attorney's fees.

**SO ORDERED.**

The CA was of the view that petitioners failed to negate the causal confluence of the burn injury suffered by Zosimo while on board the vessel, the onset of tetanus and the complication of pneumonia which was indicated as Zosimo's cause of death. It stressed that

"strict rules of evidence, x x x, are not applicable in claims for compensation and disability benefits."<sup>[18]</sup> The CA emphasized that it was enough that the hypothesis on which the employee's claim was based was probable. Zosimo's failure to report for post employment medical examination at petitioner's office within the mandatory period of seventy two (72) hours from his return to the Philippines, as required by the Philippine Overseas Employment Administration (POEA) Standard Employment Contract<sup>[19]</sup> (SEC), should not be automatically taken against him. The CA cited *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,<sup>[20]</sup> which justified the exception from the application of the 72-hour requirement, by showing that a seaman who was terminally ill and in need of medical attention could not be expected to immediately comply with the medical examination and thus given the right to claim benefits due him.

Petitioners moved for reconsideration, but their motion was denied by the CA in its November 14, 2006 Resolution.

Hence, this petition.

### **THE ISSUE**

#### **WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING DEATH BENEFITS TO THE RESPONDENT.**

##### **Petitioners' argument**

In support of their position, petitioners assert that respondent's declaration that the death of Zosimo was compensable because the latter died due to tetanus had no factual basis. Tetanus was never established, much less existed, in the case. Based on the Autopsy Report<sup>[21]</sup> submitted by respondent, the cause of death was "Pneumonia with congestion of all visceral organs," not a burn injury or tetanus. Moreover, the death of Zosimo occurred outside, and not during the term, of the seaman's contract as the seafarer signed-off and was disembarked for medical reasons pursuant to Section 18 (B) 1 of the POEA SEC.<sup>[22]</sup> For said reason, it is not compensable.

##### **Respondent's contention**

Respondent counters that the entitlement to the benefits by Zosimo's family should not be defeated by the fault of the people who failed to indicate in the proper documents that Zosimo indeed died of tetanus. Zosimo's death, on July 31, 1996, was still within the contract period as he joined the M.V. Apollo on September 7, 1995, for a 12-month employment contract.

##### **The Court's Ruling**

The petition is meritorious.

In petitions for review on *certiorari*, only questions of law may be raised, the only exception being when the factual findings of the appellate court are erroneous, absurd, speculative, conjectural, conflicting, or contrary to the findings culled by the court of origin.<sup>[23]</sup> Considering the conflicting findings of the LA and the NLRC and those of the CA, the Court is constrained to resolve the factual issues together with the legal ones.

The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired, as long as the stipulations therein