

SECOND DIVISION

[G.R. NO. 141505, August 18, 2005]

NORMA HERMOGENES, PETITIONER, VS. OSCO SHIPPING SERVICES, INC., RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA), dated May 31, 1999, in CA-G.R. SP No. 52389 which denied due course and dismissed herein petitioner's petition for *certiorari*; and its November 29, 1999 Resolution^[2] denying petitioner's motion for reconsideration.

The facts of the case, as found by the CA, are as follows:

It appears that the petitioner Norma Hermogenes is the surviving spouse of the late Ciriaco A. Hermogenes who, prior to his death, was a seaman employed in foreign vessels from 1973 to 1991. His last employment was with the Osco Shipping A/S Co. of Norway, represented by respondent Osco Shipping Services (Philippines), Inc., as Chief Cook of the M/T Cedar Bow. Prior thereto, he was also employed as a Chief Cook on the vessels M/T Geroro and M/T Gracechurch Star, also owned by the same company.

On March 2, 1991, while serving on the M/T Gracechurch Star, he was confined at the Ospedale Internazionale Case Di Cura at Naples, Italy, and was operated on due to continuous bleeding of his intestines (also described as severe gastric hemorrhage) arising from an ulceratic lesion at the prepyloric region. He was also diagnosed to be suffering from gastric ulcer with chronic gastritis, calculosis of the gall bladder, diabetes mellitus, hypertension, and ischaemic cardiopathy. Thereafter, he was repatriated back to Manila and confined at the Metropolitan Hospital where he underwent postoperative medical attention by Dr. Robert D. Lim. He was discharged shortly thereafter when he was on the way to recovery.

In the meantime, Ciriaco Hermogenes was given sick wage allowance by respondent Osco equivalent to four (4) months' salary.

In September, 1991, he was again employed as Chief Cook of the M/T Cedar Bow. However, his contract was terminated on November 9, 1991.

On November 13, 1994, Ciriaco Hermogenes was confined at the National

Kidney Institute where he was treated for:

- : Cardiopulmonary Arrest secondary to Sepsis secondary to Urinary Tract Infection
- : Pneumonia
- : Toxic Epidermal Necrolysis
- : Acute Renal Failure on top of Chronic Renal Insufficiency secondary to Diabetic Nephropathy.

He underwent Peritoneal Dialysis, but on November 21, 1994, he died.

The petitioner filed a claim for death compensation benefits under the POEA Standard Format, which provides for a US\$50,000.00 death benefit plus US\$7,000.00 for each minor child, and US\$1,000.00 for burial assistance. She also asked for P60,000.00 as expenses for medication and hospitalization, plus attorney's fees. The claim was opposed by the respondent."^[3]

After hearing, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision finding herein respondent liable for burial assistance and medication and hospitalization expenses but not for death benefits and attorney's fees.^[4] The dispositive portion of the Labor Arbiter's decision reads as follows:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding respondent Osco Shipping Services (Phils.), Inc. liable to pay complainant the following:

- a) US\$1,000.00 or its equivalent in pesos as burial expenses; and
- b) P60,000.00 as continued medication and hospitalization expenses.

All other claims are dismissed for lack of merit.

SO ORDERED.^[5]

Herein petitioner appealed the Labor Arbiter's decision with the National Labor Relations Commission (NLRC). In a Decision promulgated on July 24, 1996, the NLRC affirmed the assailed decision of the Labor Arbiter and dismissed herein petitioner's appeal for lack of merit.^[6]

Aggrieved by the Decision of the NLRC, herein petitioner filed a petition for *certiorari* directly with this Court.^[7]

Subsequently, the parties were required to file various pleadings with this Court including comments to the petition by respondent Osco Shipping Services, Inc. (Osco)^[8] and the Office of the Solicitor General (OSG),^[9] petitioner's reply to these comments,^[10] as well as respondent's rejoinder to the reply.^[11]

In a Resolution dated February 3, 1999, this Court referred the instant case to the CA for appropriate action and disposition in accordance with this Court's decision in *St. Martin Funeral Homes vs. National Labor Relations Commission, et al.*^[12]

On May 31, 1999, the CA rendered the herein assailed decision denying due course to the petition and dismissing the same for lack of merit.^[13] Petitioner's motion for reconsideration was denied in the questioned Resolution of November 29, 1999.^[14]

Hence, this petition filed by Norma Hermogenes contending that:

[T]he Honorable Court of Appeals committed serious errors when it dismissed the petition for *certiorari* of the petitioner and denied her Motion for Reconsideration without due regard to the merits of the same and despite the clear wordings of the law and of the parties' contract.^[15]

Prefatorily, it bears to emphasize that under the prevailing law, jurisdiction over claims arising out of any law or contract involving overseas Filipino workers, whether land-based or sea-based, is now vested in the NLRC, pursuant to Section 10 of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," which took effect on July 15, 1995. In the present case, the complaint was filed with the NLRC on August 15, 1995. Hence, at the time of the filing of the complaint, jurisdiction over the case is already vested in the NLRC.

Going into the main issues raised, petitioner claims that the CA erred in declaring that Ciriaco's death is not compensable because it only occurred after his repatriation. Petitioner claims that the very reason why Ciriaco was repatriated was that he was then suffering from various illnesses which he contracted during the term of his contract with Osco.

The petition is without merit.

Memorandum Circular No. 41, Series of 1989, which provides for the Standard Employment Contract Governing the Employment of Filipino Seamen On Board Ocean-Going Vessels, and which was in force at the time Ciriaco was employed by Osco, states that for the death of a seafarer to be compensable, the same must have occurred during the term of his contract. Paragraph No. 7 of the said Memorandum provides:

7. Compensation and Benefits:

a. **In case of death of the seaman during the term of his Contract**, the employer shall pay his beneficiaries the PHILIPPINE CURRENCY EQUIVALENT TO THE AMOUNT OF:

US\$15,000 for master and chief engineers;
US\$13,000 for other officers including radio operators and master electricians;
US\$11,000 for ratings

AT THE EXCHANGE RATE PREVAILING DURING THE TIME OF PAYMENT.
(Emphasis supplied)

In the present case, evidence shows that the last contract of employment entered into by Ciriaco prior to his death was with Osco. The contract was signed on September 14, 1991, for a duration of ten months.^[16] Hence, Ciriaco's contract of employment with Osco should have effectively ended ten months from September 14, 1991 or on July 14, 1992. However, it is undisputed that Ciriaco's contract was