

## **FOURH DIVISION**

**[ CA-G.R. SP NO. 93437, August 31, 2006 ]**

**CREW & SHIP MANAGEMENT INTERNATIONAL, INC. AND CLIO  
NAVIGATION CORPORATION, PETITIONERS, VS. NATIONAL  
LABOR RELATIONS COMMISSION (2ND DIVISION) AND  
AMELITA R. MORILLO, RESPONDENTS.**

### **D E C I S I O N**

**BARRIOS, J.:**

This petition for certiorari was filed by Crew and Ship Management International, Inc. and CLIO Navigation Corporation (or the petitioners) assailing the National Labor Relations Commission's (or NLRC) Decision dated July 26, 2005 granting the claim for death benefits of the respondent Amelita R. Morillo (or the respondent) arising from the demise of her son Alvin R. Morillo (or Alvin), and the Resolution dated December 28, 2005 denying its reconsideration.

Alvin was employed by the petitioners as a deck cadet on board the vessel M.V. Tiger from March 2000 until his death on August 5, 2001. His employment contract was for a period of one (1) year for the monthly salary of \$165.00.

The circumstances of his death as borne by the records are as follows: On August 5, 2001, their vessel M.V. Tiger reached the Ukraine where it laid anchor at the Nikolaev River. Alvin, together with three of his crewmates identified as 3rd Officer Markiss Pepito, A.B. Frederico Paitim and Deck Cadet Lucky Maximo Bellardo decided to take a swim in the river. While swimming within the vicinity of the vessel, the strong current carried away Alvin some 20 to 30 meters from the vessel. A crewmember noticed that he was starting to drown and a life ring was thrown towards him. This and other attempts to save him however proved futile, and Alvin sank and disappeared. A call for assistance was immediately made to the Port Control of Nikolaev, and a boat was sent to the place where Alvin floundered but he could not be found. The next day, divers were sent to search for him but he was not found. It was only three (3) days thereafter when he was retrieved, drowned and dead.

On September 4, 2001, the respondent filed a claim for death benefits against the petitioners. She contended that the death of her son happened in the course of his employment and was due to an accident which can not be attributed to his willful act.

For their part, the petitioners maintained that the respondent is not entitled to death benefits because the cause of the death of Alvin is not work related. They also alleged that Alvin's death resulted from his willful act and an intentional breach of his superior officer's order. There was an express and standing order from the ship master prohibiting the crew from swimming in the river because of its strong and

dangerous current and murky waters.

On April 22, 2003, the Labor Arbiter rendered a Decision in favor of the petitioners, disposing that:

WHEREFORE, premises considered, this case should be, as it is hereby DISMISSED for lack of merit. SO ORDERED. (p. 49, rollo)

The respondent appealed this to the NLRC. This was reversed in the now assailed Decision dated July 26, 2005 holding that:

WHEREFORE, on all the foregoing, the instant appeal is hereby GRANTED. Accordingly, the decision of the Labor Arbiter dated May 15, 2003 (sic) is hereby Reversed and Set Aside and anew (sic) one being rendered ordering respondents to pay complainant as follows:

1. Death benefits in the amount of Fifty Thousand US dollars (US\$50,000.00) or its peso equivalent at the rate of exchange at the time of actual payment.
2. Burial expenses in the amount of One Thousand US dollars (US\$1,000.00) or its peso equivalent at the exchange rate prevailing at the time of actual payment.
3. Moral Damages in the amount of P200,000.00;
4. Exemplary Damages in the amount of P200,000.00;
5. Attorney's fees equivalent to 10% of the total amount due.

SO ORDERED. (pp. 37-38, rollo)

A motion for reconsideration was filed by the petitioners but this was denied by the NLRC in its Resolution dated December 28, 2005.

The petitioners now seek relief through this petition raising the following issues for consideration:

I. THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED DEATH BENEFITS AND BURIAL EXPENSES TO THE PRIVATE RESPONDENT BECAUSE:

A) THE DEATH OF THE DECEASED WAS NOT WORK-RELATED.

B) THE DEATH WAS DUE TO THE WILLFUL ACT AND INTENTIONAL BREACH OF DUTY OF THE DECEASED.

C) THE LABOR ARBITER DID NOT COMMIT GRAVE ABUSE OF DISCRETION OR SERIOUS ERROR IN A FINDING OF FACT, THUS HER DECISION SHOULD BE RESPECTED AND IMPLEMENTED.