

## SECOND DIVISION

[ G.R. No. 144665, September 08, 2004 ]

**GAU SHENG PHILS., INC. AND BESTOW OCEAN UNIA TRADING PTE. LTD., PETITIONERS, VS. ESTELLA JOAQUIN, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Before us for review is the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 54596, holding the petitioners solidarily liable for compensation arising from the death of Roberto L. Joaquin.

#### The Antecedents

Bestow Ocean Unia Trading Pte. Ltd. (Bestow) is a foreign corporation doing business in the Philippines through its agent Gau Sheng Philippines, Inc. (Gau Sheng), a licensed manning agency.

On June 8, 1993, Roberto L. Joaquin signed a contract with Bestow, through Gau Sheng, under which he was hired as a fisherman on board the MV Bestow Ocean with a salary of US\$250, with working time of forty-eight hours a week for a period of one year.<sup>[3]</sup> Roberto boarded the vessel on September 23, 1993. After twenty-eight (28) days at sea, he fell ill and had to be repatriated to the Philippines on October 21, 1993, per his request. Upon his arrival in the Philippines, he and his wife, Estella Joaquin, went to the office of Gau Sheng and requested medical treatment for his illness and financial assistance, which was, however, rejected. They went home to Pangasinan, their home province. Roberto's illness worsened and he had to be confined and treated at the Villaflor Hospital in Dagupan City. He later became an outpatient at the National Kidney Institute. On August 25, 1994, or eight (8) months after his repatriation, he succumbed to chronic renal failure.<sup>[4]</sup>

Estella filed a complaint before the Philippine Overseas Employment Agency (POEA)<sup>[5]</sup> against Gau Sheng and Bestow for death compensation, docketed as POEA Case No. ADJ(M) 94-08-2608.<sup>[6]</sup> She claimed that she and her children by her deceased husband were entitled to compensation, considering that her husband became ill during his employment with Bestow and died during the effectivity of their contract. She invoked Memorandum Circular No. 5, Series of 1994 of the POEA.<sup>[7]</sup>

For their part, Bestow and Gau Sheng denied any liability for the death of Roberto, contending that it was impossible for the latter to have acquired and developed chronic renal failure on board the vessel MV Bestow Ocean for a period of less than a month. They averred that the complainant failed to prove that Roberto contracted the said illness while on board the said vessel and that the risk of contracting the said illness was increased by his working conditions. Moreover, the Employees'

Compensation Commission did not include chronic renal failure as an occupational disease. They pointed out that Roberto was given financial assistance for his medical check-up, and that Memorandum Circular No. 5 did not apply to Roberto because he died eight (8) months after he was repatriated.<sup>[8]</sup>

### **Ruling of the Labor Arbiter**

On February 28, 1997, the Labor Arbiter (LA) rendered a decision declaring Roberto's death compensable and holding Gau Sheng and Bestow solidarily liable for the payment of death compensation to the complainant:

In fine, respondents are liable *in solidum* to the complainant in the following amounts less whatever had already been extended to him by way of financial assistance.

- a) death benefits in the sum of US\$1,000.00 or its peso equivalent;
- b) four (4) months' pay at US\$200 a month or US\$1,000 or its peso equivalent; and
- c) medical expenses incurred in the Philippines which was not quantified.

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering the respondents *in solidum* to pay the complainant the peso equivalent of the disposition above which is hereby incorporated herein less the amount of financial assistance already received by complainant.

<sup>[9]</sup>

The LA declared that Roberto was already suffering from chronic renal failure while on board the vessel MV Bestow Ocean and was repatriated to the Philippines while his contract was subsisting. He rejected the claim of Gau Sheng and Bestow that Roberto was already suffering from kidney renal failure even before his employment, as the latter was issued a clean bill of health by the designated physician who conducted a physical examination on him prior to embarkation. The LA based the award on the POEA Standard Employment Contract in force at the time of Roberto's death.

Gau Sheng and Bestow appealed the decision to the National Labor Relations Commission (NLRC). In a Resolution dated July 26, 1999, the NLRC granted the appeal and dismissed the complaint:

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby given due course. This case should be, as it is, hereby dismissed for lack of merit.<sup>[10]</sup>

The NLRC ruled that under Subsection 4-C, Section C, Part II of the POEA Standard Employment Contract,<sup>[11]</sup> Roberto was required to submit to a post-medical examination conducted by the company-designated physician, but failed to do so. It held that aside from the death certificate indicating that Roberto died of chronic renal failure, the complainant failed to present any medical certificate or any documentary evidence to support her claim for death compensation. Further,

Roberto was repatriated twenty-eight (28) days after his deployment and died of chronic renal failure several months thereafter; although his pre-employment medical examination showed that he was fit to work, it did not necessarily mean that he did not have kidney trouble before he sought employment from Bestow. Since there was no evidence to show that he contracted the disease during the term of his employment, the same cannot be said to be compensable.

The NLRC, likewise, pointed out that the death benefits awarded to the four children of Roberto had no basis because the complainant failed to show their filiation.<sup>[12]</sup>

Aggrieved, Estella filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 54596.

### **The Ruling of the Court of Appeals**

The CA, in a decision dated April 28, 2000, reversed and set aside the July 26, 1999 Resolution of the NLRC. The dispositive portion is quoted, *infra*:

WHEREFORE, the petition is GRANTED, the assailed resolution of public respondent National Labor Relations Commission dated July 26, 1999 is SET ASIDE, and the decision of Labor Arbiter Melquiades Sol D. Del Rosario is AFFIRMED with MODIFICATION as follows:

“In fine, private respondents, Gau Sheng Phils., and Bestow Ocean Unia Trading Pte., Ltd., are liable *in solidum* to the complainant in the following amounts less whatever had already been extended to him by way of financial assistance:

- a) death benefit in the sum of US\$11,000 or its peso equivalent;
- b) funeral benefit in the sum of US\$1,000 or its peso equivalent; and
- c) four (4) months’ pay at US\$250 a month or US\$1,000 or its peso equivalent.”<sup>[13]</sup>

In reversing the resolution of the NLRC, the CA ruled that the compensability of an ailment does not depend on whether the injury or disease is work-related or aggravated his condition. It stressed that in order for an employee to recover compensation, it is not required that an employee be in perfect condition or health at the time he received the ailment or that he be free from disease.<sup>[14]</sup> Citing the case of *More Maritime Agencies, Inc. v. National Labor Relations Commission*,<sup>[15]</sup> the CA stated that while the employer is not the insurer of the health of his employees, he takes them as he finds them; he assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury, independent of any pre-existing weakness or disease. The CA went on to say that there was at least a reasonable connection between Roberto’s job and his kidney infection, which eventually developed into chronic renal failure and ultimately caused his death.

The CA also held that Roberto's failure to comply with the seventy-two-(72)-hour post-medical examination, as required by the provisions of the POEA Standard Employment Contract, cannot be used to avoid payment of death compensation benefits. Estella could not be expected to travel from Lingayen, Pangasinan to Manila to inform Gau Sheng and Bestow of her husband's condition.

The CA stressed that the POEA Standard Employment Contract is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provision must, therefore, be construed and applied fairly, reasonably and liberally or for the benefit of the seamen and their dependents.

Aggrieved, the petitioners filed a motion for reconsideration which was dismissed.

Hence, the instant petition.

### **The Present Petition**

The petitioners allege that the appellate court committed the following errors:

- I. THE COURT OF APPEALS ERRED IN SETTING ASIDE THE COMMISSION'S DECISION, THERE BEING NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE COMMISSION.
- II. THE COURT OF APPEALS ERRED IN FINDING THAT THE DEATH OF ROBERTO JOAQUIN WAS COMPENSABLE FOR LACK OF FACTUAL BASIS.
- III. THE COURT OF APPEALS ERRED IN AWARDING DEATH BENEFITS. BURIAL BENEFITS AND THE AMOUNT EQUIVALENT TO FOUR (4) MONTHS' SALARY OF ROBERTO JOAQUIN.<sup>[16]</sup>

According to the petitioners, the respondent failed to show that the NLRC acted with grave abuse of discretion in denying her claim. The petitioners emphasize that the cause of Roberto's death was not among those listed as compensable under the POEA Standard Employment Contract. Considering that Roberto himself requested for his release from the contract of employment and was, thus, repatriated on October 21, 1993, he was no longer an employee of the petitioners at the time of his death. They contend that the respondent failed to show that Roberto's death was compensable, and that his death certificate is insufficient to show that he was ill when he was repatriated; that he was admitted to the hospital for the same illness; and that said illness caused his death.

The petitioners stress that Roberto's failure to comply with the post-medical examination requirement under Subsection 4-C, Section C, Part II of the POEA Standard Employment Contract prevented the allowance of the respondent's claim for death compensation.

For her part, Estella, the respondent, insists that the CA had judiciously resolved the pivotal issue of the compensability of Roberto's death; hence, it did not commit any error in ruling that it was compensable.

The pivotal issue for resolution is whether or not Roberto's death is compensable.

In petitions for review, only questions of law may be raised, except, if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin.<sup>[17]</sup> Due to the irreconcilable findings of the LA and the CA on the one hand, and the NLRC on the other, we are constrained to review the petition.

A review of Roberto's employment contract revealed that provision number two (2) specifically provided that the terms and conditions of the revised employment contract for seafarers approved by the POEA/DOLE on July 14, 1989 under Memorandum Circular No. 41, Series of 1989, and amendments shall apply.<sup>[18]</sup>

Pursuant to Memorandum Circular No. 41, Series of 1989, as incorporated in the Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels, which was in force during the employment of Roberto, the beneficiaries of an employee who died during the effectivity of the contract may claim compensation and benefits in case of death during the term of his contract:

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:

. . .

- c. IN ALL CASES, THE EMPLOYER SHALL PAY THE BENEFICIARIES OF SEAMEN THE PHILIPPINE CURRENCY EQUIVALENT TO THE AMOUNT OF US\$1,000 FOR BURIAL EXPENSES AT THE EXCHANGE RATE PREVAILING DURING THE TIME OF PAYMENT.

- d. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel, the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work of the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seaman shall submit himself to a post-employment medical examination by the company-designated physician within THREE WORKING DAYS upon his return EXCEPT WHEN HE IS PHYSICALLY INCAPACITATED TO DO SO, IN WHICH CASE A WRITTEN NOTICE TO THE AGENCY WITHIN THE SAME PERIOD IS DEEMED AS COMPLIANCE. FAILURE OF THE SEAMAN TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENT SHALL RESULT IN HIS FORFEITURE OF THE RIGHT TO CLAIM THE ABOVE BENEFITS.<sup>[19]</sup>