447 Phil. 654

FIRST DIVISION

[G.R. No. 132761, March 26, 2003]

NORMA ORATE, PETITIONER, VS. COURT OF APPEALS, EMPLOYEES COMPENSATION COMMISSION, SOCIAL SECURITY SYSTEM (MANILA BAY SPINNING MILLS, INC.), RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 14, 1997 Decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 42280, and its January 29, 1998 Resolution[3] denying petitioner's motion for reconsideration.

The undisputed facts are as follows:

On December 5, 1972, petitioner Norma Orate was employed by Manila Bay Spinning Mills, Inc., as a regular machine operator.[4] Her duties included the following:

A) Doffing:

1) Obtain empty cones from storage prior to doffing; incl. patrol round trip.
2) Prepare empty cones to each spindle prior to doffing; incl. attention to condition of empty cones.
3) Doff full cones to bank over machine.
4) Take empty cones by L. H. drop ends inside cone or wrap around cones and load to spindle then start spindle.

B) Creeling:

1) Remove empty bobbins from creel pin to conveyor.
2) Obtain one-full cop from bank and remove tail ends.
3) Fit full cop to creel pin and thread to guides
4) Find end from running cone and joint-end from full cop; incl. keep clearer free from accumulated cone.
5) Remove tail from empty bobbin when necessary. 20%
6) Stop spindles. (occasionally when stop motion malfunction. 10%)

C) Repair Breaks:

1) Patrol to break-end.
2) Stop spindle. (occasionally) 10%
3) Get end from full cop and thread to guides.

4) Find end from running cone by R.H. and joint ends by knotter on L. H., then start spindle; including keep cleaner free from accumulated cone.

D) Machine Cleaning Duties once per shift (start of shift):

1) Patrol to obtain brush.
2) Brush ends of machine.
3) Brush creel bar.
4) Brush frame beam and stand.[5]

On March 22, 1995, she was diagnosed to be suffering from invasive ductal carcinoma (breast, left),[6] commonly referred to as cancer of the breast. Consequently, she underwent modified radical mastectomy on June 9, 1995.[7] The operation incapacitated her from performing heavy work, for which reason she was forced to go on leave and, eventually, to retire from service at the age of 44.

On November 17, 1995, petitioner applied for employees compensation benefits[8] with the Social Security System (SSS), but the same was denied on the ground that her illness is not work-related. On January 22, 1996, she moved for reconsideration contending that her duties as machine operator which included lifting heavy objects increased the risk of contracting breast cancer.[9] The SSS, however, reiterated its denial of petitioner's claim for benefits under the Employees' Compensation Program. Instead, it approved her application as a sickness benefit claim under the SSS,[10] and classified the same as a permanent partial disability equivalent to a period of twenty-three (23) months.[11] Thus –

> Respectfully referred is a letter and copies of EC-Sickness Benefit Claim of subject employee for your further evaluation and review.
>
> Said claim was not considered as EC, however, sickness and disability benefit claims under SSS were approved, computer print-out hereto attached.[12]

Petitioner requested the elevation of her case to the Employees' Compensation Commission (ECC), which affirmed on June 20, 1996, the decision of the SSS in ECC Case No. MS-7938-296. The ECC ruled that petitioner's disability due to breast cancer is not compensable under the Employees' Compensation Program because said ailment is not included among the occupational diseases under Annex "A" of the Rules on Employees' Compensation; and it was not established that the risk of contracting said ailment was increased by the working conditions at Manila Bay Spinning Mills, Inc.[13] The dispositive portion of the ECC's decision reads –

> IN LIGHT OF THE FOREGOING, the decision appealed from is hereby AFFIRMED and the instant case is accordingly DISMISSED for lack of merit.
>
> SO ORDERED.[14]

Petitioner filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 42280. On May 14, 1997, the Court of Appeals reversed the decision of the

ECC, and granted petitioner's claim for compensation benefit under the Workmen's Compensation Act (Act No. 3428).[15] It held that petitioner's breast cancer must have intervened before the effectivity of Title II, Book IV of the Labor Code on Employees' Compensation and State Insurance Fund on January 1, 1975, hence, the governing law on petitioner's claim for compensation benefit is Act No. 3428, which works upon the presumption of compensability, and not the provisions of the Labor Code on employees' compensation. The Court of Appeals further ruled that since Manila Bay Spinning Mills, Inc. failed to discharge the burden of proving that petitioner's ailment did not arise out of or in the course of employment, the presumption of compensability prevails, entitling her to compensation. The dispositive portion of the said decision states:

> THE FOREGOING CONSIDERED, the contested Decision (ECC Case No. MS-7838-296) is hereby set aside; petitioner instead should be entitled to the benefits under Act No. 3428, as amended, together with the medical-surgical expenses, including doctor's bill.
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> SO ORDERED.[16]

Petitioner filed a motion for reconsideration[17] arguing that it is the Labor Code which should be applied to her case inasmuch as there is no evidence that the onset of her breast carcinoma occurred before January 1, 1975. She claimed that the basis of the computation of her compensation benefits should be the Labor Code and not the Workmen's Compensation Act.

On January 29, 1998, the Court of Appeals denied her motion for reconsideration. [18]

Hence, petitioner filed the instant petition insisting that her disability should be compensated under the provisions of the Labor Code and not under the Workmen's Compensation Act.

The resolution of the instant controversy hinges on the following issues: (1) What is the law applicable to petitioner's claim for disability benefits? and (2) Is she entitled under the applicable law to be compensated for disability arising from breast carcinoma?

The first law on workmen's compensation in the Philippines is Act No. 3428, otherwise known as the Workmen's Compensation Act, which took effect on June 10, 1928. This Act works upon the presumption of compensability which means that if the injury or disease arose out of and in the course of employment, it is presumed that the claim for compensation falls within the provisions of the law. Simply put, the employee need not present any proof of causation. It is the employer who should prove that the illness or injury did not arise out of or in the course of employment.[19]

On November 1, 1974, the Workmen's Compensation Act was repealed by the Labor Code (Presidential Decree No. 442). On December 27, 1974, Presidential Decree No. 626 (which took effect on January 1, 1975) was issued. It extensively amended the provisions of Title II, Book IV of the Labor Code on Employees' Compensation and State Insurance Fund.[20] The law as it now stands requires the claimant to prove a

positive thing – that the illness was caused by employment and the risk of contracting the disease is increased by the working conditions.[21] It discarded, among others, the concepts of "presumption of compensability" and "aggravation" and substituted a system based on social security principles. The present system is also administered by social insurance agencies – the Government Service Insurance System and Social Security System – under the Employees' Compensation Commission. The intent was to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability.[22]

In *Sarmiento v. Employees' Compensation Commission, et al*.,[23] we explained the nature of the new employees' compensation scheme and the State Insurance Fund, as follows –

> The new law establishes a state insurance fund built up by the contributions of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with a new neutral Employees' Compensation Commission which then determines on the basis of the employee's supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled.
>
> On the other hand, the employer's duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own funds to meet these contingencies. It does not have to defend itself from spuriously documented or long past claims.
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> The new law applies the social security principle in the handling of workmen's compensation. The Commission administers and settles claims from a fund under its exclusive control. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.
>
> Since there is no employer opposing or fighting a claim for compensation, the rules on presumption of compensability and controversion cease to have importance. The lopsided situation of an employer versus one employee, which called for equalization through the various rules and concepts favoring the claimant, is now absent. . . .

In workmen's compensation cases, the governing law is determined by the date when the claimant contracted the disease. An injury or illness which intervened prior to January 1, 1975, the effectivity date of P.D. No. 626, shall be governed by the provisions of the Workmen's Compensation Act, while those contracted on or after January 1, 1975 shall be governed by the Labor Code, as amended by P.D. No. 626.[24] Corollarily, where the claim for compensation benefit was filed after the effectivity of P.D. No. 626 without any showing as to when the disease intervened,

the presumption is that the disease was contracted after the effectivity of P.D. No. 626. [25]

In the case at bar, petitioner was found to be positive for breast cancer on March 22, 1995. No evidence, however, was presented as to when she contracted said ailment. Hence, the presumption is that her illness intervened when P.D. No. 626 was already the governing law.

The instant controversy is not on all fours with the cases where the Court applied the "presumption of compensability" and "aggravation" under the Workmen's Compensation Act, even though the claim for compensation benefit was filed after January 1, 1975. In the said cases, the symptoms of breast cancer manifested before or too close to the cut off date – January 1, 1975, that it is logical to presume that the breast carcinoma of the employee concerned must have intervened prior to January 1, 1975. Thus –

(1) In *Avendaño v. Employees' Compensation Commission*,[26] the Workmen's Compensation Act was applied to a claim for disability income benefit arising from breast carcinoma, though the said claim was filed only in 1976, after the effectivity of the Labor Code. Per certification of the physician of the claimant, her breast cancer was contracted sometime in 1959, although the clinical manifestations thereof started only in 1969.

(2) In *Cayco, et al. v. Employees' Compensation Commission, et al.*,[27] the deceased employee's breast carcinoma first showed up in 1972 or 6 years before she died on April 26, 1978. We ruled therein that the presumption on compensability under the Workmen's Compensation Act governs since her right accrued before the Labor Code took effect.

(3) In *Ajero v. Employees' Compensation Commission, et al.,*[28] the claimant was confined and treated for pulmonary tuberculosis and cancer of the breast from January 5 to 15, 1976. In granting the employee's claim for income benefit, it was held that her ailments, especially pulmonary tuberculosis, must have supervened several years before, when the Workmen's Compensation Act was still in force.

(4) In *Mandapat v. Employees' Compensation Commission, et al.*,[29] we held that since the deceased underwent radical mastectomy on May 10, 1975, it is obvious that the tumor in her right breast started to develop even before 1975. We further noted "[t]hat the onset of cancer is quiet and gradual, in contrast [to] many diseases … It takes six to twelve months for a breast cancer to grow from a size which can just be found to the size actually encountered at the time of surgery."

(5) In *Nemaria v. Employees' Compensation Commission, et al.*,[30] the deceased employee was confined for cancer of the liver, duodenal cancer, and cancer of the breast, from September 8-25, 1978, before she succumbed to death October 16, 1978. In the said case, we recognized that cancer is a disease which is often discovered when it is too late. Hence, we surmised that the possibility that its onset was even before the effectivity of the New Labor Code cannot be discounted.

(6) In *De Leon v. Employees' Compensation Commission, et al.*,[31] we ruled that