

## THIRD DIVISION

[ G.R. No. 115858, June 28, 1996 ]

**EMPLOYEES' COMPENSATION COMMISSION, PETITIONER, VS.  
COURT OF APPEALS AND AIDA ALVARAN, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

For purposes of determining compensation to be given their widows and orphans, policemen -by the nature of their functions- are deemed to be on 24-hour duty. This Court holds that since the public demands, as it ought to, strict performance of duty by our lawmen in maintaining peace and security, the government, in the same measure, must be ready to compensate their heirs who are left without any means of support.

This is a petition for review on certiorari under Rule 45 to set aside the Decision<sup>[1]</sup> promulgated on April 19, 1994 by the Court of Appeals<sup>[2]</sup> in CA-G.R. SP No. 28487 and the Resolution<sup>[3]</sup> promulgated on June 10, 1994 denying reconsideration.

#### The Facts

The assailed Decision of the respondent Court of Appeals reversed a ruling by petitioner, a government agency organized under P.D. 422, as amended, holding that private respondent, a policeman's widow, is not entitled to compensation. The facts are not disputed and are quoted by the assailed Decision<sup>[4]</sup> from the reversed judgment of petitioner as follows:

"The deceased was a member of the Mandaluyong Police Station, assigned at the Pasig Provincial Jail as 2nd Shift Jailer with tour of duty from 7:00 P.M. to 7:00 A.M. He had been serving the Mandaluyong Police Station for more than twenty years, since he first entered the service on April 1, 1964, until his death on November 19, 1988.

Records disclosed that on November 19, 1988, at around 11:50 in the evening, the deceased was in front (sic) of the Office of the Criminal Investigation of the Mandaluyong Police Station and was talking with another policeman, PFC. Ruben Cruz, when another policeman, Pat. Cesar Arcilla, who had just arrived, immediately got off the car holding his service firearm and approached the deceased and without saying any word, he fired three successive shots at the surprised police sergeant which sent him slumped to the ground. The deceased, however, although critically wounded, drew his side firearm and fired back, twice hitting fatally Pat. Cesar Arcilla, who was still advancing towards him and

uttering 'ano, ano.' Both fell, fatally wounded, and were rushed to the Mandaluyong Medical Center, but Sgt. Alvaran was pronounced dead upon arrival. Pat. Cesar Arcilla, died in the same hospital, the day after.

Records further disclosed that previous to that shooting incident, it was learned that the same, stemmed from a family feud, wherein Sgt. Alvaran's son, stabbed the patrolman's nephew, a day before (November 18, 1988). Such quarrel was aggravated when the latter fired shots on (sic) the air and uttered defamatory words before the relatives of the former. The presence of Sgt. Alvaran at the Mandaluyong Police Station, that night of November 19, 1988, (when he was supposed to be in the Pasig Provincial Jail, as 2nd Shift Jailer), was to accompany his son who was to be interviewed at the same and to shed light with regards (sic) that stabbing incident which he got involved (in) a day before.

The appellant subsequent (sic) filed a claim for compensation benefits under PD 626, as amended. The System [GSIS] denied the claim on the ground that at the time of the accident the deceased was supposed to be at the Pasig Provincial Jail as 2nd Shift Jailer and with a specific duty to perform, in a particular place, his presence in the Mandaluyong Police Station, although he was a member of the same, clearly reflects the fact that he was 'there merely to accompany his son who was requested to be interviewed by the Officer-in-charge Pfc. Carlos Villaruel pertaining to the stabbing incident which ultimately led to a family feud. In other words according to the System, 'he was plainly acting as a father to his son, an act which is purely personal, foreign and unrelated to his employment. His having been killed at the place where he was not required to be and while he was not in the performance of his duty, cannot be considered to have arisen out of and in the course of employment.'

Appellant requested a reconsideration of the respondent's [GSIS] ruling saying that the contingency happened in the police station where her husband is a member although at that time of the contingency her husband was assigned at the Pasig Provincial Jail.

Respondent [GSIS], nonetheless, took a firm stand prompting appellant to elevate her case to this Commission for review. (ECC Decision pp. 1-3; Rollo, pp. 11-13)."

On July 31, 1991, petitioner Commission affirmed the holding of the GSIS that the death of private respondent's husband is not compensable under P.D. 626, as amended. On appeal, respondent Court reversed petitioner Commission via its assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is GRANTED and the decision of the Employees' Compensation Commission dated July 31, 1991 is REVERSED and SET ASIDE and another one is hereby rendered declaring the petitioner entitled to compensation benefits under P.D. 626, as amended.

Respondent ECC is hereby ORDERED to accordingly AWARD the petitioner the benefits under said law."

Respondent Court held that "(b)y the nature of his work, a police officer exercises his official duty on a 24 hour basis" and that his death "came as an incident in the performance of his duties in the police force x x x (and) must be declared compensable under our law."

### The Issues

Before us, petitioner attacks the appellate court's holding and assigns the following "errors":

"I

The respondent Court of Appeals erred in ruling that deceased P/Sgt. Wilfredo Alvaran was performing an official function when he accompanied his son for interview at (the) Criminal Investigation Division of the Mandaluyong police station; and

II

The respondent Court of Appeals erred in ruling that the private respondent is entitled to the compensation benefit under P.D. 626, as amended, on account of the death of her husband, P/Sgt. Wilfredo Alvaran."

Upon the other hand, private respondent raises the issues of forum-shopping claiming that this Court, in G.R. No. 115040, had already dismissed an earlier petition questioning the very same Decision of the Court of Appeals in CA-G.R. SP No. 28487.

Thus, the issues could be restated as follows:

- (1) Did petitioner engage in "forum-shopping" in filing this petition?
- (2) Did the Court of Appeals err in holding that the death of Sgt. Alvaran is compensable?

### The First Issue: Forum-Shopping

The herein petition should be denied.

In *Buan vs. Lopez*,<sup>[5]</sup> this Court, speaking through Mr. Chief Justice Andres R. Narvasa, ruled that forum-shopping exists where the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res adjudicata* in the other:

"There thus exists between the action before this Court and RTC Case No. 86-36563 identity of parties, or at least such parties as represent the same interests in both actions, as well as identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity on the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant*."

xxx xxx xxx

"As already observed, there is between the action at bar and RTC Case No. 86-36563, an identity as regards parties or interests represented, rights asserted and relief sought, as well as basis thereof, to a degree sufficient to give rise to the ground for dismissal known as *auter action pendant* or *lis pendens*. That same identity puts into operation the sanction of twin dismissals just mentioned. The application of this sanction will prevent any further delay in the settlement of the controversy which might ensue from attempts to seek reconsideration of or to appeal from the Order of the Regional Trial Court in Civil Case No. 86-36563 promulgated on July 15, 1986, which dismissed the petition upon grounds which appear persuasive."

The test therefore in determining the presence of forum-shopping is whether in the two (or more cases) pending, there is identity of (a) parties, (b) rights or causes of action and (c) reliefs sought.

Applying the above test, there is no question that there is identity of cause of action and reliefs sought between this petition and the petition in G.R. No. 115040. The very same decision of the respondent Court of Appeals in CA-G.R. SP No. 28487 promulgated by the same Fifth Division and by the same ponente is sought to be set aside in both petitions before this Court. However, the Solicitor General, as counsel for petitioner, insists that there is no identity of parties inasmuch as the petitioner in G.R. No. 115040 is the Government Service Insurance System as represented by the Government Corporate Counsel while the petitioner now before us is the Employees' Compensation Commission. The Solicitor General also avers that he observed Administrative Circular No. 28-91 proscribing forum-shopping, because he attached a certification<sup>[6]</sup> to the herein petition expressly mentioning the dismissal of the petition in G.R. No. 115040, as follows: