



**DEL ROSARIO & DEL ROSARIO**

## Shipping and the Law

### Seafarer's death 17 days after end of contract held not compensable

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, March 20, 2006

On January 25, 2004, seafarer disembarked as able seaman on the LPG/C GAS HOPE due to finished contract. On February 2, 2004, seafarer suffered a stroke and on February 11, 2004, after an unsuccessful operation, he died. His cause of death was due to "cerebrovascular disease, malignant right middle cerebral artery infarct with uncal herniation". His widow claimed for death benefits. Vessel interests' denied the claim as it occurred after the end of the contract and was not work-related.

The Labor Arbiter awarded death benefits "since the illness that caused the death occurred during the term of employment."

On appeal, the NLRC reversed the decision and dismissed the complaint. The NLRC decision states:

"awards of compensation cannot rest on speculations or presumptions. There is no substantial evidence on record to prove that Cabahug suffered any illness while aboard the vessel or after he disembarked there from."

**"while illness like cerebrovascular disease is disputably presumed as work-related, it behooves upon the complainant to show a reasonable connection between Cabahug's work and the cause of his death; or that the risk of contracting "cerebrovascular disease" was increased by Cabahug's working conditions.** As held by the Supreme Court in the very recent case of Rosario vs. Denklav Marine (G.R. No. 166906, March 16, 2005), it would be too presumptive for this Court to contemplate even the probability that Romeo contracted this illness while on board the M/T Endurance. The burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability. Here, petitioner failed to discharge the burden."

"Also, in the case of Gau Sheng Phils. Inc. vs Estella Joaquin (G.R. No. 144665, 8 September 2004), the Supreme Court ruled that **the complainant-appellee 'must submit proof as would constitute as a reasonable basis of concluding either that the conditions of employment caused the ailment or that such working conditions had aggravated the risk of contracting that ailment.** This the complainant-appellee failed to do."

**"It could not have been the intention of the Standard Employment Contract to make the employer an insurer against all illnesses which might be contracted by the seafarer while in the course of employment, but only for such illnesses suffered during the term of his contract and arising from or growing out of, the risks peculiar to the nature and scope of his employment or incidental to such employment (work-related) and which it is possible to trace the illness to some risk or hazard to which the seafarer is exposed in a special degree by reason of such employment**

The NLRC summarized its decision thus:

"In summary, without substantial evidence showing that the "cerebrovascular disease" (stroke) suffered by Cabahug two (2) days after disembarkation and for which, after going an unsuccessful operation, he died seventeen (17) days after disembarkation, was acquired during the term of his contract and that his working conditions during the said period increased the risk of contracting the aforesaid ailment which is not an occupational disease under the Standard Employment Contract, we find the Labor Arbiter committed a serious reversible error when she ruled that the death of Roque Cabahug is compensable and consequently, awarded to the complainant-appellee death benefits under Section 20.A. of the Standard Employment Contract."

**Cabahug, et.al. vs. Southfield Agencies, Inc., et. al., NLRC OFW CN. 04-04-01095-00; CA NO. 045283-05, January 31, 2006**

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