



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 24, 2013 (Issue 2013/04)

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Lenten / Easter Holiday Notice

Our offices will be closed from Thursday, 28 March to Sunday, 31 March in view of the Lenten / Easter holidays in the Philippines. We re-open on Monday, 1 April 2013.

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One Page POEA Employment Contract Revised

In compliance with the 2006 Maritime Labour Convention, the POEA has issued Memorandum Circular No. 04 Series of 2013 revising the one page POEA employment contract for seafarers. The revised contract now includes the seafarer's date of birth and place of birth, the Shipowner's address; and reference to collective bargaining agreement (CBA), if applicable.

The Memorandum Circular will take effect 15 days from publication in a newspaper of general circulation and filing with the Office of the National Administrative Register.

Supreme Court rules that death during shore leave not compensable as not-work-related

Seaman was on shore leave. He was riding as a passenger on-board a motorcycle and he requested the driver to stop by the riverside of the road as he wanted to urinate. As seaman did not return for a while, the driver looked for him but he was nowhere to be found. Early in the evening, the corpse of the seaman was found. The pathologists confirmed that seaman died due to accidental drowning and that there was "alcohol 20%mg" in his urine. When the body was repatriated, another post mortem examination was conducted by Philippine authorities where it was determined that the cause of death is asphyxia due to drowning.

Seaman's widow claimed death benefits on the argument that his husband died during employment and that he would not have died if he was not employed.

The Labor Arbiter awarded death benefits to the claimant which the NLRC affirmed.

The Court of Appeals reversed the decision of the NLRC.

When the case reached the Supreme Court, it was held that the claimant was not entitled to death benefits.

The Court held that to be entitled for death compensation benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. Under the Amended POEA Contract, work-relatedness is now an important requirement. The qualification that death must be work-related has made it necessary to show a causal connection between a seafarer's work and his death to be compensable.

Under the POEA Contract, work-related injury is defined as an injury(ies) resulting in disability or death arising out of and in the course of employment. Thus, there is a need to show that the injury resulting to disability or death must arise (1) out of employment, and (2) in the course of employment.

The seaman died due to drowning and while on shore leave. At the time of the accident, there was no showing that the seaman was doing an act in relation to his duty as AB or engaged in the performance of any act incidental thereto. It was not also established that, at the time of the accident, he was doing work which was ordered by his superior ship officers to be done for the advancement of his employer's interest. On the contrary, it was established that he was on shore leave when he drowned and because of the 20% alcohol found in his urine upon autopsy of his body, it can be safely presumed that he just came from a personal social function which was not related at all to his job as a seaman. Consequently, his death could not be considered work-related to be compensable.

The argument of the claimant that death happened in the course of employment, because if not for his employment he could be somewhere else and was not on shore leave; and that he would not be in the riverside of Jakarta, Indonesia and had not answered the call of nature and fell into the river and drowned did not convince the Court.

The Court ruled that while the seaman's employment relationship with the respondents did not stop but continues to be in force even when he was on a shore leave, their contract provides that it is not enough that death occurred during the term of the employment contract, but must be work-related to be compensable. There is a need to show connection of seaman's death with the performance of his duty. The deceased was not in the performance of his duty as a seaman on the time of the incident but was merely doing an act for his own personal benefit at the time of the incident. The cause of death which is drowning, at the time when he was on a shore leave, was not brought about by a risk which was only peculiar to his employment as a seaman. He was in no different circumstance with other people walking along the riverside who might also drown if no due care to one's safety is exercised.

Susana Sy vs. Philippine Transmarine Carriers, Inc., and/or SSC Ship Management Pte., Ltd.; G.R. No. 191740; Third Division; February 11, 2013; Associate Justice Diosdado Peralta, Ponente (Attys. Catherine Mangahas and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).

"Few will dispute Del Rosario & Del Rosario's position as the Philippines' leading maritime law firm." from Asia-Pacific, The Legal 500, 2012, p. 388

"This unparalleled shipping firm remains at the forefront of the market." "They are in a league of their own." "They are the runaway leaders in shipping." Chambers Asia Pacific, 2012 p. 832

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This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com.

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