



## Shipping and the Law

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, April 25, 2006

### **To be compensable, illness, injury or death must occur during term of employment**

**In this issue are two Supreme Court decisions. Although based on the old POEA contract, the principles in the decision remain the same under the new POEA contract.**

- **A death to be compensable must occur during term of employment.**
- **An illness to be compensable must occur during term of employment.**

### **A death to be compensable must occur during term of employment**

Seafarer was employed on various vessels by Denholm under several fixed-term contracts. Before his last contract, he underwent a pre-employment medical exam and was declared fit to work. He signed-off without incident and was about to have another tour of duty when he was diagnosed with "renal failure". He eventually died four months after the end of his last contract.

His widow filed a claim for death benefits which was denied by Denholm as he was no longer an employee at the time of his death. The Labor Arbiter ruled in favor of seafarer awarding him death benefits. However, this was reversed by the NLRC Commission which dismissed the complaint.

The Supreme Court likewise dismissed the claim for death benefits as the death, to be compensable, must occur "during the term of employment". In the words of the Court:

"Explicit it is from (Section 20A) that for the death to be compensable, **the death of the employee must occur "during the term of the contract."** Here Romeo's death occurred nearly four (4) months after the conclusion of his employment contract with respondent Denholm. Hence, the NLRC was correct in holding that the death was not compensable under the aforementioned provisions of the POEA Standard Employment Contract."

"True, it is that the policy of the State is to give maximum aid and protection to labor, and beneficiaries may still claim benefits under the provision of the Standard Contract of Employment even if the death occurred after the termination of the contract of employment. **However, to be entitled, the cause of death must be considered work-related.** An example is when the employee contracts an illness or suffers an injury during the course of employment which results in his death shortly after the expiration of his contract. If it is sufficiently proven by the beneficiaries claiming death benefits under Section 20A of the POEA Standard Contract of Employment that the death was a consequence of said illness or injury, the courts will grant the benefits claimed."

"Here, there are no indications that Romeo was already suffering from an ailment at the time of the termination of his employment contract with respondents. The illness which resulted in his death surfaced months after his repatriation."

"(The widow claims that chronic renal failure) do not have any symptoms and could only have been discovered if a urine test had been performed. In essence, (widow) alleges that Romeo's illness is in its

initial stage and does not physically manifest itself. 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 disability.** Here, petitioner failed to discharge this burden."

**Zosima Rosario vs. Denklav Marine Services, Ltd. et.al., G.R. No. 166906, March 16, 2005**

### **An illness to be compensable must occur during term of employment**

Seafarer claims he experienced chest pains and difficulty in breathing while on board the MT "Newberry". He allegedly was examined twice in Nigeria and diagnosed with heart ailment. He allegedly sought treatment but instead the Master terminated his employment. He presented his medical certificate to the agents in order to have his heart ailment treated. He was not treated for said heart ailment but instead was treated for malaria as he complained of fever and chills. He was eventually declared fit from malaria. He requested for copy of his medical certificate on his heart ailment but agents denied he ever submitted such a medical certificate. Seafarer eventually filed a claim for disability benefits based on his heart ailment.

Both the Labor Arbiter and the NLRC Commission dismissed the complaint. The case was brought before the Supreme Court.

The Supreme Court ruled that the illness is not compensable as it did not occur during the term of employment. If ever, said disease was contracted after employment.

**No evidence was presented to prove that the illness existed during employment.** The alleged medical certificate which seafarer submitted to agents and thereafter was allegedly lost by agents, cannot be given credence. The same was vehemently denied by agents and this can be given credence as seafarer was treated by agents for malaria. No plausible reason exists why the company would not similarly grant seafarer's request for examination for the more serious ailments of chest pain and difficulty in breathing. The three medical certificates submitted by seafarer in evidence were all issued in 1996 which was after his employment contract had already expired in December 1995.

**A clear prerequisite of the (old) POEA Standard Employment Contract for claiming of benefits is that the sickness or injury must have been sustained during the term of employment.** Besides, this was the finding of the Labor Arbiter and the NLRC Commission, that is, that the heart ailment was contracted after his employment contract had already expired.

**Bartolome C. Pelayo vs. Aarema Shipping and Trading Co. Inc., et. al., G.R. No. 155741, March 31, 2006**

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