



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 12, 2014 (Issue 2014/21)

***“Del Rosario ... offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market.”  
Chambers Asia Pacific, 2014 p. 949***

## **Supreme Court denies claim for death benefits as cause of death is different from injury sustained during employment**

Seafarer was employed by the company in various capacities under different contracts of employment continuously for a period of ten (10) years. In his last contract with the company he was hired as Third Mate for a period of one (1) year. On the last day of seaman's contract, he met an accident. While inspecting a lifeboat, he slipped and hit his back on the steel lifeboat ladder. He was brought to a hospital in Bahrain and was confined thereat for two (2) weeks. Eventually, he was repatriated to the Philippines. The seaman did not report to the company after repatriation. He was admitted in a hospital for three (3) weeks for further treatment. Sometime later, he was again confined in the hospital, with the diagnosis of "squamous cell carcinoma of the lungs with metastasis to the spine and probably the brain."

The seaman then filed against his employers a complaint for permanent disability benefits, sick wages, reimbursement of hospital, medical, and doctor's expenses, actual, moral and exemplary damages, and attorney's fees.

During the pendency of the case, the seaman died of *“Multiple Organ Failure Secondary To Pulmonary Squamous Cell CA With Distant Metastasis (Brain and Bone) And Obstructive Pneumonia Secondary To Electrolyte Imbalance Secondary To Gastric Ulcer Secondary To S/P Radio Therapy.”* His widow substituted him in the complaint and the claim for disability benefits was then converted into one for death benefits.

The Labor Arbiter dismissed the claim as the seaman died due to an illness which is not a consequence of his slipping on the steel ladder but due to totally different diseases which were diagnosed as Pott's disease/tuberculosis, pneumonia and squamous cell carcinoma. Said illnesses did not manifest during his employment with the company. The injury suffered by the seaman was not the proximate cause of his death, therefore, not work-related and that the death did not arise during the term of the contract but more than one (1) year after.

The NLRC reversed the Labor Arbiter's Decision and ordered the company to pay the spouse death benefits. According to the NLRC, the accident that seaman encountered was the proximate cause of his death. The NLRC held that prior to seaman's last deployment, he passed through the required pre-medical examination and was declared fit to work. In his ten years of employment with the company, there was no showing that he was afflicted with T.B. or any other illness as he passed all the required pre-medical examinations. Thus, the injury he sustained triggered his pulmonary illness and, therefore, his death should be compensable following the liberal interpretation of the employment contracts that all doubts shall be resolved in favor of labor.

The Court of Appeals reversed the ruling of the NLRC and held that seaman's death occurred when he was no

longer in the employ of the company. Consequently, when the seaman died, more than a year had already lapsed from the expiration of his contract of employment and as such, it can no longer be said that seaman was an employee of the company.

It was also held that the wife failed to adduce substantial evidence that the injury sustained by her deceased husband was the proximate cause of his death. There was no causal connection between this illness and the accidental slip. Absent a post-medical examination or its equivalent to show that the disease of which seaman died was contracted during his employment or that his working conditions increased the risk of contracting the aforesaid ailment, the company cannot be made liable for death compensation.

The spouse still contended that seaman may be considered "in the employment of the company at the time of his death" pursuant to Article 26.3, in relation to Articles 22 and 23 of their Collective Bargaining Agreement (CBA), which provides:

26.3 For the purpose of this clause, a seafarer shall be regarded as "in the employment of the company" **for as long as the provisions of Articles 22 and 23 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated** in accordance with Article 19.1 b.

The appellate court still rejected this view considering that seaman's death resulting from cancer of the lungs with metastasis to the spine and brain cannot be said to have been directly attributable to his accident on the ship.

On petition, the Supreme Court affirmed the decision that the spouse is not entitled to death benefits.

*The Supreme Court held that in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract.*

### **Seaman died outside of the term of his employment**

It is clear from the evidence presented that seaman did not pass away during the term of his employment. His contract of employment with respondents expired on July 23, 2006 whereas his death occurred more than a year thereafter or on August 19, 2007. As the appellate court noted, even if it is said that his employment ceased upon his repatriation to the Philippines on August 17, 2006, the fact remains that his death took place long after the expiration of his employment.

Even assuming that the CBA provision being cited by the spouse is applicable in this case, the seaman still cannot be considered as in the employment of the company when he died. The provisions relied upon by the spouse require that the seafarer has not been repatriated or if so, that his death is directly attributable to the sickness or injury that caused him to be medically repatriated. But there is nothing in the records which will indicate that seaman was repatriated by reason of his illness. More importantly, there is no showing that seaman's death is directly attributable to the accident he encountered on the vessel.

### **Death was not proven to be work-related**

The spouse failed to adduce proof that the death of the seaman was work-related. The Supreme Court has consistently ruled that unless there is substantial evidence showing that: (a) the cause of the seaman's death was reasonably connected to his work; or (b) the sickness/ailment for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died, death compensation benefits cannot be awarded.

To substantiate her claim for death compensation, the spouse merely presented the accident report of the vessel's captain, the referral form of the shore clinic indicating that an X-Ray was conducted on the seaman, the medical report of the attending physician of the local hospital containing an account of the tests conducted on him and their respective findings, the consultation report of the radiologist of the local hospital showing the condition of seaman's spine, and his certificate of death, among others. The Supreme Court said that these documents exhibit nothing more than seaman's condition at the time the tests were conducted after his repatriation, the fact of his accidental slip on board the vessel and of his eventual death. Regrettably, explanations as to the causal correlation among them are lacking. There is no established link connecting seaman's accidental slip to the lung cancer and pneumonia which caused his death. Without competent evaluation and interpretation by medical experts on how the findings

actually relate to the facts surrounding the case, the Court cannot just automatically conclude that his death was a product of his accident on board the ship.

Further, the seaman did not even submit himself to the mandatory post-employment medical examination within three (3) days from his arrival in the Philippines. Neither was there any indication that he was physically incapacitated to do so. To ignore this mandatory rule would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. It is, therefore, difficult to say that seaman acquired or developed lung cancer or pneumonia as a result of his work in the vessel.

Neither can it be said that seaman's working conditions increased the risk of contracting the disease for which he died. The Court ruled before that claimant need not show a direct causal connection as positive propositions on employment factors like age, position, actual work, dietary provisions, exposure to substances, and possibility of recovery may suffice. However, the Court found no evidence on record or allegation in the pleadings showing how seaman's working conditions involved exposure to the risks of contracting cancer of the lungs or pneumonia.

### **PEME not exhaustive**

The Court noted that the NLRC granted the claim for death compensation essentially because prior to his last deployment, the seaman passed the required pre-employment medical examination (PEME) and was declared fit to work. The NLRC ruled that in his ten years of employment with the company, there was no showing that he was afflicted with T.B. or any other illness as he passed all the required PEMEs. On this premise, the NLRC concluded that the injury he sustained in the accident triggered his pulmonary illness.

The Court disagreed with this reasoning and held that the mere fact that seaman was declared fit to work in his PEMEs for the past ten (10) years of his employment does not necessarily follow that his pulmonary illness and cancer of the lungs was brought about by the accident he encountered. The Court ruled that the pre-employment medical examination is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. It merely determines whether one is "fit to work" at sea or "fit for sea service," and does not reveal the real state of health of an applicant. Thus, the "fit to work" declaration in seaman's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.

*Remedios O. Yap versus Rover Maritime Services Corp., Mr. Ruel Benisano and/or UCO Marine Contracting W.L.L; GR. No. 198342; Third Division; August 13, 2014; Supreme Court Associate Justice Diosdado M. Peralta, Ponente (Attys. Jerome Pampolina and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).*

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*"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497*

*"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where i represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494*

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**Del Rosario & Del Rosario / Del Rosario Pandiphil, Inc.**

**Office Address:** 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

**Telephone:** 63 2 810 1791 \* **Fax:** 63 2 817 1740/ 63 2 810 3632

**24/7 mobile:** (63) (917) 830-8384; [mail@delrosario-pandiphil.com](mailto:mail@delrosario-pandiphil.com); [www.delrosariolaw.com](http://www.delrosariolaw.com)

