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FIRST DIVISION

[G.R. No. L-42458. June 29, 1979]

JOSE SALVADOR, JR., *petitioner, vs.* **THE WORKMEN'S COMPENSATION COMMISSION and EDUARDSON SHOE FACTORY,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMENS' COMPENSATION ACT; DISABILITY; KNOWLEDGE BY THE MANAGER OR AGENT OF THE EMPLOYER IS SUFFICIENT WITHIN THE PURVIEW OF SECTION 45 THEREOF; CASE AT BAR.**— WE have ruled in several cases that knowledge by the manager, agent or foreman of the employer of the disability or illness or the death of the employee is sufficient knowledge within the purview of said Section 45. It is inconceivable that the illness of the deceased employee from September 28, 1972 to October 29, 1972, who was bed-ridden and therefore absent from his job, or his death on October 29, 1972, was not known to the respondent employer or its manager, supervisor or foreman.

2. **ID.; ID.; CLAIM FOR COMPENSATION; RIGHT TO CONTROVERSION; FAILURE TO SEASONABLY CONTROVERT THE CLAIM RESULTS IN A WAIVER OF NON-JURISDICTIONAL DEFENSES.**— Such failure to seasonably controvert the claim results in a waiver by the employer of all non-jurisdictional defenses.

D E C I S I O N

MAKASIAR, *J.*:

This petition for *certiorari* seeks to review the decision of the Workmen's Compensation Commission.

The deceased Lope Salvador, during his lifetime, was an employee of respondent Eduardson Shoe Factory as shoemaker for a period of 13 years receiving a salary of ₱8.35 a day. From September 28, 1972 to October 29, 1972, Lope Salvador was bed-ridden and was attended by Dr. Paciano Z. Sena, Jr.,

Supreme Court E-Library

who diagnosed his sickness as "septicemia, serum homologus hepatitis, pneumonitis, right, PTB, minimal, bilateral," which was also the cause of his death on October 29, 1972.

In behalf of Lope Salvador, Jr., minor son of the deceased, who was born on July 9, 1970, Jose Salvador, brother of the deceased, filed a claim for compensation for the death of Lope Salvador. Among the evidence submitted in support thereof are the physician's report dated March 13, 1975 signed by Dr. Paciano Z. Sena, Jr., the death certificate of the deceased Lope Salvador, and medical certificate showing that the deceased was confined at the Eulogio Rodriguez Sr. Memorial Hospital from September 28, 1972 up to October 29, 1972.

This claim for compensation was referred to respondent Eduardson Shoe Factory, which, on May 16, 1975 filed the Employer's Report of Accident or Sickness, alleging that respondent factory is controverting the claimant's right to compensation "because we were not informed about his sickness and the ailment was not contracted in the course of his employment in the company nor aggravated by the nature of his work." In addition thereto, upon receipt of the notice of hearing, respondent factory filed a motion to include the Federal Insurance Company, Inc. as party respondent because the liability of respondent factory is insured with said company, under Policy No. 12241.

This claim for compensation was set for hearing on June 18, 1975 and reset to July 5, 1975. In all these scheduled dates of hearing neither the claimant nor his counsel appeared. Hence, on September 23, 1975 Acting Referee Angel L. Hernando, Jr. dismissed the claim. Claimant moved for the reconsideration of this order, alleging:

"1. that claimant was never notified and has never received any notice to appear for hearing of the above-entitled case, hence, his failure to prosecute his claim; and

2. that claimant came to know of the dismissal order when he came to this office yesterday to inquire as to the status of his claim."

Supreme Court E-Library

This motion was denied by the respondent Commission in its decision dated December 4, 1975, the pertinent portion of which reads:

"The instant case was scheduled for hearing and the notices thereof were sent to the parties first, on May 25, 1975, the second on August 18, 1975 and the third was on September 3, 1975. In all these dates, there was no showing of any appearance of the claimant nor his counsel. Hence, on September 23, 1975, after claimant failed to appear, except the respondent, the case was dismissed by Acting Referee Angel Hernando of the Regional Office No. 4, Department of Labor, Manila, which is now the subject of the Motion to Set Aside Order and Set Case for Formal Hearing on October 17, 1975, which was denied on October 20, 1975.

"Normally, the entire records of the case should be remanded to the Regional Office *a quo* to afford the parties the opportunity to adduce evidence. However, under the present set up, such procedure is next to impossible considering the legal abolition of the Office upon the implementation of the Labor Code. At any rate, the requirement of due process was substituted by the Department Order No. 1 dated July 17, 1974 requiring the parties to adduce their evidence, as herein before stated in its Order dated May 25, 1975, in which case, claimant especially failed to comply.

"From the foregoing facts, there is no justifiable and compelling reason to reverse the order issued by the Acting Referee of Regional Office No. 4, Manila, which has exercised jurisdiction over the case.

"WHEREFORE, premises considered, the order appealed from is hereby AFFIRMED And the above-entitled case is hereby dismissed for lack of merit."

It appears that in all the notices for hearing sent out to the parties, there was no proof of service to claimant or his counsel. Although it appeared from the notices dated May 29, 1975 and September 3, 1975 that they were sent by registered mail to the claimant, yet the address in the notice of hearing did not state the house number of the claimant, which is No. 14 as appearing in the notice and claim for compensation in death cases. The claim, therefore, of the herein petitioner that he was not notified of the hearing of his claim, should be given

Supreme Court E-Library

full weight and credit. The presumption that the registered notice had been received by the claimant will not prosper because the address of the claimant is incomplete. The dismissal for failure to prosecute was therefore erroneous.

It is not disputed that the deceased Lope Salvador was an employee of respondent Eduardson Shoe Factory; that during his employment he worked as shoemaker for a period of 13 years; and that it was during his employment when he was hospitalized and ultimately died. The only issue is whether the illness of Lope Salvador which caused his early demise is work-connected.

The respondent employer filed its controversion only on May 16, 1975, which is way beyond the period prescribed by Section 45 of the Workmen's Compensation Act, as amended, to wit:

> "The controversion shall be filed within fourteen (14) days from the date of his disability or within ten (10) days after the employer has knowledge of the alleged disability."

WE have ruled in several cases that knowledge by the manager, agent or foreman of the employer of the disability or illness or the death of the employee is sufficient knowledge within the purview of said Section 45. It is inconceivable that the illness of the deceased employee from September 28, 1972 to October 29, 1972, who was bed-ridden and therefore absent from his job, or his death on October 29, 1972, was not known to the respondent employer or its manager, supervisor or foreman. Such failure to seasonably controvert the claim results in a waiver by the employer of all non-jurisdictional defenses.

Moreover, the medical certificate issued by the Eulogio Rodriguez Sr. Memorial Hospital shows that the deceased was confined in said hospital from September 28, 1972 up to October 29, 1972 with a diagnosis of septicemia, serum homologus hepatitis, pneumonitis, right, PTB, minimal, bilateral. The death certificate shows that Lope Salvador died on October 29, 1972 and the cause of his death is that which was diagnosed by the hospital.

Supreme Court E-Library

It is not hard to explain that this ailment could have been aggravated by, if not the direct result of his employment with respondent factory as a shoemaker. His work involved manual labor inside the factory the whole day and sometimes until night. After working manually inside the factory the whole day and then going home, he was constantly exposed to sudden changes of temperature (Annex "A", petition). It may be added that as a shoemaker, he must have had constantly inhaled fibrous substances from the materials he was using which greatly affected his lungs.

From the notice and claim for compensation, the amount of physician, medical and hospitals bills is ₱2,000.00. However, the claim for funeral services in the amount of ₱700.00 cannot be granted in full as the law provides for a fixed amount of ₱200.00 for said services (Sec. 8, Workmen's Compensation Act, as amended). The claimant is therefore entitled to receive from respondent factory the following ₱6,000.00 as death benefits; ₱2,000.00 for physician, hospital and medical expenses; and ₱200.00 as burial expenses.

WHEREFORE, THE ORDER OF DISMISSAL IS HEREBY SET ASIDE AND RESPONDENT EDUARDSON SHOE FACTORY IS HEREBY ORDERED TO PAY

1. THE CLAIMANT THE SUM OF SIX THOUSAND PESOS (₱6,000.00) AS DEATH BENEFITS;
2. THE AMOUNT OF TWO THOUSAND PESOS (₱2,000.00) FOR MEDICAL EXPENSES;
3. THE SUM OF TWO HUNDRED PESOS (₱200.00) FOR FUNERAL EXPENSES;
4. THE AMOUNT OF SIX HUNDRED PESOS (₱600.00) AS ATTORNEY'S FEES; AND
5. THE SUM OF SIXTY-ONE PESOS (₱61.00) AS ADMINISTRATIVE COSTS.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.