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FIRST DIVISION

[G.R. No. L-43471. September 30, 1978]

JOSE TORALDE, *petitioner, vs.* **THE WORKMEN'S COMPENSATION COMMISSION and ORBE LINES, represented by ORLANDO TAN, Manager,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; DISABILITY BENEFITS; CLAIMANT ENTITLED THERETO IF HE IS NOT GAINFULLY EMPLOYED DURING HIS ABILITY.** — The fact that claimant, after he had stopped working from his employment on account of his illness, was seen driving the passenger-jeepney of his father-in-law, having been forced to drive once in a while because he needed money, does not negate his claim for compensation, there being no proof that claimant was already gainfully employed as driver of said passenger-jeepney.

2. **ID.; ID.; PRESUMPTION OF COMPENSABILITY; ILLNESS PRESUMED TO HAVE BEEN CAUSED AND AGGRAVATED BY NATURE OF WORK.** — Claimant's illness of PTB was presumptively caused and aggravated by his work, it appearing that as bus driver he worked from 3:00 o'clock in the morning up to 9:00 o'clock in the evening and was exposed to the early morning and late evening cold as well as to the heat of the engine and the sun during the whole day — breathing the polluted air of dusty roads. And where such presumption, reinforced by medical examination and treatment, was not rebutted by substantial proof to the contrary, claimant is entitled to compensation.

APPEARANCES OF COUNSEL

Martin Badong, Jr. for petitioner.
Luis P. Bisana for private respondent.
E. V. Miguel for respondent WCC.

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DECISION

MAKASIAR, *J.*:

Petition for review of the decision of the Workmen's Compensation Commission dated January 14, 1976 reversing the award of the Workmen's Compensation Unit, Regional Office No. VI.

Claimant Jose Toralde was employed by respondent Orbe Lines sometime in 1969 as bus driver. As such driver he worked five days a week from 3:00 A.M. up to 9:00 P.M. until martial law was declared on September 21, 1972 when he started reporting for work at 4:00 A.M. On November 8, 1973, he submitted himself at the Camarines Sur Provincial Hospital for a chest X-Ray examination and was found afflicted with PTB. He was treated at the same hospital for a month after which he resumed his work. Again claimant submitted himself for treatment of PTB in 1974 to Dr. Magno Jamito, Dr. Ramon Prado and Dr. Semaña. In July, 1974, he stopped working completely because his illness worsened and was treated for six months by Dr. Ramon Prado and Dr. Lope Semaña.

On March 26, 1975 petitioner filed his claim for compensation with the Workmen's Compensation Unit, Regional Office No. VI, Naga City. Said Regional Office rendered a decision awarding compensation to petitioner in the total sum of ₱6,000.00 plus ₱2,511.00 as reimbursement of medical expenses and attorney's fee of ₱300.00 and administrative fee of ₱61.00. This award was however reversed by the Workmen's Compensation Commission sitting *en banc* for the following reasons:

"It is indubitable that he stopped working not because of any disabling illness but because the bus he was driving figured in an accident and there was no bus for him to drive. That he was not disabled from labor by his PTB is likewise amply demonstrated by the fact that since one month after he stopped working with the respondent up to the present, he was driving a passenger jeepney. The injuries or diseases that are compensable are those which produces disability and affect the earning power of the employee. As long as the employee is able to work and receives his pay even he is suffering

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from illness, he is not entitled to compensation (*General Azucarera Don Pedro vs. De Leon*, G.R. No. L-9449, July 24, 1959)."

It may be true that once in a while petitioner was seen driving the passenger-jeepney of his father-in-law, yet there was no proof that claimant was already gainfully employed as driver of said passenger-jeepney. He said that he was forced to drive a passenger-jeepney once in a while because he needed money for his medicines.

The nature and condition of the work of petitioner, starting for work as early as 3:00 o'clock in the morning up to 9:00 o'clock in the evening, exposed to the early morning and late evening cold as well as to the heat of the engine and the sun during the whole day, and breathing the polluted air of dusty roads, would certainly weaken the bodily resistance of petitioner and make him susceptible to sickness. Petitioner's illness of PTB was presumptively caused and aggravated by his work, which presumption has not been rebutted by substantial proof to the contrary, reinforced as it is by medical examination and treatment. Claimant is therefore entitled to compensation.

WHEREFORE, THE JUDGMENT OF RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY REVERSED AND RESPONDENT ORBE LINES, REPRESENTED BY ORLANDO TAN, IS HEREBY DIRECTED

A. TO PAY CLAIMANT

(1) THE SUM OF SIX THOUSAND (P6,000.00) PESOS AS DISABILITY COMPENSATION;

(2) THE AMOUNT OF TWO THOUSAND FIVE HUNDRED ELEVEN (P2,511.00) PESOS AS REIMBURSEMENT FOR HIS MEDICAL EXPENSES DULY SUPPORTED BY PROPER RECEIPTS; AND

(3) ATTORNEY'S FEES EQUIVALENT TO 10% OF THE RECOVERABLE AMOUNT;

B. TO PROVIDE CLAIMANT WITH SUCH MEDICAL, SURGICAL AND HOSPITAL SERVICES, APPLIANCES AND

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SUPPLIES AS THE NATURE OF HIS DISABILITY AND THE PROGRESS OF HIS RECOVERY MAY REQUIRE AND THAT WHICH WILL PROMOTE HIS EARLY RESTORATION TO THE MAXIMUM LEVEL OF HIS PHYSICAL CAPACITY; AND

C. TO PAY ₱61.00 AS ADMINISTRATIVE FEE.

SO ORDERED.

Teehankee (Chairman), Muñoz Palma, Fernandez, and *Guerrero, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43690. September 30, 1978]

SANCHO SEBASTIAN, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and PROVINCIAL GOVERNMENT OF SULU (Provincial Waterworks),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONSHIP MAINTAINED EVEN WHILE ON LEAVE.—Employer-employee relationship is not suspended when an employee is given a vacation leave with pay. That the employee on vacation leave with pay is accorded with regular compensation, attests to said employee's continuously rendering regular service, in line with the settled principle that the basis of remuneration work rendered.

2. ID.; WORKMEN'S COMPENSATION; PRESUMPTION OF COMPENSABILITY; ILLNESS SUPERVENING DURING EMPLOYMENT, COMPENSABILITY PRESUMED.—Section 44 of the Workmen's Compensation Act unequivocally