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FIRST DIVISION

[G.R. No. L-42069. January 15, 1979]

PEDRO LEONARDO, *petitioner, vs.* **THE WORKMEN'S COMPENSATION COMMISSION and LUZON BROKERAGE CORPORATION,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; CLAIMS FOR COMPENSATION; PRESCRIBES IN TEN YEARS.** — Claims for compensation are not barred by prescription although they were not filed within two months from date of injury or sickness pursuant to Section 24 of the Workmen's Compensation Act, as amended. A claim for compensation benefit is a liability vested by statute which prescribes in ten years in accordance with Art. 1144(2) of the New Civil Code.

2. **ID.; ID.; ID.; ID.; TEN-YEAR PERIOD COUNTED FROM DATE EMPLOYEE IS RENDERED DISABLED TO PURSUE HIS WORK.** — The ten-year prescriptive period for compensation cases commences from the time the employee is disabled to pursue his occupation by reason of illness. Thus, where claimant's disability started on July 15, 1964 and the claim was filed on May 27, 1974, said claim is still within the 10-year prescriptive period. A Workmen's Compensation is a substantial right created by statute, hence, the period of prescription shall be 10 years in accordance with the provisions of the New Civil Code.

3. **ID.; ID.; ID.; DELAY IN FILING CLAIM, NON-JURISDICTIONAL.** — Delay in the filing of the Notice and Claim is non-jurisdictional provided, however, the respondent did not suffer by such delay or failure or when the employer, his agent or representative had knowledge of the illness or accident.

4. **ID.; ID.; COMPENSABLE DISEASES; INCLUDE TUBERCULOSIS.** —Tuberculosis is not an instantaneous disease. It is an imperceptible disease that is breathed in and feeds on the lungs and taken with food; its presence in the body cannot easily be discerned; its incipient stage may not be readily discovered. It is medically accepted that exposure to dust and dirt is a

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predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens the resistance to any latent tuberculosis infection and reactivity of the infection. The causal connection between claimant's ailment and the nature of his employment as driver is easily discernible from which can be concluded that his illness supervened in the course of such employment and was directly caused or either aggravated by the result of such employment.

5. **ID.; ID.; PRESEUMPTION OF COMPENSABILITY; DOUBTS RESOLVED IN FAVOR OF CLAIMANT.** — Where there exists same doubt as to whether claimant's illness arose out of or was aggravated by his employment, such doubt, for the purpose of carrying out the beneficient intention of the Workmen's Compensation Act, should be resolved in favor of the claimant.

6. **ID.; ID.; ID.; PROBABILITY IS THE TOUCHSTONE IN PROVING COMPENSABILITY.** — In testing the evidence on the relation between the injury or disease and the employment, probability and not certainty is the touchstone.

7. **ID.; ID.; ID.; BURDEN TO SHOW NON-COMPENSABILITY RESTS UPON THE EMPLOYER.** — Well-established is the rule that under the presumption of compensability established by the Workmen's Compensation Act, the burden of proving non-compensability of the employee's illness rests on the employer.

APPEARANCES OF COUNSEL

Amado A. Caballero for petitioner.

Ernesto H. Cruz & Rodolfo M. Cornejo for respondent Commission.

Ermitaño & Garchitorena and Amor, Toquero & Associates for respondent Corporation.

D E C I S I O N

GUERRERO, *J.*:

Petition for review[1] of the decision of the Workmen' Compensation Commission in RO 4-WC Case No. 153315 which

[1] Treated as special civil action per resolution of April 26, 1976.

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reversed the award of ₱6,000.00 granted by Acting Referee Estratonico S. Añano of the Workmen's Compensation Section, Regional Office No. 4, Department of Labor, Manila, in favor of petitioner, pursuant to Secs. 14 and 15 of the Workmen's Compensation Act, as amended.

On May 27, 1974, petitioner filed his Notice of Injury Sickness and Claim for Compensation[2] seeking to recover disability compensation benefits against his employer, the Luzon Brokerage Corporation, for his sickness of pulmonary tuberculosis allegedly contracted in the course of his employment caused by or aggravated by the nature of his work as driver physically disabling him for further work. To support his claim for compensation, petitioner attached the Physician's Report of Sickness or Accident[3] accomplished by Dr. Delfin Manuel of the Philippine Tuberculosis Society at Tayuman, Manila, stating therein that claimant Pedro Leonardo is definitely suffering from a moderately advanced Pulmonary Tuberculosis.

On August 5, 1974, private respondent Luzon Brokerage Corporation controverted petitioner's claim, contending that claimant's illness is not compensable as it did not arise out of the performance of his duties and not in the ordinary course of his employment.

The issues having been joined, the case was set by the Acting Referee for conference. The claimant submitted an affidavit to constitute as his evidence in chief while respondent submitted its Motion to Dismiss, and thereupon, the Acting Referee rendered decision on February 24, 1975 awarding the claimant the sum of ₱6,000.00 as disability compensation benefits as well as attorney's fees.

Against this adverse decision, private respondent Luzon Brokerage Corporation on March 18, 1975 filed with the Workmen's Compensation Commission a Petition for Review of the aforesaid decision. The Commission, through Associate

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[2] Records, p. 128.

[3] Records, p. 129.

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Commissioner Eugenio I. Sagmit, Jr., concurred in by Associate (Medical) Commissioner Herminia Sotelo Castelo on November 25, 1975 reversed and Acting Referee's decision on the ground that it found "practically nothing to satisfactorily show that he (Pedro Leonardo) was suffering from pulmonary tuberculosis in 1964."

Hence, this Petition for Review on *Certiorari.*

Private respondent Luzon Brokerage Corporation in its memorandum submitted to this Court, anchors its opposition to the grant of compensation benefits on the following grounds: (1) petitioner's claim has prescribed; (2) there is no conclusive evidence that petitioner (claimant) was suffering from pulmonary tuberculosis in 1964 when he ceased working, or that he contracted the said ailment in the course of his employment with respondent; and (3) the law furnishes equal protection to both petitioner and private respondent without distinction between the strong and the weak.

Apropos the first contention, private respondent maintains that Sec. 24 of the Workmen's Compensation Act, as amended, explicitly prescribes that claims for compensation benefits should be filed within two months from the date of injury. The respondent says:

"In the case at bar, it appears from the affidavit of Celestina Leonardo, wife of the claimant Pedro Leonardo, dated January 7, 1975, submitted in support of the instant claim, that Pedro Leonardo was aware that he was suffering from tuberculosis when he had himself examined sometime in 1958 (see par. 6 of the affidavit). Petitioner herein filed his claim for disability benefits for the said ailment which he discovered in 1958, only on May 27, 1974. From 1958 to 1974 is a period of 16 long years . . . (T)here is no question that petitioner's claim for disability compensation benefits had long prescribed. Certainly laches had set in controverting petitioner's cause into one of a stale demand.

Petitioner's claim may be viewed at another angle. In a letter to the Chief Referee and Chief of Section of Regional Office No. 4 of the Workmen's Compensation Section dated August 1, 1964, addressed to the respondent Luzon Brokerage Corporation, it was

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reported by the said Chief Referee that the claimant Pedro Leonardo (petitioner herein) contracted illness sometime in June, 1964. Again, from June, 1964, when claimant contracted illness to May 27, 1974 when claimant filed his claim for disability compensation benefits is roughly 10 years. The claim has, therefore, prescribed. (Memorandum for Respondent Luzon Brokerage Corporation, pp. 79-80).

Private respondent's stance that petitioner's claim has prescribed is without merit. In *Romero v. Workmen's Compensation and Republic of the Philippines (Bureau of Public Schools)*, No. L-42617, June 30, 1977, 77 SCRA 482, 487, We ruled as without merit the Solicitor General's contention that the filing by claimant of notice for compensation beyond the reglementary period of two months as provided by Section 24 of the Workmen's Compensation Act, as amended, was fatal to the success of the claim; that said defense is not jurisdictional; and that the statutory right to compensation prescribes in ten (10) years. Citing the *Romero* case, We reiterated in *Cañonero v. Workmen's Compensation Commission and Republic of the Philippines (Bureau of Public Schools)*, No. L-43880, February 28, 1978, 81 SCRA 713, 720, that the contention of respondent employer that the filing of the claim for compensation only after the lapse of more than seven (7) years from the time of disability or illness in violation of Section 24 of the Workmen's Compensation Act, as amended, was fatal to its success is, likewise, without merit. It must be underscored that pursuant to Article 1144 (2) of the Civil Code, the compensation under the Workmen's Compensation Act is a liability vested by statute which prescribes in 10 years.

When does the 10-year statutory period to file a compensation claim under the Workmen's Compensation Act commence? This question was resolved in *Superior Concrete Products, Inc. v. WCC and Carmelito Benoza*, No. L-42020, March 31, 1978, 82 SCRA 270, 278, wherein We ruled that the ten-year prescriptive period for compensation cases commences from the time the employee is disabled to pursue his occupation by reason of illness. Thus, We enunciated:

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"The claim for compensation benefits filed by private respondent Benoza has not prescribed. Petitioner asserts that inasmuch as the claimant alleges that he became sick with pulmonary tuberculosis in February of 1963, the claim for compensation has long prescribed and the employee is guilty of laches since the latter filed the claim for the first time only in April of 1971.

"Although the herein claimant became ill in February of 1963, however, it was only in March of 1967 when he became disabled from work, and inasmuch as it is the employee's disability to pursue his occupation by reason of illness which entitles him to compensation, Benoza's cause of action accrued only in March of 1967, consequently, the filing of his claim in April of 1971 was well within the ten-year prescriptive period for compensation cases of this nature."

In the case at bar, the Acting Referee correctly ruled in his decision that Pedro Leonardo's claim for compensation benefits has not yet prescribed for "the records show that the claimant's disability started on July 15, 1964. The filing of the claim on May 27, 1974 is still within the 10-year prescriptive period. A Workmen's Compensation is a substantial right created by statute, hence, the period of prescription shall be 10 years in accordance with the provisions of the New Civil Code. Further, the claimant's delay in the filing of the Notice and Claim is non-jurisdictional provided, however, the respondent did not suffer by such delay or failure or when the employer, his agent or representative had knowledge of the illness or accident. In the case at bar, the respondent cannot deny knowledge of claimant's disability. As a matter of fact, the matter was allegedly reported to the Luzon Brokerage Corporation especially when the claimant filed an application for benefits with the SSS. x x x"

Private respondent's second argument that there is no conclusive evidence that petitioner (claimant) was suffering from pulmonary tuberculosis in 1964 when he ceased working or that he contracted the said ailment in the course of his employment with respondent is, likewise, unmeritorious. The records of this case indubitably reveal that petitioner Pedro Leonardo had been in the employ of the Luzon Brokerage Corporation as driver for more than thirty (30) years from 1930

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to 1964 before the disease of pulmonary tuberculosis caught up with him and rendered him incapacitated and disabled for further work. He was barely thirty years of age when he started working for respondent Corporation, a well-established and successful brokerage firm under able management, which had under its employ about 750 employees who must have undergone medical and physical examination previous to their employment and an annual check up thereafter, including petitioner. There is no showing that the services of petitioner had been interrupted during his employment with the respondent Corporation for over three decades. There is evidence that as far back as 1958, when Leonardo was still working as driver of respondent Corporation, he began complaining about his condition of missing his regular meals on time, getting hungry because of it, the dust he inhaled while driving which caused him to cough, the intense heat of the sun at noontime and the cold biting wind during rainy season especially when he got wet, and after having himself examined by a doctor, he was found to be suffering from TB. The medical evidence given by Dr. Delfin B. Manuel of the Philippine Tuberculosis Society in his Physician's Report clearly and positively stated that claimant Pedro Leonardo was definitely suffering from a moderately advanced pulmonary tuberculosis and that his illness could be aggravated by his employment.

Private respondent's assertion that compensability does not lie as there was no showing that claimant was suffering from pulmonary tuberculosis when he was separated from the service is flimsy and weak when We consider that tuberculosis is not an instantaneous disease. It is an imperceptible disease that is breathed in and feeds on the lungs and taken with food; its presence in the body cannot easily be discerned; its incipient stage may not be readily discovered. It is medically accepted that exposure to dust and dirt is a predisposing cause of tuberculosis and tends to produce fibrosis of the lungs which weakens the resistance to any latent tuberculosis infection and reactivates that infection. (See *Batangas Transportation Company v. Perez and WCC*, L-19522, August 31, 1964, 11 SCRA 797 and *Lorenzo v. WCC and Philippine Glass*

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Manufacturing Co., Inc., L-42631, January 31, 1978, 81 SCRA 430, 440). The causal connection between his ailment and the nature of his employment as driver is thus easily discernible, from which can be concluded that his illness supervened in the course of such employment and was directly caused or either aggravated by or was the result of such employment. We find substantial evidence to this effect from the Physician's Report signed by Dr. Delfin Manuel and the Medical Report of the Social Security System.

At any rate, where there exists some doubt as to whether claimant's illness, pulmonary tuberculosis, arose out of or was aggravated by his employment, such doubt for the purpose of carrying out the beneficient intentions of the Workmen's Compensation Act, should be resolved in favor of the claimant. We must once again emphasize the principle that in testing the evidence on the relation between the injury or disease and the employment, probability and not certainty is the touchstone. And well-established is the rule articulated by this Court in numerous Workmen's Compensation cases decided by Us that under the presumption of compensability established by the Act, the burden of proving non-compensability of the employee's illness rests on the employer, which in the case at bar, respondent Corporation has utterly failed to do by substantial evidence.

We find the decision of the respondent Workmen's Compensation Commission contrary to the evidence and to the law.

WHEREFORE, We set aside the decision of the respondent Commission and affirm the Acting Referee's Award with modification. The private respondent Luzon Brokerage Corporation is hereby ordered to:

1. Pay petitioner Pedro Leonardo the maximum amount of SIX THOUSAND PESOS (₱6,000.00) as disability compensation benefits;

2. Reimburse petitioner his expenses for medical and hospital services, duly supported by proper receipts;

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3. Provide petitioner with such services, appliances and supplies as the nature of his disability and the process of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity;

4. Pay petitioner's counsel the amount of SIX HUNDRED PESOS (₱600.00) as attorney's fees; and

5. Pay the sum of SIXTY-ONE PESOS (₱61.00) administrative fee.

SO ORDERED.

Teehankee, Makasiar, Santos, and *Fernandez, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43219. January 15, 1979]

JOSEFINA BORJA VDA. DE CLEMENTE, *petitioner*, *vs.* **WORKMEN'S COMPENSATION COMMISSION and CITY OF MANILA (Manila Metropolitan Police),** *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; CLAIM FOR COMPENSATION; CLAIMANT WITH OPTION TO CHOOSE REMEDY TO PURSUE.** — Pursuant to Section 6 of the Workmen's Compensation Act the employee who suffers injury for which compensation is due by any other person besidés his employer has the option to either claim compensation from his employer under the provision of the Act or sue such other person for damages in accordance with law.

2. **ID.; ID.; ID.; SETTLEMENT OF CRIMINAL CASE AGAINST THIRD PARTIES DOES NOT AFFECT RECOVERY OF**