Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARLOW NAVIGATION PHILS.,[*] MARLOW NAVIGATION CO. LTD. and/or MR. ANTONIO GALVEZ, JR., LEOPOLDO C. TENORIO, PAUL BERNHARD GALVEZ, ANDREAS NEOPHYTOU, NIDA C. ABARQUEZ, JERRY P. AGNES and JOANNE B. VITOBINA,

Petitioners,

G.R. No. 233897

Present:

PERLAS-BERNABE, *S.A.J.*,[**]
HERNANDO,
Acting Chairperson,[***]
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

- *versus* -

HEIRS OF THE LATE ANTONIO O. BEATO, represented by his wife JONABEL D. BEATO,

Respondents.

Promulgated:

MAR 09 2022

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DECISION

HERNANDO, *J.*:

This petition for review on *certiorari* with application for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction[1] seeks the reversal of the May 12, 2017 Decision[2] and the August 23, 2017 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP. No. 137624. The CA

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* Also referred to as Marlow Navigation Phils. Inc.
** On official business.
*** Per Special Order No. 2872 dated March 4, 2022.
1 *Rollo,* pp. 8-60
2 Id. at 67-80. Penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting (now a Member of the Court).
3 Id. at 82-83.

Decision reversed and set aside the unanimous Decisions[4] of the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC), which denied the claim for death benefits, burial benefits and medical expenses, including moral and exemplary damages, and attorney's fees, of the heirs of the late Antonio O. Beato (Antonio).

Factual Antecedents:

Antonio was a seafarer engaged by Marlow Navigation Phils., Inc. (Marlow), for and in behalf of its foreign principal, Marlow Navigation Co. Ltd., as an Able Seaman on board the vessel *MV Geest Trader* for a contract period of 10 months. Prior to embarkation, Antonio underwent a Pre-Employment Medical Examination and was declared "Fit for Sea Duty." He departed the Philippines and joined the vessel on July 14, 2012.[5]

Sometime in November 2012, Antonio felt severe abdominal pain, back ache, chest pain and had coughs. Due to the absence of medical facilities at the port clinic, he did not receive the proper medical assistance and did not undergo any laboratory test. He was repatriated to the Philippines on December 1, 2012 due to his medical condition.[6]

Petitioners referred Antonio to Dr. Orlino F. Hosaka, Jr. (Dr. Hosaka) of the Notre Dame Medico-Dental Clinic, the company-designated physician, who, in turn, referred him to the company specialists, particularly a pulmonologist and a cardiologist. Antonio's x-ray results showed that he has negative infiltrates. He was diagnosed with hypertension secondary to upper respiratory tract infection. Antonio was advised by Dr. Hosaka to return for further treatment and examination on January 8, 2013, but he did not.[7]

Meanwhile, on December 14, 2012, Antonio went home to Aklan and was confined at the St. Gabriel Clinic from December 21 to 22, 2012 where he was diagnosed with functional dyspepsia. He was again confined in the same clinic from January 24, 2013 to February 5, 2013 where he was diagnosed with pancreatic cancer. After his discharge, Antonio was bedridden at home until he died on April 6, 2013. His death certificate indicated that he died due to cardio respiratory failure with underlying cause of pancreatic cancer.[8]

Thus, his surviving heirs, through his wife, Jonabel D. Beato, filed a complaint for death benefits, payment for burial expenses, reimbursement of medical expenses, airfare expense, damages and attorney's fees, against Marlow on the ground that the cause of his death, pancreatic cancer, is a work-related illness.[9]

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4 CA *rollo*, pp. 46-53, and pp. 30-41.
5 Id. at 31
6 Id.
7 Id. at 31-32.
8 Id.
9 Id. at 30-31.

On the other hand, Marlow contended that the heirs are not entitled to death benefits because Antonio's death occurred after the termination of his employment contract. Furthermore, he abandoned his treatment, thus, he is not qualified to these benefits. Finally, Antonio did not acquire his illness, pancreatic cancer, while he was on board the vessel, thus, it could not have been a work-related illness.[10]

Ruling of the Labor Arbiter:

On December 18, 2013, the LA rendered a Decision[11] dismissing the complaint for lack of merit but ordering Marlow to pay the heirs the sickness allowance of the late Antonio amounting to US$ 990.00. The LA ruled that there appears no causal relation between Antonio's work as an Able Seaman and his pancreatic cancer.[12] Thus, the LA held:

> WHEREFORE, premises considered, the above-entitled case is DISMISSED for lack of merit. Respondents, however, are ordered to pay complainant the sum of US$990.00 (US$660/26X39 days) or its equivalent in Philippine peso at the time of payment, representing sickness allowances.
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> SO ORDERED.[13]

Ruling of the National Labor Relations Commission:

Dissatisfied with the LA Decision, the heirs of Antonio filed an appeal[14] with the NLRC. The NLRC, in a Decision,[15] affirmed the LA Decision. The NLRC held that the heirs failed to present concrete proof showing that Antonio acquired or contracted the injury or illness that resulted to his disability during the term of his employment contract. Proof was especially required since he failed to submit himself to the company-designated physician for medical examination.[16] Thus, the heirs failed to present substantial evidence to prove entitlement to death benefits. The dispositive portion of the NLRC Decision reads as follows:

> WHEREFORE, the instant appeal is dismissed for lack of merit and the labor arbiter's decision AFFIRMED.
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> SO ORDERED.[17]

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[10] Id. at 48.
[11] Id. at 46-53.
[12] Id. at 52.
[13] Id. at 53.
[14] Id. at 30.
[15] Id. at 30-42.
[16] Id. at 40.
[17] Id. at 41.

In its Resolution,[18] the NLRC found no palpable or patent errors in its Decision to warrant its modification, setting aside or reversal. Thus, it denied the motion for reconsideration filed by the heirs of Antonio.

Ruling of the Court of Appeals:

Overturning the unanimous rulings of the LA and the NLRC, the CA held that the heirs of the late Antonio are entitled to death benefits under existing law and jurisprudence.[19] The pertinent portions of the CA Decision held that:

> The rule is that a seafarer's right to disability benefits is a matter governed by law, contract and medical findings.
>
> What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone. It is not required that the employment be the sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease.
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> x x x x
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> While it is true that medical repatriation has the effect of terminating the seafarer's contract of employment, it is, however, enough that the work-related illness, which eventually becomes the proximate cause of death, occurred while the contract was effective for recovery to be had.
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> WHEREFORE, foregoing considered, the petition is GRANTED. Accordingly, the assailed Decision and Resolution dated May 30, 2014 and July 31, 2014, respectively, of the National Labor Relations Commission in NLRC LAC No. 02-000176-14 are hereby SET ASIDE and REVERSED.
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> Private respondents are ordered to jointly and severally pay petitioners as follows:
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> 1. Death benefits in the amount of Fifty Thousand US dollars (US$50,000.00);
> 2. Reimbursement of medical and hospitalization expenses, in the amount of Two Hundred Thirty-Six Thousand Eight Hundred Eighty-Three and 31/100 Pesos (P236,883.31);
> 3. Burial expenses in the amount of One Thousand US dollars (US$1,000.00)
> 4. Attorney's fees equivalent to 10% of the total amount due.
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> SO ORDERED.[20]

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[18] Id. at 43-44.
[19] *Rollo*, p. 78.
[20] Id. at 77-79.

Issue

In its petition for review on *certiorari* with application for the issuance of a temporary restraining order and/or writ of preliminary injunction[21] before this Court, Marlow raised the following grounds:

I.

THE COURT OF APPEALS GRAVELY MISAPPRECIATED THE ATTENDANT FACTS OF THIS CASE AND MISAPPLIED THE PREVAILING DECISIONS OF THIS HONORABLE COURT ON WORKMEN'S COMPENSATION IN REVERSING THE UNANIMOUS DECISIONS OF THE LOWER LABOR TRIBUNALS AND THEREBY GRANTING DEATH BENEFITS AS WELL AS ATTORNEY'S FEES IN FAVOR OF RESPONDENTS.

II.

THE ILLNESS WHICH WAS THE REASON FOR SEAFARER BEATO'S REPATRIATION IS NOT THE PROXIMATE CAUSE OF HIS EVENTUAL DEATH. THE RECORDS SHOW THAT THE CAUSE OF DEATH OF SEAFARER BEATO, WHICH IS PANCREATIC CANCER, WAS NOT THE REASON FOR HIS MEDICAL REPATRIATION. THEREFORE, THE CAUSE OF HIS DEATH IS NOT WORK-RELATED.[22]

Thus, the main issue is whether the death of the late Antonio is compensable.

Our Ruling

The Court grants the petition.

This Court may review factual findings of the LA, NLRC, and CA if they are contradictory.

The known and general rule is that this Court may only review questions of law. However, a recognized exception is when there are not only different but contradictory findings between that of the CA and of the labor tribunals.[23] In this case, the factual findings of the CA and the labor tribunals regarding Antonio's medical condition in relation to whether the same is compensable under the law are evidently contradictory.

Thus, given the contradictions on the questions of fact that are crucial in determining the applicable laws to the case, it is necessary that the Court must review and re-evaluate the records of the case.

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21 Id. at 8-60.
22 Id. at 20.
23 *V People Manpower Phils., Inc. v. Buquid*, G.R. No. 222311, February 10, 2021.

A seafarer is entitled to disability benefit claims in accordance with law, his employment contract and medical findings.

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code. By contract, it is governed by the employment contract which the seafarer and his employer or local manning agency executes prior to employment, and the applicable Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) deemed incorporated in the employment contract. Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.[24]

Since Antonio was employed in 2012, Section 20-A of the 2010 POEA-SEC[25] applies in determining the factual issues of compensability of his pancreatic cancer, and compliance with the POEA-SEC prescribed procedure for disability determination. The applicable provisions of Section 20-A read in part:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> 1. x x x
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> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time** he is declared fit or **the degree of his disability has been established by the company-designated physician.**
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> 3. x x x
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> x x x x
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> **For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also**

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[24] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 385 (2014), citing *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 908 (2008).

[25] POEA Memorandum Circular No. 10, Series of 2010.

report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.**

5. x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

x x x x (Emphases supplied)

Section 20-A of the 2010 POEA-SEC should be read together with Section 32-A of the same Contract which enumerates the various diseases deemed to be occupational and thus, compensable. In short, in order for a seafarer to be entitled to the compensation and benefits under Section 20-A, the disability causing the illness, injury or death must be one of those listed under Section 32.

As regards those diseases not otherwise considered an occupational disease under the POEA-SEC, the law recognizes that these illnesses may nevertheless cause or aggravate the seafarer's working conditions. Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational diseases and the resulting illness, injury or death that the seafarer may have suffered during the term of his employment contract.[26] The non-inclusion of the disease in the list of compensable diseases does not mean absolute exclusion from disability benefits. **However, the disputable presumption does not also signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.**[27]

Thus, to be entitled to benefits under Section 20-A, the seafarer must show that (1) he suffered an illness; (2) during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-A of the applicable POEA-SEC; (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he

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[26] *Jebsen Maritime, Inc., v. Ravena*, supra note 24 at 388.
[27] Id.

complied with the four conditions enumerated under Section 32-A of the POEA-SEC for an occupational disease or a disputably-presumed work-related disease to be compensable, which are as follows:

> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.[28]

In this case, the heirs established that Antonio suffered an illness during the term of his employment contract. However, he failed to comply with the procedures prescribed under the POEA-SEC, particularly Section 20-A(3), paragraph 3, which requires the seafarer must submit himself to a post-employment medical examination within three days upon his return. Further, he must report regularly to the company-designated physician specifically on the dates prescribed by the latter. When the seafarer is physically incapacitated to do so, he must submit a written notice to the agency. Otherwise, his failure to do so will result in forfeiture of his right to claim his benefits.

Antonio was repatriated on December 1, 2012. He went to Dr. Hosaka of the Notre Dame Medico-Dental Clinic on December 5, 13 and 18, 2012 who diagnosed him with hypertension secondary to upper respiratory tract infection.[29] When he was asked to report back on January 8, 2013 for a follow-up check-up, not only did Antonio fail to do so, he also failed to notify in writing Marlow or Dr. Hosaka that he had already gone home to Aklan. The only defense the heirs gave was that Antonio's worsening condition prevented him from doing so.[30] The law is clear, however, that all that Antonio or his family had to do was make a written notification of his hospitalization, or his physical incapacity to report back to the company-designated physician. This they did not do.

Paragraph 4 of the same section further states that if the doctor selected by the seafarer disagrees with the assessment of the company-designated physician, the parties may jointly appoint a third doctor whose decision shall be final and binding on both parties.

When Antonio failed to report back to Dr. Hosaka on January 8, 2013, it was because he already went home to Aklan and had himself checked by another physician in a different clinic, St. Gabrielle Medical Clinic, on December 20 to 21, 2012. There, he was diagnosed with functional dyspepsia.[31] A month later, he was again confined in the same clinic and was subsequently diagnosed with pancreatic cancer.[32]

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[28] Section 32-A of the 2010 POEA-SEC.
[29] CA *rollo*, p. 431.
[30] Id. at 476.
[31] Id. at 471.
[32] Id.

The records reveal an indisputable disagreement between the findings of the company-designated physician, on one hand, and the physician Antonio approached in Aklan, on the other hand. Dr. Hosaka even claims that Antonio never made any reference to any other symptom or condition relating to pancreatic cancer because otherwise, he (Dr. Hosaka) would have reported it to Marlow.[33] At this point, it bears stressing that the employee seeking disability benefits carries the responsibility of securing the opinion of a third doctor. In fact, the employee or the seafarer must actively or expressly request for it. The referral to a third doctor has been recognized by this Court to be a mandatory procedure. Failure to comply therewith is considered a breach of the POEA-SEC, and renders the assessment by the company-designated physician binding on the parties.[34]

Secondly, pancreatic cancer is not an occupational disease. Section 32-A of the POEA-SEC only considers two types of cancer as compensable occupational diseases: (1) cancer of the epithelial of the bladder (papilloma of the bladder); and (2) cancer, epithellomatous or ulceration of the skin of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product or residue of these substances.

Although the CA afforded Antonio the benefit of the legal presumption of work-relatedness, this Court disagrees and holds that Antonio or his heirs failed to prove the work-relatedness of his pancreatic cancer. Case law has held time and time again that for a disease not included in the list of compensable diseases to be compensable, the seafarer still has to establish, by substantial evidence that his illness is or was work-related. As stated, the disputable presumption does not amount to an automatic grant of compensation.[35]

In this case, Antonio failed to prove that his illness is compensable as he failed to satisfy all the conditions under Section 32-A which are, to repeat:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.[36]

Firstly, Antonio or his heirs did not enumerate his specific duties as an Able Seaman nor did they list down the specific tasks which Antonio performed on a daily basis. Secondly, they did not show that his duties or tasks caused, contributed to the development of, or aggravated his pancreatic cancer. There

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[33] Id. at 433.

[34] *Idul v. Alster Int'l Shipping Services, Inc.*, G.R. No. 209907, June 23, 2021, citing *Hernandez v. Magsaysay Maritime Corp.*, 824 Phil. 552, 560-561 (2018); *Multinational Ship Management, Inc. v. Briones*, G.R. No. 239793, January 27, 2020; *Pacific Ocean Manning, Inc. v. Solacito*, G.R. No. 217431, February 19, 2020.

[35] *Destriza v. Fair Shipping Corp.*, G.R. No. 203539, February 10, 2021.

[36] Section 32-A of the 2010 POEA-SEC.

was no mention of the specific substances or chemicals which he claimed he was exposed to during his employment contract; how these chemicals could have caused his pancreatic cancer; or measures that Marlow did or did not take to control the hazards. His heirs merely presented general averments and allegations that his "constant exposure to hazards such as chemicals and the varying temperature, coupled by stressful tasks in his employment caused the aggravation of [his] medical condition."[37] This Court has ruled in *Status Maritime Corp. v. Spouses Delalamon*[38] that:

> At the very least, these general statements surmise mere possibilities but not the probability required by law for disability compensation. Mere possibility will not suffice and a claim will still fail if there is only a possibility that the employment caused or aggravated the disease. Even considering that the respondents have shown probability, their basis is, nonetheless incompetent for being uncorroborated. Probability of work-connection must at least be anchored on credible information and not on self-serving allegations.
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> Certainly, disability compensation cannot rest on mere allegations couched in conjectures and baseless inferences from which work-aggravation or relatedness cannot be presumed. "[B]are allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions. The beneficiaries must present evidence to prove a positive proposition."[39]

The heirs' further presentation in their memorandum to the CA[40] of studies by the Centre for Occupational and Health Psychology at Cardiff University[41] and by the International Labor Organization (ILO)[42] cannot be considered as substantial evidence of his cancer's work-relatedness.

The heirs insist that the studies correlate the symptoms the late Antonio complained of while on board the vessel (high blood pressure and lung problem) to the cause of his death (Acute Pancreatitis and Pancreatic Cancer).[43] Further, a study made by research associates at the same university noted that a seafarer's illness is caused by stress on board the vessel.[44] The ILO also has determined the maximum working hours of a seafarer to be 14 hours per day. These long working days, heat in work places, separation from family, time pressure or hectic activities, and insufficient qualifications of subordinate crew members, add to a seafarer's ongoing elevated stress level which has a negative impact on his physical and mental health.[45]

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37 CA *rollo*, p. 489.
38 740 Phil. 175 (2014).
39 Id. at 197.
40 CA *rollo*, pp. 469-493.
41 Id. at 479-480.
42 Id. at 491.
43 Id. at 479.
44 Id. at 492.
45 Id. at 492-493.

However, these two studies could not serve as sufficient proof that Antonio's working conditions caused, contributed to the development of, or aggravated his pancreatic cancer since they are simply generalizations that infer mere possibilities but not the probability required by law for disability or death compensation. The studies only made general statements about hazards that may typically attach to the duties of a seafarer. However, the specific risks which a seafarer may be exposed to in the performance of his duties will still depend on the specific duties which he may be tasked to perform.[46]

Finally, the NLRC also noted that no scintilla of evidence was presented by the heirs to establish the symptoms which Antonio complained of, and which eventually led to the disease that he contracted allegedly as a result of his work. In its Decision, the NLRC stated:

> As to the illness "hypertension" which was also noted to be a cause of the late seafarer's death, it is true that pursuant to the POEA SEC, hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.
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> **In the given case, however, not a single medical certificate or laboratory report was presented by the complainants, thus, they failed to comply with the mandatory requirements provided under the afore-stated Sec. 32 of the POEA SEC.**[47] (Emphasis supplied)

In sum, the Court holds that the late Antonio's pancreatic cancer is not work-related and therefore, not compensable because he or his heirs failed to prove, by substantial evidence, its work-relatedness and his compliance with the parameters that the law has set out with regard to claims for disability and death benefits. While this Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for disability compensation based on surmises. Liberal construction is never a license to disregard the evidence on record and to misapply the law.[48]

WHEREFORE, the Court hereby **GRANTS** the petition. Accordingly, the Court **REVERSES** and **SETS ASIDE** the May 12, 2017 Decision and the August 23, 2017 Resolution of the Court of Appeals in CA-G.R. SP. No. 137624, and **REINSTATES** the National Labor Relations Commission Decision dated May 30, 2014 in NLRC LAC No. 02-000176-14. The complaint filed by the heirs of the late Antonio O. Beato, represented by his wife, Jonabel D. Beato, is hereby **DISMISSED** for lack of merit.

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[46] *Jebsen Maritime, Inc. v. Ravena*, supra note 24 at 393.

[47] CA *rollo*, p. 38.

[48] *Jebsen Maritime, Inc. v. Ravena*, supra note 24 at 395, citing *Philman Marine Agency, Inc. v. Cabanban*, 715 Phil. 454, 483 (2013).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

On official business
ESTELA M. PERLAS-BERNABE
Senior Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice