

SECOND DIVISION

**BANDILA SHIPPING, INC.,
MR. REGINALDO A. OBEN,
BANDILA SHIPPING, INC.
and FUYOH SHIPPING, INC.,**
Petitioners,

G.R. No. 177100

- versus -

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
ABAD, and
PEREZ, *JJ.*

MARCOS C. ABALOS,
Respondent.

Promulgated:

February 22, 2010

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DECISION

ABAD, *J.*:

Statement of the Case

This case is about a Filipino seafarer's claim for disability benefits from *cholecystolithiasis* or gallstone that was discovered when he suffered excruciating pain while working on board an ocean-going vessel, an illness that was not in the list of compensable diseases listed in the standard seafarer's contract that he signed with the vessel owner.

The Facts and the Case

On July 25, 2002 respondent Marcos C. Abalos entered into a contract of employment with petitioner Bandila Shipping, Inc. (BSI), a Philippine manning agency acting on behalf of its co-petitioner Fuyoh Shipping, Inc., as fourth engineer for the ocean-going vessel M/V Estrella Eterna at US\$765.00 per month for 10 months.^[1] Prior to embarkation, Abalos underwent pre-employment medical examination and was found to be “*fit for sea service.*”^[2] He boarded his vessel in Singapore on August 28, 2002.^[3]

As the vessel headed towards Nagoya, Japan, on January 23, 2003, respondent Abalos felt excruciating pain in his stomach while he was on duty. He tried to tolerate it until he got off but he was unable to sleep because of severe pain. The following day, unable to bear the pain, he told the vessel’s master about it. After being examined at the International Clinic in Nagoya, Japan, he was diagnosed to be suffering from “gallstone, acute cholecystitis, and pancreatitis suspected.” The attending physician found him unfit for duty and recommended his repatriation.^[4]

On January 25, 2003 respondent Abalos was repatriated to the Philippines. He was referred to Dr. Ruby Dizon who found that he had *cholecystolithiasis*, commonly known as gallstone, and needed to undergo *cholecystectomy* or gall bladder removal that would cost P80,000.00.^[5] Unable to get the company’s approval for his surgery,^[6] Abalos sought the opinion of other physicians who made the same diagnosis and suggested surgery.^[7]

On June 12, 2003 Abalos filed a complaint with the Labor Arbiter for disability benefits, unexpired portion of his contract, moral and exemplary damages, and attorney’s fees against petitioner BSI, its claims manager, and its foreign principal, petitioner Fuyoh Shipping, Inc.,^[8] in NLRC OFW-(M) Case 03-06-1493-00. Persuaded by the opinion of a company-designated physician that *cholecystolithiasis* was not work-related, BSI denied liability.

Meantime, respondent Abalos amended his complaint to include nonpayment of disability benefits, medical reimbursement, sickness allowance, compensatory damages, moral and exemplary damages, and attorney’s fees.^[9]

To establish compensability, respondent Abalos consulted Dr. Efren R. Vicaldo, an internist of the Philippine Heart Center, who certified that: 1) Abalos had gall bladder stones requiring surgery; 2) he was unfit to resume work as seaman; and 3) his illness was work-aggravated with an impediment of grade VII (41.80%).^[10]

Efforts to amicably settle the dispute did not materialize.^[11] Thus, on January 29, 2004 the Labor Arbiter rendered a decision,^[12] granting respondent Abalos permanent disability benefit, sickness allowance, and 10 percent of the award as attorney's fees. The Labor Arbiter found that Abalos became ill while on board his assigned vessel and the demanding nature of his work aggravated it, thus, establishing a reasonable connection between the two. He denied the other claims for lack of merit.

But, on appeal by petitioner BSI, on February 23, 2006 the National Labor Relations Commission (NLRC) rendered judgment^[13] that set aside the Labor Arbiter's decision. The NLRC pointed out that the applicable standard terms of employment did not regard respondent Abalos' illness as an occupational disease. He also failed to show that his work on ship aggravated it. His motion for reconsideration having been denied,^[14] Abalos went up to the Court of Appeals (CA) in CA-G.R. SP 95238.

On January 30, 2007 the CA rendered a decision,^[15] granting the petition, setting aside the NLRC decision, and reinstating that of the Labor Arbiter. On March 19, 2007 the appellate court denied BSI's motion for reconsideration,^[16] hence, the present petition for review.

Issue Presented

The core issue presented in this case is whether or not Abalos' *cholecystolithiasis* or gallstone is compensable and, thus, entitles him to disability benefits and sickness allowance.

The Court's Rulings

Whether or not respondent Abalos' illness is compensable is essentially a factual issue. Yet the Court can and will be justified in looking into it considering the conflicting views of the NLRC and the CA.^[17]

There is no question as to what respondent Abalos was sick of. He was sick of *cholecystolithiasis* or gallstone. It does not develop overnight. It is caused by stone formation in the gallbladder that blocks the tube leading out of the gallbladder, causing bile to build up, resulting in gallbladder inflammation. These gallstones are solid accumulations of the components of bile, particularly cholesterol, bile pigments, and calcium.^[18] The formation of gallbladder stones take months, if not years, to build up.

According to the NLRC, medical reports show that gallstone relates to one's weight or diet and in some instances may be a genetic predisposition. It is not one of those enumerated as compensable diseases in the Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels that covered Abalos' employment. The NLRC denied him disability benefits and sickness allowance for this reason.

The CA held, however, that Abalos' diet or sustenance on board the vessel had presumably caused or contributed to his illness for he had no choice but eat ship food. Consequently, although his gallstone is not a compensable illness under his employment contract, it can be said that his illness was either work-related or reasonably connected with his work.

But, since *cholecystolithiasis* or gallstone has been excluded as a compensable illness under the applicable standard contract for Filipino seafarers that binds both respondent Abalos and the vessel's foreign owner, it was an error for the CA to treat Abalos' illness as "work-related" and, therefore, compensable. The standard contract precisely did not consider gallstone as compensable illness because the parties agreed, presumably based on medical science, that such affliction is not caused by working on board ocean-going vessels.

Nor has respondent Abalos proved by some evidence that the nature of his work on board a ship aggravated his illness. No one knew when he boarded the vessel that he was sick of gallstone. By the nature of this illness, it is highly probable that Abalos already had it when he boarded his assigned ship although it went undiagnosed because he had yet to experience its symptoms.

If respondent Abalos had instead been sick of asthma and the shipping company knew of it even as it assigned him to do work that exposed him to allergens, then it can be said that the company assigned him work that aggravated his illness. Here, however, he himself was unaware that he had gallstone until excruciating pains manifested its presence for the first time when his vessel was sailing the seas.

The Court recognized in *Vergara v. Hammonia Maritime Services, Inc.* ^[19] the significance of the adoption by the Department of Labor and Employment of the Philippine Overseas Employment Administration Standard Employment Contract as a condition for deploying Filipino seafarers working on foreign ocean-going vessels. When the foreign shipping company signs that contract, there is assurance that it voluntarily subjects itself to Philippine laws and jurisdiction. If the NLRC orders the payment of benefits not found in that contract, the particular seaman might be favored but the credibility of our standard employment contract will suffer. Foreign shipping companies might regard it as non-binding to the detriment of other seamen.

ACCORDINGLY, the Court grants the petition, **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. SP 95238 dated January 30, 2007 and its resolution dated March 19, 2007, and **REINSTATES** the decision of the National Labor Relations Commission in NLRC NCR CA 039306-04 dated February 23, 2006.

SO ORDERED.

ROBERTO A. ABAD

Associate Justice

WE CONCUR:

ANTONIO T. CARPIO

Associate Justice

ARTURO D. BRION

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

JOSE PORTUGAL PEREZ

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.

ANTONIO T. CARPIO

Associate Justice

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

REYNATO S. PUNO
Chief Justice

^[1] *Rollo*, p. 553.

^[2] *Id.* at 13.

^[3] *Id.* at 225.

^[4] *Id.* at 554.

^[5] *Id.* at 555.

^[6] *Id.*

^[7] *Id.* at 14.

^[8] *Id.* at 555.

^[9] *Id.* at 556.

^[10] *Id.*

^[11] *Id.* at 223.

^[12] *Id.* at 223-240.

^[13] *Id.* at 552-563.

^[14] *Id.* at 359.

^[15] *Id.* at 12-23.

^[16] *Id.* at 325-354.

^[17] *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 607.

^[18] <http://emedicine.medscape.com/article/774352.overview>.

^[19] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.