686 Phil. 255

THIRD DIVISION

[G.R. No. 194677, April 18, 2012]

ALEN H. SANTIAGO, PETITIONER, VS. PACBASIN SHIPMANAGEMENT, INC. AND/OR MAJESTIC CARRIERS, INC., RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the February 11, 2010 Decision[1] of the Court of Appeals (*CA*), in CA-G.R. SP. No. 108035, which affirmed the April 25, 2008 Decision[2] of the National Labor Relations Commission *(NLRC)*. The NLRC affirmed with modification the December 29, 2006 Decision[3] of the Labor Arbiter *(LA)* in NLRC OFW Case No. (M) 06-01-00057-00, entitled *"Alen H. Santiago v. Pacbasin ShipManagement, Inc./Esteban Salonga/Majestic Carriers, Inc."*

The Factual and Procedural Antecedents

Petitioner Alen H. Santiago (*Santiago*) entered into a contract of employment[4] with respondent Pacbasin ShipManagement, Inc. *(Pacbasin)*, the local manning agent of its foreign principal, Majestic Carriers, Inc. Under said contract, Santiago shall work as a "riding crew cleaner" with a monthly salary of US$162.00 for two months.

On February 2, 2005, Santiago boarded the vessel M/T Grand Explorer. During his stint, he figured in an accident. On March 9, 2005, he was accidentally hit by two falling scaffolding pipes while performing a task, and his head, neck and shoulder were injured. He was rushed to Rashid Hospital in Dubai where he underwent a series of examination and treatment. Despite the treatment he received, his condition did not improve. He continued to have headaches with severe pain in his nape and shoulder. For this reason, it was advised that he be repatriated to the Philippines.

On March 17, 2005, two days after his repatriation, Santiago was referred to the company-designated doctor, Dr. Robert Lim *(Dr. Lim)* of the Marine Medical Services at the Metropolitan Medical Center, to undergo some tests. He underwent cervical spine and skull x-ray. His neck injury was diagnosed to be a contusion, nape area and left, C5, C6, C7 radiculopathy, mild sensorineural hearing loss, bilateral probably secondary to cochlear concussion. On April 8, 2005, he was referred to a neurologist and EMG/NCV was conducted. On August 13, 2005, after several sessions of treatment and evaluation from March 17, 2005 to July 2005, Dr. Lim, in coordination with the clinic's orthopedic surgeon and EENT specialists, pronounced that his hearing problem was cured and gave him a disability assessment of "Grade 12."

On October 10, 2005, Santiago underwent a CT scan of the head at his own expense. On the 23rd of the same month, he was seen by Dr. Epifania Collantes *(Dr. Collantes)*, a neurologist. He was diagnosed to have cerebral concussion, C5-C7 Radiculopathy secondary to trauma. In the clinical summary,[5] it was stated, among others, that his motor exam was 5/5 on all extremities and reflexes were normal; that there was no note of sensory deficits and the neck was supple; that cranial CT scan showed no skull fractures and no brain parenchymal lesions; that there was a showing of bilateral sclerosis of mastoids; and that he was ambulatory and able to perform his daily chores, although experiencing neck pains and headaches.

Despite medical treatment, his condition showed minimal improvement. He continued to experience a lingering pain in his nape, headaches and mixed type deafness. On February 16, 2006, he consulted Dr. Efren Vicaldo (Dr. Vicaldo) of the Philippine Heart Center, who was not a company-designated physician. After checking on his condition, Dr. Vicaldo issued a medical certificate[6] assessing his disability as Grade 7. He was also declared to be unfit to resume work as a seaman. His medical state would require regular medication and that it would take a considerable length of time before he would be considered symptom-free.

Subsequently, Santiago demanded payment from Pacbasin for disability benefits pursuant to the provisions of the POEA Standard Employment Contract. This demand, however, was not heeded. Consequently, he filed a complaint for disability benefit, illness allowance, and reimbursement of medical expenses, damages and attorney's fees.

In its defense, Pacbasin averred that during the time that Santiago was under medication, it shouldered all the expenses; that it even paid him a total of one hundred twenty (120) days of sickness allowance; that the findings of Dr. Vicaldo should not be given more weight than that of Dr. Lim; and that since Dr. Lim categorized his disability to be Grade 12, then the amount that he was entitled to receive was only $5,225.00 and not the maximum amount of $60,000.00.

In its decision dated December 29, 2006, the LA adopted the findings of Dr. Vicaldo that he was totally and permanently disabled, entitling him to full disability benefits. Thus, it disposed:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering the respondents **PacBasin ShipManagement, Inc./Esteban Salonga/Majestic Carriers, Inc.** to pay complainant **Alen H. Santiago** the amount of **SIXTY SIX THOUSAND SEVEN HUNDRED TWELVE US DOLLARS & 80/100 (US$66,712.80)** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.
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> All other claims are **DISMISSED** for lack of merit.

SO ORDERED.[7]

Dissatisfied with the ruling of the LA, Pacbasin appealed the decision to the NLRC. On April 25, 2008, the NLRC partially granted its prayer. It ruled that Santiago was only entitled to partial permanent disability equivalent to grade 12 or the amount of $5,225.00 plus 10% as attorney's fees. Thus, the claim for total permanent disability benefit and sickness allowance was disallowed. The decretal portion reads:

> WHEREFORE, premises considered, respondent's appeal is partially GRANTED. The Decision of the Labor Arbiter is **AFFIRMED** subject to MODIFICATIONS in that complainant is entitled only to partial permanent disability equivalent to grade 12 or the amount of US$5,225.00 plus 10% thereof as attorney's fees. The award of total permanent disability benefit (US$60,000.00) and sickness allowance (of US$648.00) are vacated and set aside for lack of merit.
>
> SO ORDERED.[8]

A motion for reconsideration was filed by Santiago but the same was denied.

Aggrieved, Santiago elevated the case to the CA. He insisted that he was entitled to the maximum disability benefit of $60,000.00 because he was unable to perform his customary work for more than 120 days. His basis for said position was the ruling in the case of *Crystal Shipping v. Natividad.*[9]

Pacbasin countered that the case of *Crystal Shipping v. Natividad* was already abandoned and superseded by the case of *Jesus Vergara v. Hammonia Maritime Services.*[10] In said case, the Court ruled that a temporary total disability only becomes permanent when so declared by the company-designated physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without the declaration of either fitness to work or the existence of a permanent disability.[11]

The CA, in its February 11, 2010 Decision, dismissed Santiago's appeal and affirmed the NLRC decision and resolution. The dispositive portion of said decision is quoted below as follows:

> WHEREFORE, in view of the foregoing, the instant petition is hereby ***DISMISSED***. Accordingly, the decision dated April 25, 2008 and resolution dated November 28, 2008 both issued by public respondent commission are perforce ***affirmed in toto***.
>
> SO ORDERED.[12]

The CA applied the case of *Vergara* where it was held that if the 120-day initial period was exceeded and no declaration was made with respect to disability or fitness because the seaman required further medical treatment, then treatment should continue up to a maximum of 240 days. At any time within the 240-day period, the seaman may be declared fit or disabled. If, however, the 240-day period lapsed without any declaration that the seaman was fit or disabled to work, the temporary total disability becomes a permanent total disability, which would entitle the seaman for maximum disability benefits.

The CA also wrote that since Santiago was assessed by the company- designated physician to be suffering a Grade 12 disability within the 240- day period, then he was merely suffering from a permanent partial disability and not a permanent total disability which would entitle him to a maximum disability benefit of $60,000.00.

A motion for reconsideration was filed but the CA denied it in its resolution dated November 12, 2010.

Hence, this petition.

Santiago presents for evaluation the following errors allegedly committed by the CA, to wit:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT APPLYING THE RULE OF PERMANENT TOTAL DISABILITY UNDER ARTICLE 291 OF THE LABOR CODE AND SEVERAL JURISPRUDENCE SUPPORTING THE SAME.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN MISAPPLYING THE PROVISIONS OF THE POEA STANDARD EMPLOYMENT REGARDING THE OPTION OF THE PARTIES TO SECURE THE OPINION OF A THIRD DOCTOR.

III.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT SUSTAINING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF PETITIONER.[13]

The core issue in this case is the question of whether or not Santiago is entitled to a maximum disability benefit of US$60,000.00 on account of his being unable to perform work as a seaman for more than 120 days.

The respondents, in their Comment,[14] state that both the NLRC and the CA were correct in ruling that Santiago was not permanently and totally disabled but was merely suffering from a Grade 12 disability under the POEA contract. They claim that the prevalent rule now, as enunciated in *Vergara*, is that the company-designated doctor overseeing the seafarer's treatment is given a maximum of 240 days to assess a seafarer with a disability or declare him fit to work. It is only after the lapse of 240 days when the company-designated doctor could not yet render a final assessment of the seafarer's medical condition that the latter shall be automatically considered permanently and totally disabled and, as such, entitled to the maximum disability benefit.

Santiago, in his Reply,[15] argues that the 120-day Presumptive Disability Rule is the prevailing jurisprudence in this jurisdiction. According to him, this rule is not a novel one because as early as in the case of *GSIS v. Court of Appeals,*[16] the Court has ruled that if an employee is unable to perform his customary job for more than 120 days then said employee suffers permanent total disability regardless of whether or not he loses the use of any part of his body.

The Court finds no merit in the petition.

The contention of Santiago, that he was entitled to a permanent total disability benefit as he was unable to perform his job for more than 120 days, is not totally correct. This issue has been clarified in *Vergara* where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In the recent case of *Magsaysay Maritime Corp. v. Lobusta,*[17] this Court also referred to, and applied, the ruling in *Vergara* in this manner:

> Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:
>
> > **ART. 192. *Permanent total disability***. – x x x
> >
> > x x x
> >
> > (c) The following disabilities shall be deemed total and permanent:
> >
> > (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;
> >
> > x x x x

> Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads:
>
> Sec. 2. *Disability*. – x x x
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> x x x x

Section 2, Rule X of the ECC Rules reads:

> SEC. 2. *Period of entitlement*.— (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.
>
> x x x x

According to *Vergara*, these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand with the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract which reads:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician[,] but in no case shall this period exceed one hundred twenty (120) days.

Vergara continues:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable

> Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.
>
> x x x
>
> As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.**
>
> To be sure, there is one Labor Code concept of permanent total disability, as stated in Article 192(c)(1) of the Labor Code, as amended, and the ECC Rules. We also note that the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract was lifted verbatim from the first paragraph of Section 20(B)(3) of the 1996 POEA Standard Employment Contract, to wit:
>
> > Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> [Emphasis supplied]

In said *Magsaysay Maritime Corp.* case, the employee (Oberto Lobusta) was eventually awarded the maximum disability benefit of $60,000.00. Applying the *Vergara* case, the Court ruled that he was suffering from permanent total disability because the maximum 240-day (8 months) medical treatment period expired with no declaration from the attending physician that he was already fit to work. Neither was there a declaration that Lobusta was afflicted with a permanent disability. From May 22, 1998, his initial examination, to February 16, 1999, when he was still prescribed medications for his lumbosacral pain and was even advised to return for reevaluation, the number of days would be 264 days or 6 days short of 9 months,[18] way beyond the prescribed 240 day period.

In contrast, in the case at bench, two days after repatriation on March 17, 2005, Santiago underwent several tests and treatment. On April 8, 2005, a neurologist conducted EMG/NCV on him. On August 13, Dr. Lim, the company-designated physician, opined that he was suffering from a "Grade 12" disability only, not a permanent total one. Counting the days from March 17 to August 13, this assessment by Dr. Lim was made on the 148th day, more or less, and, therefore, within the 240-

day period. Thus, Santiago's condition cannot be considered a permanent total disability that would entitle him to the maximum disability benefit of $60,000.00. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

Santiago relies too much on the *Crystal Shipping* case for his permanent total disability claim. Unfortunately, his reliance on the ruling in said case is misplaced. In the *Vergara* case, this Court held in resolving the seeming conflict between the two cases by stating:

> x x x This declaration of permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.
>
> *Crystal Shipping* was a case where the seafarer was completely unable to work for **three years** and was indisputably unfit for sea duty "due to respondent's need for regular medical check-up and treatment which would not be available if he were at sea." While the case was not clear on how the initial 120-day and the subsequent temporary total disability period operated, **what appears clear is that the disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability was called for, fully in accordance with the operation of the period for entitlement that we described above**.[19] (Emphases supplied)

Furthermore, the Court takes note that even after Santiago was informed by Dr. Lim of his finding, he sought the opinion of independent doctors. First he went to see Dr. Collantes, a neurologist, who diagnosed him to have cerebral concussion, C5-C7 Radiculopathy secondary to trauma. It is interesting to note, however, that the clinical summary stated, among others, that his reflexes were normal and he was ambulatory and able to perform his daily chores although he still experienced neck pains and headaches. These findings negate a claim for total disability.

Finally, Santiago went to see Dr. Vicaldo of the Philippine Heart Center, whose findings also belied his claim for permanent total disability. The doctor, after only a single session, gave him a disability grading of 7, which would not entitle him to a permanent total disability compensation.

At any rate, said finding ought not to be given more weight than the disability grading given by the company-designated doctor. The POEA Standard Employment Contract clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding

contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer as the decision final and binding on both of them.[20] In this case, Santiago did not avail of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. Thus, this Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability.

WHEREFORE, the petition is **DENIED**. Accordingly, the February 11, 2010 Decision of the Court of Appeals, in CA-G.R. SP. No. 108035, is **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.*, concur.

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[1] *Rollo*, pp. 233-244. Penned by Associate Justice Bienvenido L. Reyes (now member of this Court) with Associate Justice Celia C. Librea-Leagogo and Associate Justice Francisco P. Acosta, concurring.

[2] Id. at 159-167. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco, concurring.

[3] Id. at 100-110. Penned by Executive Labor Arbiter for Adjudication Fatima Jambaro-Franco.

[4] Id. at 35.

[5] Id. at 17.

[6] Id. at 50.

[7] Id. at 109-110.

[8] Id. at 166.

[9] 510 Phil. 332 (2005).

[10] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[11] Id. at 629.

[12] *Rollo*, p. 243.

[13] Id. at 19.

[14] Id. at 296-325.

[15] Id. at 333-345.

[16] 363 Phil. 585 (1999).

[17] G.R. No. 177578, January 25, 2012.

[18] Id.

[19] *Vergara v. Hammonia Maritime Service, Inc.* ,G.R. No. 172933, October 6, 2008, 567 SCRA 610, 631-632.

[20] Section 20 [50]. *Compensation and Benefits for Injury or Illness*

X X X

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

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. 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 binding on both parties. (Emphasis supplied)
