680 Phil. 137

FIRST DIVISION

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

MAGSAYSAY MARITIME CORPORATION AND/OR WASTFEL-LARSEN MANAGEMENT A/S*, PETITIONERS, VS. OBERTO S. LOBUSTA, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Petitioners appeal the Decision[1] dated August 18, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 74035 and its Resolution[2] dated April 19, 2007, denying the motion for reconsideration thereof. The CA declared that respondent is suffering from permanent total disability and ordered petitioners to pay him US$2,060 as medical allowance, US$60,000 as disability benefits and 5% of the total monetary award as attorney's fees.

The facts follow:

Petitioner Magsaysay Maritime Corporation is a domestic corporation and the local manning agent of the vessel MV "Fossanger" and of petitioner Wastfel-Larsen Management A/S.[3]

Respondent Oberto S. Lobusta is a seaman who has worked for Magsaysay Maritime Corporation since 1994.[4] In March 1998, he was hired again as Able Seaman by Magsaysay Maritime Corporation in behalf of its principal Wastfel-Larsen Management A/S. The employment contract[5] provides for Lobusta's basic salary of US$515 and overtime pay of US$206 per month. It also provides that the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels, approved per Department Order No. 33 of the Department of Labor and Employment and Memorandum Circular No. 55 of the Philippine Overseas Employment Administration (POEA Standard Employment Contract), both series of 1996, shall be strictly and faithfully observed.

Lobusta boarded MV "Fossanger" on March 16, 1998.[6] After two months, he complained of breathing difficulty and back pain. On May 12, 1998, while the vessel was in Singapore, Lobusta was admitted at Gleneagles Maritime Medical Center and was diagnosed to be suffering from severe acute bronchial asthma with secondary infection and lumbosacral muscle strain. Dr. C K Lee certified that Lobusta was fit for discharge on May 21, 1998, for repatriation for further treatment.[7]

Upon repatriation, Lobusta was referred to Metropolitan Hospital. The medical coordinator, Dr. Robert Lim, issued numerous medical reports regarding Lobusta's condition. Lobusta was first seen by a Pulmonologist and an Orthopedic Surgeon on May 22, 1998.[8] Upon reexamination by the Orthopedic Surgeon on August 11, 1998, he opined that Lobusta needs surgery, called decompression laminectomy,[9] which was done on August 30, 1998.[10] On October 12, 1998, Dr. Lim issued another medical report stating the opinion of the Orthopedic Surgeon that the prognosis for Lobusta's recovery after the spine surgery is good. However, the Pulmonologist opined that Lobusta's obstructive airway disease needs to be monitored regularly and that Lobusta needs to be on bronchodilator indefinitely. Hence, Lobusta should be declared disabled with a suggested disability grading of 10-20%.[11] The suggestion was not heeded and Lobusta's treatment continued.

On February 16, 1999, Lobusta was reexamined. Dr. Lim reported that Lobusta still complains of pain at the lumbosacral area although the EMG/NCV[12] test revealed normal findings. Lobusta was prescribed medications and was advised to return on March 16, 1999 for re-evaluation.[13]

On February 19, 1999, Dr. Lim reported that Lobusta has been diagnosed to have a moderate obstructive pulmonary disease which tends to be a chronic problem, such that Lobusta needs to be on medications indefinitely. Dr. Lim also stated that Lobusta has probably reached his maximum medical care.[14]

Petitioners "then faced the need for confirmation and grading by a second opinion" and "it took the parties time to agree on a common doctor, until they agreed on Dr. Camilo Roa."[15] Dr. Roa's clinical summary states that Lobusta's latest follow-up check-up was on December 16, 1999; that Lobusta is not physically fit to resume his normal work as a seaman due to the persistence of his symptoms; that his asthma will remain chronically active and will be marked by intermittent exacerbations; and that he needs multiple controller medications for his asthma.[16]

As the parties failed to reach a settlement as to the amount to which Lobusta is entitled, Lobusta filed on October 2, 2000, a complaint[17] for disability/medical benefits against petitioners before the National Labor Relations Commission (NLRC).

Sometime in October 2000, Magsaysay Maritime Corporation suggested that Lobusta be examined by another company-designated doctor for an independent medical examination. The parties agreed on an independent medical examination by Dr. Annette M. David, whose findings it was agreed upon, would be considered final.

On November 17, 2000, Dr. David interviewed and examined Lobusta.[18] Pertinent portions of Dr. David's report read:

> xxx ***Based on the Classes of Respiratory Impairment as described in the American Medical Association's Guidelines for the Evaluation of Permanent Impairment, this is equivalent to Class 2 or Mild***

Impairment of the Whole Person (level of impairment: 10-25% of the whole person). Given the persistence of the symptoms despite an adequate medical regimen, the impairment may be considered permanent.

The determination of disability and fitness for duty/return-to-work is more complex. During asymptomatic periods, Mr. Lobusta could conceivably be capable of performing the duties and responsibilities of an Able Seaman as listed in the memos provided by Pandiman (Duties of an Able Seaman on board an average vessel, January 26, 2000; and Deck Crew general Responsibilities, 95.11.01). However, consideration needs to be given to the following:

- During the personal interview, Mr. Lobusta reported the need to use a self-contained breathing apparatus (SCBA) for "double bottom" work. While the use of these devices may not appreciably increase the work of breathing, an individual who develops an acute asthmatic attack under conditions requiring the use of an SCBA (oxygen-poor atmospheres) may be at increased risk for a poor outcome.

- When out at sea, the medical facilities on board an average vessel may not be adequate to provide appropriate care for an acute asthmatic exacerbation. Severe asthmatic attacks require life-sustaining procedures such as endotracheal intubation and on occasion, mechanical ventilation. Asthma can be fatal if not treated immediately. The distance from and the time required to transport an individual having an acute asthmatic attack on a vessel at sea to the appropriate medical facilities on land are important factors in the decision regarding fitness for duty.

- Several of the duties listed for an Able Seaman require the use of a variety of chemical substances (e.g. grease, solvents, cleaning agents, de-greasers, paint, etc.), many of which are known or suspected asthma triggers in sensitized individuals. The potential for an Able Seaman's exposure to these asthma triggers is considerable.

Taken altogether, it is my opinion that Mr. Lobusta ought not to be considered fit to return to work as an Able Seaman. While the degree of impairment is mild, for the reasons stated above, it would be in the interest of all parties involved if he were to no longer be considered as capable of gainful employment as a seafarer. It is possible that he may perform adequately in another capacity, given a land-based assignment.[19] (Stress in the original by Dr. David.)

As no settlement was reached despite the above findings, the Labor Arbiter ordered the parties to file their respective position papers.

On April 20, 2001, the Labor Arbiter rendered a decision[20] ordering petitioners to pay Lobusta (a) US$2,060 as medical allowance, (b) US$20,154 as disability benefits, and (c) 5% of the awards as attorney's fees.

The Labor Arbiter ruled that Lobusta suffered illness during the term of his contract. Hence, petitioners are liable to pay Lobusta his medical allowance for 120 days or a total of US$2,060. The Labor Arbiter held that provisions of the Labor Code, as amended, on permanent total disability do not apply to overseas seafarers. Hence, he awarded Lobusta US$20,154 instead of US$60,000, the maximum rate for permanent and total disability under Section 30 and 30-A of the 1996 POEA Standard Employment Contract. The Labor Arbiter also awarded attorney's fees equivalent to 5% of the total award since Lobusta was assisted by counsel.[21]

Lobusta appealed. The NLRC dismissed his appeal and affirmed the Labor Arbiter's decision. The NLRC ruled that Lobusta's condition may only be considered permanent partial disability. While Dr. David suggested that Lobusta's prospects as seafarer may have been restricted by his bronchial asthma, Dr. David also stated that the degree of impairment is mild. Said qualification puts Lobusta's medical condition outside the definition of total permanent disability, said the NLRC.[22] Later, the NLRC also denied Lobusta's motion for reconsideration.

Unsatisfied, Lobusta brought the case to the CA under Rule 65 of the 1997 Rules of Civil Procedure, as amended. As aforesaid, the CA declared that Lobusta is suffering from permanent total disability and increased the award of disability benefits in his favor to US$60,000, to wit:

> WHEREFORE, the petition for certiorari is hereby GRANTED. The challenged resolution of the NLRC dated 20 June 2002 is MODIFIED, declaring [Lobusta] to be suffering from permanent total disability.
>
> [Petitioners] are ORDERED to pay [Lobusta] the following:
>
> a) US$2,060.00 as medical allowance,
> b) US$60,000.00 as disability benefits, and
> c) 5% of the total monetary award as attorney's fees
>
> x x x x[23]

The CA faulted the NLRC for "plucking only particular phrases" from Dr. David's report and said that the NLRC cannot wantonly disregard the full import of said report. The CA ruled that Lobusta's disability brought about by his bronchial asthma is permanent and total as he had been unable to work since May 14, 1998 up to the present or for more

than 120 days, and because Dr. David found him not fit to return to work as an able seaman.

Hence, this petition which raises two legal issues:

> I.
>
> WHETHER OR NOT THE POEA CONTRACT CONSIDERS THE MERE LAPSE OF MORE THAN ONE HUNDRED TWENTY (120) DAYS AS TOTAL AND PERMANENT DISABILITY.
>
> II.
>
> WHETHER OR NOT THERE IS LEGAL BASIS TO AWARD RESPONDENT LOBUSTA ATTORNEY'S FEES.[24]

Petitioners argue that the CA erred in applying the provisions of the Labor Code instead of the provisions of the POEA contract in determining Lobusta's disability, and in ruling that the mere lapse of 120 days entitles Lobusta to total and permanent disability benefits. The CA allegedly erred also in holding them liable for attorney's fees, despite the absence of legal and factual bases.

The petition lacks merit.

Petitioners are mistaken that it is only the POEA Standard Employment Contract that must be considered in determining Lobusta's disability. In *Palisoc v. Easways Marine, Inc.*,[25] we said that whether the Labor Code's provision on permanent total disability applies to seafarers is already a settled matter. In *Palisoc*, we cited the earlier case of *Remigio v. National Labor Relations Commission*[26] where we said (1) that the standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247[27] "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith," and "to promote and protect the well-being of Filipino workers overseas"; (2) that Section 29 of the 1996 POEA Standard Employment Contract itself provides that all rights and obligations of the parties to the contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory; and (3) that even without this provision, a contract of labor is so impressed with public interest that the Civil Code expressly subjects it to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.[28] In affirming the Labor Code concept of permanent total disability, *Remigio* further stated:

> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the

company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.

The same principles were cited in the more recent case of *Crystal Shipping, Inc. v. Natividad*. In addition, the Court cited *GSIS v. Cadiz* and *Ijares v. CA* that "permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."

x x x x

These facts clearly prove that petitioner was unfit to work as drummer for at least 11-13 months – from the onset of his ailment on March 16, 1998 to 8-10 months after June 25, 1998. This, by itself, already constitutes permanent total disability. x x x[29]

In *Vergara v. Hammonia Maritime Services, Inc.*,[30] we also said 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.

Thus, the CA was correct in applying the Labor Code provisions in Lobusta's claim for disability benefits. The Labor Arbiter erred in failing to apply them.

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 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*,[31] 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 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.[32]

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.

Applying the foregoing considerations, we agree with the CA that Lobusta suffered permanent total disability. On this point, the NLRC ruling was not in accord with law and jurisprudence.

Upon repatriation, Lobusta was first examined by the Pulmonologist and Orthopedic Surgeon on May 22, 1998. The maximum 240-day (8-month) medical-treatment period expired, but no declaration was made that Lobusta is fit to work. Nor was there a declaration of the existence of Lobusta's permanent disability. On February 16, 1999, Lobusta was still prescribed medications for his lumbosacral pain and was advised to return for reevaluation. May 22, 1998 to February 16, 1999 is 264 days or 6 days short of 9 months.

On Lobusta's other ailment, Dr. Roa's clinical summary also shows that as of December

16, 1999, Lobusta was still unfit to resume his normal work as a seaman due to the persistence of his symptoms. But neither did Dr. Roa declare the existence of Lobusta's permanent disability. Again, the maximum 240-day medical treatment period had already expired. May 22, 1998 to December 16, 1999 is 19 months or 570 days. In *Remigio*, unfitness to work for 11-13 months was considered permanent total disability. So it must be in this case. And Dr. David's much later report that Lobusta "ought not to be considered fit to return to work as an Able Seaman" validates that his disability is permanent and total as provided under the POEA Standard Employment Contract and the Labor Code, as amended.

In fact, the CA has found that Lobusta was not able to work again as a seaman and that his disability is permanent "as he has been unable to work since 14 May 1998 to the present or for more than 120 days." This period is more than eight years, counted until the CA decided the case in August 2006. On the CA ruling that Lobusta's disability is permanent since he was unable to work "for more than 120 days," we have clarified in *Vergara* that this "temporary total disability period may be extended up to a maximum of 240 days."

Thus, we affirm the award to Lobusta of US$60,000 as permanent total disability benefits, the maximum award under Section 30 and 30-A of the 1996 POEA Standard Employment Contract. We also affirm the award of US$2,060 as sickness allowance which is not contested and appears to have been accepted by the parties.

On the matter of attorney's fees, under Article 2208[33] of the Civil Code, attorney's fees can be recovered in actions for recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[34] Such conditions being present here, we affirm the award of attorney's fees, which we compute as US$3,103 or 5% of US$62,060.

Before we end, we note petitioners' repeated failure to comply with our resolutions, as well as the orders issued by the tribunals below. We remind petitioners and their counsels that our resolutions requiring them to file pleadings are not to be construed as mere requests, nor should they be complied with partially, inadequately or selectively. Counsels are also reminded that lawyers are called upon to obey court orders and willful disregard thereof will subject the lawyer not only for contempt but to disciplinary sanctions as well.[35] We may also dismiss petitioners' appeal for their failure to comply with any circular, directive or order of the Supreme Court without justifiable cause.[36] In fact, we actually denied the instant petition on July 9, 2008 since petitioners failed to file the required reply to the comment filed by Lobusta.[37] On reconsideration, however, we reinstated the petition.[38] But when we required the parties to submit memoranda, petitioners again did not comply.[39] As regards the proceedings below, they did not file their position paper on time, despite the extensions granted by the Labor Arbiter.[40] Nor did they file the comment and memorandum required by the CA.[41]

Finally, we note that the Labor Arbiter improperly included Miguel Magsaysay as

respondent in his decision.[42] It should be noted that Lobusta sued Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S in his complaint.[43] He also named them as the respondents in his position paper.[44] Petitioners are the proper parties.

WHEREFORE, we **DENY** the present petition for review on certiorari and **AFFIRM** the Decision dated August 18, 2006 of the Court of Appeals and its Resolution dated April 19, 2007 in CA-G.R. SP No. 74035. We **ORDER** petitioners Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S to pay respondent Oberto S. Lobusta US$65,163 as total award, to be paid in Philippine pesos at the exchange rate prevailing during the time of payment.

With costs against the petitioners.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and *Mendoza, JJ.*, concur.

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*Also referred to as Westfal-Larsen Management A/S.

?Designated additional member per Raffle dated February 10, 2010 vice Associate Justice Lucas P. Bersamin who recused himself from the case due to prior action in the Court of Appeals.

[1] *Rollo*, pp. 34-44. Penned by Associate Justice Santiago Javier Ranada with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino.

[2] Id. at 46-47. Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Lucas P. Bersamin (now a Member of this Court) and Amelita G. Tolentino.

[3] Id. at 11.

[4] Records, p. 50.

[5] Id. at 3.

[6] *Rollo*, p. 49.

[7] Id. at 34-35, 73.

[8] Id. at 74.

[9] Id. at 81.

[10] Id. at 83.

[11] Id. at 84-85.

[12] Electromyography/Nerve Conduction Velocity.

[13] *Rollo*, p. 91.

[14] Id. at 92.

[15] Id. at 53.

[16] Id. at 95.

[17] Records, p. 2.

[18] *Rollo*, pp. 101-103.

[19] Id. at 103.

[20] Id. at 43-57.

[21] Id. at 51-56.

[22] Id. at 334-336.

[23] *Rollo*, p. 43.

[24] Id. at 18.

[25] G.R. No. 152273, September 11, 2007, 532 SCRA 585, 592.

[26] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

[27] Reorganizing the Philippine Overseas Employment Administration and for Other Purposes.

[28] Supra note 26 at 207.

[29] Id. at 207-208, 212.

[30] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 626.

[31] Id. at 627.

[32] Id. at 628-629.

[33] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

x x x x

(7) In actions for the recovery of wages of x x x laborers x x x;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

[34] *Remigio v. National Labor Relations Commission,* supra note 26 at 215.

[35] *Sebastian v. Bajar,* A.C. No. 3731, September 7, 2007, 532 SCRA 435, 449.

[36] Rules of Court, Rule 56, Section 5. *Grounds for dismissal of appeal.* – x x x

x x x x

(e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause.

x x x x

[37] *Rollo*, p. 300.

[38] Id. at 319.

[39] Id. at 337.

[40] Records, p. 48.

[41] CA *rollo,* pp. 182, 183-245.

[42] Records, p. 43.

[43] Id. at 2.

[44] Id. at 18.

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