

694 Phil. 239

FIRST DIVISION

[G.R. No. 162809, September 05, 2012]

**PACIFIC OCEAN MANNING, INC. AND CELTIC PACIFIC SHIP
MANAGEMENT CO., LTD., PETITIONERS, VS. BENJAMIN D.
PENALES, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari*^[1] to reverse and set aside the December 4, 2003 **Decision**^[2] and February 23, 2004 **Resolution**^[3] of the Court of Appeals in CA-G.R. SP No. 75126.

The facts, as summarized by the Court of Appeals, are as follows:

Petitioner Benjamin Penales (Penales) is a seafarer. He was contracted by private respondent Pacific Ocean Manning, Inc. (Pacific) for x x x its foreign principal, private respondent Celtic Pacific Ship Management (H.K.) Ltd. Penales was assigned to work on board the vessel, MV "Courage Venture" under the following terms and conditions:

Duration of Contract	:	10 months
Position	:	Ordinary Seaman
Basic Monthly Salary	:	US\$396.00
Hours of Work	:	48 hours per week
Overtime	:	US\$2.60/hour
Vacation Leave with pay	:	6.0 days per month

Penales underwent the pre-employment medical examination (PEME) as part of the prescribed employment procedure and was pronounced fit to work by the company doctors.

Penales joined the vessel of assignment and started working thereon on May 24, 1999.

Penales' scheduled repatriation coincided with the vessel's docking operations at the port of Nigeria making his return to Manila difficult. Hence, his supposed disembarkation in Singapore where he is scheduled to sign off and repatriated to Manila following the termination of his employment contract was not followed. Instead, he was made to stay longer than the ten-month contract duration stipulated in the Philippine Overseas

Employment Administration (POEA) approved contract of employment.

On or about August 2000, the vessel "Courage Venture" went to the Port of Chennai, India. On its way to the designated port and while preparing to moor, the vessel, through its line (rope) tied on the starboard, was pulled by tugboat MV "Matchless." In preparation for mooring, the Chief Mate ordered Penales to stand at the forward masthead and wait for further instruction.

While awaiting further instructions, the rope rifted and directly recoiled in Penales' direction, hitting him severely in the chest, left arm and head. The impact caused him to miss his balance, [become] unconscious and sustain a fracture on his left arm.

Penales was brought to the National Hospital in India under the medical supervision of Dr. Arvind Rajagopalan. He was initially diagnosed to have suffered from "*fracture shaft of left humerus mid third with radial nerve injury.*" He was operated on, fixing the fracture on his left humerus with an eight-screwed stainless steel plate. After the operation, Penales was signed off and repatriated to Manila.

In Manila, Penales reported to the office of Pacific. He was referred to the Fatima Medical Clinic and was diagnosed as suffering from "*Fracture, closed, committed, M/3, humerus, S/P Open Reduction, internal fixation, plate and screws, Radial nerve pulsy left, Cerebral Concussion, Contusion chest left*" [as per the Medical Certificate^[4] issued by the Fatima Medical Clinic. Penales however failed to go back to the clinic for the management of his injuries, as reported by Fatima Medical Clinic on October 10, 2000.^[5] [Penales was thereafter] referred to the Mary Chiles General Hospital and finally to the Medical Center Manila for treatment and rehabilitation [wherein he continued treatment until January 26, 2001].^[6]

On October 2, 2000, while still undergoing treatment, Penales filed a complaint before the Quezon City Arbitration Branch of the National Labor Relations Commission (NLRC). This was docketed as NLRC OFW Case No. (L) 00-10-1636-00.

Penales complained that despite medical treatment, he continued to be weak and unable to perform any work-related activity. He alleged that his accident disabled him from earning income as a seafarer, thus, he was entitled to disability compensation and benefits, which the respondents denied him without valid cause.

Pacific Ocean Manning, Inc. and Celtic Pacific Ship Management Co., Ltd. (petitioners), on the other hand, argued that Penales could not be considered as disabled by mere lapse of time. They claimed that Penales was still undergoing medical treatment, and that the last pronouncement of his attending orthopedic surgeon was that there was no reason why he should not eventually become fit to work.^[7]

On January 25, 2002, Labor Arbiter Natividad Roma issued her Decision,^[8] the

dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Pacific Ocean Manning, Inc. and Celtic Pacific Ship Management Ltd. (Hongkong), to pay, jointly and solidarily, complainant Benjamin D. Penales disability benefits in the sum of US\$16,795.00 representing 33.59% of the maximum amount of US\$50,000.00 payable in Philippine Currency at the rate of exchange prevailing at the time of payment as well as ten (10%) percent thereon as attorney's fees; and DISMISSING all other claims for lack of merit.^[9]

In her decision, the Labor Arbiter held that there is no dispute that Penales's injury was work-related and his treatment went beyond 120 days, which, under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC), entitled him to disability benefits. The Labor Arbiter added that the petitioners were unable to refute Penales's claim by failing to prove that he was fit to work, or with at least a certificate on his disability grade. The Labor Arbiter then declared that Penales was entitled to a disability of "around Grade 8 which is equivalent to 33.59% of the maximum amount of US\$50,000 in the sum of US\$16,795.00," after examining the schedule of disability benefits under the POEA SEC *vis-à-vis* the medical findings of the company-designated physician.^[10]

Not satisfied, Penales appealed^[11] the Labor Arbiter's Decision to the NLRC, arguing that the Labor Arbiter abused her discretion when she vaguely declared that he was entitled to a disability grade of only 8.

The NLRC agreed that while there is no question that Penales was disabled, the issue of his grade of disability was not threshed out properly. The NLRC said that "considering that the determination of the grade means determination of the actual physical condition of [Penales] and his injuries, a physician is more in a position to ascertain the degree of disability."^[12]

On September 5, 2002, the NLRC set aside^[13] the Labor Arbiter's decision and remanded the case for further proceedings only in so far as the determination of Penales's grade of disability.

Penales moved to reconsider the above resolution but this was denied by the NLRC on November 18, 2002, for lack of merit.^[14]

Penales elevated his case then to the Court of Appeals via a Petition for *Certiorari*^[15] under Rule 65, on the ground that the NLRC committed grave abuse of discretion when it remanded the case notwithstanding the fact that the evidence of both parties clearly support his entitlement to the maximum amount of US\$60,000.00 as disability benefits. This petition was docketed as CA-G.R. SP No. 75126.

The Court of Appeals found that Penales was able to establish his entitlement to the

maximum benefits under Section C(4)[b] and [c] of the POEA SEC. The Court of Appeals held:

We find Penales clearly entitled to the maximum amount given to totally and permanently disabled seafarers. It is undisputed that even now, Penales has fragile extremities that [affect] his upper body strength and he can no longer perform draining shipboard activities. Since disability benefits are based on the impairment of earning capacity, then Penales is entitled to the maximum amount granted to disabled seafarers.

Consistently, the High Court has ruled 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." [*ECC v. Edmund Sanico*, 321 SCRA 268] In 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.^[16]

On December 4, 2003, the Court of Appeals granted Penales's petition and held that the NLRC abused its discretion when it remanded the case to the Labor Arbiter for the determination of Penales's grade of disability when his total and permanent disability had been clearly established. The fallo of the Decision reads:

WHEREFORE, premises considered, the petition is **GRANTED**. Private Respondents are hereby ordered to pay Penales, jointly and severally, the amount of US\$50,000.00 (maximum rate) x 120% or US\$60,000.00 (to be paid in the Philippine currency equivalent to the exchange rate prevailing at the time of payment) representing the maximum disability benefits as per Section 30-A, Appendix 1-A of the POEA Standard Employment Contract.

Private respondents are likewise ordered to pay ten percent (10%) of the awarded amount of US\$60,000.00 as and for attorney's fees.^[17]

The petitioners filed a Motion for Reconsideration^[18] of the above Decision but this was denied by the Court of Appeals in its February 23, 2004 Resolution for lack of merit.

Undaunted, petitioners are now before this Court presenting the following issue and grounds for its petition:

Statement Of The Issue

Whether Or Not The Court Of Appeals Decided The Case A Quo In A Way Not

In Accord With Law And/Or [Applicable] Jurisprudence Of The Honorable Court When It Granted Petitioner's Petition For Certiorari Under Rule 65.

Grounds For The Petition

Petitioners respectfully submit that the appellate court decided the petition not in accord with applicable laws and jurisprudence when:

I. The Appellate Court Disregarded The Terms And Conditions Of The POEA Standard Employment Contract When It Rendered Petitioners Liable To Respondent For Disability Benefits.

II. The Appellate Court Failed To Give Due Weight And Consideration To The Assessment Made By The Company- Designated Physician As To Respondent's Condition; And

III. The Appellate Court Found Respondent With A Grade 1 Disability And Awarded Him Disability Benefits In The Amount Of U[S]\$60,000.00 Which Is Equivalent To A Finding Of Total And Permanent Disability, Despite The Lack Of Any Basis Therefor.

IV. Respondent Is Not Entitled To Attorney's Fees.^[19]

Discussion

The crux of the controversy boils down to the propriety of awarding disability benefits to Penales in light of the fact that he was neither declared fit to work nor given a disability grade rating within the period allowed by the law.

Applicability of the Labor Code Provisions on Disability Benefits to Seafarers

The petitioners claim that the benefits to be awarded to Penales should be determined and delimited by the POEA SEC, the contract which governs their relationship.^[20] The petitioners argue:

Entitlement of a seafarer to disability compensation does not depend on whether or not he is still capable of working as a seafarer but on whether he suffers an impediment which hinders him from doing his customary work or any kind of work of a similar nature which a person of his mentality and attainment could as defined by jurisprudence in the very cases relied upon by the appellate court in the assailed Decision and Denial Resolution. x x x.

^[21]

The petitioners add that Penales is not "totally disabled" as although he may have suffered an injury that would render him unfit to work as a seafarer, he could still get a

land-based job, which does not call for the agility required by the work on board a vessel.^[22] They claim that temporary disability, or one that is capable of being treated and cured, is not compensable.^[23]

Penales, in his Comment,^[24] reiterates that “in disability cases, it is not the nature and extent of the disability that is controlling but it is the negative impact created by the disability to one’s earning capacity that ultimately gauges the claimant’s chance of recovery.”^[25]

This Court finds petitioners to be mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specifically its schedule of benefits, must be considered. This Court has ruled that such is governed not only by medical findings but also by contract and law. ^[26] The applicability of the Labor Code, particularly Article 192(c)(1), to seafarers, is already a settled issue.^[27] This Court, in *Magsaysay Maritime Corporation v. Lobusta*, ^[28] reiterating our ruling in *Remigio v. National Labor Relations Commission*,^[29] held:

The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under [Executive Order] No. 247 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.” Section 29 of the 1996 POEA [Standard Employment Contract] itself provides that “[a]ll 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.” Even without this provision, a contract of labor is so impressed with public interest that the New 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.”

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.^[30] (Emphases ours, citations omitted.)

The application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits was further clarified by this *Court in Vergara v. Hammonia Maritime Services, Inc.*,^[31] wherein we said:

The standard terms [of the POEA SEC] agreed upon, x x x, are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

Award of Disability Benefits

The petitioners also argue that the case is premature as Penales was still undergoing treatment when he filed the complaint; thus, the possibility of his recovery cannot be discounted.^[32]

In his memorandum, ^[33] Penales emphasized that his inability to perform his customary work for more than 120 days constitutes permanent total disability, and according to the applicable laws and jurisprudence, he is entitled to an award of total and permanent disability.^[34]

The Labor Arbiter found, and the NLRC and the Court of Appeals agreed, that Penales indeed suffered work-related injury during his employment with the petitioners, which rendered him unable to perform his customary work as a seafarer. Since Penales was found to be disabled in all prior decisions, **the only bone of contention here now is the amount of disability benefits to be awarded to Penales.**

This Court notes that as of January 26, 2001, Penales's medical treatment had gone beyond the 120 days provided for in Section 20 B(6) of the POEA SEC, viz:

B. Compensation and Benefits for Injury or Illness

x 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 permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

and Article 192(c) of the Labor Code, which reads:

ART. 192. Permanent Total Disability

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 for in the Rules[.]

However, Rule X, Section 2 of the Rules and Regulations Implementing Book IV, which is the rule referred to in the above Labor Code provision, states:

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.

The above provisions of the POEA SEC, the Labor Code, and its implementing rules and regulations, are to be read hand in hand when determining the disability benefits due a seafarer. ^[35]

Elucidating on this concept, this Court, in *PHILASIA Shipping Agency Corporation v. Tomacruz*^[36] quoting *Vergara*, held:

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.

Based on the foregoing, it is clear that the initial treatment period of 120 days may be extended up to a maximum of 240 days under the conditions prescribed by law.

The records show that from the time Penales became injured on August 31, 2000, until his last treatment on January 26, 2001, only 148 days had lapsed. While this might have exceeded 120 days, this was well within the 240-day maximum period for the company-designated physician to either declare Penales fit to work or assign an impediment grade to his disability at that time. It is worthy to note as well that when Penales filed a complaint before the Labor Arbiter on October 2, 2000, not only was he remiss in regularly attending his scheduled treatment sessions, but only 32 days had passed from the time of his injury.

We note that under POEA SEC, the seafarer has the duty to faithfully comply with and observe the terms and conditions of the contract, including the provisions governing the procedure for claiming disability benefits.

When Penales filed his complaint and refused to undergo further medical treatment, he prevented the company-designated physician from fully determining his fitness to work within the time allowed by the POEA SEC and by law. As we said in *Vergara*:

As we outlined above, a temporary total disability only becomes permanent when so declared by the company[-designated] 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. x x x.^[37]

Damages and Award of Attorney's Fees

Under Article 2208 of the Civil Code, attorney's fees can be recovered "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." 38 Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

Remand Case

As we have stated above, since the Labor Arbiter, the NLRC, and the Court of Appeals all found Penales to be disabled, this fact is now binding on the petitioners and this Court. The question therefore is the amount of disability benefits to be awarded to

Penales. To settle this, Penales's disability at the time of his last treatment should be determined in accordance with Section 20(B) of the POEA SEC.

WHEREFORE, above premises considered, the December 4, 2003 Decision and February 23, 2004 Resolution of the Court of Appeals in CA G.R. SP No. 75126 are **SET ASIDE**.

In lieu thereof, this Court is **REMANDING** the case to the Labor Arbiter for the determination of the impediment grade to be assigned to Benjamin D. Penales's disability at the time of his last treatment. No damages or attorney's fees shall be awarded.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 46-53; penned by Associate Justice Eliezer R. de los Santos with Associate Justices B.A. Adefuin-de la Cruz and Jose C. Mendoza, concurring.

[3] *Id.* at 55.

[4] *Id.* at 73-74.

[5] *Id.* at 75-76.

[6] *Id.* at 46-47.

[7] *Id.* at 61.

[8] *Id.* at 114-123.

[9] *Id.* at 122-123.

[10] *Id.* at 118-122.

[11] *Records*, pp. 86-100.

[12] *Rollo*, pp. 177-178.

[13] *Id.* at 174-179.

[14] *Id.* at 193-194.

[15] Id. at 195-223.

[16] Id. at 51.

[17] Id. at 52.

[18] Id. at 224-234.

[19] Id. at 21.

[20] Id. at 23

[21] Id. at 28-29.

[22] Id. at 29.

[23] Id. at 368.

[24] Id. at 240-255.

[25] Id. at 245.

[26] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

[27] *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 593.

[28] G.R. No. 177578, January 25, 2012, 664 SCRA 134, 143-144.

[29] 521 Phil. 330 (2006).

[30] Id. at 346-347.

[31] *Vergara v. Hammonia Maritime Services, Inc.*, supra note 26 at 626-627.

[32] *Rollo*, p. 29.

[33] Id. at 381-397.

[34] Id. at 321.

[35] *Vergara v. Hammonia Maritime Services, Inc.*, supra note 26 at 627.

[36] G.R. No. 181180, August 15, 2012.

[37] *Vergara v. Hammonia Maritime Services, Inc.*, supra note 26 at 629.

[38] CIVIL CODE, Art. 2208(2).



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