698 Phil. 437

# SECOND DIVISION

# [ G.R. No. 195168, November 12, 2012 ]

## BENJAMIN C. MILLAN, PETITIONER, VS. WALLEM MARITIME SERVICES, INC., REGINALDO A. OBEN AND/OR WALLEM SHIPMANAGEMENT,[1] LTD., RESPONDENTS.

## R E S O L U T I O N

**PERLAS-BERNABE, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated August 20, 2010 and Resolution[3] dated January 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 104924 which decreed petitioner Benjamin C. Millan entitled only to partial disability benefits in the sum of US$7,465.00 plus ten percent (10%) thereof as attorney's fees, or its peso equivalent at the time of payment.

The facts are undisputed.

Petitioner Benjamin C. Millan has been under the employ of Wallem Maritime Services, Inc. as a seafarer since May 1981.[4] On October 19, 2002, he was deployed by the latter for its foreign principal, Wallem Shipmanagement, Ltd., as a messman with a basic salary of US$405.00 a month on board M/T "Front Vanadis."[5] On February 13, 2003, he slipped while carrying the ship's provisions and injured his left arm. He was examined at St. Paul's Surgical Clinic in Yosu City, South Korea where he was diagnosed to have suffered "fracture on left ulnar shaft."[6] Hence, he was medically repatriated on February 26, 2003.[7] On February 28, 2003, he proceeded to the Manila Doctor's Hospital where he consulted Dr. Ramon S. Estrada, the company-designated physician, and underwent an operation on March 3, 2003.[8] After his discharge, he went through a series of consultations and physical therapy sessions from May 6, 2003 until July 2, 2003.[9] On July 5, 2003, Dr. Estrada reported that petitioner had completed his physical therapy program but will have to undergo a physical capacity test on August 28, 2003[10] to evaluate his fitness to work.[11] Instead, on August 29, 2003, petitioner filed a complaint[12] against respondents Wallem Maritime Services, Inc., its President/Manager Reginaldo A. Oben, and Wallem Shipmanagement, Ltd. for medical reimbursement, sickness allowance, permanent disability benefits, compensatory damages, exemplary damages and attorney's fees.

On September 1, 2003, petitioner consulted Dr. Rimando C. Saguin, an orthopedic surgeon, who diagnosed him as suffering from Philippine Overseas Employment Administration (POEA) Disability Grade 11 and elbow bursitis which rendered him "unfit

to work at the moment."[13] On September 10, 2003, petitioner sought the opinion of Dr. Nicanor F. Escutin who assessed his condition as a partial permanent disability with POEA Disability Grade 10, 20.15%. Dr. Escutin also opined that petitioner was suffering from "loss of grasping power of small objects in one hand, and inability to turn forearm to pronation or supination. The period of healing remains undetermined. The patient is now unfit to go back to work at sea at whatever capacity."[14]

In their defense, respondents denied any liability contending that proper treatment and management were afforded petitioner but he deliberately ignored his medical program by failing to appear on his scheduled appointment with the company-designated physician. Respondents also claim that petitioner was paid his sickness allowance in full, and his medical examinations, tests and check-ups were shouldered by the company.[15]

**The Labor Arbiter's Ruling**

In the Decision[16] dated September 27, 2006, the Labor Arbiter held that since the company-designated physician failed to make any pronouncement on petitioner's fitness to resume sea service within 120 days as required by law, his disability is deemed permanent and total. Consequently, respondents Wallem Maritime Services, Inc. and Wallem Shipmanagement, Ltd. were found jointly and severally liable to pay petitioner US$60,000.00 or its peso equivalent representing his permanent and total disability compensation plus ten percent (10%) thereof or US$6,000.00 as attorney's fees. Petitioner's claim for medical reimbursement and sickness allowance, however, were denied for lack of merit.

**The NLRC Ruling**

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the findings of the Labor Arbiter, ruling that the assessments made with respect to the degree of petitioner's disability by the two independent doctors who examined him only once cannot prevail over the extensive medical examinations conducted by the company-designated physician, Dr. Estrada. It pointed out that under the POEA Standard Employment Contract, the post-employment medical examination and degree of disability must be performed and declared by the company-designated physician.[17]

Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

**The CA Ruling**

In its assailed Decision[18] dated August 20, 2010, the CA set aside the NLRC's conclusions and rendered a new judgment finding petitioner as suffering from partial permanent disability Grade 10. It held that while petitioner's disability has exceeded 120 days, there was no showing that his "earning power was wholly destroyed and he is still capable of performing remunerative employment."[19] Thus, it ordered respondent manning agency and its principal liable to pay petitioner US$7,465.00 plus

10% thereof as attorney's fees by way of partial disability benefits.

Hence, the instant petition[20] based on the sole issue of whether or not the CA committed reversible error in granting petitioner only partial permanent disability Grade 10 despite his inability to work for more than 120 days.

In their Comment,[21] respondents averred that the determination made by the CA on the degree of petitioner's disability was in accordance with the Schedule of Disability Allowances under Section 32 of the POEA-Standard Employment Contract (POEA-SEC), hence, should be upheld.

**The Court's ruling**

There is no merit in this petition.

A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.

In *Vergara v. Hammonia Maritime Services, Inc.*,[22] the Court elucidated on the seeming conflict between Paragraph 3, Section 20(B)[23] of the POEA-SEC (Department Order No. 004-00) and Article 192 (c)(1)[24] of the Labor Code in relation to Section 2(a), Rule X[25] of the Amended Rules on Employees Compensation, thus:

> 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. (Italics in the original)

Applying *Vergara,* the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Taok*[26] enumerated the following instances when a seafarer may be allowed to pursue an action for total and permanent disability benefits, to wit:

(a) The company-designated physician failed to issue a declaration

as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company-designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

None of the foregoing circumstances is extant in this case.

Records show that from the time petitioner was repatriated on February 26, 2003, 129 days had lapsed when he last consulted with the company-designated physician on July 5, 2003 and 181 days had passed on the day he last visited his physiatrist on August 26, 2003.[27] Concededly, said periods have already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. However, it cannot be denied that the company-designated physician had determined[28] as early as March 5, 2003 or even before his discharge from the hospital that petitioner's condition required further medical treatment in the form of physical therapy sessions, which he had subsequently completed per Dr. Estrada's Memo dated July 5, 2003,[29] thus, justifying the extension of the 120-day period. The company-designated physician therefore had a period of 240 days from the time that petitioner suffered his injury or until October 24, 2003 within which to make a finding on his fitness for further sea duties or degree of disability.

Consequently, despite the lapse of the 120-day period, petitioner was still considered to be under a state of *temporary total disability* at the time he filed his complaint on August 29, 2003, 184 days from the date of his medical repatriation which is well-

within the 240-day applicable period in this case. Hence, he cannot be said to have acquired a cause of action for total and permanent disability benefits.[30] 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.[31]

Besides, petitioner's own evidence shows that he is suffering only from partial permanent disability of either Grade 10 or 11.[32] Accordingly, in the absence of proof to the contrary,[33] the Court concurs with the CA's finding that petitioner suffers from a partial permanent disability grade of 10.

**WHEREFORE**, premises considered, the instant petition is **DENIED**. The Decision dated August 20, 2010 and Resolution dated January 13, 2011 of the Court of Appeals in CA-G.R. SP No. 104924 are **AFFIRMED.**

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Del Castillo*, and *Perez, JJ*., concur.

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[1] Spelled as "Wallem Ship Management, Ltd." in the title of the Petition.

[2] *Rollo,* pp. 11-19; Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Normandie B. Pizzaro and Florito S. Macalino, concurring.

[3] Id. at 21-22.

[4] Id. at 91.

[5] Id. at 88.

[6] Id. at 93.

[7] Id. at 94-95.

[8] Id. at 96-99.

[9] Id. at 12.

[10] Id. at 139.

[11] Id. at 138.

[12] Id. at 103.

[13] Id. at 100.

[14] Id. at 101-102.

[15] Id. at 116-122.

[16] Id. at 141-152. Penned by Labor Judge Nieves Vivar-De Castro.

[17] Id. at 154-162. Penned by Presiding Commissioner Raul T. Aquino.

[18] Id. at 11-19.

[19] Id. at 16, citing *Malaysian International Shipping Corp. v. Lariza*, 218 Phil. 224, 232 (1984).

[20] Id. at 24-46.

[21] Id. at 174-183.

[22] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628.

[23] Sec. 20. Compensation and Benefits

A. Compensation and Benefits for Death
x x x
B. 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:

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.

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 final and binding on both parties.

[24] ART. 192. *Permanent Total Disability*. – (a) 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 for in the Rules;

[25] 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 days except when 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.

[26] G.R. No. 193679, July 18, 2012.

[27] Id. at 139.

[28] Id. at 130.

[29] Id. at 138.

[30] *C.F. Sharp Crew Management, Inc. v. Taok*, supra note 26.

[31] *Santiago v. Pacbasin Shipmanagement, Inc*., G.R. No. 194677, April 18, 2012.

[32] *Rollo*, pp. 100, 103.

[33] Incidentally, respondents do not refute and are in full accord with the CA's disability grading in their Comment.