

700 Phil. 419

SECOND DIVISION

[**G.R. No. 187337, December 05, 2012**]

LOADSTAR INTERNATIONAL SHIPPING, INC., PETITIONER, VS. THE HEIRS OF THE LATE ENRIQUE C. CALAWIGAN REPRESENTED BY THE LEGAL SPOUSE MARITESS C. CALAWIGAN, RESPONDENTS.

DECISION

PEREZ, J.:

This Rule 45 Petition for Review on Certiorari seeks the reversal and setting aside of the 6 February 2009 Decision^[1] rendered by the Fifth Division of the Court of Appeals (CA) in CA-G.R. SP NO. 105075,^[2] the dispositive portion of which states:

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated April 30, 2008 and the Resolution dated June 18, 2008 of the NLRC, Third Division in NLRC NCR CA No. 048098 (NLRC NCR OFW-05-07-01593-00) are REVERSED and SET ASIDE.

Respondent Loadstar International Shipping, Inc. is hereby ordered to pay petitioners Heirs of the late Enrique C. Calawigan, represented by Maritess Calawigan, US\$5,520.00 as sickness allowance, US\$39,180.00 as permanent disability compensation which should be paid in Philippine Currency equivalent to the prevailing rate of exchange at the time of payment and 10% attorney's fees.^[3]

Likewise assailed is the 30 March 2009 Resolution issued in the case which denied the motion for reconsideration of the foregoing decision, for lack of merit.^[4]

The Facts

On 14 September 2004, Enrique C. Calawigan (Calawigan) was hired by petitioner Loadstar International Shipping, Inc. (LISI) as a Chief Engineer for the vessel ***M/V Foxhound***, for a contract period of ten months and a basic monthly salary of US\$1,380.00.^[5] Deployed on 22 September 2004, Calawigan immediately commenced his shipboard employment which primarily entailed responsibilities pertaining to the operation of the vessels' engine room, maintenance of its equipment and books and supervision of the engine crew.^[6] About a month prior to the expiration of his contract, however, it appears that Calawigan, citing personal reasons, filed with LISI a request for disembarkation/resignation letter postdated 20 June 2005.^[7] With the approval of

the request/resignation, Calawigan disembarked the vessel at the Port of Davao on 5 June 2005^[8] and, upon receipt of his monetary entitlements in the sum of P39,441.32, executed a *Release and Quitclaim* dated 29 June 2005 in favor of LISI.^[9]

On 4 July 2005, Calawigan filed against LISI the complaint for medical reimbursement, sickness allowance, permanent disability benefits, compensatory damages, moral damages, exemplary damages and attorney's fees which was docketed before the arbitral level of the National Labor Relations Commission (NLRC) as NLRC NCR OFW-05-07-01593-00.^[10] Contending that his shipboard employment exposed him to stress, depression, chemical irritants and rigors of the sea, Calawigan alleged that he suffered blurring of vision and a roaring sound in his ears while overhauling a piston in the vessel's engine room sometime in March 2005. In view of his worsening condition which he initially attributed to overfatigue, Calawigan claimed that he requested for a reliever and a medical check up when the vessel docked at Ishinomaki, Japan. On 16 May 2005, he was diagnosed by a Japanese doctor to be suffering from "Uveitis" and advised to disembark the vessel for medical treatment.^[11]

Upon his 5 June 2005 disembarkation, Calawigan maintained that he requested for a medical examination from LISI which simply referred his request to the Social Security System (SSS) as a sickness benefit claim. As a consequence, he was supposedly constrained to consult Dr. Luis Mendiola (Dr. Mendiola) at the Manila Hearing Aid Center (MHAC) on 27 June 2005 and to undergo an ultrasonography of his right eye at the St. Luke's Medical Center (SLMC) where he was diagnosed to be suffering from "Retinal Detachment w/ Vitreous Opacities, O.D."^[12] On the strength of the MHAC diagnosis that he was likewise suffering "moderate bilateral sensorineural hearing loss" in the right ear,^[13] Calawigan was issued a Medical Certificate dated 5 July 2005 by Dr. Mendiola who assessed his disability as Grade 3^[14] under the *POEA Standard Employment Contract for Filipino Seafarers On-Board Ocean-Going Vessels* (POEA-SEC). Ultimately, Calawigan asserted that LISI unjustifiably turned a deaf ear to his demands for payment of the disability and medical benefits due him.^[15]

LISI, on the other hand, denied liability for Calawigan's monetary claims. Maintaining that the latter complained of no ailment while on-board the vessel M/V Foxhound, LISI averred that Calawigan voluntarily pre-terminated his employment contract for personal reasons, as evidenced by his request for disembarkation/resignation letter. Not having been repatriated for medical reasons, Calawigan allegedly reported to LISI's office to claim his last salary and benefits in the sum of P39,441.32 which he was accordingly paid as likewise evidenced by the *Release and Quitclaim* he executed in its favor on 29 June 2005. In essence, LSI claimed that Calawigan did not sustain any injury or illness in the course of his employment and, as a consequence, was not entitled to medical reimbursement, sickness allowance and permanent disability benefits, much more to the compensatory damages, moral damages, exemplary damages and attorney's fees sought in the complaint.^[16]

On 28 December 2005, Labor Arbiter Veneranda C. Guerrero (Labor Arbiter) rendered a decision, dismissing Calawigan's complaint for lack of merit. Finding no showing in the record that said seafarer was repatriated for medical reasons on account of an illness or

injury suffered while on board M/V Foxhound, the Labor Arbiter brushed aside the claim for medical reimbursement, sickness allowance and permanent disability benefits on the additional ground that Calawigan's disability was not assessed by a company-designated physician as required under Sec. 20-B of the POEA-SEC. Absent the names of the doctor and hospital as well as the time and date of consultation in the Statement of Account supposedly issued to Calawigan in Ishinomaki, Japan, the Labor Arbiter also discounted the probative value of said document which was additionally found to contain typewritten entries "markedly similar, if not the same as the typewritten entries in the complaint form."^[17]

Dissatisfied with the foregoing decision, Calawigan perfected the appeal which was docketed as NLRC NCR CA No. 048098-06 before the Third Division of the NLRC. In view of his death from a heart attack during the pendency of his appeal, Calawigan was, however, substituted in the case by his heirs, namely, his wife, respondent Maritess C. Calawigan, and their minor daughter, respondent Rikki Jule C. Calawigan. On 30 April 2008, the NLRC rendered a decision, denying the appeal for lack of merit and affirming *in toto* the Labor Arbiter's decision dated 28 December 2005. Finding that Calawigan failed to establish that he was repatriated for medical reasons, the NLRC ruled that said seafarer's monetary claims were correctly dismissed for lack of showing that his moderate hearing loss was attributable to his working conditions and that he submitted himself for a post-employment medical examination by a company-designated physician within three days from repatriation. Echoing the Labor Arbiter's rejection thereof, the Statement of Account Calawigan claimed he was issued in Ishinomaki, Japan was also pronounced to be of dubious authenticity by the NLRC.^[18]

Unfazed by the NLRC's 18 June 2008 denial of their motion for reconsideration of the foregoing decision,^[19] **respondents** Heirs of Enrique C. Calawigan filed a Petition for Certiorari under Rule 65 which was docketed as CA-G.R. SP No. 105075 before the CA.^[20] On 6 February 2009, the CA's Fifth Division rendered the herein assailed decision, reversing the NLRC's decision upon the following findings and conclusions: (a) the entries made in Japanese characters in the Statement of Account indicate that Calawigan was treated for an eye complaint which was confirmed by the results of the ultrasonography he underwent at the SLMC; (b) complete deafness resulting from working conditions involving any industrial operation having excessive noise particularly in high frequencies is an occupational disease and is compensable as such under Sec. 32 of the POEA-SEC; (c) Calawigan's non-submission to a post-employment medical examination by a company-designated physician was due to LISI's inaction on his request therefor; and (d) designed for the benefit of Filipino seafarers, the POEA-SEC provides for compensation where work has contributed, even in a small degree, in bringing about the disability.^[21]

LISI's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's likewise assailed Resolution dated 30 March 2009,^[22] hence, this Petition for Review on Certiorari under Rule 45.

The Issues

LISI seeks the reversal and setting aside of the CA's assailed decision and resolution on the following grounds, to wit:

I

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT REVERSED AND SET ASIDE THE DECISION DATED APRIL 30, 2008 AND RESOLUTION DATED JUNE 18, 2008 OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE LATE CALAWIGAN IS ENTITLED TO PERMANENT DISABILITY COMPENSATION AS HIS MODERATE HEARING LOSS IS NOT CONSIDERED AN OCCUPATIONAL DISEASE WITH A GRADE THREE (3) IMPEDIMENT PURSUANT TO SECTION 32 OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.

III

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE LATE CALAWIGAN IS ENTITLED TO SICKNESS ALLOWANCE AS HE FAILED TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY DESIGNATED PHYSICIAN WITHIN THREE (3) WORKING DAYS FROM HIS DISEMBARKATION ON JUNE 6, 2006 PURSUANT TO SECTION 20-B (3) OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.

IV

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT ALL THE ELEMENTS FOR AN OCCUPATIONAL DISEASE TO BE COMPENSABLE ARE PRESENT IN THE CASE AT BAR PURSUANT TO SECTION 32-A OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.^[23]

The Court's Ruling

The petition is impressed with merit.

The tenor of the first ground raised by LISI in support of its petition impels us to call its counsel's attention to the basic rule that grave abuse of discretion is beyond the scope of appeals by certiorari like the one at bench.^[24] Considering that only questions of law may be raised in a Rule 45 petition for review on certiorari, the well-entrenched doctrine is also to the effect that questions of fact are not proper subjects in this mode of appeal.^[25] When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties, and are not reviewed by this Court except when the findings are contrary with those of the lower court or quasi-judicial bodies.^[26] Since the CA's factual findings can be questioned if they are, as here, contrary to those of the lower court and/or administrative agency,^[27] we find that respondents cannot, in turn, argue that this Court has no jurisdiction to entertain the questions of fact pertinent to the grounds raised in support of LISI's petition.

Much had likewise been made of the Statement of Account that Calawigan claimed he had been issued for an eye examination in Ishinomaki, Japan where he was diagnosed to be suffering from "Uveitis". Rejected by both the Labor Arbiter and the NLRC on grounds of dubious authenticity, said document was given credence by the CA in view of the fact, among others, that Calawigan's eye complaint was supposedly confirmed by the results of the ultrasonography he underwent at the SLMC which, in turn, resulted in the diagnosis that he was suffering from "Retinal Detachment w/ Vitreous Opacities, O.D." The record shows, however, that Calawigan was declared entitled to sickness allowance and permanent disability compensation by the CA on the strength of Dr. Mendiola's finding that said seafarer's "moderate bilateral sensorineural hearing loss" in the right ear warrants a Grade 3 disability rating under the POEA-SEC. Thus, we find further discussions of said Statement of Account as well as the results of the SLMC ultrasonography to be, on the whole, immaterial in determining the merit of the petition at bench.

Unfettered by the extraneous, we now go to respondent's "moderate x x x deafness."

Deemed written in the seafarer's contract of employment, the 2000 POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels.^[28] Anent a seafarer's entitlement to compensation and benefits for injury and illness, Section 20-B (3) thereof provides as follows:

Section 20-B. Compensation and Benefits for Injury and 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.

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. (Emphasis added.)

In *Coastal Safeway Marine Services v. Esguerra*,^[29] we ruled that the foregoing provision means that "it is the company designated-physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC."

Viewed in light of the foregoing considerations, we find that LISI correctly fault the CA for awarding sickness allowance and permanent disability compensation in favor of Calawigan. Shown to have requested for his disembarkation and/or resignation one month prior to the expiration of his contract,^[30] Calawigan failed to establish compliance with the requirement for him to undergo post-employment medical examination by a company-designated physician within three working days from his repatriation on 5 June 2005. But for Calawigan's bare allegation that he requested said medical examination from LISI which supposedly referred his request to the SSS as a sickness benefit claim, the record is bereft of any showing of any justification for said seafarer's non-compliance with the requirement. If a written notice is required of a seafarer who is physically incapacitated for purposes of abiding with the requirement of a post-employment medical examination, it stands to reason that a more tangible proof of compliance should be expected of Calawigan who appears to have been well enough to consult with Dr. Mendiola at the MHAC for his ear complaint.

Time and again, we have ruled that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence.^[31] Often described as more than a mere scintilla,^[32] substantial evidence is such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.^[33] To our mind, Calawigan's unsubstantiated assertion that he requested for a post-employment medical examination from LISI does not even come close to approximating the foregoing quantum of proof. Given that compliance with said requirement is mandatory and the unexplained omission thereof will bar the filing of a claim for disability benefits,^[34] the CA clearly erred when it adjudged Calawigan entitled to sickness allowance and permanent disability compensation despite his failure to abide by the procedure outlined under the POEA-SEC. As it would be fairly easy for a physician to determine whether the injury or ailment is work-related within three-days from repatriation, to ignore the requirement would set a precedent with negative repercussions which would open the floodgates to a limitless number of seafarers claiming disability benefits.^[35]

Even if we were to disregard the fact, however, that the POEA-SEC recognizes only the disability grading provided by the company-designated physician,^[36] LISI correctly faults the CA for awarding disability benefits corresponding to the Grade 3 disability rating assessed by Dr. Mendiola. The record shows that on 5 July 2005, Dr. Mendiola issued the following medical certificate in favor of Calawigan, to wit:

This is to certify that **Mr. Enrique Calawigan**, 46 years old, was seen and examined by the undersigned last June 26, 2005 due to hearing impairment on both ears.

Pure tone audiometry was requested which revealed ***moderate bilateral sensorineural hearing loss (Grade 3)***. Tympanometry ***showed ossicular disarticulation on right ear; normal findings on left ear.***

This medical certificate was issued upon request for whatever purpose it may serve.^[37]

For an occupational disease and the resulting disability to be compensable, all of the following conditions must be satisfied under the POEA-SEC: (1) the seafarer's work must involve the risks described in the contract; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.^[38] Deafness is listed as an occupational disease for work in "any industrial operation having excessive noise particularly in the higher frequencies" or "any process carried on in compressed or rarified air."^[39] Sec. 32 of the POEA-SEC assigns the following disability grades for ear injuries or ailments, viz.:

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

X X X X

EARS

1. For the complete loss of the sense of hearing on both ears..... Gr. 3
2. Loss of two (2) external ears..... Gr. 8
3. Complete loss of the sense of hearing in one ear..... Gr. 11
4. Loss of one external ear..... Gr. 12
5. Loss of one half (1/2) of an external ear..... Gr. 14

Undoubtedly also applicable to the POEA-SEC, it is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.

[40] Considering that Calawigan was only diagnosed to be suffering from “moderate bilateral sensorineural hearing loss,” LISI correctly argues that the CA erred in giving credence to Dr. Mendiola’s assessment of a Grade 3 disability rating which corresponds to complete loss of hearing on both ears. Absent a finding that the “ossicular disarticulation” detected on Calawigan’s right ear amounts to a complete loss of the sense of hearing in one ear, it would also appear that said seafarer is not even entitled to compensation for a Grade 11 disability rating. Granted that strict rules of evidence are not applicable in claims therefor, [41] compensation and disability benefits under the POEA-SEC cannot be awarded to ailment or injuries not falling within its purview.

His entitlement to sickness allowance and disability compensation thus discounted, attorney’s fees are not likewise due to Calawigan who filed his complaint on 4 July 2005 or even prior to Dr. Mendiola’s assessment of his disability. Having requested disembarkation/resigned from employment, Calawigan also executed a 29 June 2005 *Release and Quitclaim*, acknowledging his receipt from LISI of the sum of P39,441.32 by way of salaries and benefits. [42] Although releases and quitclaims executed by employees are commonly frowned upon as being contrary to public policy, the transaction evidenced thereby is recognized as a valid and binding undertaking where the consideration therefor is credible and reasonable and the person making the waiver has done so voluntarily, with a full understanding thereof. [43] No defect in respondent’s waivers was proven in the instant case. Thus, while we sympathize with Calawigan’s plight, we are, constrained to disallow the sickness allowance, disability benefits and attorney’s fees awarded by the CA.

WHEREFORE, premises considered, the petition is **GRANTED** and the CA’s assailed 6 February 2009 Decision and 30 March 2009 Resolution are, accordingly, **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered **REINSTATING** the NLRC’s 30 April 2008 Decision.

SO ORDERED.

*Carpio, (Acting C.J., * Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.*

* Per Special Order No. 1384 dated 4 December 2012.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. concurring.

[2] *Rollo*, pp. 33-45.

[3] *Id.* at 44.

[4] *Id.* at 47-48.

[5] *Id.* at 49. Contract of Employment.

[6] *Id.* at 50. Engine Officer's Written Instructions Prior Embarkation.

[7] *Id.* at 51.

[8] *Id.* at 62.

[9] *Id.* at 55. Release and Quitclaim

[10] *Id.* at 57-58. Undated Complaint.

[11] Records, pp. 41-42. Undated Statement of Account and Receipt.

[12] *Id.* at 46. Ultrasonography Result.

[13] *Id.* at 44-45. Audiogram and Tympanogram Report.

[14] *Id.* at 48. Medical Certificate.

[15] *Rollo*, pp. 59-72. Calawigan's 2 September 2005 Position Paper.

[16] *Id.* 73-78. LISI's 1 September 2005 Position Paper.

[17] *Id.* at 102-108. Labor Arbiter's Decision.

[18] *Id.* at 131-138. NLRC's Decision.

[19] *Id.* at 157-158. NLRC's Resolution

[20] *Id.* at 159-176. Respondents' 1 September 2008 Petition for Certiorari.

[21] *Id.* at 33-45. CA's Decision.

[22] *Id.* at 47-48, CA's Resolution.

[23] *Id.* at 12.

[24] *Mackay v. Judge Angeles*, 458 Phil. 1031 (2003).

[25] *Larena vs. Mapili*, 455 Phil. 944, 950 (2003).

[26] *Muaje-Tuazon v. Wenphil Corp.*, 540 Phil. 516, 524 (2006).

[27] *Air Philippines Corp. v. Inter'l. Aviation Services Phils., Inc.*, 481 Phil. 366, 394 (2004).

[28] *Bergensen D.Y. Philippines, Inc. v. Estenzo*, 513 Phil. 254, 262 (2005).

[29] G.R. No. 185352, 10 August 2011, 655 SCRA 300, 307-308, citing *Magsaysay Maritime Corp. v. Velasquez*, G.R. No. 179802, 14 November 2008, 571 SCRA 239, 248; *German Marine Agencies, Inc. v. NLRC*, 403 Phil. 572, 588 (2001); *NYK-Fil Ship Management, Inc. v. Talavera*, G.R. No. 175894, 14 November 2008, 571 SCRA 183, 193; *HFS Philippines, Inc. v. Pilar*, G.R. No. 168716, 16 April 2009, 585 SCRA 315, 326; *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, 15 March 2010, 615 SCRA 529, 543; *Sarocam v. Interorient Maritime Ent., Inc.*, G.R. No. 167813, 27 June 2006, 493 SCRA 502, 512.

[30] *Rollo*, p. 51.

[31] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 238.

[32] *Spouses Aya-ay, Sr. v. Arpahil Shipping Corp.*, 516 Phil. 628, 639 (2006).

[33] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, 29 June 2010, 622 SCRA 352, 377.

[34] *Maunlad Transport, Inc. v. Manigo, Jr.*, G.R. No. 161416, 13 June 2008, 554 SCRA 446, 459.

[35] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, 14 December 2011, 662 SCRA 670, 680-681.

[36] *Magsaysay Maritime Corp. v. Velasquez*, G.R. No. 179802, 14 November 2008, 571 SCRA 239, 248.

[37] Records, p. 48.

[38] POEA-SEC, Sec. 32-A. Occupational Diseases.

[39] Id.

[40] *German Marine Agencies, Inc. v. NLRC*, 403 Phil. 572, 588-589 (2001).

[41] *Rivera v. Wallem Maritime Services, Inc.*, 511 Phil. 338, 348 (2005).

[42] *Rollo*, p. 55.

[43] *Ison v. Crewserve, Inc.*, G.R. No. 173951, 16 April 2012.



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