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THIRD DIVISION

[G.R. No. 197205, September 26, 2012]

JESSIE V. DAVID, REPRESENTED BY HIS WIFE, MA. THERESA S. DAVID, AND CHILDREN, KATHERINE AND KRISTINA DAVID, PETITIONERS, VS. OSG SHIPMANAGEMENT MANILA, INC. AND/OR MICHAELMAR SHIPPING SERVICES, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Before Us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Decision[1] and Resolution[2] dated March 11, 2011 and June 1, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 114616, overturning the January 22, 2010 and March 30, 2010 Resolutions[3] of the National Labor Relations Commission (NLRC), Second Division in NLRC NCR OFW Case No. (M)09-10261-07.

The facts are not disputed. On May 10, 2006, petitioner Jessie David (David) entered into a six-month Contract of Employment[4] with respondent OSG Shipmanagement Manila, Inc. (OSG Manila), for and in behalf of its principal Michaelmar Shipping Services, Inc., as a Third Officer of the crude tanker M/T Raphael. The engagement was the third contract of employment between David and OSG Manila. OSG Manila previously hired and deployed David to work aboard crude tankers since December 2004.[5]

Prior to his embarkation, David underwent a pre-employment medical examination (PEME) and was declared "fit for further sea duty."[6] David then boarded the ship M/T Raphael on May 23, 2006.[7] Barely six months into his employment or in November 2006, David complained of an intolerable pain on his left foot so that he consulted a doctor at the port of Rotterdam. The doctor diagnosed him as suffering from "lipoma [on the] left upper leg"[8] and a possible "calcaneus spur of [the] left foot."[9] Although found to be fit for work, David was nonetheless advised to undergo further treatment upon repatriation to the Philippines.[10]

Immediately after his return to the country on December 4, 2006, OSG Manila referred David to the company-designated physician, Dr. Robert Lim (Dr. Lim) of the Metropolitan Medical Center (MMC), who referred him to the Cardinal Santos Medical Center for a Magnetic Resonance Imaging (MRI), which reflected the following impressions:

> Large soft tissue mass of the anterior left thigh, as described. Considerations include neoplasm such as benign/malignant nerve sheath tumor, hemangioma, soft tissue sarcoma or inflammatory process such as intramuscular abscess.[11]

The Pathology Report of the MMC also showed the following: "Left anterior thigh mass excision: Malignant fibrous histiocytoma, myxoid type. Margins of resection negative for tumor."[12]

On February 27, 2007, OSG Manila certified David's entitlement "to sickness allowance from the company or principal equivalent to basic salary of member."[13]

On March 2, 2007, Dr. Christopher Co Peña (Dr Peña), also of MMC, wrote Dr. Lim, informing the latter of the etiology of soft tissue sarcoma, viz:

> The following are the etiology of soft tissue sarcoma:
>
> 1. Ionizing radiation
> 2. Genetic predisposition
> 3. Chemical exposure – Phenoxyacetic acid, cholorophenols, thorotrast, vinyl chloride, arsenic
> 4. Chronic lymphedema
>
> Whether work-related or not will depend on the exposure of the above mentioned factors.[14]

On March 5, 2007, the Marine Medical Services of MMC certified that David had undergone medical and surgical evaluation treatment at its establishment from December 21, 2006 due to "malignant fibrous histiocytoma, left thigh calcaneal spur, left; s/p with excision of mass left thigh."[15]

Apparently as a result of another inquiry regarding David's illness and its relation to his work, Dr. Peña again addressed a letter to Dr. Lim stating:

> Dear Dr. Lim,
>
> This is with regards to Mr. Jessie David, diagnosed case of Malignant Fibrous Histiocytoma last February 2007. S/P Resection. Etiology has already been mentioned in my previous letter dated March 2, 2007. It is difficult to determine exactly whether his work history would have bearing as etiology is multifactorial. Unless there is documented exposure to the previously mentioned chemicals.[16]

Despite the non-conclusive findings of the company designated physician and Dr. Peña,

respondents issued on June 28, 2007 a Certification stating that David has been given a "permanent disability Grade One (1)"[17] by the Marine Medical Services, *viz*:

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that **MR. JESSIE V. DAVID**, a resident of Block 3 Lot 4, NWSA Compound Tondo, Manila, **has been given a permanent disability Grade of One (1) by Marine Medical Services.**

This certification is being issued 28th day of June 2007 for whatever legal purpose it may serve him best.

Very truly yours,

OSG SHIPMANAGEMENT MANILA INC.
As Agent Only, acting for and in behalf of the Owners

(SGD.) MS. MA. CRISTINA G. PARAS
President

Due to his condition, David underwent chemotherapy per the advice of the company-designated physician. However, despite several requests, respondents refused to shoulder David's expenses and medication. Hence, after an unsuccessful grievance proceeding, David filed on September 17, 2007 a complaint against respondents for total and permanent disability benefits, medical and transportation expenses, moral and exemplary damages, and attorney's fees.[18]

In his Decision of March 31, 2008 finding for David, Labor Arbiter (LA) Legerio V. Ancheta noted that there was no categorical denial on the part of respondents that David's disability was not work-related. Instead, respondent OSG Manila, through its President, issued a certification that David has a Grade I disability. According to LA Ancheta, this certification should bind the respondents.[19] Hence, LA Ancheta declared David to be permanently and totally disabled, entitled to be paid his total disability compensation, plus damages and attorney's fees in the total amount of USD 115,500 and PhP 426,645.69.[20]

The NLRC affirmed the Decision of the LA *in toto* holding that the respondents, by certifying David's Grade I disability and by paying his sickness allowance, are estopped from impugning the work-related nature of David's illness.[21]

Undaunted, respondents elevated the case to the CA. In its Decision dated March 11, 2011, the appellate court ruled against David's entitlement to the benefits he claimed,

and accordingly nullified the resolutions of the NLRC.[22] The CA ratiocinated, thus:

> In the case at bar, there is no question that private respondent (David) reported to the company-designated physician for treatment immediately upon arriving in the Philippines. Problems arose, however, when private respondent was diagnosed to be suffering from malignant fibrous histiocytoma and **while his condition was given a grade I disability rating**, Dr. Chrisopher Co Pe[ñ]a who diagnosed private respondent's condition opined that it is difficult to determine whether work history would have a bearing to his illness as etiology is multifactorial. Dr. Pe[ñ]a was short of declaring private respondent's illness as non-work related. It is noted, however, that **aside from the certification by the president of petitioner OSG stating that the Marine Medical Services**, the record is bereft of the actual medical certificate coming from the Marine Medical Services itself which shows that indeed it issued a Grade I disability rating for private respondent's illness.
>
> x x x x
>
> Malignant Fibrous Histiocytoma is not listed as an occupational disease under Section 32-A thereof. Nonetheless, Section 20(B), paragraph (4) provides that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The burden is, therefore, placed upon private respondent to present substantial evidence x x x. Private respondent, however, failed to do this. Private respondent did not, by way of a contrary medical finding, assail the diagnosis arrived at by the company-designated physician x x x.
>
> x x x x
>
> As to the issue that there was an admission on the part of petitioner OSG that private respondent was already assessed to have a grade I disability, the same only shows that indeed private respondent is suffering from a disability. But going back to the provisions of the POEA Standard Employment Contract, such disability must have a causal relation to the work of private respondent to be compensable.[23]

In due time, David filed a Motion for Reconsideration of the CA's March 11, 2011 Decision.[24] Pending the resolution of his motion, David succumbed and died on April 9, 2011[25] and was substituted in the case by his wife and children.[26] On June 14, 2011, the CA issued a resolution denying the motion for reconsideration.

Hence, this petition.[27]

Petitioners argue that the appellate court grievously erred in overturning the NLRC and the LA's decisions considering that it is presumed that David's illness was work-related

and it behooves the respondents to present substantial evidence to overcome this presumption. To petitioners, respondents have failed to discharge this burden. On the contrary, respondents admitted that David was suffering from a Grade I disability. Petitioners further add that there is a reasonable causal connection between David's illness and the duties he performed as a Third Officer on board respondents' crude tanker.

In their comment, respondents counter that the appellate court's denial action was correct since "convenient presumption regarding work-relation will not suffice to justify an award of disability benefits"[28] and David failed to submit any real and substantial evidence "to dispute the opinion of the company physician confirming [the] absence of work-relation."[29] Respondents posit that if David was indeed convinced that his illness was work-related, he should have procured supporting opinion from his various doctors. [30]

The petition has merit.

Deemed read and incorporated into the Contract of Employment between David and respondents are the provisions of the 2000 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). Section 20(B) of the POEA-SEC reads:

> SECTION 20. COMPENSATION AND BENEFITS. ---
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESSES
>
> The liabilities of the employer **when the seafarer suffers work-related injury or illness** during the term of his contract are as follows:
>
> 1. x x x x
> 2. 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.
>
>   x x x x
>
> 4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.**[31] (Emphasis supplied.)

In this case, David suffered from malignant fibrous histiocytoma (MFH) in his left thigh. MFH is not one of the diseases enumerated under Sec. 32 of the POEA-SEC. However, Sec. 20(B)(4) of the POEA-SEC clearly established a disputable presumption in favor of

the compensability of an illness suffered by a seafarer during the term of his contract. This disputable presumption works in favor of the employee pursuant to the mandate under Executive Order No. (EO) 247 dated July 21, 1987 under which the POEA-SEC was created: "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith"[32] and "to promote and protect the well-being of Filipino workers overseas."[33] Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[34]

In this case, David not only relies on this disputable presumption of the compensability of his illness but further alleges that the following conditions provided in Sec. 32-A of the POEA-SEC have all been satisfied:

> **SECTION 32-A OCCUPATIONAL DISEASES**
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks describe herein;
> 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;
> 4. There was no notorious negligence on the part of the seafarer.

David showed that part of his duties as a Third Officer of the crude tanker M/T Raphael involved "overseeing the loading, stowage, securing and unloading of cargoes."[35] As a necessary corollary, David was frequently exposed to the crude oil that M/T Raphael was carrying.[36] The chemical components of crude oil include, among others, sulphur, vanadium and arsenic compounds.[37] Hydrogen sulphide and carbon monoxide may also be encountered,[38] while benzene is a naturally occurring chemical in crude oil.[39] It has been regarded that these hazardous chemicals can possibly contribute to the formation of cancerous masses.[40]

In this case, David was diagnosed with MFH (now known as undifferentiated pleomorphic sarcoma [UPS]),[41] which is a class of soft-tissue sarcoma or an illness that account for approximately 1% of the known malignant tumors.[42] As stated by Dr. Peña of the MMC, who was consulted by the company-designated physician, the etiology of soft tissue sarcomas are multifactorial.[43] However, some factors are associated with a higher risk.[44] These factors include exposure to chemical carcinogens[45] like some of the chemical components of crude oil. Clearly, David has provided more than a reasonable nexus between the nature of his job and the disease that manifested itself on the sixth month of his last contract with respondents. It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the

disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[46]

This reasonable connection has not been convincingly refuted by respondents. On the contrary, respondents do not deny the functions performed by David on board M/T Raphael or the cargo transported by the tanker in which he was assigned. At best, respondents have cited contrary researches suggesting that the chemicals in crude oil do not induce the kind of disease contracted by David—a soft tissue sarcoma, which can supposedly occur to anybody regardless of the nature of their employment.[47] Furthermore, respondents harp on the alleged "opinion of the company physician confirming absence of work-relation"[48] that "explicitly stated that there is no documented exposure to previously cited etiology."[49]

A review of the documentary evidence submitted by parties will readily show that there is no such "opinion of the company physician confirming absence of work-relation," much less an explicit statement that David had "no documented exposure" to the etiology cited by Dr. Peña in his letter to the company-designated physician, Dr. Lim. [50] There is only an imprecise and ambivalent medical opinion regarding the work-relation of the MFH/UPS suffered by David that can be construed in favor of the employee.

With more reason, such construal in favor of David and the relation of his illness to the nature of his work must be sustained considering that **the employers, through respondent OSG Manila, admitted that David had suffered a Grade I disability.** Notably, respondents have not denied the authenticity and genuineness of the Certification dated June 28, 2007 wherein the admission was made.[51] Instead, respondents whimsically argue that the admission merely pertains to the gravity of the ailment suffered by David but not its nature. This hair-splitting argument presented by respondents, and accepted by the appellate court, does not persuade. It ignores the fact that employers do not have the business of certifying the gravity of an illness suffered by an employee unless it is in relation to the latter's employment. Hence, the certification issued by OSG Manila regarding the classification/grading of David's illness can only be taken as a strong validation of the relation between David's illness and his employment as a seafarer with the respondents.

It is significant to note that OSG Manila issued the June 28, 2007 Certification after the issuance of the letters/certifications regarding the possible etiology of David's illness, where it was tacitly suggested by the MMC doctors that David's illness could be work-related provided there is a documented exposure to carcinogenic chemicals. It can be easily deduced, therefore, that the certification impliedly fills in the information required by Dr. Peña in his last letter to the company-designated physician regarding the nature of the work performed by David and his exposure to chemical carcinogens that could have led to his illness. After all, respondents, as David's employers, have knowledge regarding the functions of a Third Officer on board a crude tanker and the nature of the cargo transported in their vessels. Without a doubt, the certification issued by OSG Manila encompasses not only the gravity of David's illness but also its

nature and relation to the employment undertaken by David in their crude tankers.

This conclusion is corroborated by respondents' contemporaneous act of extending to David sickness allowance under Sec. 20(B) of the POEA-SEC, since an employer is liable for the payment of sickness allowance only "when the seafarer suffers work-related injury or illness during the term of his contract." Surely, an illness that has been recognized at the outset by the employer as work-related cannot evolve to an illness not connected to the seafarer's employment.

The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[52] In this case, in accordance with the foregoing disquisitions, We find that there is substantial evidence to support the decision of the LA and the NLRC.

WHEREFORE, the petition is **GRANTED**. The March 11, 2011 Decision of the CA and its June 1, 2011 Resolution are hereby **REVERSED** and **SET ASIDE**, and the January 22, 2010 and March 30, 2010 Resolutions of the NLRC are **REINSTATED.**

SO ORDERED.

Sereno,[*] *C.J., Perez,*[**] *Mendoza,* and *Perlas-Bernabe,*[***] *JJ.*, concur.

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[*] Additional member per Special Order No. 1311 dated September 21, 2012.

[**] Additional member per Special Order No. 1299 dated August 28, 2012.

[***] Additional member per Special Order No. 1320 dated September 21, 2012.

[1] *Rollo*, pp. 49-62. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[2] Id. at 86-87.

[3] CA *rollo*, pp. 56-78. Penned by NLRC Commissioner Teresita Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino. Commissioner Napoleon M. Menese took no part.

[4] Id. at 121.

[5] Prior to the May 2006 contract, David had been working on board two other crude tankers of the respondents since December 2004. (Certification dated January 11, 2007; id. at 144.)

[6] Id. at 122, Medical Examination Records.

[7] Id. at 12.

[8] Id. at 123, Medical Report dated November 9, 2006.

[9] Id.

[10] Id.

[11] Id. at 145; *rollo,* p. 107, MRI of the Left Thigh with and without Contrast dated January 15, 2007.

[12] Id. at 146; *rollo*, p. 108, Pathology Report dated February 14, 2007.

[13] Id. at 147; *rollo*, p. 109.

[14] Id. at 124. The contents of the letter were reiterated in a letter/certification dated April 23, 2007.

[15] Id. at 148; *rollo*, p. 110.

[16] Id. at 125.

[17] Id. at 149; *rollo,* p. 111.

[18] Id. at 90-92.

[19] Id. at 86.

[20] Id. at 88-89. The dispositive portion of LA Ancheta's Decision dated March 31, 2008 provides:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered finding and ORDERING all the respondents jointly and severally liable to pay complainant JESSIE V. DAVID the following:

1. **Disability Benefits** US$105,000.00
2. **Reimbursement of Medical Expenses** PhP187,859.72
3. **Moral Damages** PhP100,000.00
4. **Exemplary Damages** PhP100,000.00
5. **Attorney's Fees** 10% of the above awards US$10,500.00 + PhP38,785.97

GRAND TOTAL: US$115,500.00 + PhP426,645.69

[21] Id. at 58-78.

[22] *Rollo*, pp. 49-62.

[23] Id. at 59-61.

[24] Id. at 63-83.

[25] Id. at 14.

[26] Id. at 10-15; CA rollo, pp. 600-605.

[27] Id. at 18-47.

[28] Id. at 127.

[29] Id.

[30] Id. at 130-131.

[31] The foregoing provisions are reiterated in the Collective Bargaining Agreement between respondents and David's union, which pertinently states:

20.1.4 Compensation for Disability

20.1.4.1 A seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving on board including accidents and work related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work related illness, reference shall be made to the Philippine Employees Compensation Law and/or Social Security Law.

[32] EO 247, Sec. 3(i).

[33] Id., Sec. 3(j); *Fil-Star Maritime Corporation v. Rosete,* G.R. No. 192686, November 23, 2011, 661 SCRA 247, 254.

[34] *Fil-Star Maritime Corporation v. Rosete,* supra note 33, at 255.

[35] *Rollo*, p. 31.

[36] Id.

[37] *Labour Administration Training Material: Labour Inspection Skills in the Petroleum Industry* (Bangkok: International Labour Organisation, 1991), p. 18.

[38] *Rollo,* p. 32; see (visited July 31, 2011).

[39] Jahn, Frank, Cook, Mark, and Graham, Mark, Hydrocarbon Exploration and Production 112 (2nd ed., 2008).

[40] Id. See also Fontham, Elizabeth T.H. and Trapido, Edward, Oil and Water. Environ Health Perspect. 2010 October; 118(10): A422–A423 (visited July 31, 2011).

[41] Per the new classification of adopted by the World Health Organization in 2002 Kransdorf, Mark. J. and Murphey, Mark. D., Imaging of Soft Tissue Tumors 1 (2nd ed., 2006).

[42] M. van Vliet, M. Kliffen, G. P. Krestin and C. F. van Dijke, Soft Tissue Sarcomas at a Glance: Clinical, Histiological, and Imaging Features of Malignant Extremity Soft Tissue Tumors. European Radiology, Volume 19, Number 6 (2009), 1499-1511.

[43] CA *rollo*, p. 125.

[44] M. van Vliet, et al., supra note 42.

[45] Id.

[46] *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 699; *NYK-Fil Ship Management v. Talavera,* G.R. No. 175894, November 14, 2008, 571 SCRA 183.

[47] *Rollo*, p. 136.

[48] Id. at 130.

[49] Id. at 129.

[50] CA *rollo*, p. 124.

[51] *Rollo*, pp. 138-140.

[52] *Government Service Insurance System v. Besitan*, G.R. No. 178901, November 23, 2011, 661 SCRA 186, 195.