704 Phil. 625

EN BANC

[G.R. No. 168703, February 26, 2013]

RAMON G. NAZARENO, PETITIONER, VS. MAERSK FILIPINAS CREWING INC., AND ELITE SHIPPING A/S, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision[1] dated April 27, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84811, and the Resolution[2] dated June 28, 2005 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 16, 2001, petitioner Ramon G. Nazareno was hired by Maersk Filipinas Crewing Inc. (MCI) as Chief Officer for and in behalf of its foreign principal Elite Shipping A/S (Elite) on board its vessel M/V Artkis Hope for a period of six (6) months with a basic salary of US$1,129.00.

On March 25, 2001, the vessel was berthed at Port Belem, Brazil to load timber. While petitioner was checking the last bundle of timber to be loaded, he suddenly lost his balance and fell at a height of two (2) meters. He landed on the timber and injured his right shoulder. Due to the pain he felt in his right shoulder, he was later examined at Philadelphia, U.S.A. and was considered not fit for work. It was recommended that petitioner should be confined for thorough evaluation and further tests, such as MRI. Petitioner was also advised to see an Orthopedic Surgeon and/or a Neurologist.[3] However, petitioner was not permitted to disembark as there was no one available to replace him.

On August 8, 2001, at Ulsan, South Korea, petitioner was brought at the Ulsan Hyundai Hospital where he was treated and given medication for his "frozen right shoulder."[4] He was also advised to undergo physical therapy. Consequently, petitioner was declared unfit to work and was recommended to be signed off from duty.

On August 10, 2001, petitioner was repatriated to Manila. He then reported to MCI which referred him to the Medical Center Manila (MCM) where he underwent a physical therapy program under Dr. Antonio O. Periquet (Dr. Periquet) three times a week. On October 31, 2001, Dr. Emmanuel C. Campana (Dr. Campana) issued a Medical Certificate[5] stating that petitioner has been under their medical care since August 13, 2001 and that after treatment and physical therapy, petitioner was fit for work as of October 21, 2001.

However, after almost two (2) months of therapy, petitioner did not notice any improvement. He informed Dr. Periquet that when he was in Philadelphia, U.S.A., he was advised to consult a neurologist and undergo MRI. When Dr. Periquet ignored him, he consulted another doctor. Thus, from October 23, 2001 to December 1, 2001, petitioner underwent a series of treatment for his "frozen shoulder of the right arm" from Dr. Johnny G. Tan, Jr. (Dr. Tan) in his Chiropractic Clinic.[6]

On December 27, 2001, petitioner consulted Dr. Cymbeline B. Perez-Santiago (Dr. Santiago), a Neurologist at the Makati Medical Center, and was subjected to neurologic examinations. In her Neurologic Summary[7] dated February 28, 2002, Dr. Santiago concluded that petitioner will no longer be able to function as in his previous disease-free state and that his condition would hamper him from operating as chief officer of a ship.

Meanwhile, petitioner was also examined by Dr. Efren R. Vicaldo who, in a Medical Certificate[8] dated January 29, 2002, diagnosed petitioner to be suffering from Parkinson's disease and a frozen right shoulder (secondary), with an "Impediment Grade VII (41.8%). He concluded that petitioner is unfit to work as a seafarer.

On the basis of the findings of his doctors, petitioner sought payment of his disability benefits and medical allowance from respondents, but was refused. Petitioner therefore instituted the present Complaint[9] against the respondents docketed as NLRC OFW Case No. (M) 02-03-0660-00.

On February 24, 2003, after the parties submitted their respective pleadings, the Labor Arbiter (LA) rendered a Decision[10] in favor of petitioner and ordered respondents to pay the former his disability claims, sickness allowance, and attorney's fees. The dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgement (sic) is hereby rendered ordering the respondents Maersk-Filipinas Crewing, Inc./Elite Shipping A/S to jointly and severally pay complainant Ramon D. (sic) Nazareno the amount of **TWENTY-SEVEN THOUSAND NINE HUNDRED FIFTY-SEVEN US DOLLARS & 60/100 (US$27,957.60)**, or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability claims, sickness allowance and attorney's fees.
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[11]

The LA gave credence to the findings and assessments of petitioner's attending physicians who took care and treated him, instead of the conclusion of Dr. Campana that petitioner was already fit for work as of October 21, 2001. The LA held that the medical certificate of Dr. Campana cannot prevail over the findings of the physicians

who treated petitioner.

Aggrieved, respondents appealed to the National Labor Relations Commission (NLRC). On April 15, 2004, the NLRC, Third Division, rendered a Decision[12] affirming with modification the decision of the LA. The tribunal concurred with the findings of the LA that petitioner was entitled to disability benefits. It, however, deleted the grant of sickness allowance, considering that petitioner had already received the same. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the Decision of February 24, 2002 is hereby MODIFIED by deleting the award of US$4,516.00 for sick wages, the other awards are AFFIRMED.
>
> SO ORDERED.[13]

Respondents filed a Motion for Reconsideration,[14] but it was denied in the Resolution[15] dated May 31, 2004.

Respondents then sought recourse before the CA alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in ruling in favor of the petitioner,[16] which case was docketed as CA-G.R. SP No. 84811.

On April 27, 2005, the CA rendered a Decision[17] granting the petition. The CA set aside the decision and resolution of the NLRC and dismissed petitioner's complaint, the decretal portion of which reads:

> **WHEREFORE**, premises considered, we hereby **GRANT** the petition and accordingly: **SET ASIDE** the assailed Decision and Resolution of the respondent National Labor Relations Commission for being null and void; and **DISMISS** the private respondent's COMPLAINT for lack of merit.
>
> **SO ORDERED**.[18]

In ruling in favor of the respondents, the CA opined that petitioner is covered by the 1996 POEA Standard Employment Contract (POEA-SEC) and under Section 20 of the said POEA-SEC, the disability of a seafarer can only be assessed by the company-designated physician and not by the seafarer's own doctor.

Hence, the petition assigning the lone error:

> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN REVERSING AND SETTING ASIDE THE DECISIONS OF BOTH THE LABOR ARBITER *A QUO* AND THE NATIONAL LABOR RELATIONS COMMISSION FINDING PETITIONER ALREADY UNFIT TO WORK AS A RESULT OF THE INJURY HE SUSTAINED DURING THE ACCIDENT ON BOARD THE

RESPONDENT'S VESSEL AND THEREFORE ENTITLED TO DISABILITY BENEFITS.[19]

Petitioner argues that there is enough reason to disregard the assessment of Dr. Campana, the respondents' company-designated physician, that he is already fit for work as of October 21, 2001. Petitioner maintains that despite the said findings, he still found it difficult to walk and move his upper right extremities. Petitioner, thus, sought further treatment from other doctors. The fact that he continued to undergo further examinations and treatments belie the declaration that he was fit for work. Petitioner claims that both the LA and the NLRC cannot be faulted for disregarding the findings of respondents' company-designated physician and in upholding instead the assessment of his independent doctors.

Moreover, petitioner contends that the records of the case would clearly reveal that the present complaint was filed on the basis of his injured right shoulder that he suffered while working on board respondents' vessel and not solely on the basis of his Parkinson's disease, which was diagnosed only at a later time.

Finally, petitioner insists that he is entitled to the payment of attorney's fees.

On their part, respondents argue that the CA acted in accordance with the law when it set aside and annulled the decision of the NLRC and dismissed petitioner's complaint for lack of merit.

The petition is meritorious.

In the case at bar, the CA relied on the provisions of Section 20 (B) of the 1996 POEA-SEC[20] and the ruling of this Court in *German Marine Agencies, Inc. v NLRC*,[21] in concluding that the disability of a seafarer can only be determined by a company-designated physician and not the seafarer's own doctors.

Respecting the findings of the CA that it is the 1996 POEA-SEC which is applicable, nonetheless the case of Abante v. KJGS Fleet Management Manila[22] is instructive and worthy of note. In the said case, the CA similarly held that the contract of the parties therein was also governed by Memo Circular No. 55, series of 1996.[23] Thus, the CA ruled that it is the assessment of the company-designated physician which is deemed controlling in the determination of a seafarer's entitlement to disability benefits and not the opinion of another doctor. Nevertheless, that conclusion of the CA was reversed by this Court. Instead, the Court upheld the findings of the independent physician as to the claimant's disability. The Court pronounced:

> Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, *apropos* is the ruling in *Seagull Maritime Corporation v. Dee* involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard

> Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.[24]

Verily, in the cited case of *Seagull Maritime Corporation v. Dee*,[25] this Court held that nowhere in the case of *German Marine Agencies, Inc. v NLRC*[26] was it held that the company-designated physician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant. While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion.[27]

The case of *Maunlad Transport, Inc. v. Manigo, Jr.*[28] is also worthy of note. In the said case, the Court reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration, to wit:

> All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.[29]

In the recent case of *Daniel M. Ison v. Crewserve, Inc., et al.*,[30] although ruling against the claimant therein, the Court upheld the above-cited view and evaluated the findings of the seafarer's doctors vis-à-vis the findings of the company-designated physician. A seafarer is, thus, not precluded from consulting a physician of his choice. Consequently, the findings of petitioner's own physician can be the basis in determining whether he is entitled to his disability claims.

Verily, the courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on

board the vessel every single day.[31]

Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These pieces of evidence will in turn be used to determine the benefits rightfully accruing to him.[32]

It bears to note, at this juncture, that this Court is aware of its ruling in *Vergara v. Hammonia Maritime Services, Inc.*[33], wherein it sustained the findings of the company-designated physician vis-a-vis the contrary opinion of the doctors consulted by the seafarer. This Court so ruled on two basic grounds. First, the seafarer failed to follow the procedure outlined in the Standard Employment Contract he signed, wherein it was provided that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated physician, a third doctor may be agreed upon jointly between the employer and the seafarer and the third doctor's decision shall be final and binding on both parties. This Court held that, for failure of the seafarer to follow this procedure, the company doctor's determination should prevail, especially in view of the fact that the company exerted real effort to provide the seafarer with medical assistance, through the company-designated physician, which eventually led to the seafarer's full recovery. Second, the seafarer never raised the issue of the company-designated doctor's competence until he filed a petition with this Court. On the contrary, he accepted the company doctor's assessment of his fitness and even executed a certification to this effect.

The above factual circumstances, however, are not on all fours with the facts obtaining in the instant case.

First, the procedure outlined above, which was derived from Department Order No. 4, Series of 2000, is not the same as the procedure outlined in Memorandum Circular No. 55, Series of 1996, which embodies the Standard Employment Contract between petitioner and respondent. Notably, there is nothing in the said circular which provides that in case of conflict between the findings of the company-designated physician and the seafarer's doctor of choice, the parties may agree to consult a third doctor, whose opinion shall bind both parties. The provision authorizing the parties to ask the opinion of a third doctor is an innovation which was added in the subsequent Standard Employment Contract provided for under Department Order No. 4, Series of 2000. Thus, being governed by the 1996 Standard Employment Contract, it cannot be said that petitioner failed to follow the procedure outlined under the 2000 Standard Employment Contract. Moreover, in *Vergara*, the Court relied on the findings of the company-designated physician because the medical attention given by the company to the seafarer led to the seafarer's full recovery. This is not so in the present case. Petitioner remains unfit to perform his job as a ship's chief officer.

Second, unlike in *Vergara,* petitioner timely questioned the competence of the company-designated physician by immediately consulting two independent doctors. Neither did he sign nor execute any document agreeing with the findings of the

company physician that he is already fit for work.

Thus, the doctrine enunciated in *Vergara* is not applicable in the instant case.

In any case, the bottomline is this: the certification of the company-designated physician would defeat petitioner's claim while the opinion of the independent physicians would uphold such claim. In such a situation, the Court adopts the findings favorable to petitioner. The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[34]

Anent the question of whether or not petitioner is indeed entitled to disability benefits based on the findings and conclusions, not only of his personal doctors, but also on the findings of the doctors whom he consulted abroad, the Court rules in the affirmative.

From the documents presented by the parties, it is apparent that in a message[35] to Elite, it was established that petitioner was already declared "not fit for duty" and was advised to be confined and undergo MRI treatment. Similarly, when petitioner was brought to the Ulsan Hyundai Hospital, South Korea on August 8, 2001 for his frozen right shoulder, he was again declared not fit for duty and was advised to be "signed off" for further physical therapy. Indeed, petitioner was repatriated to Manila and underwent physical therapy session with Dr. Periquet. However, still not feeling well, he underwent a series of treatment with Dr. Tan for his frozen right shoulder until December 1, 2001. Petitioner then consulted Dr. Santiago for neurologic evaluation on December 27, 2001. In Dr. Santiago's Neurologic Summary,[36] it was indicated that petitioner developed right shoulder pains nine months before and that despite repeated physical therapy, it only provided petitioner temporary relief. Dr. Santiago was also of the impression that petitioner was afflicted with Parkinson's disease and concluded that petitioner will no longer function as in his previous disease-free state.

From the findings and prognosis of the rest of petitioner's doctors who attended and treated him, petitioner already established that he is entitled to disability benefits. Indeed, the fact remains that petitioner injured his right shoulder while on board the vessel of Elite; that he received treatment and was repatriated due to the said injury; and was declared unfit for duty several times by the doctors who attended and treated petitioner abroad and in Manila. Clearly, the medical certificate issued by Dr. Campana cannot be given much weight and consideration against the overwhelming findings and diagnoses of different doctors, here and abroad, that petitioner was not fit for work and can no longer perform his duties as a seafarer.

Also, contrary to the findings of the CA, petitioner was claiming disability benefits based on the injury he sustained while employed by the respondents, the mere inclusion of the findings that he has Parkinson's disease will not negate such fact nor diminish his right to claim the said benefit from the respondents.

The Court finds no cogent reason to depart from the findings of the Labor Arbiter, as affirmed by the NLRC, that petitioner is entitled to disability benefits corresponding to

an Impediment Grade of 7 (equivalent to a disability assessment of 41.8%) in the Schedule of Disability Allowances under Section 30-A of the 1996 Standard Employment Contract. Under the said Schedule, petitioner should be awarded the amount of US$20,900.00 or its equivalent in Philippine currency at the time of payment.

The Court also agrees with the ruling of the labor arbiter that petitioner is entitled to attorney's fees following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.[37]

To recapitulate, it bears to reiterate the general rule under Department Order No. 33, Series of 1996 and Memorandum Circular No. 55, Series of 1996, that it is the company-designated physician who determines the fitness or disability of a seafarer who suffered or is suffering from an injury or illness. However, considering the unanimity of the findings not only of petitioner's independent physicians here in the Philippines, but also those who were consulted abroad by petitioner's employer, that petitioner is indeed not fit for duty as a seafarer by reason of the injury he sustained during his fall, the instant case should be considered as an exception to the general rule abovestated.

The Court has applied the Labor Code concept of disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor, it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[38]

To be sure, the POEA-SEC for Seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect.[39]

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals dated April 27, 2005 and June 28, 2005, respectively, in CA-G.R. SP No. 84811 are **REVERSED** and **SET ASIDE**. Respondents MAERSK FILIPINAS CREWING INC., and ELITE SHIPPING A/S are **ORDERED** to pay jointly and severally to petitioner the amount of US$20,900.00, representing his disability benefits, as well as attorney's fees equivalent to ten percent (10%) of the monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Bernabe, and *Leonen, JJ*., concur.
Brion, J., on official leave.

[1] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Eliezer R. De los Santos, concurring; *rollo*, pp. 116-133.

[2] *Id*. at 145-148.

[3] *Rollo,* p. 25.

[4] *Id*. at 26.

[5] *Id*. at 149.

[6] *Id.* at 150.

[7] *Id*. at 28.

[8] *Id.* at 29-30.

[9] CA *rollo*, pp. 34-35.

[10] *Rollo*, pp. 60-67.

[11] *Id.* at 66-67. (Emphasis in the original)

[12] *Id.* at 84-89.

[13] *Id*. at 89.

[14] CA *rollo*, pp. 119-125.

[15] *Id*. at 23-24.

[16] *Rollo*, pp. 90-101.

[17] *Id*. at 116-133.

[18] *Id.* at 132. (Emphasis in the original)

[19] *Id*. at 15.

[20] SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

x x x x

2. If the injury or illness requires medical attention and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

x x x x.

[21] G.R. No. 142049, January 30, 2001, 350 SCRA 629.

[22] G.R. No. 182430, December 4, 2009, 607 SCRA 734.

[23] Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

[24] *Abante v. KJGS Fleet Management Manila,* supra note 22, at 739-740.

[25] G.R. No. 165156, April 2, 2007, 520 SCRA 109.

[26] Supra note 21.

[27] *Seagull Maritime Corporation v. Dee,* supra note 25, at 117-118.

[28] G.R. No. 161416, June 13, 2008, 554 SCRA 446.

[29] *Maunlad Transport, Inc. v. Manigo, Jr.,* supra, at 459. (Emphasis in the original).

[30] G.R. No. 173951, April 16, 2012, 669 SCRA 481.

[31] *Seagull Maritime Corp. v. Dee,* supra note 25, at 120.

[32] *Id.*

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

[34] *Abante v. KJGS Fleet Management Manila*, *supra* note 22, at 741, citing *HFS Philippines, Inc. v. Pilar,* G.R. No. 168716, April 16, 2009, 585 SCRA 315, 327-328.

[35] *Rollo*, p. 25.

[36] *Id*. at 28.

[37] *Abante v. KJGS Fleet Management Manila*, supra note 22, at 742.

[38] Section 3, Article XIII, 1987 Constitution; *Quitoriano v. Jebsens Maritime, Inc.,* G.R. No. 179868, January 21, 2010, 610 SCRA 529, 534.

[39] *Philippine Transmarine Carriers, Inc. v. NLRC,* G.R. No. 123891, February 28, 2001, 353 SCRA 47, 54.

Source: Supreme Court E-Library
This page was dynamically generated
by the E-Library Content Management System (E-LibCMS)