

713 Phil. 487

FIRST DIVISION

[G.R. No. 199932, July 03, 2013]

CAMILO A. ESGUERRA, PETITIONER, VS. UNITED PHILIPPINES LINES, INC., BELSHIPS MANAGEMENT (SINGAPORE) PTE LTD., AND/OR FERNANDO T. LISING, RESPONDENTS.

DECISION

REYES, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated May 26, 2011 and Resolution^[3] dated December 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116631 which awarded disability benefits to Camilo Esguerra (petitioner) pursuant to the Philippine Overseas Employment Administration-Standard Employment Contract for Seafarers (POEA-SEC) and not under the collective bargaining agreement (CBA) as previously adjudged by the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC).

The Facts

On October 26, 2007, United Philippines Lines, Inc. (UPLI), a Philippine-registered manning agency, in behalf of its principal, Belships Management (Singapore) Pte Ltd., (Belships), hired the petitioner to work as a fitter on board the vessel 'M/V Jaco Triumph' for a period of nine (9) months or until July 2008, subject to a one (1) month extension upon mutual agreement of the parties.^[4]

Their contract of employment was approved by the POEA and it contained a clause stating that "[t]he current PSU/ITF TCC Agreement shall be considered to be incorporated into and to form part of this contract."^[5]

On August 21, 2008, while the petitioner was welding wedges inside Hatch 5 of the vessel, a manhole cover accidentally fell and hit the petitioner on the head. The impact of the blow caused him pain on his neck and shoulders despite him wearing a protective helmet. He was given immediate medical attention and was kept under constant monitoring and observation.^[6]

On September 11, 2008, the petitioner was medically repatriated to the Philippines where he arrived two (2) days later.^[7]

On September 15, 2008, he consulted UPLI's accredited physician, Dr. Raymund Sugay of the Physicians' Diagnostic Center. After a physical examination, the petitioner was found to be suffering from tenderness of paravertebral muscles along his back. The x-

ray imaging of his spine showed no fractures but with straightening of the cervical spines. He was advised to undergo physical therapy.^[8]

Thereafter, the petitioner was referred to UPLI's accredited physicians at the Metropolitan Medical Center where he was placed under the charge of orthopedic surgeon, Dr. William Chuasuan, Jr. (Dr. Chuasuan). After series of medical examinations, the petitioner was diagnosed with *Coccygodynia* and *Thoracolumbar Strain*. He was directed to continue his physical therapy sessions.^[9]

On December 16, 2008, an interim Medical Report was issued by UPLI's accredited physicians, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon) and Dr. Robert Lim (Dr. Lim), who pronounced the petitioner's temporary disability as Grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk) under Section 32 of the POEA-SEC. The doctors recommended that the petitioner continue physical therapy for another six (6) to eight (8) weeks.^[10]

Alleging that despite undergoing medical treatment and physical therapy sessions, his injuries did not heal and instead, his condition deteriorated, the petitioner filed before the LA a complaint for permanent disability benefits and sickness allowance with claims for damages and attorney's fees against UPLI, its President, Fernando T. Lising and Belships (respondents).^[11]

He claimed that pursuant to the Philippine Seafarer's Union/ International Transport Workers Federation Total Crew Cost (PSU/ITF TCC) Agreement incorporated in his employment contract, he is entitled to the maximum permanent disability compensation of US\$142,560.00^[12] and sick wages equivalent to 130 days amounting to US\$3,063.66.^[13]

While the complaint was pending or on February 7, 2009, Dr. Chuasuan issued a report maintaining the Grade 11 disability assessment previously made on the petitioner's condition, viz:

Patient has undergone 3 months of rehabilitation and claims only mild improvement of symptoms. Further treatment would probably be of some benefit but will not guarantee his fitness to work.

Interim disability of grade 11 stands.^[14]

However, Drs. Cruz-Balbon and Lim raised the petitioner's assessment to Grade 8 or "moderate rigidity or two-thirds (2/3) loss of motion or lifting power" under Section 32 of the POEA-SEC in their medical report.^[15] Based thereon, UPLI paid the petitioner sickness allowance of P133,843.47 for the period September 14, 2008 to January 12, 2009.^[16]

Unconvinced of the final assessment made by UPLI's physicians, the petitioner

consulted independent physician Dr. Raul Sabado (Dr. Sabado) of the Dagupan Orthopedic Center who, after examination, diagnosed him to be suffering from *Compression fracture vertebrae*, which is classified as Grade 1 disability. Dr. Sabado pronounced the petitioner permanently unfit for sea-faring duty in a medical certificate dated February 15, 2009.^[17] The petitioner submitted such assessment to bolster his claim. He also submitted a copy of his Seaman's Employment Contract.^[18] Likewise proffered in evidence was an alleged copy of ITF Uniform "TCC" Collective Agreement under Sections 22 and 24^[19] of which the petitioner is allegedly entitled to maximum permanent disability compensation of US\$142,560.00 and sick wages equivalent to one hundred thirty (130) days or US\$3,063.66. The petitioner also submitted a copy of a CBA between PSU-ALU-TUCP-ITF and Belships covering the M/V Jaco Triumph for the period November 1, 2008 to October 31, 2009.^[20]

For their part, the respondents denied that the petitioner's employment was covered by a CBA and pointed out that the selected pages of the alleged CBA that he attached are misleading. They averred that he is entitled only to the benefits accorded to Grade 11 disability by the POEA-SEC as determined by the company's designated physicians.^[21]

Ruling of the LA

On June 10, 2009, the LA rendered a Decision^[22] according greater merit to the assessment made by the petitioner's independent doctor over the varying, hence, unreliable, assessments issued by the respondents' accredited physicians. The LA also noted that the several amounts for settlement offered by the respondents to the petitioner are indicative that he is indeed entitled to permanent disability benefits.

The LA rejected the respondents' assertion that the petitioner's employment was not covered by a CBA since the exact opposite was proven with certainty by the POEA-approved employment contract submitted by the petitioner. Anent the applicable basis of the award of permanent disability benefits, the LA found the attached pages of the ITF Uniform "TCC" Collective Agreement applicable and sufficient under which the petitioner is entitled to disability compensation and balance of the due sickness allowance under Sections 22 and 24 thereof. The LA awarded moral and exemplary damages in view of the bad faith exhibited by the respondents when they lured the petitioner into settlement by offering various amounts with no genuine intent to actually settle. The dispositive portion of the decision thus read:

WHEREFORE, premises considered[,] judgment is hereby rendered ordering respondents United Philippine Lines, Inc. and Belships Management (Singapore) PTE Ltd. to jointly and severally pay (the petitioner) the peso equivalent at the time of actual payment of the sums of US\$82,500.00 and US\$271.92 as permanent total disability benefits and balance of sickness allowance respectively, pursuant to the mandate of the ITF Uniform "TCC" Collective Agreement. Respondents are further ordered to pay moral and exemplary damages to the (petitioner) in the amount of [P]100,000.00 each plus the amount equivalent to ten percent (10%) of the judgment award as and by way of attorney's fees.

All claims are ordered dismissed for lack of merit.

SO ORDERED.^[23]

Ruling of the NLRC

The NLRC agreed with the conclusions of the LA adding that there is actually no disparity between the assessment given by the company doctors and the petitioner's own physician as they uniformly found the petitioner to be permanently unfit for sea duty. Dr. Chuasuan categorically declared in his February 7, 2009 letter that "[f]urther treatment would probably be of some benefit but will not guarantee his fitness to work."^[24] The final assessment made by the respondents' doctors also stated that the petitioner has lost 2/3 of his motion lifting power which can only mean that he is already permanently unfit for sea service. Regardless of the different disability grading given by the doctors, the petitioner is undoubtedly already permanently incapacitated. As such, the NLRC Decision^[25] dated May 24, 2010 disposed as follows:

WHEREFORE, premises considered, the appeal of respondents is DISMISSED for lack of merit. The assailed Decision is hereby AFFIRMED.

SO ORDERED.^[26]

The respondents moved for reconsideration but the motion was denied in the NLRC Resolution^[27] dated July 30, 2011.

Ruling of the CA

The respondents sought recourse with the CA which found partial merit in their petition. The CA disagreed with the LA and the NLRC that there is adequate proof of the provisions of the CBA. The CA ruled that while the petitioner's employment contract states that the "current PSU/ITF TCC Agreement" is incorporated therein, what he attached to his *Position Paper and Motion to Dismiss Appeal and/or Opposition* is the CBA between PSU-ALU-TUCP-ITF and Belships which does not contain Sections 22 and 24 cited by him for his claim and relied upon by the LA in awarding the disability compensation. In fact, under the said agreement, entitlement to the maximum disability compensation of either US\$110,000.00 or US\$90,000.00 is accorded only to two classes of officers, *i.e.*, the class of radio officers and chief stewards or the class of electricians and electro technicians - neither of which does the petitioner belong to. The petitioner failed to discharge his burden of proving by substantial evidence his entitlement to superior benefits under the purported "ITF TCC CBA" as he merely submitted copies of the CBA between PSU-ALU-TUCP-ITF and Belships and not the relevant PSU/ITF TCC Agreement.

The CA sustained the final assessment of the respondents' physicians assigning Grade 8 disability to the petitioner which is compensable under Section 32 of the POEA-SEC or

US\$16,795.00 (33.59% of US\$50,000.00). The awards for damages and attorney's fees were deleted for lack of bad faith on the part of the respondents who promptly provided the petitioner with medical assistance and sickness allowance from September 2008 to January 2009. Thus, the CA Decision^[28] dated May 26, 2011 disposed as follows:

WHEREFORE, the petition for certiorari is **PARTLY GRANTED**. The May 24, 2010 *Decision* of public respondent NLRC is **SET ASIDE** and the June 10, 2009 *Decision* of the Labor Arbiter is **REINSTATED with MODIFICATION**, to read, viz:

WHEREFORE, premises considered, judgment is hereby rendered, ordering respondents United Philippine Lines, Inc. and Belships Management (Singapore) PTE Ltd. to jointly and severally pay (the petitioner) the sum of **US\$16,795.00 or its equivalent in Philippine Currency at the prevailing exchange rate at the time of payment, representing permanent medical unfitness benefits, plus legal interest reckoned from the time it was due. The claims for moral and exemplary damages, and attorney's fees are dismissed for lack of merit.**

SO ORDERED.

SO ORDERED.^[29] (Emphasis added)

Aggrieved, the petitioner interposed the present petition ascribing misappreciation of facts on the part of the CA.

The Court's Ruling

The petition is partially meritorious.

There is no question that the petitioner's injury is work-related and that he is entitled to disability benefits. The dispute lies in the degree of such injury and the applicable basis for the amount of benefits due for the same.

Preliminarily, it must be emphasized that this Court is not a trier of facts hence, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45.^[30] In the exercise of its power of review, the findings of fact of the CA are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. However, it is a recognized exception that when the CA's findings are contrary to those of the NLRC and LA, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.^[31]

The petitioner's injury should be

classified as permanent and total disability.

The findings of the NLRC on the degree of the petitioner's disability are most in accord with the evidence on record. As ardently observed by the labor commission, the orthopedic surgeon designated by the respondents, Dr. Chuasuan, and the petitioner's independent specialist, Dr. Sabado, were one in declaring that the petitioner is permanently unfit for sea duty. Dr. Sabado categorically pronounced the same in his certification dated February 15, 2009^[32] while the import of Dr. Chuasuan's report on February 7, 2009^[33] conveyed the similar conclusion when he stated: "[f]urther treatment would probably be of some benefit but will not guarantee (the petitioner's) fitness to work." The uncertain effect of further treatment intimates nothing more but that the injury sustained by the petitioner bars him from performing his customary and strenuous work as a seafarer/fitter. As such, he is considered permanently and totally disabled.

Permanent and total disability means "disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do."^[34]

It is inconsequential whether the petitioner was actually recorded by the respondents to be driving a motorcycle. It does not preclude an award for disability because, in labor laws, disability need not render the seafarer absolutely helpless or feeble to be compensable; it is enough that it incapacitates to perform his customary work.^[35]

It is not unexpected for Drs. Cruz-Balbon and Lim to downplay the report of Dr. Chuasuan when they issued the Grade 8 final disability assessment. The Court is not naive of such interplay of force between the seafarer, the company and the latter's accredited physicians. As the medical coordinators of the hospital that represents the company in the conduct of medical evaluations, they are accustomed to do so in order to underrate the compensation the company must pay to the seafarer-claimant. This is precisely one of the reasons why the seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician.^[36]

The award of permanent disability benefits shall be governed by the POEA-SEC.

Settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue. In labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[37] In disability claims, as in the case at bar, the employee bears the onus to prove by substantial evidence his own positive assertions.^[38]

To show that he is entitled to superior disability benefits under a CBA, the petitioner

submitted copies of pages 9 and 10 of the purported PSU/ITF TCC Agreement^[39] and a copy of the complete text of a CBA between PSU-ALU-TUCP-ITF and Belships dated November 3, 2008.^[40] Neither of which, however, substantially establish his claim for the amount of US\$142,560.00 permanent disability benefits.

The two-paged evidence reflecting what is supposed to be Sections 22 and 24 of a PSU/ITF TCC Agreement is too trifling to adequately prove that it is indeed the agreement signed by Belships or that it even covers the petitioner. From the said piecemeal evidence, it is impossible to deduce whether it is indeed the correct CBA upon which the superior amount of permanent disability benefit claimed by the petitioner can be based. Neither can the complete text of CBA between PSU-ALU-TUCP-ITF and Belships be considered as satisfactory evidence. As correctly observed by the CA, the said agreement does not contain Sections 22 and 24 cited by the petitioner for his claim and relied upon by the LA in awarding the disability compensation. The provision therein that deals with disability compensation is Article 12 which reads:

Article 12
Disability Compensation

If a seafarer due to no fault of his own, suffers an occupational injury as a result of an accident or an occupational disease while serving on board or while travelling to or from the vessel on Company's business or due to marine peril, and as a result his ability to work is permanently reduced, partially or totally, and never to be declared fit, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be maximum:

Radio Officers, Chief Stewards, Electricians, Electro Technicians Ratings	USD 110 000 USD 90 000
x x x x. ^[41]	

The CA baselessly concluded that the provision is limited only to radio officers, chief stewards, electricians and electro technicians under which the petitioner cannot be categorized. As can be gleaned above, ratings are covered by disability compensation. It is not logical to limit the provision only to the officers as the union, PSU-ALU-TUCP-ITF, represents all Filipino crew members without exception.^[42]

Nevertheless, the inapplicability of the provision to the petitioner must be sustained in view of the fact that the duration of the submitted copy of PSU-ALU-TUCP-ITF and Belships CBA is from November 1, 2008 until October 31, 2009^[43] or outside the petitioner's employment period which expired as early as July 2008.

In fine, the petitioner failed to proffer credible and competent evidence of his claim for superior disability benefits. What remains as competent basis for disability award is the

POEA-SEC, Section 20(B)(6) thereof provides, to wit:

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Section 32, on the other hand, states that a disability allowance of US\$60,000.00 (US\$50,000.00 x 120%) is granted for an impediment considered as total and permanent, such as that adjudged to have befallen the petitioner.

Anent sickness benefits, the Court finds that the respondents have already satisfied the same based on Section 20(B)(3) of the POEA-SEC. Under the said provision, 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. The receipts on record establish payment of the petitioner's sickness allowance from September 14, 2008 to January 12, 2009 or for a period of 120 days.^[44]

Damages and Attorney's Fees

The CA correctly denied an award of moral and exemplary damages. The respondents were not negligent in affording the petitioner with medical treatment neither did they forsake him during his period of disability. However, the Court finds that the petitioner is entitled to attorney's fees pursuant to Article 2208(8) of the Civil Code^[45] which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.^[46]

WHEREFORE, foregoing considered, the petition is **PARTLY GRANTED**. The Decision dated May 26, 2011 and Resolution dated December 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116631 are hereby **AFFIRMED** with the **MODIFICATION** that respondents United Philippines Lines, Inc. and Belships Management (Singapore) Pte Ltd. are jointly and severally liable to pay petitioner Camilo Esguerra's permanent disability benefits in the amount of US\$60,000.00 at the prevailing rate of exchange at the time of payment, plus legal interest reckoned from the time it was due. In addition, they shall also pay attorney's fees amounting to ten percent (10%) of the total award. The dismissal of the claims for moral and exemplary damages **STANDS**.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro Bersamin, and Villarama, Jr., JJ., concur.

[1] *Rollo*, pp. 8-47.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser, concurring; *id.* at 50-67.

[3] *Id.* at 140-144.

[4] *Id.* at 243.

[5] *Id.* at 291.

[6] *Jaco Triumph Shipping Ltd, Accident Report dated August 21, 2008*; *id.* at 244.

[7] *Id.* at 52.

[8] *Id.* at 245-246.

[9] *Id.* at 250-253.

[10] *Id.* at 254.

[11] *Id.* at 277-289.

[12] *Id.* at 288.

[13] *Id.* at 286. However, in the prayer portion of his position paper, the petitioner asked for the amount of US\$1,850.33 as sickwages for 130 days.

[14] *Id.* at 255.

[15] *Id.* at 53.

[16] *Id.* at 257-261.

[17] *Id.* at 149.

[18] *Id.* at 291.

[19] *Id.* at 294-295.

[20] *Id.* at 101-113.

[21] Id. at 263-276.

[22] Rendered by LA Elias H. Salinas; id. at 152-161.

[23] Id. at 161.

[24] Id. at 255.

[25] Id. at 162-174.

[26] Id. at 173.

[27] Id. at 176-177.

[28] Id. at 50-67.

[29] Id. at 66.

[30] Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[31] *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

[32] *Rollo*, p. 149.

[33] Id. at 255.

[34] *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671 (2007).

[35] Id.

[36] Id. at 670.

[37] *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavillion Hotel Chapter v. NLRC*, G.R. No. 179402, September 30, 2008, 567 SCRA 291, 305.

[38] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 675.

[39] *Rollo*, pp. 294-295.

[40] Id. at 101-113.

[41] Id. at 108-109.

[42] See page 1 of the PSU-ALU-TUCP-ITF and Belships CBA; id. at 103.

[43] Article 27 of the PSU-ALU-TUCP-ITF and Belships CBA; id. at 112.

[44] Id. at 257-261.

[45] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x.

[46] *Leonis Navigation Co. Inc. v. Villamater*, G.R. No. 179169, March 3, 2010, 614 SCRA 182, 201.



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