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[G.R. Nos. 194490-91, March 20, 2013]

TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, AND GENERAL MARINE SERVICES CORPORATION, PETITIONERS, VS. INOCENCIO B. VEDAD, RESPONDENT.

[G.R. NOS. 194518 & 194524]

INOCENCIO B. VEDAD, PETITIONER, VS. TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, AND GENERAL MARINE SERVICES CORPORATION, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

It would be an unsound policy to allow manning agencies and their principals to hedge in giving sickness allowance to our seafarers while waiting for the assessment and declaration by the company-designated physician on whether or not the injury or illness is work-related. Otherwise, our poor seafarers who sacrifice their health and time away from their families and are stricken with some ailments will not be given the wherewithal to keep body and soul together and provide for their families while they are incapacitated or unable to perform their usual work as such seafarers.

The Case

In these consolidated Petitions for Review on Certiorari under Rule45, the parties uniformly assail the July 28, 2010 Decision[1] and November 11, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 105601 and 105615, which modified the National Labor Relations Commission's (NLRC's) reversal of the grant by the Labor Arbiter of full permanent total disability benefits to seaman Inocencio B. Vedad (Inocencio).

The Facts

Inocencio was a seafarer employed as second engineer by Transocean Ship Management (Phils.), Inc. (Transocean),[3] a local manning agency, tor its principal, General Marine Services Corporation (General Marine). Carlos S. Salinas (Salinas) was the President of Transocean.[4] Inocencio's employment under the Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC) was for a 10-month period from June 1, 2005 to March 1, 2006.[5] Inonencio was deployed and went on board M/V *Invicta* after the required pre-employment medical examination (PEME) which gave him a clean bill of health.

Be tore the expiry of his 10-month contract or specifically on February 19, 2006, Inocencio was, however, repatriated for medical reasons. On board M/V *Invicta* he fell ill and experienced fever, sore throat and pain in his right car. The ship docked on February 3, 2006 at Port Louis, Mauritius. The day after, on February 4, 2006, he underwent medical examination with the finding of "chronic suppurative otitis media right [CSOM(R)] with acute pharyngitis[, with] mild maxillary sinusitis," for which he was prescribed antibiotics and ear drops with the recommendation of a follow-up examination of the CSOM(R).[6] Subsequently on February 16, 2006, he underwent a follow-up examination on his illness in Tanjung Priok, Indonesia, and consequently, his eventual repatriation on February 19, 2006 for further evaluation and treatment.

Inocencio immediately reported to the company-designated doctor. Dr. Nicomedes G. Cruz (Dr. Cruz) of the NGC Medical Clinic in Manila, tor diagnosis and treatment. On May 10, 2006, he underwent tonsillectomy but was later found by a histopathology report to be suffering from cancer of the right tonsil. The final histopathologic diagnosis reports: "undifferentiated carcinoma, right tonsil; and chronic tollicular tonsillitis with actinomycosis, left tonsil."[7] Dr. Cruz then advised Inocencio to undergo chemotherapy and linear treatment at an estimated cost of PhP 500,000, which Transocean and General Marine promised to shoulder. Inocencio started with the procedure but could not continue due to the failure of Transocean and General Marine to provide the necessary amount. This constrained Inoncencio to tile, on July 17, 2006, a Complaint[8] before the Labor Arbiter for, among others, total permanent disability benefits and sickness allowance, docketed as NLRC NCR OFW Case No. (M) 06-97-02117-00.

Decision of the Labor Arbiter

On August 10, 2007, the Labor Arbiter rendered a Decision, awarding Inocencio USD 60,000 as permanent total disability benefits plus 10% attorney's fees while dismissing all other claims, the decretal portion reading:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Transocean Ship Management Phils. and General Marine Services Corporation to jointly and severally pay the complainant his disability compensation in the amount of US$60,000.00 in its peso equivalent at the time of actual payment, plus l 0% thereof by way of attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[9]

The Labor Arbiter, applying Section 20 of the POEA-SEC, decreed Inocencio's tonsil cancer to be presumptively work-related, since it has not been proved otherwise and which lasted for more than 120 days. The Labor Arbiter likewise found Transocean and General Marine to have reneged on their promise to shoulder the medical procedures

prescribed for Inocencio's treatment.

Decision of the NLRC

Upon appeal by Transocean, Salinas, and General Marine, the NLRC, by its May 29, 2008 Decision in NLRC LAC No. 12-000379-07(8), vacated that of the Labor Arbiter and awarded sickness allowance only equivalent to 120 days or four months salary amounting to US D 4,616 and the payment or reimbursement of Inocencio's medical expenses. The decretal portion of the NLRC's Decision reads:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and the Respondents-Appellants are ordered to pay Complainant-Appellee sickness allowance equivalent to his basic wage for 120 days, amounting US$4,616.00 (USS 1,154 x 4 months) or its peso equivalent at the time of payment, plus payment/reimbursement of his medical expenses.
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> SO ORDERED.[10]

The NLRC held that the June 9, 2006 medical report/certification[11] by the company-designated physician, Dr. Cruz, that the tonsil cancer of Inocencio was not work-related shifted the burden of proof to Inocencio who failed to substantiate that his illness was work-related. As the NLRC further ruled, the PEME alone was not conclusive proof of Inocencio's state of health before deployment. However, the NLRC did find that Inocencio was, indeed, permanently totally disabled and was not at fault when he failed to undergo the necessary treatment given his condition due to the failure of Transocean and General Marine to provide the payment as earlier promised. Thus, Transocean, et al. were ordered to reimburse Inocencio's medical expenses.[12]

Decision of the CA

Both parties appealed the NLRC ruling before the CA, docketed as CA-G.R. SP Nos. 105601 and 105615. On July 28, 2010, the CA rendered its Decision, modifying the NLRC Decision by setting aside the award of sickness allowance of USD 4,616 but affirming the grant of reimbursement of medical expenses. The *fallo* reads:

> ACCORDINGLY:
>
> (a) In CA-G.R. SP No. 105601, the petition is GRANTED IN PART. The *Decision* dated May 29, 2008 of the National Labor Relations Commission in NLRC LAC No. 12-000379-07(8) is MODIFIED so that the portion therein awarding Inocencio Vedad sickness allowance. amounting to USS4,616.00 (USS 1,154 x 4 months) or its peso equivalent at the time of payment, is SET ASIDE. So far as it ordered Trans Ocean Ship Management Philippines and General Marine Services Corporation to reimburse or pay for jointly and severally the medical expenses of Inocencio Vedad, the same is AFFIRMED.

(b) In CA-G.R. SP No. 105615, the petition is DISMISSED for lack of merit.

No costs.

SO ORDERED.[13]

In so ruling, the CA affirmed the NLRC's determination that Inocencio's cancer of the tonsil, based on the certification of the company designated physician, Dr. Cruz, was not work-related. This determination, the CA observed, citing *NYK-Fil Ship Ivtanagement, Inc. v. Talavera*,[14] was not rebutted by contrary findings. The CA also held that the mere allegations of Inocencio on the causal relation between his work and ailment are not substantial proof of such relation, and that the PEME before deployment did not render Inocencio's tonsil cancer work-related either, for the PEME is not considered exploratory enough to fully ascertain his health before deployment. However, the CA agreed with the NLRC and ruled that Transocean and General Marine must pay or reimburse Inocencio's medical expenses based on their offer and promise to shoulder the medical treatment, such as the '"chemotherapy of [Inocencio], costing [PhP] 500,000,"[15] pointing out that Inocencio, indeed, initially underwent some of the prescribed medical procedures until Transocean and General Marine unilaterally withdrew the payment of their obligation.

Hence, the parties filed these petitions.

The Issues

In G.R. Nos. 194490-91, Transocean, et al. raise the sole ground that:

> The Honorable Court of Appeals committed grave abuse of discretion in ordering herein petitioners [Transocean, et al.] to pay or reimburse respondent [Inocencio's] medical expenses.[16]

On the other hand, Inocencio raises the following assignment of errors in G.R. Nos. 194518 & 194524:

1. The Honorable Court of Appeals committed a reversible error in the questioned decision and resolution sufficient to warrant the exercise of this Honorable Court's discretionary appellate jurisdiction. The factual findings of the NLRC and the Court of Appeals arc not based on substantial evidence.

2. The decisions of the Court of Appeals are contrary to applicable law and jurisprudence.

3. The Court of Appeals made manifest error in not awarding attorney's fees.[17]

The Court's Ruling

The petition of Transocean, et al. is unmeritorious. The petitions of Inocencio, on the other hand, are partly meritorious. He is entitled to both sickness allowance and payment or reimbursement of his medical expenses as properly awarded by the NLRC.

Pertinent to the resolution of this case are the following provisos of the POEA-SEC governing the employment of Filipino seafarers on board ocean-going vessels under POEA Memorandum Circular No. 09, Series of 2000:

> SECTION 20. COMPENSATION AND BENEFITS
>
> xxxx
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> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> xxxx
>
> 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.
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> 4. Those illnesses not listed in Section 32 of this Contract arc disputably presumed as work related.
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> (Emphasis supplied.)

Inocencio entitled to sickness allowance

Inocencio got ill with what appeared to be tonsillitis while on board MV *Invicta*, for which he was treated at a foreign port where the ship docked. His malady still continued despite the treatment as he was, in fact, repatriated before the end of his l 0-month contract on medical grounds.

With the foregoing facts and the application of the above-quoted pertinent POEA-SEC provisos, it is abundantly clear that Inocencio is entitled to receive sickness allowance from his repatriation for medical treatment, which is equivalent to his basic wage for a period not exceeding 120 days or four months.

The fact that Inocencio's sickness was later medically declared as not work-related does not prejudice his right to receive sickness allowance, considering that he got ill while on board the ship and was repatriated for medical treatment before the end of his 10-month employment contract. Moreover, at the time of his repatriation. his illness was not yet medically declared as not work-related by Dr. Cruz thus, the presumption under the aforequoted Sec. 20(B)(4) of the POEA-SEC applies. He is, therefore, entitled to sickness allowance pending assessment and declaration by the company-designated physician on the work-relatedness of his ailment. When the assessment of the company physician is that the ailment is not work related but such assessment is duly contested by the second opinion from a physician of the seafarer's choice, then pending the final determination by a third opinion pursuant to the mechanism provided under the third paragraph of Sec. 20(B)(3), the seafarer is still entitled to sickness allowance but not to exceed 120 days.

Considering that Inocencio's sickness in question manifested itself and that he was repatriated during the period of his employment, he is entitled to sickness allowance, his sickness being then disputably presumed to be work-related pursuant to Sec. 20(B) above. Later he had tonsillectomy on May l 0, 2006. Though Inocencio was later diagnosed with cancer of the tonsils or *tonsillar carcinoma* and the company-designated doctor certified that it is not work-related, yet that fact should not prejudice the grant of sickness allowance which the law mandates the employers to give seafarers upon their repatriation for medical reasons to cushion their needs. Here, Inocencio was unable to work for a period of more than 120 days. The NLRC is, therefore, correct in awarding Inocencio his 120-day sickness allowance as required by the POEA-SEC from the time he was repatriated on February 19, 2006.

The POEA formulated the standard employment contract tor seafarers pursuant to its mandate under Executive Order No. 247, Series of 1995, to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."[18] As in *Crystal Shipping, Inc. v. Natividad*, [19] an award of sickness allowance to Inocencio would be germane to the purpose of the benefit, which is to help the seafarer in making ends meet at the time when he is unable to work.

The law looks tenderly on laborers. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to them, the balance must be tilted in their favor consistent with the principle of social justice.[20]

Inocencio not entitled to permanent total disability benefits

Anent Inocencio's claim for permanent total disability benefits, its propriety hinges on whether or not his illness was work-related. We find no compelling reason to deviate from the factual findings of the NLRC that Inocencio failed to establish that his illness was work-related. Thus, he is not entitled to claim total permanent disability benefits. This CoUI1has, time and again, held that the "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court."[21] "It must be stressed that in petitions for review under Rule 45 of the Rules of Court, only questions of law must be raised"[22] before this Court.

Tonsil cancer or *tonsillar carcinoma* is, indeed, not work-related. The NLRC and the CA correctly ruled on this issue. It is not included in the list of occupational diseases. Thus, Inocencio carried the burden of showing by substantial evidence that his cancer developed or was aggravated from workrelated causes. As both the NLRC and the CA found, he had nothing to support his claim other than his bare allegations.

We note that when Inocencio was repatriated, Dr. Cruz, the company designated physician, conducted the examination, diagnosis and treatment of Inocencio until the hispathology report showed he had cancer of the tonsils. Significantly, Dr. Cruz issued on June 9, 2006 his assessment and medical certification that Inocencio's cancer was not work-related or work aggravated. In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20(B)(3) of the POEA-SEC quoted above.

Inocencio, however, failed to seek a second opinion from a physician of his choice. As already mentioned, Inocencio did not present any proof of work-relatedness other than his bare allegations. We, thus, have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. To recapifulate, the CA properly affirmed the findings of the NLRC that Inocencio's illness was not work-related. The NLRC's findings of facts have sufficient basis in evidence and in the records of the case and, in our own view, far from the arbitrariness that characterizes excess of jurisdiction. If Inocencio had any basis at all to support his claim, such basis might have been found after considering that he was medically fit when he boarded the ship based on the requisite PEME. Under this Court's ruling in *Montoya v. Transmed Manila Corporation*,[23] work-relatedness could possibly have been show, since the cancer of the tonsil, already latent when Inocencio boarded his ship, "flared up" after work-related stresses intervened. In the absence, however, of any duly medically proven work relatedness, Inocencio cannot . be accorded permanent total disability benefits.

Transocean, et al. must honor their obligation

The award granted by the NLRC and the CA for payment or reimbursement of the medical expenses of Inocencio relative to the required treatment for his cancer is proper. In fact, Transocean, et al. acknowledged offering to shoulder these expenses, alleging, however, that Inocencio did not continue with the treatment. They judicially admitted this in their Respondents' Position Paper filed at the outset before the Labor Arbiter, as follows:

> Upon request of the Respondents [Transocean. et al.]. the Complainant visited undersigned counsel's office on 9 June 2006. During said meeting. the undersigned counsel explained to Complainant that his illness known as Tonsil Cancer is not work-related but, nonetheless, the **Respondents agreed to shoulder the costs of treatment estimated at PhP500,000**. The undersigned counsel then instructed Complainant to visit Dr. Cruz and arrange for the schedule of his treatment
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> To the Respondents' dismay. the said treatment never materialized as the Complainant failed to go back to Dr. Cruz clinic on the dates he was scheduled to be treated. It turned out that Complainant already decided to engage services of counsel to claim disability benefits from the Respondents. Despite requests from undersigned counsel coursed through Complainant's counsel for him to go back to the company doctor. the Complainant failed to do so.[24](Emphasis supplied.)

Having obliged themselves to shoulder the medical treatment of Inocencio, Transocean, et a!. must be held answerable to said obligation, a finding of fact not only determined by the NLRC and the CA, but is also a judicial admission of Transocean, et al. As aptly put by the CA, Inocencio started with the medical procedure which could not be completed, for Transocean and General Marine unilate.rally withheld payment for the procedure. Notably, Inocencio's last consultation with Dr. Cruz was on June 15, 2006. At such time, Transocean, et al. had not remitted money for his treatment.

As the NLRC's Decision dated May 29, 2008 and Resolution dated July 22, 2008 are vague as to the nature of Transocean, et al.'s liability, the Court rules that they are jointly and solidarity liable to Inocencio for the payment of his sickness allowance and medical expenses. In view of the unjustified refusal of Transocean, et al. to reimburse the medical expenses to Inocencio after they agreed to such obligation, interests of 6% per annum shall be imposed on said medical expenses and sickness allowance of USD 4,616 from June 15, 2006 up to the finality of this Decision and 12o/o per annum from finality of this Decision until paid.[25]

WHEREFORE, the petition in G.R. Nos. 194490-91 is **DENIED** for lack of merit, while the petition in G.R. Nos. 194518 & 194524 is **PARTLY GRANTED**. The CA's July 28, 2010 Decision and November 11, 2010 Resolution in CA-G.R. SP Nos. 105601 and 105615 are hereby **REVERSED** and **SET ASIDE**, and the May 29, 2008 Decision and July 22, 2008 Resolution of the National Labor Relations Commission in NLRC LAC No.

12-000379-07(8) accordingly REINSTATED, with the modification that Transocean, Salinas, and General Marine shall be jointly and solidarily liable to Inocencio for the payment of PhP 500,000 representing the medical expenses agreed to by them in their Position Paper before the Labor Arbiter, inclusive of the actual expenses incurred by Inocencio, and the sickness allowance of USD 4,616. Interest shall be imposed on them at the rate of 6% per annum from June 15, 2006 until the finality of this Decision and at 12% per annum from finality of this Decision until paid.

The Labor Arbiter shall determine the actual medical expenses incurred by Inocencio.

No costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ*., concur.

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[1] *Rollo* (G.R. Nos. 194518 & 194524), pp. 25-37. Penned by Associate Justice Amy c. LazaroJavier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon.

[2] Id. at 39-40.

[3] "Ttrans Ocean" in some parts of the records.

[4] He was also the owner and general manager of the company.

[5] *Rollo* (G.R. Nos. 191518 & 194524), p. 41.

[6] Id. at 42, Foreign Medical Report.

[7] Id. at 43.

[8] *Rollo* (G.R. Nos. 194490-91), pp. 106-107.

[9] Id. at 238.

[10] Id. at 103. Penned by Commisioner Gregorio O. Bilog III and concurred in by Presiding Comm issioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[11] Id. at 139 (Annex "9," Transocean, et al.'s position Paper).

[12] Id. at 102. As regards medical expenses, the NLRC's Decision state, "[T]he records reflect, and [Transocean, Salinas, and General Marine] admit, that **[Transocean, et al.] agreed to shoulder the treatment/chemotherapy of [inocencio], costing**

php500,000 x x x. Nowhere is it shown that such offer was withdrawn by [Transocean, et al.]." (Emphases supplied.)

[13] *Rollo* (G.R. Nos. 194518 & 194524), pp. 36-37.

[14] G.R. No. 175894, November 14, 2008, 571 SCRA 183.

[15] *Rollo* (G.R. Nos. 194490-91). p. 102.

[16] Id. at 39.

[17] *Rollo* (G.R. Nos. 194518 & 194524),p. 9.

[18] *Remigio v. National Labor Relations Commission.* G.R. N.o. 159887, April 12, 2006, 487 SCRA 190, 207: citing Executive Order No. 247, Sec. 3(i) and (j).

[19]G.R. No. 154798. October 20, 2005, 473 SCRA 559, 568.

[20] *HFS Philippines, Inc. v. Pilar,* G.R. No. 168716. April 16, 2009, 585 SCRA 315, 328. A footnote explains, "In essence, this is similar to the equipoise rule in criminal law. See CIVIL CODE, Art. 1702. Labor legislation and contracts shall be construed in favor c,f the safety and decent living of the laborer."

[21] Coastal Safeway Marine Services. Inc., v. Delgado, G.R. No. 168210, June 17, 2008, 554 SC RA 590, 599-600; citing Ramos v. Court of Appeals, G.R. No. 145405, June 29, 2004,. 433 SCRA 177, 182.

[22] Mame v. Court of Appeals, G.R. No. 167953, April 4, 2007, 520 SCRA 552, 561.

[23] G.R. No. 183329. August 27, 2009, 597 SCRA 334, 349; citing Belarmino v. Employees' Compensation Commission, G. R. No. 90204, May 11, 1990, 185 SCRA 304.

[24] *Rollo* (G.R. Nos. 194490-91), p. 113, Position Paper dated November 9, 2006.

[25] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.