

715 Phil. 54

THIRD DIVISION

[G.R. No. 179607, July 24, 2013]

CIRILA MANOTA, FOR HERSELF AND IN BEHALF OF HER CHILDREN, CLAIRE, CATHERINE, CHARLES, PHILIP CHRISTOPHER, CARMI JOY, CARLO JOHN AND CEDRIC JAMES, PETITIONERS, VS. AVANTGARDE SHIPPING CORPORATION AND/OR SEMBAWANG JOHNSON MANAGEMENT PTE., LTD, RESPONDENTS.

DECISION

PERALTA, J.:

Assailed in this Petition for Review on *Certiorari* is the Decision^[1] dated January 30, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 70415, which affirmed *in toto* the Decision^[2] dated June 8, 2001 and the Resolution^[3] dated January 30, 2002 issued by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026489-00, which reversed the decision of the Labor Arbiter (LA) granting Enrique Manota's claim for disability benefits. Also assailed is the CA Resolution^[4] dated September 3, 2007 denying reconsideration thereof.

On April 10, 1996, Avantgarde Shipping Corporation, the local manning agent of Sembawang Johnson Mgt. Pte. Ltd. (respondents), hired Enrique Manota (Enrique) as an able seaman for a period of 7 months with a monthly salary of US\$569.00, fixed monthly overtime pay of US\$296.00, and monthly vacation leave with pay of US\$108.00.^[5] Their employment contract incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as prescribed by the Philippine Overseas Employment Administration (POEA).^[6]

On April 23, 1996, Enrique departed from the Philippines to join his vessel "Henriette Kosan." He was repatriated on November 30, 1996 and arrived in the Philippines on December 2, 1996.

On January 6, 1997, Enrique had himself examined at the United Doctors Medical Center (UDMC), Quezon City, where he underwent an x-ray examination and the result^[7] of which showed that he had pneumonia/ tuberculosis foci. On May 18, 1997, he also went to the Clinica Anda Laboratory, Davao City, for blood chemistry where it was shown that he had an elevated blood sugar.^[8] Subsequent laboratory examinations showed a slight decrease in his blood sugar level.^[9]

On November 4, 1999, Enrique went to the Seamen's Hospital for an examination where he was diagnosed as suffering from Diabetes Mellitus II, PTB cavitory class 3,

and movement disorder (Ataxia) affecting the left side upper and lower extremities.^[10] Based on such condition, he was deemed to have impediment Grade 1 disability and was deemed unfit for sea duty.^[11]

On November 18, 1999, Enrique consulted with Dr. Efren Vicaldo for the assessment of his disability and for which the latter issued a medical certificate^[12] on the same day confirming the former's disability as rated Grade 1. Thus, Enrique claimed from respondents disability and other benefits which were all denied.

Consequently, Enrique filed with the LA a Complaint^[13] for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees. He alleged that after working with respondents as a seaman for 7 months, he was placed on repatriated illness on November 30, 1996 and arrived in the Philippines on December 2, 1996; that from the time he embarked from the vessel up to the filing of the complaint, he had yet to receive his sickness allowance equivalent to his basic wage for a period of 120 days; and that since his permanent total disability occurred during the term of his employment contract, he is entitled to Grade 1 disability under the POEA Schedule of Benefits in the amount of US\$50,000.00. He also asked for moral and exemplary damages, and attorney's fees.^[14]

In their Position Paper,^[15] respondents contended that Enrique was not entitled to his claim on the ground of prescription, since the case was filed after almost three years from the expiration of the contract; that his failure to institute the case within one year as prescribed by the rules was fatal, hence, the complaint must be dismissed for lack of merit. Respondents also argued in their Reply^[16] that Enrique was not entitled to claim for sickness allowance or disability benefits as he failed to comply with the post-employment medical examination within 3 days from his arrival.

On September 29, 2000, LA Daisy G. Cauton-Barcelona issued a Decision,^[17] the decretal portion of which reads:

WHEREFORE, as above discussed, respondents Avantgarde Shipping Corporation and Sembawang Johnson Management PTE., Ltd. are hereby ordered jointly and severally to pay the complainant his total disability benefit (Grade 1) in the amount of FIFTY THOUSAND DOLLARS (US\$50,000.00) and attorney's fees equivalent to ten (10%) percent hereof.

All other claims are dismissed for lack of merit.^[18]

In so ruling, the LA found that the proximity of the time of Enrique's arrival in the Philippines on December 2, 1996 to the time he had his medical examination at the UDMC Hospital on January 6, 1997 where his x-ray result showed that he was suffering from pneumonia/tuberculosis foci, and the laboratory results showed high level of blood sugar, indicated that his sickness was contracted during the term of his employment contract; that the compensability of an ailment does not depend on whether the injury

or disease was pre-existing at the time of the employment, but rather if the disease or injury is work-related or is aggravated by his working condition. The LA observed that before Enrique's hiring, he underwent a medical examination and was declared fit to work, but after 7 months of work was found suffering from pneumonia/tuberculosis foci, thus, it concluded that Enrique contracted the disease during the term of his employment.

Aggrieved, respondents filed their memorandum on appeal^[19] with the NLRC, to which Enrique filed his Comment/Opposition thereto.^[20]

On June 8, 2001, the NLRC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the decision of [the] Labor Arbiter below is SET ASIDE. The complaint below is dismissed for lack of merit.

SO ORDERED.^[21]

The NLRC adopted the findings of LA Cristeta D. Tamayo to whom it referred the case for report and recommendation. The NLRC found that Enrique failed to adduce any evidence which established that he contracted or suffered from pneumonia/tuberculosis foci while in the employ of respondents from April 23, 1996 to November 30, 1996 as there was not a single medical certificate issued while he was still on board the vessel; that what he presented were medical certificates issued long after he had already disembarked from the vessel. It also observed that the earliest date of Enrique's medical certificate was January 6, 1997 which was two months after his disembarkation, thus if he was indeed repatriated for medical reasons, he should have submitted a medical certificate which bore a date close to his disembarkation; and that absent any proof that he was repatriated due to medical reasons, the conclusion was that Enrique was repatriated upon completion of his seven-month contract.

The NLRC found that under Section 20 B-3 of Memorandum Circular No. 55, a seafarer who is medically repatriated should submit himself to a post-employment medical examination within three days upon his return or to notify the agency within the same period of his physical incapacity to do so, and the failure to comply would result in the forfeiture of the right to sickness allowance and disability benefits; that Enrique's admission that he was physically examined only on January 6, 1997, which was more than one month from the date of his arrival in the Philippines, therefore, forfeited his right to any disability benefit, even if we are to assume *arguendo* that it existed. The NLRC also noted that Enrique failed to give any reason for the delay in filing his claim, *i.e.*, two years and eleven months from his disembarkation; and, that despite Enrique's alleged continuous medical treatment, he never requested for payment or reimbursement of his medical expenses from respondents.

Enrique filed a petition for *certiorari* with the CA. After the parties submitted their respective pleadings, the case was submitted for decision.

On January 30, 2007, the CA issued its assailed Decision dismissing the petition for lack of merit and affirming *in toto* the NLRC decision. Enrique's motion for reconsideration was denied in a Resolution dated September 3, 2007.

Still dissatisfied, hence, this petition for review on *certiorari* is filed. Enrique died on October 19, 2004,^[22] thus, the instant petition is filed by his widow, for herself and in behalf of her children.

The issue for resolution is whether or not petitioners are entitled to claim disability benefits from respondents.

The employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.^[23]

Under the third paragraph of Enrique's Contract of Employment^[24] with respondents, it was stated that the terms and conditions provided under Memorandum Circular No. 41, Series of 1989 and amending circulars relative thereto, shall be strictly and faithfully observed. Memorandum Circular No. 41, Series of 1989, or the "Revised Standard Employment Contract of All Filipino Seamen On Board Ocean-Going Vessels," as amended by POEA Memorandum Circular No. 05, Series of 1994, provides for the minimum requirements prescribed by the Government for the Filipino seafarer's overseas employment. This Circular is applicable in this case instead of Memorandum Circular No. 55, Series of 1996 applied by the NLRC, since the latter took effect on January 1, 1997 while Enrique's employment was terminated with his repatriation on November 30, 1996. Section C (4) (c) of the 1989 POEA Standard Employment Contract (SEC), as amended, provides:

SECTION C. COMPENSATION AND BENEFITS

x x x x

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

x x x x

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel the seaman is entitled to one hundred percent (100%) of his basic wages 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 seaman shall submit himself to a post-employment medical

examination by the 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 seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

Based on the foregoing provision, it must be shown that the injury or illness was contracted during the term of the employment contract. The unqualified phrase "during the term" covered all injuries or illnesses occurring during the lifetime of the contract. [25]

And it is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[26] Often described as more than a mere scintilla, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[27] Any decision based on unsubstantiated allegations cannot stand as it will offend due process.[28] Hence, the burden to prove entitlement to disability benefits lies on petitioners, thus they must establish that Enrique had contracted his illness which resulted to his disability during the term of the employment contract.

A review of the records shows that petitioners failed to prove by substantial evidence that Enrique's illness which resulted to his disability was acquired during the term of his employment contract. There was no record of medical complaint lodged by Enrique during his employment on board the vessel "Henriette Kosan" and even after his arrival in the Philippines on December 2, 1996. As the NLRC correctly observed, the medical certificates submitted were issued long after Enrique had disembarked from the vessel. Except for their bare allegation, petitioners failed to present any evidence that would indeed establish that Enrique contracted his illness during his employment. In fact, respondents were not even aware or apprised of Enrique's illness which was allegedly contracted during the term of his employment contract until the latter claimed for disability benefits almost 3 years later. Thus, we give credence to respondents' claim that Enrique was repatriated to the Philippines due to the completion of his employment contract and not on account of medical reason.

But assuming *arguendo* that Enrique was repatriated for medical treatment as he claimed, the above-quoted provision clearly provides that it is mandatory for a seaman to submit himself to a post-employment medical examination within three (3) working days from his arrival in the Philippines before his right to a claim for disability or death benefits can prosper. The provision, however, admits of exception, i.e., when the seafarer is physically incapacitated to do so, but there must be a written notice to the agency within the same period for the seaman to be considered to have complied with the 3-day rule. The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term

of his employment or that his working conditions increased the risk of contracting the ailment.^[29]

In this case, Enrique admitted that he had his physical examination at the UDMC on January 6, 1997, which was more than a month from his arrival in the Philippines, and his x-ray result showed that he had pneumonia/tuberculosis foci. Clearly, Enrique failed to comply with the required post-employment medical examination within 3 days from his arrival and there was no showing that he was physically incapacitated to do so to justify his non-compliance. Since the mandatory reporting is a requirement for a disability claim to prosper, Enrique's non-compliance thereto forfeits petitioners' right to claim the benefits^[30] as to grant the same would not be fair to respondents.

Petitioners try to justify Enrique's non-compliance with the post-employment medical examination by alleging that such requirement applies only if the seafarer is fully aware that he already has the illness upon his disembarkation but not when he is not aware of its existence as the symptoms have not yet manifested, as in this case.

We find the argument unmeritorious.

Petitioners' admission that no symptoms of Enrique's illness had manifested at the time of his arrival in the Philippines revealed that he indeed was not suffering of any ailment then, and was even in good health upon his arrival which even bolstered our earlier findings that he was repatriated due to the completion of his employment contract and not due to any medical reason. Moreover, the post-employment medical examination within 3 days from Enrique's arrival is required in order to ascertain his physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits.^[31] It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time.^[32] In such a case, the employers would have no protection against unrelated disability claims.^[33]

Petitioners contend that considering Enrique was declared fit to work prior to his embarkation on board the vessel, but upon his x-ray examination on January 6, 1997 had pneumonia/tuberculosis foci, this circumstance would establish that he already had the illness while still on board the vessel as it was quite impossible for him to have acquired the illness only within 35 days upon his arrival in the Philippines on December 2, 1996.

We do not agree.

The fact that Enrique's pre-employment medical examination showed that he was fit to work would not necessarily follow that his illness was acquired during his employment as a seaman. To reiterate, there was no showing of any medical complaint from him while still on board the vessel. He also did not comply with the mandatory post-employment medical examination within 3 days from arrival in the Philippines where the designated physician could have evaluated his medical condition. More importantly, except for petitioners' bare allegation that Enrique could not have acquired his illness

within the period of 35 days upon his disembarkation, they have not presented any concrete proof or medical expert opinion to substantiate their claim.

The case of *Wallem v. NLRC*^[34] relied upon by petitioners finds no application in this case. In *Wallem*, the deceased seaman was discharged from the vessel two months before the expiration of his employment contract. We ruled then that the only plausible reason why he was all of a sudden and with no rational explanation discharged from the vessel was the finding that he was already in a deteriorating physical condition when he left the vessel. Our conclusion was buttressed by the events that transpired immediately upon his arrival in the Philippines, *i.e.*, he was hospitalized two (2) days later and died three (3) months after. Thus, we held then that the deceased seaman's failure to comply with the 3-day post-employment medical examination requirement was excusable as he was already physically incapacitated to do so since he was already ill when he left the vessel. We also ruled that even assuming that the seaman's ailment as argued by the employers was pre-existing, *i.e.*, contracted prior to his employment on board the vessel, was not a drawback to the compensability of the disease. Thus, we said that it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death. In contrast to this case, Enrique's failure to comply with the mandatory 3-day reporting was not justified at all as there was no showing that he was physically incapacitated to do so. Moreover, as admitted, Enrique had no symptoms of any illness during his employment and even after his arrival in the Philippines on December 2, 1996. And there was no concrete evidence to establish that his employment contributed to his illness.

Finally, considering that the NLRC decision, as affirmed by the CA, dismissed Enrique's complaint not on the ground of prescription but after finding that the latter failed to adduce evidence that he contracted his illness during his employment with respondents and since he failed to submit himself to the post-employment medical examination without justifiable reason, we find no need to discuss petitioners' claim that the instant complaint was not barred by prescription.

WHEREFORE, the petition is **DENIED**. The Decision dated January 30, 2007 and the Resolution dated September 3, 2007 of the Court of Appeals, in CA-G.R. SP No. 70415, are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Leonen, JJ., concur.

August 8, 2013

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on July 24, 2013 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 8, 2013 at 10:45 a.m.

Very truly yours,
(SGD)
LUCITA ABJELINA
SORIANO
Division Clerk of
Court

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Renato C. Dacudao and Hakim S. Abdulwahid, concurring; *rollo*, pp. 158-166.

[2] Per Commissioner Vicente S .E. Veloso, with Presiding Commissioner Roy V. Señeres and Alberto R. Quimpo, concurring; *id.* at 114-131.

[3] *Id.* at 141-143.

[4] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Hakim S. Abdulwahid and Lucenito N. Tagle, concurring; *rollo*, pp. 168-170.

[5] *Id.* at 37.

[6] *Id.*

[7] *Id.* at 43.

[8] *Id.* at 38.

[9] *Id.* at 39-41.

[10] *Id.* at 45.

[11] *Id.*

[12] *Id.* at 46.

[13] *Id.* at 47.

[14] *Id.* at 49-55.

[15] *Id.* at 56-60.

[16] *Id.* at 66-69.

[17] *Id.* at 75-83.

[18] *Id.* at 83.

[19] *Id.* at 84-104.

[20] *Id.* at 105-112.

[21] *Id.* at 130.

[22] *Id.* at 34.

[23] *Crew and Ship Management International, Inc. and Salena Inc. v. Jina T. Soria*, G.R. No. 175491, December 10, 2012, citing *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010, 621 SCRA 361, 369.

[24] *Rollo*, p. 37.

[25] *Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 269, citing *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 334 (2006).

[26] *Id.*

[27] *Career Philippines Shipmanagement, Inc., et al. v. Salvador T. Serna*, G.R. No. 172086, December 3, 2012, citing *Abosta Shipmanagement Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 163252, July 27, 2011, 654 SCRA 505, 513-514.

[28] *Crew and Ship Management International Inc. and Salena Inc. v. Jina T. Soria*, G.R.No. 175491, December 10, 2012, citing *Aya-ay, Sr. v. Arpaphil Shipping Corporation*, 516 Phil. 628, 642, (2006), citing *De Paul/King Philip Customs Tailor v. National Labor Relations Commission*, 364 Phil. 91, 102 (1999).

[29] *Crew and Ship Management International Inc. and Salena Inc. v. Jina T. Soria*, G.R.No. 175491, December 10, 2012.

[30] *Id.*

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

[32] Id.

[33] Id.

[34] 376 Phil. 738 (1999).



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