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FIRST DIVISION

[G.R. No. 201072, April 02, 2014]

UNITED PHILIPPINE LINES, INC. AND HOLLAND AMERICA LINE, PETITIONERS, VS. GENEROSO E. SIBUG, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before the Court is a petition for review on certiorari assailing the Decision[1] dated July 29, 2011 and Resolution[2] dated February 14, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 110757. The CA ruled that respondent seaman Generoso E. Sibug is twice entitled to permanent and total disability benefits.

The antecedent facts follow:

Petitioners United Philippine Lines, Inc. and Holland America Line hired Sibug as waste handler on board the vessel M/S Volendam. On August 5, 2005, Sibug fell from a ladder while cleaning the silo sensor at a garbage room of the Volendam and injured his knee. He was repatriated and had anterior cruciate ligament (ACL) reconstruction surgery at the Manila Doctors Hospital. On January 19, 2006, he was declared fit to return to work from an orthopedic point of view.[3]

Sibug sought reemployment, passed the pre-employment medical examination, and was re-hired by petitioners in the same capacity for the vessel M/S Ryndam. On board Ryndam, Sibug met another accident while driving a forklift and injured his right hand and wrist. He was repatriated. He arrived in the Philippines on January 15, 2007,[4] and had surgery for his Ryndam injury.[5] On September 7, 2007, the company-designated doctor issued a medical report[6] that Sibug has a permanent but incomplete disability.[7] In an email[8] dated September 28, 2007, the company-designated doctor classified Sibug's disability from his Ryndam injury as a grade 10 disability.[9]

Sibug filed two complaints for disability benefits, illness allowance, damages and attorney's fees against petitioners, docketed as follows: (1) NLRC NCR OFW (M)-08-08711-07, which was anchored on his Volendam injury, and NLRC NCR OFW (M)-08-08708-07, which was anchored on his Ryndam injury.

In her Decision[10] dated May 14, 2008, the Labor Arbiter dismissed the Volendam case on the ground that Sibug was declared fit to work after his ACL reconstruction surgery.

He also passed the pre-employment medical examination when he sought reemployment, was reemployed and was able to work again in Ryndam. As regards the Ryndam case, the Labor Arbiter awarded to Sibug US$10,075 which is the equivalent award for the grade 10 disability rating issued by the company-designated doctor. The fallo of the Labor Arbiter's Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the claims in NLRC Case No. (M) NCR-08-08711-07. As regards the claims in NLRC NCR Case No. 08-08708-07, this Office holds that the complainant [Sibug] is entitled to disability benefits in the amount of US$10,075 which is the equivalent of the grade "10" disability issued by the company-designated physician.
>
> SO ORDERED.[11]

The National Labor Relations Commission (NLRC) reversed the Labor Arbiter's Decision. It ruled that Sibug is entitled to permanent and total disability benefit of US$60,000 for his Volendam injury and another US$60,000 for his Ryndam injury. It also awarded attorney's fees to Sibug. The *fallo* of the NLRC Decision[12] dated December 8, 2008 reads:

> **WHEREFORE**, prescinding from the foregoing considerations the appeal is given due course. Accordingly, the Decision appealed from is **REVERSED** and **SET ASIDE** and a **NEW ONE ENTERED** –
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> 1. For NLRC NCR Case (M) No. 08-08711-07 – The appellees [petitioners] are hereby ordered jointly and [severally] to pay complainant-appellant [Sibug] his total disability benefits (knee injury) amounting to US$60,000.00; and
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> 2. For NLRC NCR Case (M) No. 08-08708-07 – The appellees [petitioners] are hereby ordered jointly and severally to pay the complainant-appellant [Sibug] his total disability benefit (right hand injury) amounting to US$60,000.00
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> 3. Attorney's fees of 10% of the total monetary awards;
>
> or an aggregate amount of US$132,000.00 or its Philippine Peso equivalent at the time of actual payment.
>
> **SO ORDERED.**[13]

On reconsideration, the NLRC issued a Decision[14] dated May 29, 2009 which set aside its December 8, 2008 Decision and reinstated the Labor Arbiter's Decision, to wit:

> WHEREFORE, in the light of the foregoing, our Decision dated 8 December 2008 is hereby, SET ASIDE and the decision of the Labor Arbiter dated 14 May 2008 is hereby, REINSTATED, granting disability benefits in the amount of US$10,075.00 which is equivalent to grade "10" disability issued by the company designated physician.
>
> SO ORDERED.[15]

Later, the NLRC denied Sibug's motion for reconsideration in its Resolution[16] dated July 31, 2009.

The CA set aside the NLRC Decision dated May 29, 2009 and reinstated the NLRC Decision dated December 8, 2008. The fallo of the assailed CA Decision reads:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED** and the Decision dated May 29, 2009 is hereby **ANNULLED** and **SET ASIDE**. As prayed for, the NLRC Decision dated December 8, 2008 is hereby **REINSTATED.**
>
> **SO ORDERED**.[17]

The CA ruled that Sibug was unable to perform his customary work for more than 120 days on account of his Volendam and Ryndam injuries. Thus, he is entitled to permanent and total disability benefit for both injuries.

On February 14, 2012, the CA denied petitioners' motion for reconsideration.

Hence, this petition.

Essentially, the issues for our resolution are as follows: (1) whether Sibug is entitled to permanent and total disability benefits for his Volendam and Ryndam injuries and (2) whether he is entitled to attorney's fees.

Petitioners argue that the CA erred in awarding disability benefit to Sibug by reason of his previous knee injury as he was already declared fit to work after recovery from said injury. Sibug was even able to regain employment and board their vessel Ryndam. They also argue that the CA erred in awarding maximum disability benefit to Sibug in the amount of US$60,000 for his hand injury as he was only assessed with a grade 10 disability equivalent to US$10,075 under the terms and conditions of the Philippine Overseas Employment Administration standard employment contract (POEA-SEC).[18]

In his comment, Sibug says that the assailed CA decision is correct and prays that the instant petition be denied for lack of merit.[19]

After our own review of the case, we find the petition partly meritorious. We rule that

Sibug is not entitled to permanent and total disability benefit for his Volendam injury. But he is entitled to permanent and total disability benefit for his Ryndam injury and to attorney's fees.

Sibug is not entitled to permanent and total disability benefit for his Volendam injury since he became already fit to work again as a seaman. He even admitted in his position paper that he was declared fit to work.[20] He was also declared fit for sea service after his pre-employment medical examination when he sought reemployment with petitioners. The medical certificate[21] declaring Sibug fit for sea service even bears his signature. And he was able to work again in the same capacity as waste handler in Ryndam. On this point, the Labor Arbiter's ruling is amply supported by substantial evidence. On the other hand, the CA erred in ruling that Sibug is entitled to permanent and total disability benefit for the injury he suffered at the Volendam. The facts clearly show that he is not.

As regards his Ryndam injury, we agree with the CA that Sibug is entitled to permanent and total disability benefit amounting to US$60,000. Petitioners, the Labor Arbiter and the NLRC erred on this point. In *Millan v. Wallem Maritime Services, Inc.,*[22] we listed the following circumstances when a seaman may be allowed to pursue an action for permanent and total disability benefits:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
(b) 240 days had lapsed without any certification issued by the company-designated physician;
(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
(h) The company-designated physician declared him partially and

> permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

Paragraph (b) applies to Sibug's case. The company-designated doctor failed to issue a certification with a definite assessment of the degree of Sibug's disability for his Ryndam injury within 240 days.

In *Fil-Pride Shipping Company, Inc., et al. v. Balasta*,[23] we held that the "company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees Compensation. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled." This definite assessment of the seaman's permanent disability must include the degree of his disability, as required by Section 20-B of the POEA-SEC, to wit:

> **SEC. 20. COMPENSATION AND BENEFITS**
>
> x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> x x x x
>
> 2. x x x
> 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 x x x until he is declared fit to work **or the degree of permanent disability has been assessed by the company-designated physician** x x x. (Emphasis and underscoring supplied.)

As we said in *Oriental Shipmanagement Co., Inc. v. Bastol*,[24] the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability.

In this case, Sibug was repatriated and arrived in the country on January 15, 2007 after his Ryndam injury. He had surgery on his injured hand. On September 7, 2007, the company-designated doctor issued a medical report that Sibug has a permanent but incomplete disability. But this medical report failed to state the degree of Sibug's disability. Only in an email dated September 28, 2007, copy of which was attached as Annex 3 of petitioners' position paper, was Sibug's disability from his Ryndam injury

classified as a grade 10 disability by the company-designated doctor. By that time, however, the 240-day extended period when the company-designated doctor must give the definite assessment of Sibug's disability had lapsed. From January 15, 2007 to September 28, 2007 is 256 days. Hence, Sibug's disability is already deemed permanent and total.

In *Magsaysay Maritime Corporation v. Lobusta*,[25] we also affirmed the award of US$60,000 as permanent and total disability benefit when after the lapse of 240 days there was no declaration of Lobusta's permanent disability.

In addition, we grant Sibug attorney's fees of US$6,000 since he was forced to litigate to protect his valid claim. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.[26]

WHEREFORE, we **GRANT** the petition and **SET ASIDE** the Decision dated July 29, 2011 and Resolution dated February 14, 2012 of the Court of Appeals in CA-G.R. SP No. 110757. We render a new judgment and **ORDER** petitioners United Philippine Lines, Inc. and Holland America Line jointly and severally to pay respondent Generoso E. Sibug US$66,000 or its peso equivalent at the time of payment.

No pronouncement as to costs.

SO ORDERED.

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

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[1] *Rollo*, pp. 31-45. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[2] Id. at 66-67.

[3] Id. at 32-33.

[4] CA *rollo,* p. 197.

[5] *Rollo*, p. 33.

[6] CA *rollo*, p. 216.

[7] *Rollo,* p. 116.

[8] CA *rollo,* p. 245.

[9] Supra note 7.

[10] CA *rollo,* pp. 189-194. Penned by Labor Arbiter Romelita N. Rioflorido.

[11] Id. at 194.

[12] Id. at 88-107.

[13] Id. at 105-106.

[14] Id. at 73-79.

[15] Id. at 78.

[16] Id. at 54-55.

[17] *Rollo,* p. 44.

[18] Id. at 8.

[19] Id. at 98-99.

[20] CA *rollo,* p. 196.

[21] Id. at 244.

[22] G.R. No. 195168, November 12, 2012, 685 SCRA 225, 233-234, citing *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

[23] G.R. No. 193047, March 3, 2014, pp. 1, 11.

[24] G.R. No. 186289, June 29, 2010, 622 SCRA 352, 382.

[25] G.R. No. 177578, January 25, 2012, 664 SCRA 134, 147-148.

[26] *Fil-Pride Shipping Company, Inc., et al. v. Balasta,* supra note 23, at 13.