

741 PHIL. 222

THIRD DIVISION

[G.R. No. 198342, August 13, 2014]

REMEDIOS O. YAP, PETITIONER, VS. ROVER MARITIME SERVICES CORPORATION, MR. RUEL BENISANO AND/OR UCO MARINE CONTRACTING W.L.L., RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] and Resolution,^[2] dated June 6, 2011 and August 23, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 114417 which reversed the Decision^[3] and Resolution,^[4] dated January 29, 2010 and March 25, 2010, respectively, of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 04-000292-08.

The antecedent facts are as follows:

The deceased, Dovee M. Yap, was a seafarer who had been employed by respondents Rover Maritime Services Corporation, its foreign principal, UCO-Marine Contracting W. L. L., and Ruel Benisano, in various capacities under different contracts of employment continuously for a period of ten (10) years.^[5] In his last contract with respondents, dated July 15, 2005, he was hired as Third Mate on board vessel UCO XX for a period of one (1) year with a basic monthly salary of Six Hundred Dollars (US\$600.00).^[6] He boarded the vessel on July 23, 2005.

On July 23, 2006, the last day of Dovee Yap's contract, he met an accident. While inspecting a lifeboat, he slipped and hit his back on the steel lifeboat ladder.^[7] He was brought to a hospital in Bahrain and was confined thereat for two (2) weeks.^[8]

On August 17, 2006, Dovee Yap was repatriated to the Philippines. On August 19, 2006, he was admitted at the Doctors Medical Center in Iloilo City for three (3) weeks for further treatment. Sometime later, Dovee Yap was again confined at the (Iloilo) Western Visayas Medical Center, with the diagnosis of "squamous cell carcinoma of the lungs with metastasis to the spine and probably the brain."^[9]

On July 17, 2007, Dovee Yap filed against respondents a complaint for permanent disability benefits, sick wages, reimbursement of hospital, medical, and doctor's expenses, actual, moral and exemplary damages, and attorney's fees.^[10]

On August 19, 2007 or during the pendency of the case, Dovee Yap died of "*Multiple Organ Failure Secondary To Pulmonary Squamous Cell CA With Distant Metastasis (Brain and Bone) And Obstructive Pneumonia Secondary To Electrolyte Imbalance Secondary To Gastric Ulcer Secondary To S/P Radio Therapy.*" His widow, Remedios O. Yap, substituted him as party-complainant and the claim for disability benefits was then converted into a claim for death benefits.^[11]

On February 28, 2008, the Labor Arbiter dismissed the Complaint for lack of merit in the following manner:

Be that as it may, it is clear that Dovee M. Yap did not die due to an illness which is the consequence of his slipping on the steel ladder but died of totally different diseases which are diagnosed as Pott's disease/tuberculosis, pneumonia and squamous cell carcinoma, which did not manifest during his employment with the Respondents.

x x x x

It appears in this case that the injury suffered by Dovee M. Yap was not the proximate cause of his death, therefore, not work-related and that the death did not arise during the term of the contract of Dovee M. Yap, but more than one (1) year after.

In order to be compensable, it is not necessary that the death occurred during the effectivity of the contract provided the death was a natural result of an illness or injury that the seafarer incurred while on board the vessel, and during the effectivity of his contract. These circumstances are not obtaining in the instant case, Dovee M. Yap was repatriated on a finished contract and not on medical grounds as there was no recommendation by the doctors in Bahrain who treated him when he slipped on the ladder that he would undergo further treatment due to his fall.^[12]

In its Decision^[13] dated January 29, 2010, however, the NLRC reversed the Labor Arbiter's Decision and ordered respondents to pay petitioner the death benefits she claimed. According to the NLRC, the accident that Dovee Yap encountered was the proximate cause of his death, to wit:

We agree with the Complainant that the accident of her husband Dovee Yap on July 23, 2006 was the proximate cause of his illness and eventual death. It was not disputed that Yap, prior to his last deployment in July 2005, passed through the required pre-medical examination and was declared fit to work. In his ten years of employment with Respondents, there was no showing that he was afflicted with T.B. or any other illness as he passed all the required pre-medical examinations. We conclude, therefore, that the injury he sustained in the July 23, 2006 accident triggered his pulmonary illness and, therefore, his death should be compensable following the liberal

interpretation of the employment contracts that all doubts shall be resolved in favor of labor.^[14]

Upon denial by the NLRC of its Motion for Reconsideration, respondents appealed to the CA via Petition for *Certiorari* alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding the death benefits to petitioner. On June 6, 2011, the CA reversed the ruling of the NLRC in its Decision,^[15] the pertinent portions of which read:

In the instant case, it is undisputed that the death of Dovee Yap occurred when he was no longer in the employ of petitioners. His one-year contract of employment expired on 23 July 2006. Be that as it may, it can also be said that his employment ceased upon his repatriation to the Philippines on 17 August 2006. Consequently, when Dovee Yap died on 19 August 2007, more than a year had already lapsed from the expiration of his contract of employment; thus, it can no longer be said that Dovee Yap was an employee of petitioners. Accordingly, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers.

x x x x

x x x In this case, private respondent failed to adduce substantial evidence that the injury sustained by her deceased husband was the proximate cause of his death. x x x Verily, We find no causal connection between this illness and the accidental slip. Absent a post-medical examination or its equivalent to show that the disease of which Dovee Yap died was contracted during his employment or that his working conditions increased the risk of contracting the aforesaid ailment, the petitioners cannot be made liable for death compensation.

Aggrieved, petitioner filed a Motion for Reconsideration reiterating the argument that Dovee Yap can still be considered "in the employment of the company at the time of his death" pursuant to Article 26.3, in relation to Articles 22 and 23 of their Collective Bargaining Agreement (CBA),^[16] which provides:

26.3 For the purpose of this clause, a seafarer shall be regarded as "in the employment of the company" **for as long as the provisions of Articles 22 and 23 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated** in accordance with Article 19.1 b).

x x x x

Article 22: Medical Attention

22.1 A seafarer shall be entitled to immediate medical attention when required.

22.2 A seafarer who is hospitalized abroad owing to sickness or injury shall be entitled to medical attention (including hospitalization) at the Company's expense for as long as such attention is required or **until the seafarer is repatriated** to the port of engagement, **whichever is the earlier**.

22.3 A seafarer repatriated to their port of engagement, unfit as a result of sickness or injury, shall be entitled to medical attention (including hospitalization) at the Company's expense.

a. In the case of sickness, for up to 130 days after repatriation, subject to the submission of satisfactory medical reports.

b. In the case of injury, for as long as medical attention is required or until a medical determination is made in accordance with clause 25.2 concerning permanent disability.

22.4 Proof of continued entitlement to medical attention shall be by submission of satisfactory medical reports, endorsed.

Article 23: Sick Pay

23.1 When a seafarer is landed at any port because of sickness or injury payment of their basic wages shall continue **until they have been repatriated** at the Company's expense as specified in Article 20.

23.2 Thereafter the seafarers shall be entitled to sick pay at the rate equivalent to their basic wage while they remain sick up to a maximum of 130 days.

23.3 However, in the event of incapacity due to an accident the basic wages shall be paid until the injured seafarer has been cured or until a medical examination is made in accordance with clause 25.2 concerning permanent disability.

23.4 Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports, endorsed, where necessary, by a Company-appointed doctor. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on the parties.^[17]

The CA, however, rejected this view considering that Dovee Yap's death resulting from cancer of the lungs with metastasis to the spine and brain cannot be said to have been

directly attributable to his accident on the ship.^[18] In addition, the applicability of Articles 22 and 23 relating to medical attention and sick pay no longer applies since Dovee Yap had already been repatriated at the time of his death.^[19]

Hence, the present petition.

Petitioner invokes the following grounds to support its petition:

I.

THE COURT OF APPEALS COMMITTED BLATANT ERROR, GRAVE ABUSE OF DISCRETION AND ARBITRARINESS WHEN IT REVERSED THE DECISION AND FINDINGS OF FACT OF THE NATIONAL LABOR RELATIONS COMMISSION.

II.

THE COURT OF APPEALS COMMITTED BLATANT ERROR, GRAVE ABUSE OF DISCRETION AND ARBITRARINESS WHEN IT DISREGARDED THE CLEAR PROVISIONS OF DOVEE YAP'S COLLECTIVE BARGAINING AGREEMENT (CBA) WHICH CLEARLY PROVIDES THAT HIS DEATH IS COMPENSABLE AS IT IS DIRECTLY ATTRIBUTABLE TO THE INJURY THAT CAUSED HIS EMPLOYMENT TO BE TERMINATED.

III.

THE DECISION OF THE COURT OF APPEALS IS CONTRARY TO THE BENEVOLENT PROVISIONS OF DOVEE YAP'S CBA AND EVIDENCE ADDUCED ON RECORDS, CONSISTENT WITH RELEVANT JURISPRUDENCE PROMULGATED BY THIS HONORABLE COURT.

IV.

PETITIONER WILL SUFFER IRREPARABLE INJUSTICE IF THE DECISION OF THE COURT OF APPEALS WILL NOT BE RECTIFIED BY THIS HONORABLE COURT.

In essence, the issue to be resolved is whether or not the petitioner is entitled to compensation for the death of her husband, Dovee Yap.

We rule in the negative.

The terms and conditions of a seafarer's employment, including claims for death and disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein.^[20] For as long as the stipulations in the contract are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.

[21]

Paragraph 2 of the Contract of Employment between petitioner's husband and respondents states that the terms and conditions of Department of Labor and Employment (*DOLE*) Order No. 4, Series of 2000, as amended by Philippine Overseas Employment Administration (*POEA*) Memorandum Circular No. 9, Series of 2000, entitled the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels* (*POEA Standard Employment Contract*), shall be strictly and faithfully observed.[22] Said issuances provide a set of minimum requirements acceptable to the government for the employment of Filipino seafarers on board ocean-going vessels.[23]

Section 20 (A) of the *POEA Standard Employment Contract* provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In the case of **work-related death** of the seafarer **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x

4. The other liabilities of the employer when the seafarer dies **as a result of work-related injury or illness during the term of employment** are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advice (sic) for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippines currency equivalent to the amount of One Thousand

US dollars (US\$1,000) for burial expenses at the exchange rate prevailing during the time of payment.^[24]

Pursuant to the aforequoted provision, and a long line of jurisprudence^[25] explaining the same, in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract.

It is an oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right thereto by no less than substantial evidence.^[26] Substantial evidence is more than a mere scintilla. It must reach the level of relevant evidence as a reasonable mind might accept as sufficient to support a conclusion.^[27] The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.^[28] As such, the burden to prove entitlement to death benefits lies on the petitioner.^[29]

A perusal of the records would reveal that petitioner failed to prove by substantial evidence that the death of her husband occurred during the term of his employment contract and that the cause of death was work-related.

First, it is clear from the evidence presented that petitioner's husband did not pass away during the term of his employment. His contract of employment with respondents expired on July 23, 2006 whereas his death occurred more than a year thereafter or on August 19, 2007. As the CA noted, even if it is said that his employment ceased upon his repatriation to the Philippines on August 17, 2006, the fact remains that his death took place long after the expiration of his employment.^[30]

Second, petitioner failed to adduce proof that the death of Dovee Yap was work-related. We have consistently ruled that unless there is substantial evidence showing that: (a) the cause of the seaman's death was reasonably connected to his work; or (b) the sickness/ailment for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died, death compensation benefits cannot be awarded.^[31]

To substantiate her claim for death compensation, petitioner presented the accident report of the vessel's captain, the referral form of the Qatar Petroleum Medical Service Department indicating that an X-Ray was conducted on Dovee Yap, the medical report of the attending physician of Iloilo Medical Center containing an account of the tests conducted on him and their respective findings, the consultation report of the radiologist of Iloilo Doctor's Hospital showing the condition of Yap's spine, and his certificate of death, among others.^[32] These documents, however, exhibit nothing more than Dovee Yap's condition at the time the tests were conducted after his repatriation, the fact of his accidental slip on board the vessel and of his eventual death. Regrettably, explanations as to the causal correlation among them are lacking. While the evidence presented bear results of his "slightly enhancing hypointense

lesions, with vertebral body compression," "multiple mass lesions in the brain," and "squamous cell carcinoma of the lungs with metastasis to the spine and probably to the brain," there is no established link connecting Dovee Yap's accidental slip to the lung cancer and pneumonia that killed him. Without competent evaluation and interpretation by medical experts on how the findings actually relate to the facts surrounding the case, we cannot just automatically conclude that his death was a product of his accident on board the ship.

It may be recalled that Dovee Yap was brought to a hospital in Bahrain and was confined thereat for two (2) weeks. Had there been any indication during said confinement of his cancer of the lungs or pneumonia which caused his death, petitioner should have at least submitted a report thereof from the Bahrain hospital. Unfortunately, other than the accident report and referral form depicting illegible, handwritten statements, there is no other record or documentation which will show any symptom of Dovee Yap's illness during his employment on board the vessel. The pertinent medical reports submitted were issued after Yap had already disembarked from the vessel. Moreover, as the CA noted, Dovee Yap did not even submit himself to the mandatory post-employment medical examination within three (3) days from his arrival in the Philippines.^[33] Neither was there any indication that he was physically incapacitated to do so. To ignore this mandatory rule would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time.^[34] It is, therefore, difficult to say that Dovee Yap acquired or developed lung cancer or pneumonia as a result of his work in the vessel.

Neither can it be said that Dovee Yap's working conditions increased the risk of contracting the disease for which he died. We have ruled in the past that petitioner need not show a direct causal connection as positive propositions on employment factors like age, position, actual work, dietary provisions, exposure to substances, and possibility of recovery may suffice.^[35] We, however, find no evidence on record nor allegation in the pleadings showing how Dovee Yap's working conditions involved exposure to the risks of contracting cancer of the lungs or pneumonia.

In addition, while Dovee Yap's pneumonia may be listed as an occupational disease under Section 32-A of the POEA Standard Employment Contract,^[36] petitioner's failure to comply with its conditions bars the award of death compensation benefits. The pertinent provisions of said Contract provide:

SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted:

OCCUPATIONAL DISEASES

XXX XXX XXX

13. Pneumonia. All of the following conditions must be met:

- a. There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.
- b. There must be direct connection between the offending agent or event and the seafarer's illness.
- c. The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.
- d. The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration; and (4) physical signs of consolidation, with finerales.^[37]

As mentioned previously, apart from the accident report and referral form presented during the term of Yap's employment, petitioner submitted no other evidence to establish compliance with the requirements enumerated above. Thus, respondents cannot be held liable for death compensation on the basis of Section 32-A.

It must be further noted that the NLRC granted petitioner's claim for death compensation essentially because prior to his last deployment, Dovee Yap passed the required pre-employment medical examination and was declared fit to work.^[38] It ruled that "in his ten years of employment with respondents, there was no showing that he was afflicted with T.B. or any other illness as he passed all the required pre-employment medical examinations." On this premise, the NLRC concluded that the injury he sustained in the July 23, 2006 accident triggered his pulmonary illness.

We are not persuaded. The mere fact that Dovee Yap was declared fit to work in his

pre-medical examinations for the past ten (10) years of his employment does not necessarily follow that his pulmonary illness and cancer of the lungs was brought about by the accident he encountered. We have repeatedly ruled that the pre-employment medical examination is not exploratory in nature.^[39] It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. It merely determines whether one is "fit to work" at sea or "fit for sea service," and does not reveal the real state of health of an applicant. Thus, the "fit to work" declaration in Yap's pre-employment medical examination cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.^[40]

We are neither convinced by petitioner's argument that by virtue of Article 26.3 in relation to Articles 22 and 23 of the CBA, her husband may still be considered as "in the employment of the company." First of all, there is doubt as to whether the parties are actually covered under the CBA since, as respondents point out, not only is the same unsigned by the parties concerned, but petitioner did not present any proof to indicate Dovee Yap's membership in the particular union covered therein. Note that the maritime company identified in the CBA is not even the respondents but a certain "Interorient Navigation Company Ltd."^[41] Second, even assuming that the CBA is applicable in this case, Dovee Yap still cannot be considered as in the employment of the company. The provisions relied upon by petitioner require that the seafarer has not been repatriated or if so, that his death is directly attributable to the sickness or injury that caused him to be medically repatriated. But there is nothing in the records which will indicate that Dovee Yap was repatriated by reason of his illness. More importantly, as we have already discussed, there is no showing that Dovee Yap's death is directly attributable to the accident he encountered on the vessel.

While the accident may have led petitioner's husband to seek medical attention which resulted in the discovery of his pneumonia and cancer of the lungs, it cannot be hastily assumed that it was likewise the cause of his disease. Indeed, one's predisposition to develop cancer is affected not only by one's work, but also by many factors outside of one's working environment. In the absence of substantial evidence, Dovee Yap's accidental slip on board the vessel cannot be automatically believed to have increased his risk of contracting lung cancer.^[42]

Hence, while it is true that labor contracts are impressed with public interest and that the provisions of the POEA Standard Employment Contract must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.^[43]

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision and Resolution, dated June 6, 2011 and August 23, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 114417 are hereby **AFFIRMED**.

SO ORDERED.

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

September 4, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 13, 2014 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 September 4, 2014 at 2:15 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

* Designated Acting Member, per Special Order No. 1691 dated May 22, 2014.

[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr., concurring; Annex "A" to Petition, *rollo*, pp. 40-48.

[2] Annex "B" to Petition, *id.* at 49-52.

[3] Per Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Benedicto R. Palacol and Isabel G. Panganiban-Ortiguerra, concurring; CA *rollo*, pp. 44-56.

[4] *Id.* at 40-43.

[5] *Rollo*, pp. 41-42.

[6] CA *rollo*, p. 96.

[7] *Id.* at 99.

[8] Id.

[9] *Rollo*, p. 42.

[10] Id.

[11] Id.

[12] CA *rollo*, pp. 67-68.

[13] Id. at 44-56.

[14] Id. at 52-53.

[15] *Supra* note 1.

[16] CA *rollo*, pp. 45-47.

[17] Id. at 104-125. (Emphasis ours; citations omitted)

[18] *Rollo*, p. 51.

[19] Id.

[20] *Sy v. Philippine Transmarine Carriers, Inc.*, G.R. No. 191740, February 11, 2013, 690 SCRA 202, 210; *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 693.

[21] *Crew and Ship Management International, Inc. v. Soria*, G.R. No. 175491, December 10, 2012, 687 SCRA 491, 501, citing *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010, 621 SCRA 361, 369.

[22] CA *rollo*, p. 96.

[23] Department Order No. 4, series of 2000, as amended by Memorandum Circular No. 9, series of 2000.

[24] Id. (Emphasis ours)

[25] *Medline Management, Inc. v. Roslinda*, G.R. No. 168715, September 15, 2010, 630 SCRA 471, 480, citing *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, *supra* note 21, at 369; *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, 566 Phil. 579, 585 (2008), citing *Gau Sheng Phils., Inc. v. Joaquin*, 481 Phil. 222 (2004), and *Prudential Shipping and Management Corporation v. Sta. Rita*, 544 Phil. 94 (2007).

[26] *Wallem Maritime Services, Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 269, citing *Cootaoco, v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 545.

[27] *Sea Power Shipping Enterprises, Inc. v. Salazar*, G.R. No. 188595, August 28, 2013, 704 SCRA 233, 246.

[28] *Panganiban v. Tara Trading Shipmanagement, Inc.*, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 365-366.

[29] *Manota v. Avantgarde Shipping Corporation*, G.R. No. 179607, July 24, 2013, 702 SCRA 61, 71.

[30] *Rollo*, p. 45.

[31] *Spouses Aya-Ay, Sr. v. Arpaphil Shipping Corp.*, 516 Phil. 628, 639 (2006), citing *Gau Sheng Phils., Inc. v. Joaquin*, supra note 25, at 234.

[32] *CA rollo*, pp. 99-102.

[33] *Rollo*, p. 46.

[34] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 679.

[35] *Sea Power Shipping Enterprises, Inc. v. Salazar*, supra note 27, at 249, citing *Spouses Aya-ay, Sr. v. Arpaphil Shipping Corp.*, supra note 31, at 641.

[36] Department Order No. 4, series of 2000, as amended by Memorandum Circular No. 9, series of 2000.

[37] *Id.*

[38] *CA rollo*, pp. 44-56.

[39] *Magsaysay Maritime Corporation v. NLRC*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 378 and *Ortega v. Court of Appeals* 576 Phil. 601, 610 (2008), citing *NYK-FIL Ship Management, Inc. v. NLRC*, 534 Phil. 725, 739 (2006).

[40] *Id.*

[41] *CA rollo*, p. 118.

[42] *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer*

Anthony S. Allas, supra note 25, at 589.

[43] *Sy v. Philippine Transmarine Carriers, Inc.*, supra note 20, at 213, citing *Panganiban v. Tara Trading Shipmanagement, Inc.*, supra note 28, at 369.



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