747 Phil. 643

THIRD DIVISION

[G.R. No. 209202, November 19, 2014]

CATALINO B. BELMONTE, JR., PETITIONER, VS. C.F. SHARP CREW MANAGEMENT, INC.,/JUAN JOSE P. ROCHA AND JAMES FISHER (GUERNSEY) LTD., RESPONDENTS.

DECISION

REYES, J.:

Before this Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated April 29, 2013 and Resolution[3] dated September 18, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 124335, which nullified and set aside the Decision[4] dated January 24, 2012 and Resolution[5] dated February 23, 2012 of the National Labor Relations Commission (NLRC) Third Division in NLRC LAC No. 10-002672-11, and reinstated the Decision[6] dated August 25, 2011 of the Labor Arbiter (LA) dismissing the claim for disability benefits of petitioner Catalino B. Belmonte, Jr. (Belmonte).

The Facts

The case arose from a complaint for payment of disability benefits, medical expenses, with damages and attorney's fees, filed by Belmonte against respondents C.F. Sharp Crew Management, Inc., (CFSCMI), a Philippine manning agency, its President/General Manager, Juan Jose P. Rocha, and its foreign principal, James Fisher (Guernsey) Ltd. (respondents).

Belmonte entered into a six (6) months contract of employment with CFSCMI as A/B Cook on board the vessel M/T Summity, with a basic monthly salary of $698.00. After undergoing the required preemployment medical examination and being declared fit for sea duty, he was deployed on September 14, 2008.

Unfortunately, on December 12, 2008, Belmonte met an accident on board the vessel when he was used as a human mannequin during an emergency fire drill exercise. A metal ladder accidentally hit the right sternoclavicular part of his body from which he sustained an injury. On December 13, 2008, he was brought to a clinic in France where his x-ray result showed that he has a fracture at the right sternoclavicular bone.[7] As a result, on December 22, 2008, Belmonte was repatriated to the Philippines.

Upon his return, Belmonte was referred by the respondents to the company-designated physician, Dr. Antonio A. Pobre (Dr. Pobre), an Orthopaedic Surgeon, who issued an Initial Medical Report[8] dated December 23, 2008 assessing Belmonte's injury as

"Fracture, Non-Displaced, Sterno-Clavicular Junction, Right". In the Follow-Up Report[9] released on January 27, 2009, Dr. Pobre stated that Belmonte's fracture has fully healed, but he still advised the latter to undergo physical therapy at the right sternoclavicular for at least two weeks. By February 14, 2009, Belmonte had completed three physical therapy sessions.[10] Thus, in Dr. Pobre's Final Medical Report[11] dated February 17, 2009, Belmonte was declared "FIT TO WORK and [can] resume normal sea duties, effective immediately."

After almost two years from the time Belmonte was declared fit to work or on January 26, 2011, Belmonte instituted a complaint against the respondents before the LA for disability benefits, moral and exemplary damages, and attorney's fees. To support his claim, on March 14, 2011, Belmonte consulted a private doctor, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto), to evaluate and determine his health condition. On even date, Dr. Jacinto issued a medical certificate declaring Belmonte physically unfit to go back to work.[12]

On August 25, 2011, the LA rendered judgment dismissing the complaint for lack of merit. The LA held that the findings of the company-designated physician are more credible as compared to the findings of Belmonte's private doctor. The company-designated physician was the one who monitored the health condition of Belmonte for several months while the private doctor had examined him only once. The LA also observed that the medical certificate issued by the private doctor was lacking on the essential details, as well as the particular tests or examinations conducted to support his medical findings. Lastly, the LA held that the decision not to re-employ Belmonte, without any showing of malice, was well within the management prerogative of the respondents.

Aggrieved by the LA's decision, Belmonte filed his appeal[13] before the NLRC.

Based on the medical certificate of Belmonte's private doctor, the NLRC reversed and set aside the LA's ruling and granted Belmonte's disability compensation in the Decision dated January 24, 2012. According to the NLRC, the continued non-deployment of Belmonte despite the declaration of fit to work to resume normal sea duty of the company-designated physician is an implied admission of his permanent total disability from work, which was bolstered by the declaration made by his private doctor that he is "physically unfit to go back to work." The NLRC held that if CFSCMI found Belmonte fit to work, they would have reemployed him after he was medically deemed fit. However, CFSCMI have failed to re-hire him. The NLRC also awarded Belmonte, moral and exemplary damages, both in the amount of ?50,000.00, and attorney's fees equivalent to 10% of the total judgment award.

The respondents filed a Motion for Reconsideration,[14] but it was denied; hence, they filed a petition for *certiorari*[15] with the CA.

On April 29, 2013, the CA nullified and set aside the decision and resolution of the NLRC, and reinstated the LA's decision. The CA disregarded the private doctor's medical

findings and instead upheld the one made by the company-designated physician, to wit:

> Considering the amount of time and effort the company-designated physician gave to monitor and treat the condition of the private respondent for several months, his medical findings and evaluation are more worthy of credence than that of the independent physician who merely treated and examined private respondent once. The familiarity gained by the company-designated physician about the health condition of the private respondent, to us, made him able to arrive at a more accurate prognosis of the private respondent's injury as compared to the private physician who merely treated the private respondent once after the lapse of two (2) years from the date of his injury. Moreover, the company-designated physician in this case is an orthopedic surgeon. Therefore, he has the proper training and qualification to treat and evaluate the fracture sustained by the private respondent as compared to Dr. Manuel C. Jacinto, the independent physician, who seems to be a general practitioner with no specific field of specialization.[16]

The CA brushed aside Belmonte's argument that his non-deployment by CFSCMI after he has been declared fit to work is an indication that he has not been really cured of his injury. Whether to renew the contract of a seafarer is exclusively within the prerogative of the employer. The seafarer cannot force the employer to re-employ him as a matter of right just because he has already been extended a contract before. The CA also observed that in filing the complaint, Belmonte has no medical documents to back up his claim since it was still after almost two months from January 26, 2011 or on March 14, 2011 when Belmonte thought of consulting a private doctor to corroborate his claim that he is permanently incapacitated to resume sea duties. But while Belmonte claims that he continues to suffer from the symptoms of his injury, the records are bereft of any documentary evidence that would prove that such was his condition before the filing of the complaint.

Upset by the foregoing disquisition, Belmonte moved for reconsideration but it was denied; hence, the present petition for review on *certiorari*.

The Issue

The core issue for our resolution is whether or not the CA erred in reinstating the findings of the LA that Belmonte is not entitled to receive permanent total disability benefits.

Ruling of the Court

The petition is bereft of merit.

The question of Belmonte's entitlement to permanent total disability benefits, while basically a question of law apposite for a Rule 45 review, nevertheless hinges for its resolution on a factual issue, the question of whether the medical findings of the private doctor should be given more weight than the findings of the company-designated physician. Moreover, the inconsistent rulings of the LA and the CA, on the

one hand, and of the NLRC, on the other, in the present petition, makes this case fall within the ambit of the Court's review.[17]

This Court notes that the issue posited in this case is not novel since a catena of cases involving the question of whose disability assessment should prevail in a maritime disability claim – the fit-to-work assessment of the company-designated physician or the unfit-to-work certification of the seafarer's private doctors – has already come before the Court.

In the main, the crux of Belmonte's argument focuses only on the assumption that just because he has not been re-hired by CFSCMI, he is deemed to be permanently unfit for sea duty. He asserted that the CA erred in failing to give evidentiary value to the medical report of his private doctor, arguing that the provisions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and the numerous rulings of the Court have established that the determination of the disability of a seafarer is not limited to the findings of the company-designated physician.

"The entitlement of a seafarer on overseas employment to disability benefits is governed by the medical findings, by law and by the parties' contract."[18] Section 20-B[19] of the POEA-SEC laid out the procedure to be followed in assessing the seafarer's disability in addition to specifying the employer's liabilities on account of such injury or illness. The same provision also provides that the seafarer is not irrevocably bound by the findings of the company-designated physician as he is allowed to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's private physician, the parties shall jointly agree to refer the matter to a third doctor whose findings shall be final and binding on both.[20]

A review of the records of this case shows that the pertinent provisions of the parties' Collective Bargaining Agreement[21] are similar to those found in the 2000 POEA-SEC, that it is the finding of the company-designated physician which is controlling. If the doctor appointed by the seafarer disagrees with the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's finding shall be final and binding on both parties.[22] Apparently, this procedure was not availed of by Belmonte.

As can be recalled, upon Belmonte's repatriation on December 22, 2008, he was immediately examined by the company-designated physician on December 23, 2008. From then on, Belmonte was continuously checked up by the company-designated physician, and has also undergone physical therapy sessions. Indeed, Belmonte had been under examination and treatment with the necessary medical procedures by the company specialists. Clearly, the respondents attended to his health condition and shouldered his medical expenses, professional fees and costs of his therapy sessions. Thus, after two months of treatment from the date of repatriation, Belmonte was declared fit to return to work on February 17, 2009 by the company-designated physician.

Equally significant is the fact that almost two years had lapsed before Belmonte decided to challenge the assessment of the company-designated physician and filed a complaint before the LA. Then, on March 14, 2011, he sought the opinion of a private doctor who issued the following assessment: "He is physically unfit to go back to work". This Court notes, however, that Belmonte did so only two months after he had already filed his complaint with the LA. Thus, Belmonte, in fact, had no ground for a disability claim at the time he filed his complaint, since he did not have any sufficient evidentiary basis to support his allegation.

Indeed, Belmonte filed a claim for disability benefit without any basis since he waited for another two months from the filing of the complaint before he consulted a private doctor who issued a certification that he is physically unfit to go back to work. His private doctor's medical certification was issued after two years and one month from the company-designated physician's declaration of fit to work. Unfortunately, apart from the reasons already stated, this certification could not be given any credence as Belmonte's health condition could have changed during the interim period due to different factors. As such, the said medical certification cannot effectively negate the fit to work assessment earlier made as there would be no basis for comparison at all.

More than this, the disagreement between the findings of the company-designated physician and Belmonte's private doctor was never referred to a third doctor chosen by both CFSCMI and Belmonte, following the procedure spelled out in Section 20(B), paragraph 3 of the POEA-SEC. Had this been done, Belmonte's medical condition could have been easily clarified and finally determined.

Evidently, the medical certificate of the company-designated physician was issued after almost three months of closely monitoring Belmonte's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to Belmonte while in consultation with a physical therapist. The extensive medical attention that the company-designated physician gave to Belmonte enabled him to acquire a more accurate diagnosis of Belmonte's medical condition and fitness for work resumption compared to Belmonte's private doctor who was not privy to his case from the beginning.

Belmonte cannot likewise insist that the favorable report of his private doctor be preferred over the certification of the company-designated physician, especially if the Court were to consider that the private doctor he consulted examined him for only a day or on March 14, 2011. Clearly, Belmonte's private doctor did not have the chance to closely monitor his injury. Furthermore, the private doctor's evaluation of Belmonte's injury was uncorroborated by any proof or basis as there was no justification for such assessment that was provided for in the medical certificate he issued. Besides, the private doctor merely relied on the same medical history, diagnosis and analysis provided by the company-designated physician.

Thus, in the absence of adequate diagnostic tests and procedures and reasonable findings to support the assessments of Belmonte's private doctor, his certification on Belmonte's alleged disability simply cannot be taken at face value, particularly in light of the overwhelming evidence supporting the findings of the company-designated

physician. The burden of proof rested on Belmonte to establish, by substantial evidence, his entitlement to disability benefits.[23] Sadly, Belmonte failed to discharge this burden.

Considering the absence of findings coming from a third doctor, the Court upholds the findings of the CA and holds that the certification of the company-designated physician should prevail. The Court does so for the following reasons: *first*, the records show that Belmonte only consulted the private physician after his complaint with the LA has been filed; *second*, the medical certificate was issued after a one-day consultation; and *third*, the medical certification was not supported by particular tests or medical procedures conducted on Belmonte that would sufficiently controvert the positive results of those administered to him by the company-designated physician.

Lastly, the Court finds Belmonte's assertion, that his non-hiring by the CFSCMI was the most convincing proof of his disability, without basis. It was not a matter of course for CFSCMI to re-hire him after the expiration of his contract. There is also no evidence on record showing that Belmonte sought reemployment with other manning agencies, but was turned down due to his illness.

"A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor."[24] Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, awards for compensation cannot be made to rest on mere speculations and presumptions.[25]

Guided by the foregoing considerations, the Court finds that the CA correctly granted the respondents' petition for certiorari since the NLRC's findings and conclusions are tainted with grave abuse of discretion considering that Belmonte's claim for disability benefits was unsupported by substantial evidence. Thus, the Court rules that Belmonte is not entitled to receive permanent total disability benefits.

WHEREFORE, the petition is **DENIED**. The Decision dated April 29, 2013 and Resolution dated September 18, 2013 of the Court of Appeals in CA-G.R. SP No. 124335 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr., and *Jardeleza, JJ.*, concur.

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[1] *Rollo*, pp. 29-73.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring; id. at 10-19.

[3] Id. at 21-22.

[4] Penned by Presiding Commissioner Alex A. Lopez, with Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr., concurring; id. at 337-349.

[5] Id. at 409-410.

[6] Issued by Labor Arbiter Michelle P. Pagtalunan; id. at 541-547.

[7] Id. at 340.

[8] Id. at 473-474.

[9] Id. at 475.

[10] Id. at 476.

[11] Id. at 477.

[12] Id. at 35.

[13] Id. at 290-315.

[14] Id. at 350-364.

[15] Id. at 366-390.

[16] Id. at 15-16.

[17] *Lopez Sugar Corp. v. Franco*, 497 Phil. 806, 817 (2005).

[18] *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467, 482.

[19] SEC. 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

x 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 as 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 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.

[20] *Rollo*, p. 16.

[21] Id. at 129-159.

[22] Id. at 144.

Section 20.1.3. – COMPENSATION FOR DISABILITY

20.1.3.1 A Seafarer who suffers permanent disability as a result of work related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving on board, including accidents and work related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work related illness, reference shall be made to the Philippine Employees Compensation Law and/or Social Security law.

20.1.3.2 The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer.

[23] Supra note 17, at 818.

[24] *Millan v. Wallem Maritime Services, Inc.*, G.R. No. 195168, November 12, 2012, 685 SCRA 225, 231.

[25] *Vetyard Terminals & Shipping Services, Inc./Miguel S. Perez, Seafix, Inc. v. Bernardino D. Suarez*, G.R. No. 199344, March 5, 2014.
