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SECOND DIVISION

[G.R. No. 195832, October 01, 2014]

FORMERLY INC SHIPMANAGEMENT, INCORPORATED (NOW INC NAVIGATION CO. PHILIPPINES, INC.), REYNALDO M. RAMIREZ AND/OR INTERORIENT NAVIGATION CO., LTD./LIMASSOL, CYPRUS, PETITIONERS, VS. BENJAMIN I. ROSALES, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the appeal of the decision[1] dated December 6, 2010 and the resolution dated February 24, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 107271. The appealed decision reversed the resolution dated November 21, 2008 of the National Labor Relations Commission (*NLRC*), and reinstated the June 26, 2007 decision of the Labor Arbiter (*LA*) finding Benjamin Rosales (*Rosales*) entitled to Grade 1 disability benefits.

The Antecedent Facts

On October 12, 2005, INC Shipmanagement Incorporated (*INC*, now known as INC Navigation Co., Philippines, Inc.), in behalf of its foreign principal (Interorient Shipping Co., Ltd.) hired Rosales for a period of ten (10) months as Chief Cook for the vessel *M/V Franklin Strait.* Their contract was pursuant to the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). Rosales was to receive a monthly salary of Five Hundred Fifty United States dollars (US$550.00). His primary function was to prepare, cook, and process food for the ship's officers and crew with the corresponding responsibility of maintaining the general cleanliness of the working area.[2]

Sometime in February 2006, while on board the vessel, Rosales experienced severe chest pain and breathing difficulties, coupled with numbness on his left arm. On February 13, 2006, a physician at Mount Sinai Medical Center in Miami, Florida, USA examined him. He underwent a coronary angiogram and also an angioplasty in the left anterior artery of his heart. All these were provided by the company at its own expense. Rosales was thereafter declared unfit to work and was advised to continue treatment in his home country.[3]

On February 20, 2006, after repatriation to the Philippines, Rosales was confined at the Manila Medical Center where the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz) examined him. Rosales was diagnosed to be suffering from acute myocardial infarction secondary to coronary artery disease, hypertension and diabetes

mellitus.[4]

On April 7, 2006, Rosales consulted Dr. Paterno Dizon, Jr. (Dr. Dizon), an interventional cardiologist at the Cardinal Santos Medical Center, who certified that he was suffering from coronary artery disease and severe stenosis in his heart. Consequently, he underwent a Coronary Artery By-Pass Graft Surgery at the Philippine Heart Center.[5]

On October 10, 2006, Dr. Cruz gave Rosales a partial permanent disability assessment equivalent to **Grade 7 (moderate residuals of disorder)** under the POEA-SEC. The assessment took into account the marked improvement of his condition.[6]

On November 9, 2006, Rosales sought the medical advice of Dr. Efren R. Vicaldo (*Dr. Vicaldo*), a cardiologist at the Philippine Heart Center for a second opinion. Dr. Vicaldo found him still suffering from hypertensive cardiovascular and coronary artery diseases in his heart. He assessed Rosales to be unfit to work as a seaman in any capacity and considered his illness to be work-related. He thus gave Rosales a permanent total disability rating of Grade 1 under the POEA-SEC.[7]

On the strength of Dr. Vicaldo's more favorable finding, Rosales claimed permanent total disability benefits from INC. The company denied the claim. Following the denial, Rosales filed a complaint[8] on December 7, 2006 for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against INC before the Arbitration Branch of the NLRC.[9]

Rosales asserted that he is entitled to permanent total disability benefits under the POEA-SEC based on Dr. Vicaldo's Grade 1 disability rating; that this assessment is based on the finding that his illness was acquired in the performance of his duties, and that his illness rendered him unfit for sea duties. Rosales further stated that he was incapacitated to work for more than one hundred twenty (120) days. He also questioned Dr. Cruz's competency since Dr. Cruz did not actually perform the medical procedures, but based it only on the report of Dr. Dizon. Moreover, Rosales argued that Dr. Cruz is not a cardiologist but a general and cancer surgeon and who could not render an impartial assessment since he was a company-designated physician.[10]

For its part, INC emphasized that Dr. Cruz only gave a Grade 7 disability rating based on his post-treatment evaluation of Rosales; that under the POEA-SEC, it is the company-designated physician who is tasked to assess the fitness of a seafarer and to give the corresponding disability benefits rating. INC also pointed out that the award of disability benefits is not dependent on the impairment of the seafarer's earning capacity but on the gravity of the injury he had sustained.

The Compulsory Arbitration Decisions

In his decision of June 26, 2007,[11] the LA found the complaint meritorious and ordered INC to pay Rosales Sixty Thousand United Stated dollars (US$60,000.00) as **permanent total disability** benefits, plus three percent (3%) of this amount as attorney's fees.

The LA noted that Rosales is entitled to Grade 1 disability benefits because his illness prevented him from working for more than one hundred twenty (120) days reckoned from the time he was repatriated in February 2006 until his disability rating was issued in October 2006.

INC appealed the ruling to the NLRC. The latter, in its resolution of January 4, 2008, affirmed the LA's decision. The NLRC, however, subsequently reversed its ruling.[12] It opined in this reversal that Rosales should only be entitled to a partial disability benefit amounting to Twenty Thousand United States dollars (US$20,900.00) in accordance with Dr. Cruz' assessment.

The NLRC reasoned out that Dr. Cruz' assessment should prevail over Dr. Vicaldo's finding because Dr. Cruz, as the company-designated doctor, had thoroughly examined and had overseen the treatment of Rosales from the time of repatriation until the date of the issuance of his disability grading, while Dr. Vicaldo only attended to Rosales once on November 9, 2006.

Rosales challenged the NLRC ruling by filing with the CA a petition for certiorari under Rule 65 of the Rules of Court. He contended that the NLRC gravely abused its discretion in upholding the assessment of the company-designated physician and in finding that he is not entitled to full disability benefits.

The Assailed CA Decision

The CA granted the petition in its decision of December 6, 2010,[13] thereby reinstating the LA's decision finding Rosales entitled to permanent total disability benefits. The appellate court found that from the time Rosales was repatriated until the disability grading was issued, a period of eight (8) months or more than one hundred twenty (120) days, had lapsed and Rosales had not been able to work during this period. The CA also considered that despite medical treatment, Dr. Cruz still found that Rosales' illness persisted; that this declaration, coupled with Rosales' two (2) major heart operations, should be more than sufficient to conclude that he could no longer perform his duties as Chief Cook. For this reason, Rosales' earning capacity was grossly impaired, warranting the award of Grade 1 permanent total disability benefits.

INC moved for reconsideration, but the CA denied the motion in its resolution of February 24, 2011;[14] hence, the petition.

The Issues

INC raises the following assignment of errors:

I.

WHETHER OR NOT ROSALES IS ENTITLED TO FULL DISABILITY COMPENSATION BENEFITS BECAUSE HE WAS UNABLE TO WORK FOR ONE

HUNDRED TWENTY (120) DAYS.

II.

WHETHER THE CA ERRED IN FINDING GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC IN FAVORING THE FINDINGS OF ROSALES' PHYSICIANS OVER THAT OF THE COMPANY-DESIGNATED PHYSICIAN.

INC primarily argues that the CA erred in finding that there had been grave abuse of discretion in the ruling of the NLRC; that (1) the disability is measured in terms of gradings, not by the number of days of actual inability to work; and (2) in a conflict of findings between the company-designated physician and the private physician, it is the company-designated physician's findings that should prevail.

The Court's Ruling

We find the petition meritorious. The CA gravely abused its discretion when it totally disregarded the governing contract between the parties – a situation that this Court cannot disregard without risking instability in maritime labor relations involving Filipino seamen.

It is the doctor's findings which should prevail over the simple lapse of the 120-day period

Article 192(c)(1) of the Labor Code provides that:

x x x x

(c) The following disabilities shall be deemed **total and permanent**:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules[.]** [Emphasis ours]

This provision should be read in relation with Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code [Amended Rules on Employees' Compensation Commission],[15] and with Section 20(B)(3) of the POEA-SEC.[16] We had the occasion to explain the interplay of these provisions in *Vergara v. Hammonia Maritime Services, Inc., et al.,*[17] under these terms:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period

> until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time if such declaration is justified by his medical condition. [Emphasis supplied]

The law and this pronouncement make it clear that INC is obligated to pay for the ***treatment*** of Rosales, plus his ***basic wage***, during the 120-day period from repatriation while he is undergoing treatment; he could not work during this period and hence was on ***temporary total*** disability.

Permanent disability transpires when the ***inability to work continues beyond one hundred twenty (120) days***, regardless of whether or not he loses the use of any part of his body. In comparison with the concept of permanent disability, ***total disability*** means the ***incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do***. It does not mean absolute helplessness.

In disability compensation, it is not the injury that is compensated; it is the incapacity to work resulting in the impairment of one's earning capacity.[18]

Thus, while Rosales was entitled to ***temporary total disability benefits*** during his treatment period (because he could not totally work during this whole period), it does not follow that he should likewise be entitled to **permanent total disability** benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to be have **permanent disability** because of ***the period he was out of work and could not work*** [in this case, more than one hundred twenty (120) days], but the extent of his disability (***whether total or partial***) is determined, not by the number of days that he could not work, but by the ***disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages.***

It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14.[19] Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.

In light of these distinctions, to confuse the concepts of **permanent** and **total** disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous

to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits.

Non-referral to a third physician, whose decision shall be considered as final and binding, constitutes a breach of the POEA-SEC

After establishing the importance of the physician's assessment of disability claims, the present case should have already been resolved had it not been for the conflicting findings of Dr. Cruz and Dr. Vicaldo.

In the settlement of this conflict, we need not provide a lengthy discussion as we have resolved this matter in *Philippine Hammonia Ship Agency, Inc. v. Dumadag*,[20] citing Section 20(B)(3) of the POEA-SEC:

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor **may be agreed jointly** between the [e]mployer and the seafarer. **The third doctor's decision shall be final and binding on both parties**. (Emphasis ours)

This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia*,[21] *Ayungo v. Beamko Shipmanagement Corp*.,[22] *Santiago v. Pacbasin Shipmanagement, Inc.*,[23] *Andrada v. Agemar Manning Agency*,[24] and *Masangkay v. Trans-Global Maritime Agency, Inc*.[25] Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.

Since Rosales signed the POEA-SEC, he bound himself to abide by its conditions throughout his employment. The records show that after obtaining a medical certificate from Dr. Vicaldo classifying his illness as Grade 1 (contrary to Dr. Cruz' Grade 7 assessment that the company insisted on), Rosales immediately proceeded to secure the services of a counsel and forthwith filed a complaint for disability benefits.[26]

By so acting, Rosales proceeded in a manner contrary to the terms of his contract with INC in challenging the company doctor's assessment; he failed to signify his intent to submit the disputed assessment to a third doctor and to wait for arrangements for the referral of the conflicting assessments of his disability to a third doctor.

Significantly, no explanation or reason was ever given for the omission to comply with this mandatory requirement; no indication whatsoever is on record that an earnest

effort to secure compliance with the law was made; Rosales immediately filed his complaint with the LA. As we recently ruled in *Bahia Shipping Services, Inc., et al. v. Crisante C. Constantino,*[27] when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision.

To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. In *Bahia*, we said:

> In the absence of any request from him (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.
>
> In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr. Lim's assessment of Constantino's health should stand.[28] Thus, the CA's conclusion that Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.

Thus, as matters stand in the present case, the complaint was premature; it should have been dismissed as early as the LA's level since the fit-to-work certification and grading by the company-designated physician prevails unless a third party doctor, sought by the parties, declares otherwise.

Significantly, no reason was ever given why the LA and the NLRC both disregarded the third-doctor provision under the POEA-SEC. For similarly ruling, the CA fell into the same error. [29]

Once again, it appears to us, that the third-doctor-referral provision of the POEA-SEC, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims at the parties' level where the claims can be resolved more speedily than if they were to be brought to court.[30]

Even granting that the complaint should be given due course, we hold that the company-designated physician's assessment should prevail over that of the private physician. ***The company-designated physician had thoroughly examined and treated Rosales from the time of his repatriation until his disability grading was issued, which was from February 20, 2006 until October 10, 2006. In contrast, the private physician only attended to Rosales once, on November 9, 2006***.[31] ***This is not the first time that this Court met this situation.*** Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.

We are thus compelled to dismiss the present complaint, as we had similarly done in *Philippine Hammonia,*[32] to impress upon the public the significance of a binding obligation. This pronouncement shall not only speed up the processing of maritime disability claims and decongest court dockets; more importantly, our ruling would restore faith and confidence in obligations that have voluntarily been entered upon. As an institution tasked to uphold and respect the law, it is our primary duty to ensure faithful compliance with the law whether the dispute affects strictly private interests or one imbued with public interest. We shall not hesitate to dismiss a petition wrongfully filed, or to hold any persons liable for its malicious initiation.

WHEREFORE, premises considered, we hereby **GRANT** the petition and **SET ASIDE** the assailed decision and resolution of the Court of Appeals. The complaint is hereby **DISMISSED.**

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and *Leonen, JJ.*, concur.

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[1] Through a petition for review on *certiorari* under Rule 45 of the Rules of Court, *rollo*, pp. 33-53. The appealed decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ramon R. Garcia, *rollo,* pp. 15-28.

[2] *Rollo*, p. 62.

[3] Id. at 62-63.

[4] Id. at 63.

[5] Id.

[6] Id.

[7] Id.

[8] CA *rollo*, pp. 44-45.

[9] Docketed as NLRC NCR Case No. (M) 06-12-03720-00.0

[10] *Rollo,* p. 64.

[11] CA *rollo*, pp. 122-135.

[12] Resolution of April 22, 2008; id. at 175-181.

[13] *Rollo,* pp. 61-74.

[14] Id. at 76-77.

[15] Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case ***benefit for temporary total disability*** shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Emphasis ours]

[16] 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.

[17] 588 Phil. 895, 912 (2008).

[18] *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 340-341 (2005).

[19] Under Section 32 of the POEA-SEC, only injuries or disabilities classified as **Grade 1** may be considered as ***total and permanent***.

[20] G.R. No. 194362, June 26, 2013, 700 SCRA 53, 64.

[21] Id.

[22] G.R. No. 203161, February 26, 2014.

[23] G.R. No. 194677, April 18, 2012, 670 SCRA 271.

[24] G.R. No. 194758, October 24, 2012, 684 SCRA 587.

[25] G.R. No. 172800, October 17, 2008, 569 SCRA 592.

[26] *Rollo*, p. 97.

[27] G.R. No. 180343, July 9, 2014.

[28] *Supra* note 23.

[29] *Supra* note 20.

[30] Id.

[31] *Rollo,* p. 63.

[32] *Supra* note 20.
