767 Phil. 750

THIRD DIVISION

[G.R. No. 170706, August 26, 2015]

PRUDENCIO CARANTO, PETITIONER, VS. BERGESEN D.Y. PHILS. AND/OR BERGESEN D.Y. A.S.A., RESPONDENTS,

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* assailing the Decision[1] dated September 9, 2005 of the Court of Appeals issued inCA- G.R. SP No. 87979 which reversed the Resolution[2] dated August 31, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. (M) 00-09-1459-00. Also assailed is theCA Resolution[3] dated December 9, 2005 denying reconsideration thereof.

On October 21, 1999, petitioner was hired by respondent Bergesen D. Y. Phils., Inc., the local manning agent of respondent Bergesen D. Y. ASA, as Chief Steward/Cook aboard its vessel "M/V Berge Hus", for a period of 9 months with a salary of US$877.00 per month.[4] Petitioner had previouslyentered into 3 separate contracts of employment with respondents. Petitiorter is a member of the Associated Marine Officers' and Seamen's Union pCthe Philippines (AMOSUP) which has a Collective Bargaining (CBA) with respondent foreign principal, represented by respondent local manning agent.[5] Petitioner underwent a pre-employment medical examination (PEME) before he was deployed for overseas employment. His PEME indicated that he was fit for sea service but with a notation "Class B diabetes mellitus controlled with medications".[6] Petitioner embarked on respondents' vessel and left the Philippines on December 11, 1999.

On December 18, 1999, while on board the vessel, petitioner felt a severe headache accompanied by fever and dizziness. Despite the medication given him by the Chief Mate, his condition did not improve. He was examined by a medical doctor from Jivan Deep Hospital and Polyclinic in Jamnagar, India, who diagnosed him to be suffering; from diabetes mellitus and hypertension.[7] He was then signed off from the vessel and repatriated to the Philippines on December 25, 1999 for further medical treatment.

On January 3, 2000, petitioner was referred to Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician, from Medical Center Manila. Dr. Cruz had seen petitioner seven times[8] wherein he instructed the latter to undergo laboratory examinations. He had issued reports[9] on different dates indicating the laboratory results and the prescribed medications as well as petitioner's physical condition. During petitioner's visit on April 7, 2000, Dr. Cruz found that petitioner was not suffering from

body weakness, the repeat FBS was normal and his blood pressure was 130/70 which was normal Petitioner was then diagnosed with controlled hypertension and diabetus mellitus, and was declared fit to work on April 7, 2000.[10]

While Dr. Cruz declared petitioner fit to work on April 7, 2000, respondents still granted the request of petitioner's counsel for another medical opinion. Thus, in a fax transmission[11] dated June 22, 2000 sent to petitioner's counsel, respondents required petitioner to see Dr. Natalia G. Alegre (Dr. Alegre) of St. Luke's Hospital for a second medical opinion. Petitioner went to see Dr. Alegre only on August 31, 2000 wherein he was directed to undergo laboratory examinations. On September 7, 2000, Dr. Alegre issued a Medical Report[12] as follows:

> The chest x-ray of Mr. Prudencio Caranto showed the heart not enlarged. The FBS was elevated at 236 mg/dl (normal Value: 70-110). The creatinine (kidney function test) was normal but the urinalysis showed +2 glucose. The Glycohemoglobin test (HbAIC) was normal. The 2D Echo revealed concentric left ventricular hypertrophy with adequate wall motion and contractility but with diastolic dyskinesia.
>
> Patient then has complications involving the heart and the eyes (Gr. I-II hypertensive retinopathy). He belongs to medium to high risk category group that in 20-30% in 10 years will develop severe complications (heart attack, heart failure). These target organ damage, eyes and heart, were brought about by non-compliance in the intake of medications (financial reasons?). Proper control could not be attained because of the above reason. Our Cardiologist feels that the hypertension and diabetes could be brought under control with diet, exercise and medications given an approximate time.
>
> Diagnosis: Hypertensive Cardiovascular Disease, Poorly Controlled Non--Insulin Dependent Diabetes Mellitus, Poorly Controlled.
>
> Mr. Caranto at this time is not fit for work as opined by our Cardiologist based on the above diagnoses and may be given a disability of Gr. 12 (slight residuals of disorder of the intra-thoracic organ [heart] and intra abdominal organ [pancreas-diabetes]) under the heading Abdomen #5.[13]

Respondents offered petitioner the amount of US$5,225.00 as disability compensation in accordance with his disability grading but petitioner rejected the offer.

It appears that on May 18, 2000, petitioner had consulted a private physician, Dr. Efren R. Vicaldo (Dr. Vicaldo), who diagnosed him to have Essential Hypertension, Diabetes Mellitus, non-insulin dependent and found his condition to be a partial permanent disability with an impediment Grade V (58.96%). His justification for Impediment Grade V were as follows:

> -Patient has both hypertension (uncontrolled) and diabetes mellitus
> -His being male and age 51 put him at risk for complications of both elevated BP and blood sugar (diabetes)
> -These complications commonly involve the heart, the brain and the kidneys, although at present he does not have obvious clinical manifestations of such, in the very near future any of these target organs may fail.
> -His HPN and DM necessitates lifetime maintenance medicines.
> Gainful employment is hard to get when one is diabetic and hypertensive. [14]

Petitioner filed with the Labor Arbiter (LA) a complaint against respondents seeking disability benefits, sickness allowance or reimbursement of medical expenses, damages and attorney's fees.

Petitioner filed a Motion[15] praying for the issuance of an order to submit himself to the Employees Compensation Commission for medical re evaluation, as the parties' respective physicians had different assessments. Respondents filed their Opposition thereto. In an Order[16] dated May 25, 2001, the LA denied the motion and directed the parties to file their position papers with supporting evidence.

On January 30, 2003, the LA rendered a decision,[17] the dispositive portion of which reads:

> WHEREFORE, premises duly considered, judgment is hereby entered ordering herein respondents Bergensen D.Y. Philippines, Inc. and Bergensen D.Y. ASA jointly and severally to pay complainant Prudencio Caranto:
>
> 1. To pay the sum of US$60,000.00 as permanent medical unfitness benefits under the pertinent provisions of the CBA (TCCC) of herein parties; and
>
> 2. To pay further the sum often percent (10%) of the total award due to the complainant as attorney's fees.
>
> All other claims are dismissed for lack of basis.
>
> SO ORDERED.[18]

The LA found that petitioner had already been compensated of his sickness allowance in the total amount of US$3,299.57. He, however, found that from the time petitioner had been signed off from the vessel on December 25, 1999 for medical treatment up to April 7, 2000, when Dr. Cruz declared the latter fit to work, more than 120 days had elapsed which entitled petitioner to either a permanent partial or total disability compensation, pursuant to Section 20B (5) of the Philippine Overseas Employment Contract (POEA) contract. The LA upheld the medical assessment made by Dr. Vicaldo

over that of Dr. Alegre's saying that the latter's certification was self-serving being a company-designated physician whose opinion was biased in favor of the company, hence, petitioner is entitled to a permanent partial disability benefits equivalent to Grade V (58.96%), or the amount of $29,480.00. However, under the parties' CBA, petitioner is entitled to a permanent medical unfitness of US$60,000.00.

Respondents appealed to the NLRC. Petitioner filed his Comment thereto.

On August 31, 2004, the NLRC affirmed *in toto* the decision of the LA.

Respondents' motion for reconsideration was dismissed for Jack of merit in a Reso1ution[19] dated November 22, 2004.

Dissatisfied, respondents filed a petition with the CA. After the parties' filing of their respective pleadings, the case was submitted for decision.

On September 9, 2005, the CA issued its assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Resolutions dated August 31, 2004 and November 22, 2004 of the National Labor Relations Commission in NLRC CA No. 035491-03 (NLRC NCR Case No. [M] 00-09-1459-00) are hereby REVERSED and SET ASIDE. A new judgment is hereby entered ORDERING the petitioners Bergesen D.Y. Phils. Inc. and/or Bergesen D.Y. ASA to pay private respondent Prudencio Caranto permanent disability benefits in accordance with the Schedule of Compensation under Section 30 of the POEA Standard Employment Contract on the basis of disability assessment Grade 12 (slight residual of the intra-thoracic organ and intra abdominal organ) of the company-designated physician Dr. Natalia G. Alegre in the amount of US$5,225.00 or its equivalent in Philippine Currency. In addition, private respondent is entitled to attorney's fees equivalent to ten percent (10%) of the total award.[20]

In so ruling, the CA found, among others, that there was no substantial evidence to support the NLRC's finding that Dr. Vicaldo's medical finding and disability assessment were reliable and satisfactory compared to that of Dr. Alegre's. It also ruled that the NLRC erred in finding that petitioner is entitled to a higher disability compensation benefit granted under the parties' CBA provision on medical unfitness on the basis of Dr. Vicaldo's disability grade of 58.96%.

Petitioner's motion for reconsideration was denied m a Resolution dated December 9, 2005.

Dissatisfied, petitioner filed the instant petition for review on *certiorari* anchored on the following errors:

I

THE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE JUDGMENT OF BOTH THE LABOR ARBITER A QUO AND THE NLRC FINDING PETITIONER TO BE ENTITLED, AMONG OTHERS, TO DISABILITY BENEFITS IN THE AMOUNT OF US$60,000.00 UNDER THE PERTINENT PROVISIONS OF THE CBA.

II

THE COURT OF APPEALS ERRED IN DISREGARDING THE FINDINGS OF THE PETITIONER'S INDEPENDENT PHYSICIAN AND IN UPHOLDING INSTEAD THE OPINION OF THE RESPONDENTS' "OTHER COMPANY-DESIGNATED PHYSICIAN."

III

IN ANY EVENT AND EVEN IF THE OPINION OF THE COMPANY DESIGNATED PHYSICIAN WAS CORRECTLY UPHELD BY THE COURT OF APPEALS, STILL, PETITIONER'S DISABILITY SHOULD BE CONSIDERED AS TOTAL AND PERMANENT IN ACCORDANCE WITH THE RULING OF THE HONORABLE COURT IN THE RECENT CASE OF CRYSTAL SHIPPING INC., A/S STEIN LINE BERGEN VS. DEO P. NATIVIDAD, G.R. NO. 154798, OCTOBER 20, 2005.[21]

Petitioner assails the CA's finding which gave credence to the disability grading on petitioner's sickness accorded by Dr. Alegre, the company-designated physician, over that of Dr. Vicaldo's, petitioner's private physician, which involves a factual inquiry. Elementary is the principle that we are not a trier of facts; only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the Court of Appeals.[22] Questions of fact are not entertained.[23] And in labor cases, this doctrine applies with greater force.[24] Factual questions are for labor tribunals to resolve.[25] However, since the findings of the LA and the NLRC, on one hand, and the Court of Appeals, on the other, are conflicting, we have to resolve the factual issues in this case together with the legal Issues.

When the parties entered into a contract of overseas employment on October 21, 1999, the provisions of the Philippine Overseas Employment Authority Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board the Ocean-Going Vessels is deemed written in his contract of employment. And these provisions are those prescribed in POEA Memorandum Circular No. 055-96 and DOLE Department Order No. 33, series of 1996.

Section 20-B of the 1996 POEA Standard Employment Contract provides:

Section 20-B. *Compensation and Benefits for Injury or Illness.* - The liabilities of the employer when the seafarer suffers injury or illness during

the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. 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 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.

4. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by i either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation application at the time the illness or disease was contracted.

Jurisprudence is replete with pronouncements that it is the company designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.[26] It is his findings and evaluations which should form the basis of the seafarer's disability claim.[27] His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts,[28] as its

inherent merits would still have to be weighed and duly considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice.[29]

In this case, petitioner was repatriated on December 25, 1999 and was seen and examined by Dr. Cruz, the company-designated physician, seven times and each time was prescribed corresponding medications. Dr. Cruz made a diagnosis[30] of controlled hypertension and diabetes mellitus and declared him fit to work on April 7, 2000. As petitioner was not satisfied with the assessment made by Dr. Cruz, he, through counsel, requested respondents for another medical assessment to which respondents acceded by directing petitioner to go to Dr. Alegre at St Luke's Hospital for a second medical opinion. Petitioner went to Dr. Alegre's clinic for consultation only on August 31, 2000. After petitioner was subjected to laboratory examinations, Dr. Alegre issued a medical report declaring the former not fit to work and gave him a disability of Grade 12 (slight residuals of disorder of intra-thoracic organ [heart] and intra-abdominal organ [pancreas-diabetes]) under the heading abdomen #5.

However, petitioner sought the opinion of a private physician, Dr. Vicaldo, who declared him unfit to board ship and work as seaman and found his condition to be a partial permanent disability with an impediment Grade V (58.96%).

The LA and the NLRC gave credence to Dr. Vialdo's disability grading but the CA reversed and accepted that of Dr. Alegre's. We find no error committed by the CA in giving more weight to Dr. Alegre's finding than that of Dr. Vicaldo's. Dr. Alegre's finding was based on the results of the laboratory examinations conducted on petitioner. On the other hand, Dr. Vicaldo examined petitioner only once, and his justification for the latter's disability grading was not supported by any diagnostic or medical procedure but merely based on general impressions. We adopt the CA's ratiocination in giving more evidentiary weight to Dr. Alegre's assessment, to wit:

> x x x Clearly, the determination of whose medical findings, including disability assessment, should be given more weight would depend on the length of time the patient was under treatment and supervision, results of laboratory procedures used as basis for diagnosis and recommendation, and detailed knowledge of the patient's case reflected in the medical certificate itself. A comparison of the medical certificates issued by Dr. Alegre and Dr. Vicaldo reveals that the former's findings were based on results of certain laboratory procedures such as urinalysis and chest x-ray, while that of the latter merely stated the usual expected long term complications associated with diabetes mellitus. The present target organ in private respondent's case was determined by Dr. Alegre to be the heart and eyes (hypertensive retinopathy), while Dr. Vicaldo plainly indicated the lifelong medications are necessitated by his "HPN and DM" and that long term complications involve the heart, brain and 'kidneys. Further, while Dr. Vicaldo's diagnosis of uncontrolled diabetes mellitus and essential hypertension was based only on the patient's age belonging to high risk group, Dr. Alegre attributed the patient's poorly-controlled diabetus mellitus and essential hypertension to

"non-compliance with the intake of medicines" considering his earlier medication and treatment under Dr. Cruz from the time he was repatriated to the Philippines in a three (3)-month period, at the end of which term he was declared "fit to work."

Indeed, diabetus mellitus is a chronic disease with no cure but it can almost always be managed effectively Management of the disease may include lifestyle modifications such as losing weight, diet and exercise to long term use of oral hypoglycemics or insulin therapy. Adequate control of diabetes leads to a lower risk of the complications of uncontrolled diabetes which include kidney failure (requiring dialysis or transplant), blindness, heart disease and limb amputation. Thus, patient education and compliance with treatment is very important in managing the disease; improper use of medications and insulins can be very dangerous causing hypo- or hyper-glycemic episodes. Among the major risk of the disorder are chronic problems affecting multiple organ systems which will eventually arise in patients with poor glycemic control. Considering the subjective factor involved in the assessment of risks for long-term complications of the disease, an accurate appraisal of the disability of private respondent must be based not only on laboratory procedures conducted at the time of examination but also his medical history, i.e., medications and progress in his condition. We find the generalized statements of Dr. Vicaldo not sufficient compared to a more detailed medical assessment of Dr. Alegre based on actual laboratory results and recent medical history of private respondent. Private respondent assailed the finding of Dr. Alegre that his poorly-controlled diabetes mellitus and essential hypertension were brought about by his non-compliance with the intake of medicines. Private respondent produced some prescriptions by different doctors, but his appointed doctor, Dr. Vicaldo, neither presented any clinical explanation to controvert Dr. Alegre's evaluation. At any rate, we find no substantial evidence to support the NLRC's finding that Dr. Vicaldo's medical finding and disability assessment as reliable and satisfactory compared to that of Dr. Alegre, the company-designated physician. Hence, Dr Alegre's disability rating of Gr. 12 (pancreas-abdomen) under the Schedule of Compensation should be the basis of computation of disability benefit to which private respondent is entitled.[31]

Petitioner claims that he is entitled to US$60,000.00 disability benefit as provided in their CBA, to wit:

20.1.4 Compensation for disability

x x x x

20.1.5 *Permanent Medical Unfitness* - A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph as regarded as permanently unfit for further sea service in

> any capacity and entitled to 100% compensation, i.e., US$80,000.00 for officers and US$60,000.00 for ratings. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.[32]

Such provision finds no application in petitioner's case. Dr. Alegre, the company-designated physician, gave petitioner a disability grade of 12 only, which is less than 50%, but he did not make a certification that petitioner was permanently unfit for further sea service. In fact, Dr. Alegre's medical report stated that petitioner's illness could be brought under control with proper diet, exercise and medications given an approximate time.

Petitioner contends that the two company-designated physicians vary in their assessment of his medical condition, hence, he cannot be faulted for not relying on any of their findings but relied instead on Dr. Vicaldo's disability rating.

We are not persuaded.

After petitioner' repatriation on December 25, 1999, he was seen by Dr. Cruz seven times and was prescribed corresponding medications. He was declared fit to work on April 7, 2000 after his hypertension and diabetes mellitus were diagnosed to be controlled. However, when petitioner went to consult with Dr. Alegre on August 31, 2000, he was found not fit to work at that time because of his poorly-controlled diabetes mellitus and hypertension and gave him a disability rating of grade 12. The drastic change in petitioner's health condition, as indicated in Dr. Alegre's Report, was brought about by the non-compliance in the intake of medications. The interval of almost four months from April 7, 2000 and without the intake of proper medications explain the difference in the assessment of the two company designated doctors.

Petitioner alleges that as he was unable to work for more than 120 days as a result of his illness, his condition constitutes permanent total disability relying on the case of *Crystal Shipping Inc. v. Natividad*.[33]

The factual circumstances of the *Crystal Shipping* case is different. There, the seafarer was diagnosed with cancer and was assessed by the company-designated physician as suffering from Grade 9 disability, while his private doctor issued a Grade 1 disability. It was found that the seafarer was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment, which showed that his disability was permanent. In this case, petitioner was repatriated on December 25, 1999 and had been declared fit to work on April 7, 2000, which was within the. 120-day period treatment or the temporary total disability period from the date of the seafarer's sign-off.

WHEREFORE, the petition for review on *certiorari* is hereby **DENIED**. The Decision dated September 9, 2005 and the Resolution dated December 9, 2005 of the Court of Appeals issued in CA-GR. SP No. 87979 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro,[*] *Perez,*[**] and *Jardeleza, JJ.*, concur.

September 11, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on **August 26, 2015** 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 11, 2015 at 1:35 p.m.

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

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[*] Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated August 26, 2015.

[**] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 195-221;

[2] Per Commissioner Tito F. Genilo, concurred in by Presiding Commissioner Lourdes C. Javier, Commissioner Ernesto C. Verceles was on leave; id at 93-102.

[3] *Rollo*, p. 247.

[4] Id. at 28.

[5] Id. at 29-48.

[6] Id. at 49.

[7] Records, Vol. I, p. 59.

[8] On January 3, 10, 24, 2000, February 10, 24, 2000, March 9, 2000, April 7, 2000.

[9] Records, Vol. II, pp. 88-93.

[10] Id at 68.

[11] Records, Vol. I, pp. 128-129.

[12] Id. at 28.

[13] Id.

[14] Records, Vol. II, pp. 85-87.

[15] Records, Vol. I, p. 6.

[16] Id. at 39-42.

[17] *Rollo*, pp. 79-91; Per Labor Arbiter Elias 1-1. Salinas; Docketed as NLRC NCR Case No. (M) 00-09-1459-00.

[18] Id. at 91.

[19] Id. at 104-105.

[20] Id. at 220-221.

[21] Id. at 17-18.

[22] *Masangcay v. Trans-Global Maritime Agency, Inc.,* 590 Phil. 611, 624 (2008).

[23] Id., citing *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[24] Id., citing *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.,* G.R. No. 143341, May 28, 2004, 430 SCRA 193, 205-206.

[25] Supra note 18.

[26] *Andrada v. Agemar Manning Agency. Inc.,* G.R. No. 194758, October 24, 2012, 684 SCRA 587, 598.

[27] Id

[28] Id., citing *Maunlad Transport, inc. v. Manigo, Jr.,* 577 Phil. 319, 328 (2008).

[29] Id., citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 669 (2007).

[30] Records, Vol. I, p. 27.

[31] *Rollo*, pp. 215-216.

[32] Id. at 48.

[33] 510 Phil. 332, 341 (2005).
