753 Phil. 308

SECOND DIVISION

[G.R. No. 206285, February 04, 2015]

VERITAS MARITIME CORPORATION AND/OR ERICKSON MARQUEZ, PETITIONERS, VS. RAMON A. GEPANAGA, JR., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review on *certiorari*[1] assailing the September 17, 2012 Decision[2] and the March 14, 2013 Resolution[3] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 115186, which stemmed from a claim for permanent disability benefits, sickness allowance, damages, and attorney's fees, filed by respondent Ramon A. Gepanaga, Jr. *(Gepanaga)* against petitioner Veritas Maritime Corporation *(Veritas)*, and its president, petitioner Erickson Marquez *(Marquez)*, before the National Labor Relations Commission *(NLRC)*.

In the August 27, 2009 Decision[4] of Labor Arbiter Fe S. Cellan *(LA)*, the complaint filed by Gepanaga was dismissed for lack merit. On appeal, the NLRC *reversed* the ruling of the LA and declared Gepanaga to be suffering from permanent total disability. The NLRC, thus, ordered Veritas and Marquez to compensate him in the amount of $89,100.00 or its Philippine Peso equivalent.[5] After their motion for reconsideration was denied by the NLRC in its June 28, 2010 Resolution,[6] Veritas and Marquez filed a petition for *certiorari*[7] with the CA.

The CA, while affirming the findings and conclusions of the NLRC, *modified* its disposition and made the obligation to pay disability benefits to Gepanaga the sole responsibility of Veritas.[8] Veritas attempted to seek reconsideration but its effort was rebuffed.[9]

Hence, this petition.

The Facts:

It appears that on March 11, 2008, Gepanaga entered into a contract of employment with Veritas, for and in behalf of St. Paul Maritime Corporation, to work on board the vessel M.V. Melbourne Highway as Wiper Maintenance for six (6) months.[10] By executing the contract of employment, the parties agreed to be bound by the provisions of Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)*, as well as the IBF-JSU AMOSUP IMMAJ collective bargaining agreement *(CBA)*.[11]

As Gepanaga was able to complete his contract with no incident, the parties mutually agreed to extend his tenure as Wiper Maintenance. What happened shortly thereafter was what sparked the current controversy.

On November 28, 2008, while Gepanaga was doing maintenance work, his middle finger got caught between the cast metal piston liners of the diesel generator. He was then given first aid on board the vessel and was later brought to a hospital in Omaezaki, Japan. In the hospital, Gepanaga was diagnosed with "open fracture of [the] distal phalanx, left middle finger."[12] He was repatriated on December 3, 2008.

On December 4, 2008, Gepanaga reported right away to the clinic of Dr. Nicomedez G. Cruz *(Dr. Cruz)*, the company-designated physician. After Gepanaga was referred to the orthopedic surgeon of his clinic, Dr. Cruz concurred in the initial findings of doctors in Japan that Gepanaga was suffering from a "[c]rushing injuring with fracture distal phalanx left middle finger."[13] After a series of medical treatments, Dr. Cruz noted that Gepanaga no longer suffered the pain in the affected area and that his "grip is good and functional." Dr. Cruz thus issued his medical report, dated March 4, 2009, **declaring that Gepanaga was "cleared fit to go back to work."**[14]

Unconvinced that he had fully recovered from his injury, Gepanaga filed a complaint[15] against Veritas, Marquez and "K" Line Ship Management, Inc., claiming that the latter is the foreign principal of Veritas and owner of the M.V. Melbourne Highway.[16]

Several days after filing his complaint, Gepanaga sought the opinion of Dr. Edmundo A. Villa *(Dr. Villa)* of the Sogod District Hospital in Leyte. That same day, Dr. Villa gave his medical report finding that Gepanaga suffered from "permanent disability due to old compound fracture of the 3rd left phalanx/middle finger-left."[17] Thus, when Gepanaga filed his position paper,[18] he included Dr. Villa's report to support his contention that the injuries he had sustained while on board the M.V. Melbourne rendered him permanently unfit to work.

Ruling of the Labor Arbiter

On August 27, 2009, the LA dismissed the complaint for lack of merit. Finding the evaluation of the company-designated physician, Dr. Cruz, more credible than the findings of Dr. Villa, the LA opined that because he was the one who attended to Gepanaga from his repatriation until he was declared fit to work, Dr. Cruz was in the best position to make the evaluation of Gepanaga's true state of health. Moreover, the LA denied the claim for sick wages allowance after it found that as early as March 4, 2009, Gepanaga was already cleared to return to work. For lack of substantial evidence, the LA also denied Gepanaga's claims for reimbursement of his medical expenses, for damages and attorney's fees.

Ruling of the NLRC

As stated above, in its February 10, 2010 Decision, the NLRC found merit in

Gepanaga's claim and reversed the decision of the LA. It opined that the assessment of the company-designated physician should not be binding in determining the true condition of Gepanaga, considering that he was chosen, engaged and remunerated by Veritas and, as such, was likely to advance and serve its interests. Dr. Villa, on the other hand, was a government physician, and the NLRC gave credence to his medical assessment of Gepanaga's condition.

The NLRC also noted that the allegation that Gepanaga was covered by the CBA was never refuted, and, thus, awarded him $89,100.00 in accordance with its provisions.

Both parties sought reconsideration. The NLRC denied the motion of Veritas but granted Gepanaga's claim for attorney's fees.

Ruling of the Court of Appeals

In finding no grave abuse of discretion on the part of the NLRC, the CA held that Gepanaga indeed suffered from permanent disability as he was unable to perform his customary work as seaman for more than 120 days. According to the CA, although the Certification from Dr. Cruz was issued 91 days after his repatriation on December 3, 2008, there was no categorical evidence to show that he was able to resume his job after the crushing injury which resulted in the fracture of the distal phalanx left middle finger.

The CA agreed with the NLRC that the terms of the CBA should govern in determining the liabilities of the parties. Citing Article 27 of the CBA, the CA opined that the CBA did not prohibit a second medical opinion, and it even allowed the nomination of a third physician in case of disagreement between the assessment of the company-designated physician and the personal physician of the seafarer. Finding that Veritas failed to avail of a third doctor, the CA ruled that the NLRC did not err in construing that it is not only the findings of the company-designated physician that should control in determining the fitness and/or degree of disability of Gepanaga.

As the NLRC did, the CA concluded that Gepanaga suffered from permanent total disability as a result of his injuries. It was undisputed that because of the injury he sustained, Gepanaga lost the gripping power of his left hand and he was unable to return to his usual work as a seaman for a period of more than 120 days. The CA noted that despite the treatment and assessment of the company-designated physician, the injury sustained did not show any appreciable improvement as diagnosed by an independent physician; and that the independent assessment of Dr. Villa showed that the treatment he received failed to restore the ability of the injured finger to its normal function. With such handicap, the CA found that it would not be possible for Gepanaga to perform his work as a seaman.

The CA, however, pointed out that the NLRC failed to disclose the basis for the personal liability of Marquez. In its evaluation, the CA found that there was no categorical evidence to show that Marquez acted maliciously or in bad faith and, therefore, should not be made personally liable for the payment of the disability benefits.

Veritas and Marquez sought reconsideration but to no avail.

Hence, this petition.

In their petition, petitioners insist that Gepanaga is not entitled to permanent disability benefits, since he was declared "fit to work" by the company after receiving treatment from the day he was repatriated on December 3, 2008 to March 4, 2009 for a total of 91 days. Citing the Court's ruling in *Vergara v. Hammonia Maritime Services, Inc.*[19] *(Vergara)*, the petitioners argue that Gepanaga's alleged inability to work after the lapse of 120 days from the time he suffered his injury does not automatically entitle him to the grant of permanent and total disability benefits.[20]

The petitioners also insist that they are not liable to pay attorney's fees since their denial of Gepanaga's claims was done in good faith and based on valid grounds. They point to the fact that almost immediately upon the repatriation of the respondent, they referred him to the company-designated physician for examination and treatment. They add that they also shouldered Gepanaga's medical expenses without raising any issue. [21]

Position of the Respondent

Maintaining the correctness of the decision of the CA, Gepanaga asserts that he was entitled to claim for permanent total disability benefits because his personal physician established that he was not fit to work. He claims that the award of attorney's fees was warranted as he was compelled to litigate to enforce his claims.

The Court's Ruling

The evidentiary records favor the petitioners.

In order to provide a clear-cut set of rules in resolving the ubiquitous conflict between the seafarer and his employer for claims of permanent disability benefits, the Court in *Vergara*, stated that the Department of Labor and Employment *(DOLE)*, through the POEA, had simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working in foreign ocean-going vessels. Every seaman and vessel owner (directly or represented by a local manning agency) are required to execute the POEA-SEC as a condition *sine qua non* prior to the deployment of the seaman for overseas work. The POEA-SEC is supplemented by the CBA between the owner of the vessel and the covered seaman.

In this case, the parties entered into a contract of employment in accordance with the POEA-SEC. They also agreed to be bound by the CBA. Thus, in resolving whether Gepanaga is entitled to disability compensation, the Court will be guided by the procedures laid down in the POEA-SEC and the CBA.

Section 20(B)(3) of the POEA-SEC provides:

> 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.
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> For this purpose, the seafarer shall submit himself to a postemployment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to so, in which case, a written notice to the agency within the same period is deemed a 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.
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> **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.
>
> [Emphasis supplied]

The CBA between the petitioners and the respondent states that:

> 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.
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> [Emphasis supplied]

Interpreting an almost identical provision of the CBA, the Court ruled, in the recent case of *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[22] *(Dumadag)*, that a seafarer's non-compliance with the mandated procedure under the POEA-SEC and the CBA militates against his claims. In *Dumadag*, the Court explained:

> The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. **The two instruments are the law between them. They are bound by their terms and conditions**, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,* the Court said: "The POEA Contract, of which the parties are

both signatories, is the law between them and as such, its provisions bind both of them." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued the fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physician's opinions, without referring the conflicting opinions to a third doctor for final determination.

x x x x

The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits.

We find the rulings of the labor authorities seriously flawed as they were rendered **in total disregard of the law between the parties** — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.**

As we earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a **third doctor** as was his duty. He offered no reason that could have prevented him from following the procedure. Before he filed his complaint, or between July 19, 2007, when he came home *upon completion of his contract*, and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. We, therefore, find it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion.

> Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 – whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)* and similar other cases, or sustained the opinion of the seafarer's chosen physician as in *HFS Philippines, Inc. v. Pilar*, cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.
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> **Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld**. In *Santiago v. Pacbasin Ship Management, Inc.,* the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."
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> On a different plane, Dumadag cannot insist that the "favorable" reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only a day (or shorter) on four different dates between December 5, 2007 and April 13, 2008. Moreover, we point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists. Under the circumstances, we cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians. [23]
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> [Emphases and underscoring supplied]

As in *Dumadag*, Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. Consequently, the Court applies the following pronouncements laid down in *Vergara*:

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer **disagrees**

with the company-designated physician's assessment, the opinion of a **third doctor** may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.

Thus, **while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure.** Unfortunately, the petitioner did not avail of this procedure; hence, **we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.** [24] x x x.

[Emphases supplied]

Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."

Petitioner's Claim for Benefits Was Premature

Actually, Gepanaga's filing of his claim was premature. The Court has held that a seafarer may have basis to pursue an action for total and permanent disability benefits, if any of the following conditions is present:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition

is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods. [25]

In this case, when Gepanaga filed his complaint with the arbitration office on March 25, 2009, **he had yet to consult his own physician,** Dr. Villa. Indeed, the Court has observed that when Gepanaga filed his complaint, he was armed only with the belief that he had yet to fully recover from his injured finger because of the incident that occurred on board the M.V. Melbourne Highway. It was only on June 9, 2009, a few days before he filed his position paper on June 15, 2009, that Gepanaga sought the services of Dr. Villa.

It bears pointing out that even worse than the case in *Dumadag*, Gepanaga's personal physician examined him for only one (1) day, that is, on June 9, 2009, two and a half months (2 ½) after he had filed his claim for permanent disability benefits. Furthermore, the medical certificate issued by Dr. Villa after examining the respondent failed to state the basis of his assessment and conclusion of permanent disability, more than three (3) months after the respondent was declared fit to work by Dr. Cruz, the company-designated physician.

Let it be stressed that the 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.[26] Both law and evidence must be on his side.

For these reasons, and without sufficient evidence to support the respondent's ancillary claims for sick wages, damages and attorney's fees, the same are denied.

WHEREFORE, the petition is **GRANTED**. The September 17, 2012 Decision and the March 14, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 115186 are **REVERSED** and **SET ASIDE.** The respondent's complaint for permanent disability benefits, sickness allowance, damages and attorney's fees is dismissed for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] *Del Castillo,* and *Leonen, JJ.,* concur.

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* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

[1] *Rollo,* pp. 25-366.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring; id. at 11-19.

[3] Id. at 21.

[4] Id. at 235-241.

[5] Id. at 102-110.

[6] Id. at 112-114.

[7] Id. at 62-100.

[8] Id. at 11-19.

[9] Id. at 21.

[10] CA *rollo,* pp. 115-116.

[11] Id. at 116.

[12] Id. at 117.

[13] Id. at 88.

[14] Id. at 94.

[15] Id. at 67-68.

[16] Id. at 95.

[17] Id. at 118.

[18] Id. at 95-121.

[19] *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 908-909 (2008).

[20] *Rollo*, pp. 30-37.

[21] Id. at 37-39.

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

[23] Id. at 65-68.

[24] *Vergara v. Hammonia Maritime Services, Inc.,* supra note 19, at 914.

[25] *C.F. Sharp Crew Management, Inc. v. Taok,* G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

[26] *Millan v. Wallem,* G.R. No. 195168, November 12, 2012, 685 SCRA 225, 231.
