767 Phil. 338

THIRD DIVISION

[G.R. No. 190984, August 19, 2015]

ACOMARIT ACOMARIT LIMITED, PHILS., AND/OR HONGKONG PETITIONERS, VS. GOMER L. DOTIMAS, RESPONDENT.

D E C I S I O N

PERALTA, J.:

For the Court's resolution is a petition for review on *certiorari*, dated March 8, 2010, of petitioners Acomarit Phils. and/or Acomarit Hong Kong Limited, assailing the Decision[1] and Resolution,[2] dated December 12, 2008 and January 20, 2010, respectively, of the Court of Appeals (CA) reversing the Resolutions[3] dated September 30, 2003 and February 23, 2004 of the National Labor Relations Commission (*NLRC*) and ruling that respondent Gomer L. Dotimas suffered from permanent total disability thus entitling him to US$ 60, 000.00.

The antecedents follow:

Under a Contract of Employment dated October 27, 1999, respondent Gomer L. Dotimas was employed by ACOMARIT Phils. for its principal and ACOMARIT Hongkong, Limited as Able Seaman on board the vessel "M/V SAUDI RIYADH" for 10 months.[4] His Employment Contract[5] stated the following terms and conditions:

Duration of Contract	:	10 months
Position	:	Able Seaman
Basic Monthly Salary	:	US$ 410.00/mo.
Hours of work	:	44 hours/week
Overtime	:	US$ 228.00/mo. Fixed overtime 2.68/hour after 90 hours
Vacation leave with pay	:	6 days/mo.
Point of hire	:	Manila, Philippines

Respondent was issued a clean bill of health prior to being deployed after he underwent a medical examination required by the POEA and existing laws.[6]

On April 26, 2000, while on board and discharging his duties, respondent met an accident which injured his left leg. He was brought to the Rashid Hospital in Dubai where he was given first aid treatment.[7] Sometime in May 2000, respondent was repatriated for medical reasons.[8]

Petitioners referred respondent to its designated physician who recommended that his knee should be operated on.[9] Respondent underwent surgery known as Open Reduction and Fixation with Intramedullary Nails.[10] After a series of evaluations, on September 21, 2000, Dr. Elenita Torres Supan, the attending physician, issued a final evaluation certificate wherein she categorically cleared respondent from his injury and allowed him to resume his work even with implants, which can be removed after a year and a half.[11]

On May 2, 2001, respondent, through counsel, wrote petitioners, claiming for full disability benefits amounting to US$60,000.00. He claimed that the injury suffered while working for petitioners "will not permit him to work again" as a Seaman which rendered him totally and permanently disabled.[12]

After his demand went unheeded, respondent filed on July 6, 2001 a Complaint for Disability Benefits and for Moral and Exemplary Damages plus attorney's fees alleging that:

1. he continues to suffer from the injury which caused his repatriation;
2. an independent physician had suggested a disability grade of 13 for his injury;
3. he is suffering from permanent medical unfitness which entitles him to at least US$3,360 up to a maximum of US$60,000; [and]
4. private respondents failed and unjustifiably refused to pay his disability benefits.[13]

Having failed to reach amicable settlement during the mandatory conference, the parties were directed to submit their respective position papers.

Respondent averred that under the provision of the Labor Code and Supreme Court doctrines, he is entitled to full disability benefits because his injury occurred during his 10-month contract and he is no longer fit for sea services as certified by an independent doctor, and has, as a result lost his earning capacity. He argued that the POEA Contract does not exclude or prohibit an independent physician from giving a disability grading and that the Labor Code concept of disability (loss or diminution of earning power) is not excluded in the interpretation of the provisions of the POEA Contract.[14]

Furthermore, respondent alleged that although he was pronounced fit to work, he can never be considered fit for employment if he still has implants on his leg since he can no longer carry heavy objects while on board a vessel. He claimed that the declaration of fit to work by the company designated physician was made out of bias.[15]

On the other hand, petitioners averred: that respondent is not entitled to any disability benefit as he was declared fit to work by the company designated physician; that his fit to work declaration negates his claims for disability benefits; that under the provisions of POEA Standard Employment Contract, respondent's disability can only be assessed

by the companydesignated physician and such declaration binds the complainant; and, that the company-designated physician is the most qualified to determine the precise condition of respondent's health for having monitored and treated the complainant.[16]

In a Decision[17] dated January 28, 2003, the Labor Arbiter (*LA*) ruled in favor of the petitioners, the dispositive portion of which reads:

> WHEREFORE, premises considered, let the instant complaint be, as it is hereby ordered DISMISSED for lack of merit.
>
> SO ORDERED.[18]

In ruling that respondent is not entitled to disability benefits, the LA cited the case of *German Marine Agencies, Inc. vs. NLRC*[19] where the Court held that it is the company-designated physician who must proclaim that the seaman suffered a permanent disability whether total or partial due to either injury or illness during the term of the latter's employment, thus, the complainant's claim for permanent partial or permanent total disability must necessary fail.[20] The declaration of fitness issued by the physicians who attended to and periodically evaluated the respondent's condition soon after his repatriation from the vessel may not be outweighed by the certification of purported disability issued 10 months after the complainant was certified fit to resume employment.[21]

Respondent appealed before the NLRC, which affirmed the ruling of the LA and rendered its decision in favor of the petitioners, the dispositive portion of which states:

> WHEREFORE, premises considered, the appeal is hereby ordered DISMISSED for lack of merit and the assailed decision is hereby ordered AFFIRMED.
>
> SO ORDERED.[22]

In its decision, the NLRC noted that all the evaluation certificates issued by the company-designated physicians were all in order and not biased as to favor petitioners in their findings. The medical evaluation was periodically made and consistent with the diagnosis made on the complainant as with continuous improvement on his operated leg.[23]

Respondent filed a Motion for Reconsideration on October 31, 2003. However, the NLRC dismissed the motion for not finding any compelling reason to disturb the findings and conclusion thereon.[24]

Aggrieved, the respondent elevated the matters.to the CA via petition for *certiorari.* The CA reversed and set aside the twin Resolutions of the NLRC. The dispositive portion of

the said decision reads:

> WHEREFORE, the instant Petition for Certiorari is GRANTED. The assailed twin Resolutions, dated September 30, 2003 and dated February 23, 2004, of the Public Respondent National Labor Relations Commission, in OFW (M) 01-071332-00, are hereby REVERSED and SET ASIDE.
>
> Accordingly, Private Respondents are held jointly and severally liable to pay Petitioner permanent total disability benefits of [US$ 60,000.00] at its peso equivalent at the time of actual payment and attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
>
> Costs against private respondents.
>
> SO ORDERED.[25]

The subsequent motion for reconsideration filed by petitioners was denied in a Resolution dated January 20, 2010.

Hence, the petitioners filed before this Court the present petition raising the following issues:

> 1. Whether the Court of Appeals seriously erred in failing to abide by the express mandate of the governing POEA Contract and jurisprudence which provides that disability benefits are only given to seafarers who suffer disabilities. In this case, respondent was already declared "FIT TO WORK" by the company-designated physician;
>
> 2. Whether the Court of Appeals committed serious, reversible error of law in failing to consider that the findings of the company-designated physician are conclusive in accordance with the ruling of this Honorable Court in several cases; [and]
>
> 3. Whether the Court of Appeals committed serious, reversible error of law in not giving petitioners the opportunity to file any comment to respondent's Petition for *Certiorari*.[26]

This Court finds the present petition partly meritorious.

A cursory reading of the applicable contractual provisions and a judicious evaluation of the supporting evidence on records, lends strong credence to the contentions and arguments presented by petitioners.

Petitioners argued that the decision of the CA awarding disability benefits to respondent

constitutes grave error and grave abuse of discretion for reason that respondent was already declared "FIT TO WORK" by the company-designated physician. Petitioners alleged that the declaration of fitness by the company-designated physician bars respondent's claim for disability benefits from prospering.[27]

Petitioners disagreed with the CA's ruling that respondent is suffering from total and permanent disability as he was purportedly unable to work for more than 120 days.[28] The CA concluded that as a result of his illness, respondent was clearly shown to be actually unfit to go back to his work as Able Seaman for at least five (5) months or for more than 120 days.[29]

The CA held that respondent's inability to resume work for more than 120 days, by itself, already constituted permanent total disability. However, we have settled that 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.[30]

While it may appear that under the POEA-SEC[31] and Labor Code[32] the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with the Amended Rules on Employee Compensation (*AREC*)[33] indicates otherwise. That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days.[34]

We held in *Vergara v. Hammonia Maritime Services, Inc*.[35] that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. [36]

In the *Vergara* case, this Court discussed the significance of the 120- day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability.

Based on this Court's pronouncements, it is easily discernible that the 120-day or 240-day periods, and the obligations the law imposed on the employer are determinative of when a seafarer's cause. of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if:

(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 being 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 the said periods.[37]

It is undisputed that after respondent's repatriation sometime in May 2000, he was referred to the company-designated physician who, upon evaluation, recommended that he underwent a surgery. After a series of evaluations, Dr. Torres-Supan, the attending physician, issued a final evaluation certificate on September 21, 2000 wherein she categorically cleared respondent from his injury and declared him fit to resume his work even with implants.

This Court has observed that the records are devoid of facts about the intervening period from the time that the respondent was declared fit to work and the time he claimed permanent disability benefits. It was never alleged whether respondent attempted to resume his work with the petitioners or applied for work to another company.

From May 2000 to September 21, 2001, 144 days had lapsed before respondent was declared fit to work. Concededly, said periods have already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. However, records show that respondent underwent a series of evaluations which implied requirement of further medical treatment, thus, justifying the extension of the 120-day period. The company-designated doctor had a period of 240 days within which to make a finding on his fitness for further sea duties or degree of disability.

When respondent was declared fit to work 144 days from the date of his medical repatriation, he cannot be considered under the state of permanent total disability. Hence, he cannot be said to have acquired a cause of action for total and permanent disability benefits. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration. In this case, he was declared fit to work 144 days from the date of his medical repatriation or before the lapse of 240 days.

Petitioners reiterated that the findings and/or assessments of the company-designated physician are final and form the basis on whether or not respondent can claim for disability benefits as per provisions of the POEA Standard Employment Contract. As the company-designated physician declared him fit, then he should not be awarded disability benefits.[38]

The claim for sickness and permanent disability benefits arose from the stipulations in the standard format contract of employment pursuant to a circular of the POEA. Such circular was intended for all parties involved in the employment of Filipino seamen on board any ocean-going vessel. The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them. Thus, the parties are both bound by the provisions of the POEA contract which declares that the degree of disability or fitness to work of a seafarer should be assessed by the company-designated physician.[39]

The relevant provision of the 1996 POEA Standard Employment Contract states:

SECTION 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

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 hut 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.[40]

It was held that a claimant, in submitting himself to examination by the company-designated physician, does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. The claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.[41] In this case, respondent failed to dispute the declaration of fit to work by the company-designated physician by not timely consulting another physician.

Both the LA and the NLRC denied respondent's claim on the ground that he failed to controvert the certification issued by Dr. Torres-Supan that he is fit to work. Respondent took roughly eight months or until May 2, 2001, before disputing the finding of Dr. Torres-Supan by writing the petitioners, through his counsel, for claim for disability benefits. Then, after his demand went unheeded, he challenged the doctor's competency and the correctness of her 'findings when he filed the complaint against the petitioners before the LA on July 6, 2001.[42] It is likewise noted from records that his basis of disability was an evaluation made 10 months after he was certified fit to work by the company-designated physician. He presented the certification of Dr. Jocelyn Myra R. Caja on July 20, 2001 suggesting disability grade 13.[43]

As this Court has settled, it makes no sense to compare the certification of a company-designated physician with that of an employee appointed physician if the former is dated seven to eight months earlier than the latter- there would be no basis for comparison at all.[44] In this case, the certification of the company-designated physician was ten months earlier than that of the appointed physician of the respondent. Thus, there would be no basis for comparison.

Nevertheless, this Court finds that respondent is entitled to temporary total disability benefit. Both the company-designated physician and respondent's own physician concluded that his left tibia was fractured and that it was healed after the surgery.[45] Under the Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted in Section 30 of 1996 POEA SEC, the "slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line" suffered by respondent has a corresponding Impediment Grade of 13. The Schedule of Disability Allowances in Section 30-A of POEA-SEC provides that:

Impediment Grade		**Impediment**	
13	(maximum rate) US$ 50,000.00	X	6.72%

Thus, respondent Dotimas is entitled to US$3,360.00 or its equivalent in Philippine currency at the exchange rate prevailing during the time of payment.

Lastly, the petitioners argued that the CA committed serious, reversible error of law in not giving them the opportunity to file any comment to respondent's Petition for *Certiorari.*

If the petition for *certiorari* under Rule 65 is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within 10 days from receipt. In petitions before this Court and the CA, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition before giving due course thereto. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.[46]

It is also provided in the Internal Rules of the CA that in petitions for *certiorari,* the court may dismiss the petition outright or require the private respondents to file a comment, not a motion to dismiss.[47]

Contrary to petitioners' claim, records show that the CA issued a Resolution on August 3, 2004, ordering them to file their Comment within 10 days from notice. As per tracer reply of Postmaster Makati City, petitioners received the Resolution on August 9, 2004. On November 18, 2004, it was noted on the records that no comment was filed.[48] Thus, the CA ordered the parties to submit their respective memoranda within 15 days from notice on November 23, 2004.[49]

Lastly, in conformity with current policy and pursuant to the case of *Nacar v. Gallery Frames*,[50] we impose on "the monetary award for temporary total disability benefit an interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

WHEREFORE, the petition for review on *certiorari*, dated March 8, 2010, of petitioners Acomarit Phils. and/or Acomarit Hongkong Limited is hereby **PARTLY GRANTED.** Accordingly, the Decision and Resolution, dated December 12, 2008 and January 20, 2010, respectively, of the Court of Appeals reversing the Resolutions dated September 30, 2003 and February 23, 2004 of the National Labor Relations Commission and ruling that respondent Gomer L. Dotimas suffered from permanent total disability, thus, entitling him to US$60,000.00, are hereby **MODIFIED** to the effect that petitioners Acomarit Phils. and/or Acomarit Hongkong Limited are **ORDERED** to pay, jointly and severally, respondent Gomer L. Dotimas the amount of US$3,360.00, or its Peso equivalent at the exchange rate prevailing at the time of actual payment as disability benefits plus the interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

SO ORDERED.

Velasco, Jr., (Chairperson), Perez, Perlas-Bernabe, 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 19, 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 Bienvenido L. Reyes, per Special Order No.2112 dated July 16, 2015.

** Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated February 11, 2015.

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Arturo G. Tayag, concurring; *rollo*, pp. 53-62.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Vicente S. E. Veloso and Arturo G. Tayag, concurring; id at 92-93.

[3] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring.

[4] *Rollo*, p. 54.

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

[6] Id. at 10.

[7] Supra note 4.

[8] CA *rollo*, p. ll.

[9] Supra note 4.

[10] *Rollo*, p. 60.

[11] CA *rollo* p. 35.

[12] *Supra* note 4.

[13] *Rollo*, p. 55.

[14] LA Decision p. 3, CA *rollo,* p. 49.

[15] CA *rollo*, p 18.

[16] LA Decision p. 3, id at 49.

[17] Penned by Labor Arbiter Veneranda C. Guerrero, CA *rollo* pp. 47-53.

[18] *Rollo,* p. 30.

[19] 403 Phil. 572, 588 (2001).

[20] LA Decision pp. 5-6, CA *rollo*, pp. 51-52.

[21] Id.

[22] CA *rollo*, p. 36.

[23] Id. at 35.

[24] Id. at 39.

[25] *Rollo,* pp. 61-62. (Emphasis omitted)

[26] Id. at 32.

[27] Id. at 32-33.

[28] Id. at 33.

[29] Id. at 60.

[30] *Millan v. Wallem Matime Services, Inc., et al.,* G.R. No. 195168, November 12, 2012, 685 SCRA 225, 231.

[31] Section 20. (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 the period exceed one hundred twenty (120) days.

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

Art. 192. *Permanent total disability.* - 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 for in the Rules.

[33] Rule X, Sec. 2. *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.

[34] *C.F. Sharp Crew Management, Inc., Norwegian Cruise Lines and Norwegian Sun, and/or Arturo Rocha v. Joel D. Taok*, G.R. No. 193679, July 18, 2011, 677 SCRA 296, 314.

[35] 588 Phil. 895,913 (2008).

[36] Alpha Ship Management Corporation Calo, G.R. No. 192034, January 13, 2014, 713 SCRA 119, 137.

[37] *C.F. Sharp Crew Management, Inc., Norwegian Cruise Lines and Norwegian Sun and/or Arturo Rocha v. Joel D. Taok*, supra note 33.

[38] *Rollo*, p. 37.

[39] *Magsaysay Maritime Corp. and/or Dela Cruz, et al. v. Velasquez, et al.,* 591 Phil. 839, 849 (2008)

[40] Emphasis supplied.

[41] *Nazareno v. Maersk Filipinas Crewing Inc.*, G.R. No. 168703, February 26, 2013, 691 SCRA 630, 639.

[42] NLRC Resolution p. 2, CA *rollo*, p. 29.

[43] CA *rollo*, p. 44.

[43] *Cadornigara v. National Labor Relations Commision,* 563 Phil. 671, 682 (2007).

[45] NLRC Records p. 72; *supra* note 43.

[46] Rules of Court, Rule 65, Section 6.

[47] 1999 INTERNAL RULES OF THE COURT OF APPEALS (IRCA) Rule 7, Section 5. Judicial Action. The Court may dismiss the petition outright or require the private respondents to file a comment, not a motion to dismiss, serving a copy of said comment on petitioner within ten (10) days from notice. Thereafter, the Court may require the filing of a reply within five (5) days from receipt of the comment and such other responsive or other pleadings as it may deem necessary and proper. (Sec. 6, rule 65, RCP)

[48] CA *rollo*, p. 159.

[49] Id. at 160.

[50] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.
