759 Phil. 514

SECOND DIVISION

[G.R. No. 204845, June 15, 2015]

BELCHEM PHILIPPINES, INC/UNITED PHILIPPINE LINES, FERNANDO T. LISING, PETITIONERS, VS. EDUARDO A. ZAFRA, JR., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners Belchem Philippines, Inc. (*Belchem*), United Philippine Lines (UPL) and Fernandino T. Lising (*collectively, petitioners*) assail the June 4, 2012 Decision[1] and the December 7, 2012 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. SP No. 121629, which *affirmed* the May 31, 2011[3] Decision of the National Labor Relations Commission (*NLRC*) awarding permanent total disability benefits to respondent Eduardo A. Zafra, Jr. (*Zafra*). The NLRC decision reversed the October 21, 2010 Decision[4] of the Labor Arbiter (*LA*).

The Antecedents

Zafra was hired as a "wiper" by Belchem, through its local manning agent UPL, for a period of four (4) months under a duly approved contract of employment.

Records reveal that on July 17, 2009, Zafra boarded MT Chemtrans Havel; that on September 30, 2009, he sustained injuries on his left knee after hitting the floor on his way to the ship's engine room to check for leaks in the machineries there; that after being initially examined on October 16, 2009[5] in Amsterdam by a doctor who advised him to undergo x-ray examination, he was repatriated on October 22, 2009 for further medical treatment in the Philippines; that on October 22, 2009, upon his arrival in the Philippines, he immediately reported to the UPL office and was sent to the petitioners' designated physician, Dr. Robert D. Lim (*Dr. Lim*), at the Metropolitan Medical Center, Marine Medical Services; that the attending physician found him to have "probable Medial Meniscal Tear, Left knee" and "Anterior Cruciate Ligament (*ACL*) Tear, Left Knee" which required surgery;[6] that on January 5, 2010, he underwent a procedure known as "Arthroscopic ACL Reconstruction" costing him more than one (1) week of confinement and subsequent rehabilitation measures for him to walk again; that on January 20, 2010, after noting that Zafra's condition improved, Dr. Lim gave an interim assessment of Grade 10 for the injuries he had suffered;[7] that on April 19, 2010, or within the 240-day treatment period, the attending doctor, William Chuasuan, Jr. (*Dr. Chuasuan, Jr.*), wrote a letter to Dr. Lim stating that the suggested disability grading of Zafra's injuries was 20% of Grade 10, which under the Philippine Overseas Employment

Administration - Standard Employment Contract (*POEA-SEC*), was equivalent to US$3,590.73. Dr. Chuasuan, Jr. wrote:

> April 19, 2010
>
> **ROBERT D. LIM, M.D.**
> Marine Medical Services
> Metropolitan Medical Center
>
> Re: Mr. Eduardo Zafra, Jr.
>
> Case of 32 year old male, S/P Anterior Cruciate Ligament Reconstruction, Left.
>
> His **suggested** disability grading is 20% of Grade 10 - stretching leg of the ligaments of a knee resulting in instability of the joint.
>
> Respectfully yours,
>
> **WILLIAM CHUASUAN, JR., M.D.**[8]

On July 5, 2010, much to the petitioners' surprise, Zafra filed a complaint[9] for payment of permanent total disability benefits, moral and exemplary damages and attorney's fees.[10] Attempts for an amicable settlement of the case failed.

On August 2, 2010, Zafra demanded a copy of his medical records from petitioners,[11] but he was not given one. The requested medical records were, however, later on attached to the petitioners' position paper filed before the LA.

On August 20, 2010, the Assistant Medical Coordinator of Marine Medical Services issued Zafra's Brief Clinical History, to wit:

> Final Diagnosis (July 20, 2010) - Probable Medial Meniscal Tear, Left Knee; Anterior Cruciate Ligament Tear, Left Knee; S/P Arthoroscopic Anterior Cruciate Ligament Reconstruction, Left Knee with an incidental finding of Urinary Tract Infection.[12]

On October 21, 2010, the LA declared Zafra entitled to disability benefits in the amount of US$3,590.73.[13] The LA reasoned out, among others, that Zafra's claim for the maximum benefit of US$60,000.00 was unsubstantiated considering that (1) the assessment of the company-designated physician of his injury as Grade 10 should be respected; and (2) he failed to present the medical findings showing total and permanent disability. The dispositive portion of the LA decision reads:

> **IN VIEW OF THE FOREGOING,** the respondent Corporation is directed to pay the complainant the amount of US$3,590.73
>
> The rest of the claims are dismissed for lack of merit.

SO ORDERED.[14]

On appeal, the NLRC *reversed* and *set aside* the findings of the LA and awarded US$60,000.00 to Zafra after finding his injury permanent and total. It explained that, in disability compensation, what was being compensated was not the injury *per se* but the incapacity to work. Considering that **more than 240 days** from date of repatriation had lapsed without any declaration of fitness to work from the company-designated physician, the NLRC found him entitled to receive permanent total disability benefit in the amount of US$60,000.00. Thus:

> **WHEREFORE,** premises considered, the Decision dated October 21, 2010 is hereby **SET ASIDE** and a new one entered ordering respondents jointly and solidarity to pay complainant permanent total disability benefit in the amount of US$60,000.00 plus ten percent (10%) thereof as attorney's fees, or in the total amount of US$66,000.00.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[15]

Aggrieved, the petitioners filed a petition for *certiorari* with the CA,[16] asserting that the NLRC should have considered the final assessment which was made in accordance with the Schedule of Disability Impediment provided for in Section 32 of the POEA-SEC and issued within the 240-day period. They also challenged the award of attorney's fees amounting to $6,000.00 on the ground that it could only be given when the circumstances warrant the same. In Zafra's case, the petitioners opined that there was no basis for the said award.

Zafra, on the other hand, cited *Abante v. KJS Fleet Management Manila*,[17] where it was ruled that the failure of the company-designated physician to pronounce the petitioner fit to work within the 120-day period entitled him to permanent total disability benefits in the amount of $60,000.00. He further claimed that the medical certificates with assessment or grading issued within the 240-day period and presented by the petitioners were belatedly manufactured to remedy the obvious flaws in their legal position.

In its June 4, 2012 Decision, the CA *affirmed*[18] the NLRC decision. According to the CA, the test of whether or not an employee suffered from permanent total disability was a showing of the capacity of the employee to continue performing his work, notwithstanding the disability incurred. Thus, if by reason of the injury or sickness sustained, the employee was unable to perform his customary job for more than 120 days and he did not come within the coverage of Rule X of the Amended Rules on Employees Compensability, then the said employee undoubtedly suffered from permanent total disability regardless of whether or not he lost the use of any part of his body. Even if the 120-day period could be extended to 240 days, the employer must make a declaration within the same period, otherwise, characterizing the injury as permanent and total would become inevitable.

Accordingly, the CA took note of the fact that Zafra had not been able to work for more than 240 days from his repatriation by reason of his injuries without the petitioners issuing any certificate attesting to his fitness to work or any declaration of permanent disability. It considered the assessment valueless because no declaration of fitness to work or any degree of Zafra's permanent disability was made.

The petitioners moved for reconsideration, but their motion was denied in the CA resolution, dated December 7, 2012.

Hence, this petition.

GROUNDS FOR ALLOWANCE OF THE PETITION

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT DISMISSED THE PETITIONER'S CERTIORARI, IN THAT:

THE COURT OF APPEALS FAILED TO APPLY THE PROVISIONS OF THE POEA-SEC AND THE RECENT SUPREME COURT DECISIONS WHEN IT AFFIRMED THE NLRC'S AWARD OF PERMANENT DISABILITY BENEFITS TO THE PRIVATE RESPONDENT DESPITE THE LATTER'S PARTIAL DISABILITY ASSESSMENT OF 20% OF GRADE 10 ON THE SOLE BASIS OF THE PRIVATE RESPONDENT'S ALLEGATION THAT INCAPACITY FOR MORE THAN 120 DAYS HAS AUTOMATICALLY RENDERED HIM PERMANENTLY UNFIT FOR SEA DUTIES.

THE COURT OF APPEALS FAILED TO CONSIDER THAT THE PRIVATE RESPONDENT HAS NOT PRESENTED ANY MEDICAL EVIDENCE WHICH WOULD SHOW THAT HE IS INDEED SUFFERING A PERMANENT AND TOTAL DISABILITY WHICH WOULD ENTITLE HIM TO US$60,000.

II

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING THE PRIVATE RESPONDENT ATTORNEY'S FEES.[19]

Petitioners are of the position that the CA erred in affirming the NLRC decision for the following reasons:

1. The CA should not have based the disability compensation on the basis of the number of days a seafarer failed to resume work but on the gradings mentioned in the Schedule of Disability Allowances. The Labor Code provision on disability is not applicable as it is the POEA-SEC that governs the relationship of the parties in this case. Under the POEA-SEC, the injury

that a seafarer may have suffered is compensated on the basis of the schedule provided. Accordingly, Zafra should only be entitled to receive the benefit corresponding to Grade 10 disability as assessed by the company-designated physician. It cited *Fernandez v. Great Southern Maritime Services, Inc.*,[20] where this Court affirmed a CA rule that a seafarer's argument that his incapacity to work automatically entitled him to full disability benefits was without merit. The petitioners submit that if it were otherwise, the Schedule of Disability Allowance under the POEA-SEC would be rendered absurd and meaningless.

2. The CA also erred when it automatically declared Zafra as permanently and totally disabled after the 120-day period lapsed without any certificate of fit to work being issued. Citing *Vergara v. Hammonia Maritime Services Inc.*[21] and *Crystal Shipping v. Natividad*,[22] the petitioners would want this Court to apply the rule that even if the seafarer has not been assessed within the 120-day period, this does not automatically make him permanently and totally disabled. Considering that there are injuries that cannot be assessed or treated within the 120-day period, the period may be extended up to the maximum of 240 days if the condition of the seafarer requires further medical attention. Thus, an injury only becomes permanent and total if within the 240-day period, the company-designated physician makes such a declaration after the lapse of the said period, no declaration to that effect was made. In this case, Zafra was assessed with a Grade 10 disability within the 240 day period and, as such, he should have been declared partially disabled, instead of declaring him with permanent and total disability.

3. The CA also erred in concluding that because Zafra was not furnished a copy of the final assessment, the same was of no value. They argue that nowhere in the POEA-SEC or jurisprudence does it state that the medical reports issued by the company-designated doctor are of no value if a copy thereof was not sent to the seafarer.

In sum, the petitioners are of the position that Zafra should have been declared by the CA as partially disabled with a Grade 10 disability and entitled to US$3,590.73 only.

Respondent's Position

In his *Comment*,[23] Zafra contended that his entitlement to full disability benefits was in accord with the following facts:

1. The petitioners did not declare his fitness to work or the existence of his permanent disability within the 240-day period.

2. The petitioners' medical records of his condition have shown to have remained the same from the time he sustained his injury until August 20, 2010.

3. He remains unemployed from the time of his repatriation and is unable to perform the same physical activities he was able to do prior to his injury.

Accordingly, Zafra prays for the Court's affirmation of his permanent total disability and the right to receive the corresponding full disability benefits.

Ruling of the Court

The Court denies the petition.

There is no dispute that Zafra has been suffering permanent disability because he has remained unable to resume sea duties after the lapse of the 240-day period. The dispute is simply whether such permanent disability is partial or total in character. If the permanent disability is partial, then Zafra shall be entitled to US$3,590.73 only, the amount corresponding to the assessed Grade 10 disability pursuant to the schedule provided in the POEA-SEC. If it is total, Zafra shall receive the maximum US$60,000.00 as compensation.

The Court has reiterated in many cases that total permanent disability means the disablement of an employee to earn wages in the same kind of work that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[24]

Partial disability, on the one hand, is when the employee suffers a permanent partial loss of the use of any part of his body[25] as a result of the injury or sickness.

In *Vicente v. Employees Compensation Commission*,[26] the Court laid down the litmus test and distinction between Permanent Total Disability and Permanent Partial Disability, to wit:

> x x x while permanent total disability invariably results in an employee's loss of work or inability to perform his usual work, permanent partial disability, on the other hand, occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work. Stated otherwise, the test of whether or not an employee suffers from permanent total disability is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 or [240] days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in a more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from permanent total disability regardless of whether or not he loses the use of any part of his body.

In *Fil-Star Maritime Corporation v. Rosete*,[27] the Court emphasized that in determining whether a disability was total or partial, what was crucial was whether the employee who suffered from disability could still perform his work notwithstanding the disability he met.

In brief, permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained. The premise is that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.

For the courts and labor tribunals, determining whether a seafarer's fitness to work despite suffering an alleged partial injury generally requires resort to the assessment and certification issued within the 120/240-day period by the company-designated physician. Through such certification, a seafarer's fitness to resume work or the degree of disability can be known, unless challenged by the seafarer through a second opinion secured by virtue of his right under the POEA-SEC. Such certification, as held by this Court in numerous cases, must be a definite assessment of the seafarer's fitness to work or permanent disability.[28] As stated in *Oriental Shipmanagement Co., Inc. v. Bastol*,[29] the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability. Without which, the characterization of a seafarer's condition as permanent and total will ensue because the ability to return to one's accustomed work before the applicable periods elapse cannot be shown.

In this case, petitioners seek the Court's attention to the "final" assessment, dated April 19, 2010, issued by the attending physician, which was earlier quoted.

To the petitioners, this assessment forecloses any claim that Zafra's injury is total or one that incapacitates the employee to continue performing his work. They treat it as the certification required under Section 20 (B)(3) of the POEA-SEC[30] as it contained his degree of disability and fitness to resume sea duties.

The statement, however, is clearly devoid of any definitive declaration as to the capacity of Zafra to return to work or at least a categorical and final degree of disability. As pointed out by the CA, all the medical certificates found in the record merely recited his medical history and, worse, it made no mention as to whether the seafarer was even capable of resuming work. In fact, it was **merely a suggestion** coming from the attending doctor and not from the company-designated physician, as if the letter was written while the process of evaluation was still being completed. To stress, Section 20 (B)(3) of the POEA-SEC requires the declaration of fit to work or the degree of permanent disability by the company-designated physician and not by anyone else.[31] Here, it was only Dr. Chuasuan, Jr. who signed the suggested assessment, addressing the letter solely to Dr. Lim, the company-designated physician. Taken in this context, no assessment, definitive in character, from the company-designated physician's end was issued to reflect whether Zafra was fit or unfit to resume duties within the 120/240 day period, as the case may be. Thus, the Court deems him unfit to resume work on board a sea vessel.

It makes sense then to conclude that because Zafra has been deemed unfit to work

after the expiration of the 240-day period, it would be illogical to declare him as merely permanently, partially disabled. To reiterate, partial disability exists only if a seafarer is found capable of resuming sea duties within the 120/240 period. Here, there was no such finding. Thus, the petitioners' claim that Zafra only suffered a partial disability has undoubtedly no basis on record. If at all, the basis was not strong enough to merit its affirmation by the NLRC and the CA.

Conversely, the weight of evidence overwhelmingly tilts on the side of Zafra. Evident in the record is the fact that he has remained unemployed as a seafarer for more than 240 days from the time of his repatriation on October 22, 2009. His allegation that he was unable to perform the same physical activities he used to perform prior to his injury has not been contradicted by the petitioners or by contrary documentary evidence. Even the latest medical report, dated August 20, 2010, shows that as of July 20, 2010 (exceeding 240 days from the date of repatriation), Zafra remained a victim of the same disability:

> Final Diagnosis (July 20, 2010) - Probable Medial meniscal Tear, Left Knee; Anterior Cruciate Ligament Tear, Left Knee; S/P Arthoroscopic Anterior Cruciate Ligament Reconstruction, Left Knee with an incidental finding of Urinary Tract Infection.[32]

These circumstances are in accord with Zafra's contention that he should be deemed to be suffering permanent total disability. The CA was correct in ruling in his favor, being consistent with jurisprudence.

In *Fil-Pride Shipping Company, Inc. v. Balasta*[33] the Court held that the "company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(l) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees Compensation. **If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled.**"

Similarly, in *United Philippine Lines v. Sibig*[34] and *Magsaysay Maritime Corporation v. Lobusta*[35] the Court also affirmed the award of US$60,000 as permanent and total disability benefits where after the lapse of 240 days there was no declaration of permanent disability issued by the company-designated physician.

Recently, in *Carcedo v. Maine Marine Philippines, Inc.*,[36] which cited *Krestel* and *Vergara*, the seafarer therein was discharged from the hospital on June 6, 2009, or 137 days from repatriation. The seafarer returned to the hospital for follow-up consultation on June 15, 2009, where the company-designated physician noted that seafarer's wound was still open and that he was to continue his medications. That was 146 days from repatriation, and company-designated physician still had nearly 100 days within which to give the final disability assessment, yet he gave none. The Court concluded that:

> The company-designated physician failed to give a definitive impediment rating of Carcedo's disability beyond the extended temporary disability

> period, after the 120-day period but less than 240 days. By operation of law, therefore, Carcedo's total and temporary disability lapsed into a total and permanent disability.
>
> [Emphasis Supplied]

Verily, there is no question that Zafra has remained in a state of disability that has become permanent and total considering that no certification, compliant with the POEA-SEC and the Labor Code, was issued within the 120/240-day period.

Viewed in this light, the CA did not err in finding the absence of grave abuse of discretion on the part of the NLRC and in affirming the award of permanent and total disability benefits to Zafra. It correctly applied the provisions of the POEA-SEC and the Labor Code on permanent disability in accordance with the rulings promulgated by this Court.

Lastly, considering that Zafra was forced to litigate and incur expenses to protect his right and interest, his right to attorney's fees in the amount of US$ 6,000.00 or an amount equivalent to 10% of his claim is likewise affirmed by this Court.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and *Jardeleza*,* JJ., concur.

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* Designated Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 2056, dated June 10, 2015.

[1] *Rollo*, pp. 66-79, penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Marlene Gonzales-Sison and Leoncia Real-Dimagiba, concurring.

[2] Id. at 81-82. penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Marlene Gonzales-Sison and Leoncia Real-Dimagiba, concurring.

[3] Id. at 132-137. Penned by Labor Arbiter Gaudencio P. Demaisip, Jr.

[4] Id. at 123-130. Penned by Commissioner Alex A. Lopez, with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr., concurring.

[5] Id. at 181.

[6] Id. at 165.

[7] Id.

[8] Id. at 166.

[9] Id. at 139-140.

[10] See CA Decision, id. at 68.

[11] Id. at 50. As admitted by the petitioner.

[12] Id. at 321.

[13] See LA Decision, id. at 132-137.

[14] Id. at 137.

[15] Id. at 129.

[16] Id. at 84-113.

[17] 622 Phil. 761 (2009).

[18] *Rollo*, p. 79.

[19] Id. at 37-38.

[20] G.R. No. 177801, Minute Resolution dated August 6, 2007.

[21] 588 Phil. 895 (2008).

[22] 510 Phil. 332 (2005).

[23] *Rollo*, pp. 421-433.

[24] *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011, 659 SCRA 642, citing *Quitoriano v. Jebsens Maritime, Inc.*, 624 Phil. 523 (2010), further citing Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code.

[25] Id.

[26] 271 Phil. 196 (1991).

[27] 677 Phil. 262 (2011).

[28] *Alpha Ship Management Corporation, et. al. v. Calo*, G.R. No. 192034, January 13, 2014, 713 SCRA 119.

[29] 636 Phil. 358 (2010).

[30] 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. (Emphasis Ours).

[31] Id.

[32] *Rollo*, p. 321.

[33] G.R. No. 193047, March 3, 2014, 717 SCRA 624, 626.

[34] G.R. No. 201072, April 2, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/201072.pdf> (Last visited: May 12, 2015). In this case, the Court said: "Sibug was repatriated and arrived in the country on January 15, 2007 after his Ryndam injury. He had surgery on his injured hand. On September 7, 2007, the company-designated doctor issued a medical report that Sibug has a permanent but incomplete disability. But this medical report failed to state the degree of Sibug's disability. Only in an email dated September 28, 2007, copy of which was attached as Annex 3 of petitioners' position paper, was Sibug's disability from his Ryndam injury classified as a grade 10 disability by the company-designated doctor. By that time, however, the 240-day extended period when the company-designated doctor must give the definite assessment of Sibug's disability had lapsed."

[35] G.R. No. 177578, January 25, 2012, 664 SCRA 134, 147-148.

[36] G.R. No. 203804, April 15, 2015.

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