758 Phil. 540

SECOND DIVISION

[G.R. No. 207328, April 20, 2015]

WILHELMSEN-SMITH BELL MANNING/WILHELMSEN SHIP MANAGEMENT, LTD./ FAUSTO R. PREYSLER, JR., PETITIONERS, VS. ALLAN SUAREZ, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the present petition for review on *certiorari*,[1] assailing the March 15, 2013 decision[2] and May 27, 2013 resolution[3] of the Court of Appeals in CA-G.R. SP No. 127295.

The Antecedents

The case arose from the complaint for permanent total disability benefits, damages and attorney's fees, filed by respondent **Allan Suarez** against **petitioners** Wilhelmsen-Smith Bell Manning, Inc., (*agency*), its responsible officer, Fausto R. Preysler, Jr., and its principal, Wilhelmsen Ship Management, Ltd.

Suarez alleged that he has been continuously hired by the petitioners for five years as ordinary seaman and has always been assigned to a car ship. His last contract,[4] approved by the Philippine Overseas Employment Administration (*POEA*) on May 20, 2010, was for nine months. His employment was also covered by a Model Collective Bargaining Agreement (*CBA*) of the Associated Marine Officers and Seamen's Union of the Philippines (*AMOSUP*).[5] After his pre-employment medical examination, he boarded the vessel *Toreador* on May 26, 2010.

Sometime in December 2010, while securing chain lashing heavy equipment on board the vessel, Suarez suffered severe back pain which radiated to his right abdomen. He was brought to a medical clinic in Rotterdam, Germany, where he was diagnosed with *Right Pelvoureteric Junction Obstruction*. His attending physician declared him unfit to work.

Suarez was medically repatriated and disembarked from the vessel on December 23, 2010. He immediately reported to the agency and was referred to its accredited physician at the Metropolitan Medical Center (*MMC*), Dr. Karen Frances **Hao-Quan**. Dr. Hao-Quan initially diagnosed him with "*ureteropelvic junction obstruction*" (*UJO*). On December 30, 2010, he underwent a CT scan of the urography and was continuously treated as an out-patient.

Allegedly, despite his medications, his condition persisted. He was again examined by Dr. Hao-Quan and was found to be suffering from "*hydroneprosis secondary to UJO, right*" On February 7, 2011, he underwent *"nephrectomy, right and cystocopy"* On February 16, 2011, he again consulted Dr. Hao-Quan who diagnosed him with "*hydroneprhrosis secondary to UJO, right; s/p nephrectomy, right and cystoscopy.*"

Meanwhile, Suarez consulted a doctor of his choice, Dr. Manuel C. **Jacinto,** Jr., who found him with "*hydronephrosis secondary to UJO, right; gastric ulcer/erosion; h.pylori infections chronic pyelonephritis right kidney*." Dr. Jacinto declared Suarez no longer fit to work as a seafarer,[6] prompting him to file the complaint. He prayed for permanent total disability compensation of US$89,100.00 under the AMOSUP CBA.

To substantiate his claim, Suarez alleged that he had become unfit to work since he was repatriated on December 23, 2010, and because of his condition, no employer in his right mind would hire him. He further alleged that under the permanent medical unfitness clause of the CBA, he is entitled to permanent disability benefits, regardless of his disability grade.

The petitioners, for their part, confirmed that upon his disembarkation, Suarez was subjected to medical examinations, treatments and surgical procedures by the company-designated doctors. They stressed that the medical report of his January 13, 2011 check-up indicated (based on the DTPA scan) that his right kidney was almost non-functional and his left kidney had normal perfusion. He was diagnosed with "*hydronephrosis secondary to UJO, right.*"[7]

In her January 31, 2011 medical report,[8] MMC Asst. Medical Coordinator, Dr. Mylene **Cruz-Balbon**, declared that Suarez's UJO was not work-related. Thereafter, or on February 7, 2011, after undergoing specialized medical tests, Suarez was subjected to prescribed major surgical procedures — *cystoretrograde pyelography and nephrectomy, right kidney*. On March 31, 2011, Dr. Cruz Balbon reiterated that Suarez's condition was not work-related. She also reported that the prognosis of his condition was good, barring unforeseen circumstances; and that if he is entitled to disability compensation, his disability grading secondary to loss of 1 kidney is Grade 7[9] Finally or on May 10, 2011, the company urologist, Dr. Ed **Gatchalian**, declared Suarez fit to work.[10]

The petitioners also pointed out that under the POEA-SEC,[11] Suarez's illness is not an occupational disease. They maintained that medical studies show that UJO is mainly a genetic abnormality. Still, they shouldered the cost of his medical treatment until he was declared fit to work by the company-designated physician. They thus argued that Suarez's claim for damages and attorney's fees had no basis as their denial of his demand for disability compensation was not in bad faith.

The Rulings on Compulsory Arbitration

On October 28, 2011, Labor Arbiter (*LA*) Fedriel S. Panganiban rendered a decision[12] dismissing the case for lack of merit. LA Panganiban held that Suarez has not offered any evidence to refute the argument that his illness is not compensable for not being

work-related and because the company-designated physician had declared him fit to work. The evidence, LA Panganiban emphasized, shows that the respondents have fully complied with their contractual obligations, thus negating any finding of liability for complainant's claims.

On appeal by Suarez, the National Labor Relations Commission (*NLRC*) reversed LA Panganiban's ruling in its decision[13] of March 27, 2012. The labor tribunal found Suarez to have suffered from permanent total disability as he was unable to perform his job for more than 120 days. It opined that his illness need not be shown to be work-related provided it occurred during the term of the contract. It ordered the petitioners to pay Suarez, jointly and severally, permanent total disability benefits of US$60,000.00 under the POEA-SEC, plus 10% attorney's fees. It refused to honor the AMOSUP CBA "as the parties thereto were not specifically identified, particularly as regards respondents herein."[14]

The petitioners moved for reconsideration, but the NLRC denied the motion. They then appealed to the CA through a petition for *certiorari*, contending that the NLRC committed grave abuse of discretion in reversing LA Panganiban's dismissal of the complaint.

The petitioners argued before the CA that Suarez's illness was not work-related as there was no evidence showing that the working conditions on board the vessel caused or aggravated his medical condition, but even assuming that his illness was work-related, his claim should nonetheless fail in view of the fit-to-work declaration by the company-designated physician.

The CA Decision

The CA denied the petition. It found no grave abuse of discretion in the assailed NLRC judgment as it found the judgment supported by substantial evidence. It concurred with the NLRC conclusion that Suarez suffered from permanent total disability since he was unable to return to his job as a seafarer for more than 120 days. It stressed that from the time Suarez was medically repatriated on December 23, 2010, he was unable to work for 138 days since he was certified fit to work by the company-designated physician only on May 10, 2011.

The CA refused to give credit to the fit-to-work assessment of the company-designated physician. It considered the assessment not final, binding or conclusive on the seafarer, the labor tribunals, or the courts. Citing jurisprudence,[15] it stressed that the seafarer may request a second opinion regarding his ailment or injury and the medical report issued by the physician of his choice shall be evaluated on its inherent merit by the labor tribunals and the courts.

Like the NLRC, the CA noted that the declaration by Dr. Jacinto, Suarez's chosen physician, that he was no longer fit to work as a seaman jibed with the medical findings of one of the company doctors, Dr. Cruz-Balbon. It concluded that the two physicians shared the view that Suarez's work-related illness was subsisting and that he would feel the effect of the loss of his kidney for the rest of his life.[16]

The appellate court rejected the petitioners' submission that there was no evidence that the working conditions on board the *Toreador* caused or aggravated Suarez's illness. It emphasized that it is enough that there is a reasonable linkage between the disease suffered by the employee and his work to make a rational mind conclude that Suarez's work may have contributed to the establishment or, at the very least, aggravation of any preexisting condition he might have had.[17]

The CA pointed out that in the present case, Suarez was deployed to the petitioners' car ship and "was exposed to heavy equipment" requiring him to exert force that caused his medical condition. It also found credible Suarez's claim that the food served onboard the vessel was extremely unhealthy as it was frozen, fatty and salty. The CA thus believed that Suarez's working environment, as well as his diet onboard the vessel, may have aggravated or contributed to the development of his *Hydronephrosis secondary to UJO.*

The petitioners moved for, but failed to secure, a reconsideration from the CA.

The Petition

The petitioners now appeal to the Court to set aside the CA rulings on grounds that the appellate court gravely erred in affirming the award to Suarez of (1) US$60,000.00 in disability benefits, despite the declaration of the company-designated physician that he was fit to work and that his illness was not work-related; and (2) attorney's fees, despite the fact that their denial of his claim for disability benefits was based on valid grounds.

The petitioners bewail the rejection by the CA of the fit-to-work assessment of the company-designated physician, considering as they point out, that a company-designated physician's assessment has been upheld in recent decisions[18] of this Court, absent any contrary finding of an independent third physician jointly appointed by the parties. Moreover, they stress that in another recent ruling,[19] the Court clothed the company doctor's assessment with the presumption of regularity and legality and, therefore should be given respect. In the present case, they add, Suarez failed to rebut such presumption by moving for the appointment of a third doctor or by showing that the company doctor's findings are tainted with bias, malice or bad faith.

The petitioners insist that Suarez's illness is mainly a genetic abnormality as medical studies show and is therefore not work-related. Further, they contend that the CA erred in upholding the NLRC finding that Suarez is permanently disabled because he was unable to work for more than 120 days. They maintain that the 120-day rule had already been overturned by recent Court rulings[20] and does not apply to Suarez's claim.

The company-designated physician, the petitioners argue, assessed Suarez's illness to be non-work-related on January 27, 2011. This assessment notwithstanding, they continued his treatment until he was declared fit to work on May 10, 2011. Considering that Suarez's illness was not work-related and that the company-designated physician

declared him fit to work within the period set by the rules, the petitioners submit that Suarez is not entitled to disability compensation and to attorney's fees.

Suarez's Comment

In his comment[21] filed on November 18, 2013, Suarez prays for a dismissal of the petition with the submission that the NLRC decision that was affirmed by the CA is supported by substantial evidence, relevant jurisprudence and the provisions of the POEA-SEC. He maintains that the CA acted judiciously in upholding the findings of the NLRC that because of his disability, he had become totally unfit to work as a seafarer in any capacity as a result of the illness he contracted on board the petitioners' vessel. He insists that he is entitled to full disability compensation. The petitioners, he tells the Court, "had failed to come up with new issues, new arguments, new evidence or new matter"[22] that will justify a review of the case.

The Court's Ruling

We find merit in the petition. The facts, the law and relevant jurisprudence militate against the award of permanent total disability benefits to Suarez.

First. It appears that Suarez's illness, *hydronephrosis secondary to UJO, right* (a kidney ailment) is not work-related and therefore not compensable. Under Section 20 (B) 3 of the POEA-SEC, the employer is liable only for compensation/benefits when the seafarer suffers **work-related injury or illness during the term of the contract**.[23] Even the disputed AMOSUP CBA (invoked by Suarez but rejected by the NLRC) states that a seafarer who suffers permanent disability as a result of **work related illness** or from an injury as a result of an accident, shall in addition to sick pay, be entitled to compensation according to the provisions of the CBA.[24]

Also, UJO is not an occupational disease as it does not appear in the list of **occupational diseases** under Section 32-A of the POEA-SEC, although under its Section 20 (4), it is disputably presumed to be work-related. In this case, the company-designated physician certified that the subject illness is not work-related,[25] an assessment supported by medical studies indicating that UJO or *uteropelvic junction obstruction* is a congenital abnormality that remains an enigma in terms of both diagnosis and therapy. The abnormality may be observed in both adults and children. Thus, LA Panganiban aptly concluded that the petitioners were able to overcome the presumption.[26]

Second. The foregoing notwithstanding and, even on the assumption that Suarez's illness is work-related, his claim for permanent total disability compensation cannot prosper. The company-designated physician **declared Suarez fit to work**. The declaration was made by Dr. Ed R. Gatchalian, a urological surgeon, in his letter of May 10, 2011[27] to Dr. Robert Lim, MMC Medical Coordinator. According to Dr. Gatchalian: "*Mr. Allan Suarez is now doing well. He has fully recovered from his surgery. His urinalysis is now normal. He is now cleared to go back to work.*"

Under Section 20 (B) 3, par. 1 of the POEA-SEC,[28] it is the company-designated physician who determines the fitness to work or the degree of permanent disability of a seafarer who disembarks from the vessel for medical treatment. The AMOSUP CBA likewise provides that "*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.*"[29] The POEA-SEC, supplemented by the CBA, if one exists is the law between the parties[30] and must be given respect. In this light, the labor arbiter committed no error when he upheld the fit-to-work assessment of the company-designated physician as it was in accordance with the law that governs Suarez's employment.

The LA's reliance on the company doctors' assessment over that of Dr. Jacinto, Suarez's chosen physician, was justified not only by the governing law between the parties, but also by the time and resources spent and the effort exerted by the petitioners' physicians in the examination, treatment and management (including surgical procedures) of Suarez's medical condition until he was declared fit to work by the company urologist on May 10, 2011.[31]

On the other hand, LA Panganiban noted that the medical certificate issued by Dr. Jacinto to Suarez on June 6, 2011[32] "shows that it was made without proof of any extensive examination having been conducted" and it was "evident that it was the first and only consultation made by the complainant" with Dr. Jacinto.[33] And if we may add, Dr. Jacinto made substantially the same finding as those of the company doctors that Suarez suffered from UJO. In this light, we just cannot accept Suarez's one-time consultation with Dr. Jacinto as a credible basis for his unfit-to-work certification.

Third. The NLRC and CA's reliance on the 120-day rule for the award of permanent total disability compensation to Suarez is misplaced.

In *Splash Philippines, Inc., et al, v. Ronulfo G. Ruizo*[34] the Court reiterated that the 120-day rule for the declaration of a permanent total disability laid down in earlier maritime compensation cases, the most prominent of which was *Crystal Shipping, Inc., v. Natividad*[35] had already been clarified or modified.

Citing *Vergara v. Hammonia Maritime Services, Inc*,[36] the Court stressed that the degree of a seafarer's disability cannot be determined on the basis solely of the 120-day rule or in total disregard of the seafarer's employment contract — executed in accordance with the POEA-SEC — the parties' CBA, if there is one, and Philippine law and rules in case of any unresolved dispute, claim or grievance arising out of or in connection with the POEA-SEC. Stated otherwise, the Court emphasized that the application of the 120-day rule must depend on the circumstances of the case, considering especially the parties' compliance with their contractual duties and obligations.

In this case, Suarez was declared fit to work by Dr. Gatchalian 138 days after his repatriation, which was well within the extended 240-day period set by Rule X, Section 2, Book IV of the Implementing Rules of the Labor Code[37] (the Rules on Employees

Compensation), for the physician to make an assessment of the seafarer's disability or to declare him fit to work as explained in *Vergara*. The fit-to-work certification issued by Dr. Gatchalian clearly negated a permanent total disability assessment. Yet, the NLRC and the CA rejected Dr. Gatchalian's assessment and invoked the 120-day rule, declaring that Suarez was permanently disabled because he had been unable to resume his work as a seaman since he disembarked on December 23, 2010. Necessarily, they also upheld the unfit-to-work certification of Dr. Jacinto, Suarez's physician of choice.

The NLRC and CA rulings were rendered with grave abuse of discretion as they were in total disregard of the POEA-SEC and applicable Philippine law, particularly the following provisions:

> **Section 20 (B) 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.**
>
> **x x x x**
>
> **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 the parties.**
>
> **Section 20 (B) 6 -**
>
> **In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits in Section 32 of this Contract. Computation of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.**[38]

On the other hand, Rule X, Section 2 of the ECC Rules provides:

> 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 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.[39]

The Court said in Vergara that "*if the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.*"[40] Needless to say, and as earlier mentioned, Dr. Gatchalian declared Suarez fit to work 138 days after his repatriation on December 23, 2010.

While Suarez was free to consult a physician of his choice regarding his medical condition and/or disability as implied by the last paragraph of Section 20 (B) 3 of the POEA-SEC, the contrary opinion of his chosen physician should have been referred to a third doctor, jointly with the petitioners, for a binding and final opinion. He should have initiated the referral considering that the petitioners were not aware that he consulted Dr. Jacinto. Instead, he filed the complaint upon issuance of the unfit-to-work certification of Dr. Jacinto.

The filing of the complaint was premature and constituted a breach of Suarez's contractual obligation with the petitioners.[41] And because there was no third and binding opinion, Dr. Gatchalian's fit-to-work assessment should prevail.[42] The complaint should have been dismissed.

Finally, one other consideration why the 120-day rule cannot be accepted as a cure-all formula for the award of a permanent total disability compensation is the provision of a disability compensation system under the POEA-SEC under its Section 32 which laid down a **Schedule of Disability Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illness Contracted**, in conjunction with Section 20 (B) 6 above which, in turn, **provides that in case of a permanent total or partial disability, the seafarer he shall be compensated in accordance with Section 32.**

In a clarificatory resolution dated February 12, 2007 in relation to *Crystal Shipping,* the Court declared that the POEA-SEC does not measure disability in terms of number of days but by gradings only.[43] Significantly, permanent total disability **is classified under Grade 1** under Section 32. As we stressed in *Splash Philippines*, it is about time that the schedule of disability compensation under Section 32 is seriously observed, as we must in this case. There being no impediment grading declared by Dr. Jacinto, Suarez's claim for total disability benefits must necessarily fail.

To reiterate, **we find merit in the petition.**

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED.** The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. The decision dated October 28, 2011 of the Labor Arbiter is hereby ordered **REINSTATED**.

No costs.

SO ORDERED.

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

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[1] *Rollo*, pp. 33-53.

[2] Id. at 60-76; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

[3] Id. at 78-79.

[4] Id. at 208.

[5] Id. at 219-246.

[6] Id. at 218; Dr. Jacinto's Medical Certificate.

[7] Id. at 177.

[8] Id. at 179.

[9] Id. at 184.

[10] Id. at 185; Dr. Gatchalian's letter dated May 10, 2011 to Dr. Robert D. Lim, MMC's Medical Coordinator.

[11] Department Order No. 4, s. of 2002; *Amended Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.*

[12] *Rollo*, pp. 135-144.

[13] Id. at 121-133; penned by Commissioner Napoleon M. Menese and concurred in by Commissioners Raul T. Aquino and Teresita D. Castillon-Lora.

[14] Id. at 132, par. 2.

[15] *Wallem Maritime Services, Inc. v. Ernesto C. Tanawan,* G.R. No. 160444, August 29, 2012.

[16] *Supra* note 2, at 13, last paragraph.

[17] Jessie *V. David, et al. v. OSG Shipmanagement, Manila, Inc*., G.R. No. 197206, September 26, 2012.

[18] *Santiago v, Pacbasin Ship Management,* G.R. No. 194677, April 18, 2012; *Daniel Ison v. Crewserve,* G.R. No. 173951, April 16, 2012; and *CF Sharp Crew Management, Inc., Norwegian Cruise Lines and Norwegian Sim, and/or Arturo Rocha v. Joel Taok,* G.R. No. 193679, August 13, 2012.

[19] *Magsaysay Maritime Maritime Corporation and/or Cruise Ships Catering and Services International N. V. v NLRC and Romeo Cedol*, G.R. No. 186180, March 22, 2010.

[20] *Vergara v. Hammonia Maritime Services,* G.R. No. 172933, October 6, 2008 & *Santiago v. Pacbasin Shipmanagement, Inc.,* G.R. No. 194677, April 24, 2012.

[21] *Rollo*, pp. 441-468.

[22] Id. at 443, Comment, p. 2, par. 2.

[23] *Supra* note 11, Section 20 (B), Introductory Paragraph.

[24] *Supra* note 5, Article 20.3.1.

[25] *Supra* note 7.

[26] *Rollo*, p. 142; LA Panganiban's Decision, p. 8, par. 1.

[27] *Supra* note 10.

[28] *Supra* note 11.

[29] *Supra* note 5, Article 20.1.3.2.

[30] *Philippine Hammonia Ship Agency, Inc. v. Eulogio Dumadag,* G.R. No. 194612, June 26, 2013, 700 SCRA 53, 64, citing *Magsaysay Maritime Corp. v. Velasquez,* G.R. No. 179802, November 14 2008 571 SCRA 239, 248.

[31] *Supra* note 10.

[32] *Supra* note 6.

[33] *Supra* note 13.

[34] G.R. No. 193628, March 19,2014.

[35] 510 Phil. 332(2005).

[36] 588 Phil. 895 (2008).

[37] The Amended Rules of the Employees Compensation Commission.

[38] Emphasis and underscoring ours.

[39] Emphasis and underscoring ours

[40] *Supra* note 36, at 912; citations omitted.

[41] *Supra* note 30, p. 65.

[42] Id. at 67, citing *Santiago v. Pacbasin Ship Management, Inc.,* G.R. No. 194677, April 18, 2012, 670 SCRA, 27.

[43] *Supra* note 35.
