764 Phil. 212

FIRST DIVISION

[G.R. No. 212049, July 15, 2015]

MAGSAYSAY MARITIME CORPORATION, PRINCESS CRUISE LINES, MARLON R. ROÑO AND "STAR PRINCESS," PETITIONERS, VS. ROMEO V. PANOGALINOG, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 25, 2013 and the Resolution[3] dated April 7, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 126368, which reversed and set aside the Decision[4] dated December 15, 2011 and the Resolution[5] dated June 27, 2012 of the National Labor Relations Commission (NLRC) in NLRC NCR CN. OFW (M)-10-14690-10 denying respondent Romeo V. Panogalinog's (respondent) claim for permanent total disability benefits.

The Facts

Respondent was employed by petitioner Magsaysay Maritime Corporation (MMC) for its foreign principal, Princess Cruise Lines, Ltd. (PCL) as Mechanical Fitter on board the vessel "Star Princess" under a ten (10) month contract[6] that commenced on December 18, 2009, with a basic salary of US$508.00 per month, exclusive of overtime and other benefits.[7]

On April 27, 2010, respondent suffered injuries when he hit his right elbow and forearm on a sewage pipe during a maintenance work conducted on board the vessel. He was immediately provided medical treatment at the ship's clinic and was diagnosed by the ship doctor with "Lateral Epicondylitis, Right". However, despite treatment, his condition did not improve. Hence, he was medically repatriated on May 9, 2010.[8]

On May 14, 2010, the company-designated physicians also diagnosed respondent with "Lateral Epicondylitis, Right" and, thus, the latter was advised to undergo physical therapy. On June 2, 2010, Dr. Robert Lim (Dr. Lim), the company-designated doctor, found that "[p]atient claims almost resolution of both lateral elbow paid, decreased pain on the right wrist, slight limitation of motion of the right wrist, fair grip." On June 23, 2010, another medical bulletin was issued by Dr. Lim stating that "[p]atient claims improvement with physical therapy." On September 15, 2010, Dr. William Chuasuan, Jr. (Dr. Chuasuan), also a company-designated physician, issued a medical report stating that respondent was fit to return to work.[9]

After the company-designated physicians declared him fit to work, respondent sought the services of an independent physician, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto), who, on the other hand, found him "physically unfit to go back to work"[10] as declared in a medical certificate dated October 13, 2010.[11]

On even date, respondent filed a complaint[12] for the payment of permanent total disability compensation in accordance with the parties' collective bargaining agreement (CBA), medical expenses, moral and exemplary damages, and other benefits provided by law and the CBA against MMC, its President, Marlon R. Rofio, and its foreign principal, PCL (petitioners), before the Labor Arbiter (LA), docketed as NLRC RAB No. NCR Case No. (M) NCR-10-14690-10.

In his Position Paper,[13] respondent averred that he was unfit to perform his job for more than 120 days, and that his injuries in his right elbow and forearm were never resolved and in fact, deteriorated despite medical treatment.[14] And since by reason thereof he had lost his capacity to obtain further sea employment and an opportunity to earn an income, respondent sought for the payment of permanent total disability compensation in the amount of US$80,000.00 pursuant to the CBA that was enforced during his last employment contract. He also sought for the payment of moral and exemplary damages in view of petitioners' unjustified refusal to settle the matter under the CBA and their evident bad faith in dealing with him, as well as attorney's fees for having been compelled to litigate.[15]

For their part, petitioners maintained that respondent is not entitled to the payment of permanent total disability benefits since he was declared fit to work by the company-designated physician. They further denied respondent's claims for moral and exemplary damages as they treated him fairly and in good faith. They likewise denied respondent's claim of attorney's fees for lack of basis.[16]

The LA Ruling

In a Decision[17] dated April 7, 2011, the LA ruled in favor of respondent, ordering petitioners to jointly and severally pay the former the sum of US$80,100.00, or its peso equivalent at the time of payment, as permanent total disability benefits, as well as moral and exemplary damages in the amount of P50,000.00 each.

The LA held that since the treatment of respondent's work related injury and declaration of fitness to work exceeded the 120-day period under the POEA Standard Employment Contract (POEA-SEC), and considering further that he was not anymore rehired, respondent was entitled to permanent total disability benefits in accordance with the CBA. Moral and exemplary damages were equally awarded for petitioners' refusal to pay respondent's just claim, which constitutes evident bad faith.

However, the LA denied respondent's other money claims due to his failure to sufficiently state in his complaint the ultimate facts on which the same were based.

Aggrieved, petitioners filed an appeal[18] to the NLRC.

The NLRC Ruling

In a Decision[19] dated December 15, 2011, the NLRC reversed and set aside the appealed LA decision and instead, dismissed respondent's complaint.

It held that the medical certificate of the independent physician, Dr. Jacinto, in support of respondent's claim for permanent total disability benefits cannot prevail over the medical reports of the company-designated physicians who actually treated him. It added that respondent's injury had clearly healed, considering that he admittedly signed the certificate of fitness to work, adding too that his doubts about his true medical condition at the time he was promised redeployment was not proof that he was merely forced to sign the same.[20]

Respondent moved for reconsideration,[21] but was denied in a Resolution[22] dated June 27, 2012, prompting the filing of a petition for *certiorari*[23] before the CA.

The CA Ruling

In a Decision[24] dated October 25, 2013, the CA granted the *certiorari* petition and reinstated the LA's Decision dated April 7, 2011.

It ruled that respondent was entitled to full permanent total disability benefits, considering that a period of more than 120 days had elapsed before the company-designated physicians made their findings, and that respondent was no longer redeployed by petitioners despite the finding of fitness to work by the company-designated physicians. In this relation, it further observed that the award of said benefits was not based on the findings of respondent's physician but rather on the number of days that he has been unfit to work.

Dissatisfied, petitioners filed a motion for reconsideration[25] which was, however, denied in a Resolution[26] dated April 7, 2014; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed grave error in awarding respondent permanent total disability benefits.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or

personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[27]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's *certiorari* petition since the NLRC did not gravely abuse its discretion in dismissing the complaint for permanent total disability benefits for respondent's failure to establish his claim through substantial evidence.

It is doctrinal that the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but by law and by contract.[29] The relevant legal provisions are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation (AREC), while the relevant contracts are the POEA Standard Employment Contract (POEA-SEC), the parties' Collective Bargaining Agreement (CBA), if any, and the employment agreement between the seafarer and employer.

In this case, the parties entered into a contract of employment in accordance with the POEA-SEC which, as borne from the records, was covered by an overriding International Transport Workers' Federation (ITF) Cruise Ship Model Agreement For Catering Personnel, *i.e.*, the CBA, that was effective from January 1, 2010 until December 31, 2010.[30] Since respondent's injury on board the vessel "Star Princess" that caused his eventual repatriation was sustained on April 27, 2010, or during the effectivity of the CBA, his claim for the payment of permanent total disability compensation shall be governed by Article 12 (2) of the CBA which provides:

> 2. Disability:
>
> A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Owners/Company, regardless of fault, including accidents occurring whilst traveling to or from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> The compensation which the Owner/Company, Manager, Manning Agent, and any other legal entity substantially connected with the vessel shall be jointly and severally liable to pay shall be calculated by reference to an agreed medical report, with the Owners/Company and the Seafarer both able to commission their own and when there is disagreement the parties to this Agreement shall appoint a third doctor whose findings shall be binding on all parties. The aforesaid medical report determines the Degree of Disability and the table below the Rate of Compensation.

x x x x

> Regardless of the degree of disability an injury or illness which results in loss of profession will entitle the Seafarer to the full amount of compensation, USD eighty-thousand (80,000) for Ratings (Group B, C & D) and USD one-hundred-and-twenty-thousand (120,000) for Officers (Group A). For the purposes of this Article, loss of profession means when the physical condition of the Seafarer prevents a return to sea service, under applicable national and international standards and/or when it is otherwise clear that the Seafarer's condition will adversely prevent the Seafarer's future of comparable employment on board ships.[31]

Based on the afore-cited provision, a seafarer shall be entitled to the payment of the full amount of disability compensation **only if his injury, regardless of the degree of disability, results in loss of profession**, *i.e.*, his physical condition prevents a return to sea service. Based on the submissions of the parties, this contractual attribution refers to permanent total disability compensation as known in labor law. Thus, the Court examines the presence of such disability in this case.

Preliminarily, the task of assessing the seaman's disability or fitness to work is entrusted to the company-designated physician. Section 20 (B) (3) of the 2000 POEA-SEC 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 but in no case shall this period exceed one hundred twenty (120) days.
>
> **For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**

> **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.** (Emphases supplied)

Under the Labor Code, there are three kinds of disability, namely: (1) temporary total disability; (2) permanent total disability; and (3) permanent partial disability. Section 2, Rule VII of the AREC differentiates the disabilities as follows:

> SEC. 2. Disability - (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided in Rule X of these Rules.
>
> (b) **A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.**
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body. (Emphasis supplied)

In this case, despite the finding of fitness to work by the company-designated physicians, the CA declared respondent entitled to permanent total disability benefits for failure of the former to declare the latter fit to work within the 120-day period provided under Section 20 (B) (3) of the 2000 POEA-SEC, citing the ruling in the cases of *Valenzona v. Fair Shipping Corporation*[32] (*Valenzona*) and *Maersk Filipinas Crewing, Inc. v. Mesina*[33] (*Maersk Filipinas Crewing, Inc.*) that declared a seafarer permanently disabled if it lasts continuously for more than 120 days. Both *Valenzona* and *Maersk Filipinas Crewing, Inc*. stemmed from the ruling in *Crystal Shipping, Inc. v. Natividad*[34] that characterized permanent disability as the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

However, recent jurisprudence now holds that the said 120-day rule is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.[35] As clarified by the Court in the later case of *Vergara v. Hammonia Maritime Services, Inc.*:[36]

> [T]he petitioner has repeatedly invoked our ruling in *Crystal Shipping, Inc. v. Natividad*, apparently for its statement that the respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.

Elucidating on this point, *Vergara* discussed the seeming conflict between Section 20 (B) (3) of the 2000 POEA-SEC and Article 192 (c) (1)[37] of the Labor Code on permanent total disability in relation to Section 2(a), Rule X[38] of the AREC that provided for a 240-day period in case of further medical treatment, thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **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.[39] (Emphasis and underscoring supplied)

Thus, temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he is allowed to do so, or **upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability**.[40]

In this relation, the Court, in the recent case of *C.F. Sharp Crew Management, Inc. v. Taok*,[41] laid down the instances when a seafarer may be allowed to pursue an action for total and permanent disability benefits, to wit:

(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.[42]

None of the foregoing circumstances, however, attend in this case.

Records show that from the time respondent was medically repatriated on **May 9, 2010** up to the time the company designated physicians declared him fit to resume work during his last follow-up consultation on **September 15, 2010**, a period of **130 days had lapsed**. Concededly, said period exceeded the 120-day period under Paragraph 3, Section 20 (B) of the 2000 POEA-SEC and Article 192 of the Labor Code. However, respondent's injury required further physical therapy/rehabilitation. Therefore, despite the lapse of the 120-day period, respondent was still considered to be under a state of temporary total disability, and the company-designated physician, following the *Vergara* case, has a period of 240 days from the time the former suffered his injury within which to make a finding on his fitness for further sea duties or degree of disability.

Considering that the company-designated physicians declared respondent fit to work on September 15, 2010, or well within the 240-day period, respondent cannot be said to have acquired a cause of action for permanent total disability benefits. Consequently, the CA ruled outside of legal contemplation when it awarded permanent total disability benefits to the respondent based solely on the 120-day rule and thus, committed a reversible error in holding that the NLRC gravely abused its discretion as its findings are fully supported by substantial evidence and within the purview ofthe law.

Note that while respondent has the right to seek the opinion of other doctors under Section 20 (B) of the POEA-SEC and the CBA, it bears stressing that the employer is liable for a seafarer's disability, arising from a work-related injury or illness, **only after the degree of disability has been established by the company-designated physician and, if the seafarer consulted with a physician of his choice whose assessment disagrees with that of the company designated physician, the disagreement must be referred to a third doctor for a final assessment**.[43] No such mandated third doctor was, however, consulted to settle the conflicting findings of the company-designated physicians (Dr. Lim and Dr. Chuasuan) and the respondent's own doctor (Dr. Jacinto). To this, *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[44] holds:

> 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. x x x Durnadag, 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 her 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 arose only when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.
>
> **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. x x x 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.** [45] (Emphasis supplied.)

Besides, the findings of Dr. Lim and Dr. Chuasuan should prevail over that of Dr. Jacinto considering that the former examined, diagnosed, and treated respondent from his repatriation on May 9, 2010 until he was assessed fit to work on September 15, 2010; whereas, it appears that the independent physician, Dr. Jacinto, only examined respondent on October 13, 2010[46] which was the same day the latter filed his claim for permanent total disability benefits.[47] While the medical certificate indicates that respondent was under Dr. Jacinto's service beginning "September 2010," no supporting document on record shows this to be true. In fact, the NLRC even observed that the medical certificate of Dr. Jacinto was issued after a onetime examination and worse, without any medical support.[48] Case law dictates that, under these circumstances, the assessment of the company-designated physician should be given more credence for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.[49]

Finally, as the NLRC aptly pointed out, respondent even signed the certification of fitness to work, which thus operates as an admission in petitioners' favor.[50] The burden of proof to show that his consent was vitiated in signing said certification befalls upon respondent; a burden the latter, however, failed to discharge.

In fine, absent a showing that respondent is entitled to the full disability compensation under the CBA as afore-discussed, the Court finds that the NLRC did not commit grave abuse of discretion in dismissing respondent's complaint. The CA ruling should therefore be reversed.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 25, 2013 and the Resolution dated April 7, 2014 of the Court of Appeals in CA-G.R. SP No. 126368 are hereby **REVERSED** and **SET ASIDE**. The complaint of Romeo V. Panogalinog, docketed as NLRC RAB No. NCR Case No. (M) NCR-10-14690-10, is **DISMISSED** for lack of

merit.

SO ORDERED.

Sereno, C. J., (Chairperson), Leonardo-De Castro, Bersamin, and *Perez, JJ.*, concur.

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[1] *Rollo*, pp. 27-49.

[2] Id. at 60-70. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. concurring.

[3] Id. at 72-73.

[4] CA *rollo*, pp. 54-59. Penned by Presiding Commissioner Leonardo L. Leonida with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring.

[5] Id. at 60-62.

[6] Id. at 106.

[7] *Rollo*, p. 61.

[8] Id.

[9] CA *rollo*, pp. 56-57.

[10] Id. at 57.

[11] See Medical Certificate dated October 13, 2010; id. at 107.

[12] Id. at 66-67.

[13] Id. at 83-105.

[14] Id. at 88-89 and 93.

[15] Id. at 101-102.

[16] Id. at 142 and 146.

[17] Id. at 42-52. Penned by Labor Arbiter Thomas T. Que, Jr.

[18] Id. at 179-200.

[19] Id. at 54-59.

[20] Id. at 57.

[21] Id. at 252-277.

[22] Id. at 60-62.

[23] Id. at 3-39.

[24] *Rollo*, pp. 60-70.

[25] CA *rollo*, pp. 412-425.

[26] *Rollo*, pp. 72-73.

[27] See *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014; citation omitted.

[28] Id.

[29] See *INC Shipmanagement, Inc. v. Moradas*, G.R. No. 178564, January 15, 2014, 713 SCRA 475, 488.

[30] CA *rollo*, pp. 49 and 136.

[31] Id. at 117.

[32] See G.R. No. 176884, October 19, 2011, 659 SCRA 642.

[33] See G.R. No. 200837, June 5, 2013, 697 SCRA 601.

[34] 510 Phil. 332, 340 (2005).

[35] *Millan v. Wallem Maritime Services, Inc.*, G.R. No. 195168, November 12, 2012, 685 SCRA 225, 231.

[36] 588 Phil. 895, 915 (2008).

[37] 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;

[38] Rule X - TEMPORARY TOTAL DISABILITY

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.

[39] *Vergara v. Hammonia Maritime Services*; supra note 36, at 912.

[40] Id. at 913.

[41] See G.R. No. 193679, July 18, 2012, 677 SCRA 296.

[42] Id. at 315.

[43] See *Splash Philippines, Inc. v. Ruizo*, G.R. No. 193628, March 19, 2014, 719 SCRA 496, 508.

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

[45] Id. at 65-66.

[46] See CA *rollo*, p. 107.

[47] Id. at 66-67.

[48] Id. at 57.

[49] See *Formerly INC Shipmanagement Incorporated (now INC Navigation Co. Philippines, Inc.) v. Rosales*, G.R. No. 195832, October 1, 2014.

[50] CA *rollo*, p. 57.