754 Phil. 380

THIRD DIVISION

[G.R. No. 214132, February 18, 2015]

SEALANES MARINE SERVICES, INC./ARKLOW SHIPPING NETHERLAND AND/OR CHRISTOPHER DUMATOL, PETITIONERS, VS. ARNEL G. DELA TORRE, RESPONDENT.

R E S O L U T I O N

REYES, J.:

This is a Petition for Review on *Certiorari*[1] from the Decision[2] dated April 24, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130641, which affirmed the Decision dated February 28, 2013 and Resolution dated April 24, 2013 of the National Labor Relations Commission (NLRC), in NLRC LAC-09-000747-12-OFW, entitled, *"Arnel G. Dela Torre v. Sealanes Marine Services, Inc./Arklow Shipping Netherland and Christopher Dumatol,"* which upheld the disability award by the Labor Arbiter (LA) of US$80,000.00 in favor of Arnel G. Dela Torre (respondent), pursuant to the parties' Collective Bargaining Agreement (CBA).

Factual Antecedents

The respondent was hired by Sealanes Marine Services, Inc. (Sealanes), a local manning agency, through its President, Christopher Dumatol (Dumatol), in behalf of its foreign principal, Arklow Shipping Netherland (petitioners), as an able seaman on board *M/V Arklow Venture* for a period of nine months at a basic monthly salary of US$545.00. An overriding CBA between the respondent's union, Associated Marine Officers' and Seamen's Union of the Philippines, and the Netherlands Maritime Employers Association, called "CBA for Filipino Ratings on Board Netherlands Flag Vessels" (Dutch CBA), also covered his contract.[3]

The respondent embarked on January 21, 2010. On August 1, 2010, during the crew's rescue boat drill at the port of Leith, Scotland, he figured in an accident and injured his lower back. An X-ray of his lumbosacral spine was taken at a hospital at the port, but while according to his attending physician he sustained no major injury, the pain in his back persisted and he was repatriated. On August 4, 2010, the respondent was referred by Sealanes to the Marine Medical Services of the Metropolitan Medical Center. On August 5, 2010, an X-ray of his lumbosacral spine showed, per the medical report, that he sustained "lumbar spine degenerative changes with associated L1 compression fracture." The next day, a Magnetic Resonance Imaging scan of his lumbar spine revealed an "acute compression fracture body of L1; right paracentral disc protrusion at L5-S1 causing minimal canal compromise; L4-L5 and L5-S1 disc dehydration." Again on December 16, 2010, an X-ray showed "compression deformity of L1 vertebra; L2-L1 disc space is now defined but slightly narrowed". On January 27, 2011, his fourth X-ray

still showed a "compression fracture, L1 with narrowed L2-L1 disc space; no significant neural foraminal compromise."[4]

The respondent underwent several physical therapy sessions, and finally on March 10, 2011 the company-designated physician assessed him with a Grade 11 disability for slight rigidity or one-third loss of motion or lifting power of trunk. Nonetheless, he was informed of the assessment only in May 2011, or more than 240 days since the accident.[5]

Rulings of the LA and the NLRC

On May 20, 2011, the respondent filed a complaint for disability benefits, medical reimbursement, underpaid sick leave, damages and attorney's fees. On July 30, 2012, the LA rendered judgment awarding him US$80,000.00 in disability benefits as provided in the Dutch CBA, plus 10% as attorney's fees. In particular, the LA held that such an award cannot be made to depend on the company-designated physician's disability assessment which was issued more than 120 days after the accident, especially if despite treatment for more than 240 days the respondent was still unable to return to his accustomed work.[6]

On August 31, 2012, the petitioners appealed to the NLRC contending that the disability benefits due to the respondent should be based on his Grade 11 disability assessment issued by the company-designated physician. On September 21, 2012, the respondent also filed his appeal assailing the denial of his medical and transportation expenses.[7]

In its Decision dated February 28, 2013, the NLRC affirmed the award of total disability benefits to the respondent noting that he continued with his rehabilitation even after the company's Grade 11 disability rating issued on March 10, 2011, indicating that its disability rating was intended merely to comply with the 240-day limit for the company-designated physician to either declare him fit to work or to assess the degree of his permanent disability. The petitioners' motion for reconsideration was denied on April 24, 2013.

On petition for *certiorari* to the CA, the petitioners raised the following grounds:

> I. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED MAXIMUM DISABILITY COMPENSATION AND ATTORNEY'S FEES TO [THE RESPONDENT] DESPITE THE FOLLOWING:
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> > a. Private respondent was assessed with Disability Grade 11 only by the company-designated physician within his 240-day period of treatment;
> >
> > b. Under the POEA-contract and the Dutch CBA, disability benefits of seafarer shall be based on the medical assessment of the

company-designated physician.

c. Under the POEA-contract, benefits are awarded based solely on gradings and not by the number of days of treatment.

II. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED ATTORNEY'S FEES TO PRIVATE RESPONDENT.[8]

Ruling of the CA

The petitioners maintained that the respondent is not entitled to maximum disability benefits under the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC), the Dutch CBA and this Court's decisions, in view of his Grade 11 disability rating as assessed by the company-designated physician. But the respondent pointed out that, at the time the said rating was issued, he was not completely healed but had to continue with his physical therapy sessions even beyond the maximum 240-day period allowed under the Amended Rules on Employee Compensation (AREC),[9] implying that the company's disability rating on March 10, 2011 was temporary; that since his treatment exceeded the 240 days permitted, his disability is now total and permanent.

In its Decision[10] dated April 24, 2014, the CA ruled that the seafarer's right to disability benefits is determined not solely by the company's assessment of his impediment but also by law, contract and medical findings. Citing Articles 191 to 193 of the Labor Code, Section 2, Rule X of the AREC, the POEA SEC, the parties' CBA, and the employment contract between the parties, the appellate concurred that the respondent was entitled to total permanent disability benefits.[11]

Petition for Review in the Supreme Court

In this petition, the petitioners insist that the CA erred in disregarding the petitioners' partial permanent disability rating of Grade 11 under the POEA SEC schedule of disability benefits, even as they pointed out that the respondent failed to refer his assessment to a neutral third doctor as provided in Paragraph 3, Section 20(B) of the POEA SEC.

Ruling of the Court

The Court denies the petition.

It is expressly provided in Article 192(c)(1) of the Labor Code that a "temporary total disability lasting continuously for more than [120] days, except as otherwise provided in the Rules," shall be deemed *total and permanent.* Section 2(b), Rule VII of the AREC, likewise provides that "*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 under Rule X of these Rules."

As to sickness allowance, Section 2(a), Rule X of the AREC, referred to in Article 192(c)(1) of the Labor Code, reads:

> 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.

For its part, the POEA SEC for seafarers provides in Paragraph 3 of Section 20(B) thereof that:

> 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.

True, under Section 20(B)(3) of the POEA SEC, it is the company-designated physician who should determine the disability grading or fitness to work of the seafarer. Also, under Article 21.4.1 of the Dutch CBA governing the parties, it is the doctor appointed by the company's medical advisor who shall determine the degree of disability suffered by a seafarer:

> 21.4.1 DISABILITY COMPENSATION – the degree of disability which the COMPANY subject to this Agreement is liable to pay shall be determined by a doctor appointed by the COMPANY'S MEDICAL ADVISOR.

Under Section 32[12] of the POEA SEC, only those injuries or disabilities classified as Grade 1 are considered total and permanent. In *Kestrel Shipping Co., Inc. v. Munar*, [13] the Court read the POEA SEC in harmony with the Labor Code and the AREC, and explained that: (a) the 120 days provided under Section 20(B)(3) of the POEA SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.[14]

The respondent was repatriated on August 4, 2010 and immediately underwent treatment and rehabilitation at the company-designated facility, Marine Medical Services of the Metropolitan Medical Center. It lasted until July 20, 2011, exceeding the 240 days allowed to declare him either fit to work or permanently disabled. Although he was given a Grade 11 disability rating on March 10, 2011, the assessment may be deemed tentative because he continued his physical therapy sessions beyond 240 days. Yet, despite his long treatment and rehabilitation, he was eventually unable to go back to work as a seafarer, which fact entitled him under the Dutch CBA to maximum disability benefits.

It was held in *Kestrel* that the POEA SEC provides merely for the basic or minimal acceptable terms of a seafarer's employment contract, thus, in the assessment of whether his injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities in Section 32 of the POEA SEC, but also under the relevant provisions of the Labor Code and the AREC implementing Title II, Book IV of the Labor Code. According to *Kestrel*, while the seafarer is partially injured or disabled, he must not be precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as may be the case, then he shall be deemed totally and permanently disabled.

In *Crystal Shipping, Inc. v. Natividad*,[15] the Court ruled that it is of no consequence that the seafarer recovered from his illness or injury, for what is important is that he was unable to perform his customary work for more than 120 days, and this constitutes total permanent disability:

> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. *The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days*

> *which constitutes permanent total disability*. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.[16] (Citations omitted and italics supplied)

Thus, that the respondent required therapy beyond 240 days and remained unable to perform his customary work during this time rendered unnecessary any further need by him to secure his own doctor's opinion or that of a neutral third doctor to determine the extent of his permanent disability.

Concerning the joint and solidary liability of the manning agency, Sealanes, its foreign principal, Arklow Shipping Netherland, and Sealanes' President Dumatol, Section 10 of Republic Act (R.A.) No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995", as amended by Section 7 of R.A. No. 10022, reads:

> SEC. 10. *Money Claims*. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.
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> *The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.* This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to [be] filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. *If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.*
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> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
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> x x x x (Italics ours)

Thus, every applicant for license to operate a seafarers' manning agency shall, in the case of a corporation or partnership, submit a written application together with, among others, a verified undertaking by officers, directors and partners that they will be jointly

and severally liable with the company over claims arising from employer-employee relationship.[17] Laws are deemed incorporated in employment contracts and the contracting parties need not repeat them. They do not even have to be referred to. Every contract, thus, contains not only what has been explicitly stipulated, but also the statutory provisions that have any bearing on the matter.[18]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

*Velasco, Jr., (Chairperson), Peralta, Del Castillo,** and *Villarama, Jr., JJ.*, concur.

March 23, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on **February 18, 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 March 23, 2015 at 2:45 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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* Acting Member per Special Order No. 1934 dated February 11, 2015 vice Associate Justice Francis H. Jardeleza.

[1] *Rollo*, pp. 29-55.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Sesinando E. Villon and Nina G. Antonio-Valenzuela concurring; id. at 57-66.

[3] Id. at 58.

[4] Id. at 58-59.

[5] Id. at 59.

[6] Id.

[7] Id. at 59-60.

[8] Id. at 61.

[9] Id. at 65.

[10] Id. at 57-66.

[11] Id. at 62-63.

[12] Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

[13] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

[14] Id. at 811-812.

[15] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

[16] Id. at 568.

[17] See *Skippers United Pacific, Inc. v. Maguad*, 530 Phil. 367, 396 (2006)

[18] *Maritime Company of the Philippines v. Reparations Commission, etc.*, 148-B Phil. 65, 70 (1971).

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