761 PHIL. 270

FIRST DIVISION

[G.R. No. 191899, June 22, 2015]

JULIUS R. TAGALOG, PETITIONER, VS. CROSSWORLD MARINE SERVICES INC., CAPT. ELEASAR G. DIAZ AND/OR CHIOS MARITIME LTD. ACTING IN BEHALF OF OCEAN LIBERTY LTD, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 26 January 2010 and Resolution[2] dated 12 April 2010 of the Court of Appeals in CA-G.R. SP No. 110168. The Court of Appeals dismissed the complaint for permanent disability benefits filed by petitioner Julius R. Tagalog.

The facts follow.

Respondents Crossworld Marine Services Inc., a local manning agent and its foreign principal, Chios Maritime, Ltd., acting in behalf of Ocean Liberty, Ltd., hired petitioner as Wiper/Oiler on board the vessel M/V Ocean Breeze. Petitioner's contract of employment was for a fixed period of 12 months with a monthly basic salary of $220.00. On 11 January 2005, petitioner left the country to board the vessel.

Sometime in November 2005, petitioner injured his eye when he accidentally splashed his eyes with a cleaning solution mixed with a strong chemical while cleaning the cooler of the main engine of the vessel. On 2 December 2005, he was brought to a hospital in Port of Spain, Trinidad and Tobago where he was diagnosed to have bilateral *pterygium* and declared unfit to work. On 8 and 15 December 2005, petitioner underwent operations on both eyes at the Port of Pointe-a-Pierre. On 10 January 2006, petitioner went to see an ophthalmologist in the Port of Sea Lots due to pain and excessive tearing on his right eye. He was diagnosed to have granuloma of the conjunctive right. An excision was done on the same day and continuing medication was advised.

On 21 January 2006, petitioner signed off from his vessel. Upon his arrival in Manila on 23 January 2006, he reported to Crossworld Marine Services where he was referred to the company-designated physician Dr. Susannah Ong-Salvador (Dr. Ong-Salvador) for post-employment medical examination. Petitioner was diagnosed to have aggressive fleshy *pterygium* S/P Excision of *Pterygium* and *Granuloma*, both eyes, S/P excision of *pterygium* with conjunctival grafting, right eye. On 23 February 2006, petitioner underwent a *pterygium* excision with conjunctival graft on his right eye at the University of Santo Tomas (UST) hospital. He was discharged two days later and given oral pain relievers. On 17 March 2006, petitioner was subjected to the same procedure

on his left eye. On 3 May 2006, Dr. Ong-Salvador declared petitioner fit to work. Petitioner then executed a Certificate of Fitness for Work attesting that he is fit to work and that he has no claims whatsoever against respondents in relation to his injury.

On 7 September 2006, however, petitioner sought a second opinion and consulted a private physician, Dr. Cynthia Canta (Dr. Canta). Petitioner was diagnosed with the following condition: "S/P *Pterygium* Excision, Both Eyes[.] Conjunctival Granuloma, Left Eye[.] Error of refraction."[3] Dr. Canta concluded that petitioner was unfit to work. This prompted petitioner to file a complaint with the Arbitration branch of the National Labor Relations Commission (NLRC) for disability benefits, sickness allowance, damages and attorney's fees against respondents.

Petitioner claimed that he is entitled to permanent total disability benefits amounting to $60,000.00 because he was declared unfit to work after his injury in the last week of November 2005 until 20 April 2006, which is beyond 120 days. Petitioner alleged that under the law, a temporary total disability lasting continuously for more than 120 days is considered total and permanent. Petitioner also prayed for sickness allowance of $880.00, medical reimbursement of P10,000.00, damages and attorney's fees.

Respondents countered that petitioner was declared fit to resume his duties by the company-designated physician thereby negating his claim that he is permanently disabled. On 22 March 2007, the Labor Arbiter ruled in favor of petitioner in this wise:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering the respondents **Crossworld Marine Services, Inc./Capt. Eleasar G. Diaz/Chios Maritime Ltd. Acting in behalf of Ocean Liberty Ltd., to pay complainant Julius R. Tagalog** the aggregate amount of **SIXTY-SIX THOUSAND NINE HUNDRED SIXTY-SEVEN US DOLLARS (US$66,967.00)** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness allowance and attorney's fees.[4]

On appeal, the NLRC affirmed the findings of the Labor Arbiter but deleted the award of damages. The NLRC ruled that petitioner is entitled to disability benefits because more than 120 days have passed from the time he was first declared unfit to work on 2 December 2005 until the declaration by the company-designated physician that he was fit for sea duties on 3 May 2006.

The NLRC denied the motion for reconsideration in its 18 June 2009 Resolution.

Aggrieved, respondents filed a petition for *certiorari* before the Court of Appeals which set aside the NLRC Resolutions dated 3 October 2008 and 18 June 2009. The *fallo* of the aforesaid Decision reads:

> **WHEREFORE,** premises considered, the instant Petition for Certiorari is hereby **GRANTED**. The Resolution dated October 3, 2008 and the Resolution dated June 18, 2009 of public respondent NLRC, Second Division, are **ANNULLED** and **SET ASIDE**. Accordingly, the complaint for permanent

disability benefits filed by private respondent Julius R. Tagalog is **DISMISSED**.[5]

Applying the case of *Vergara v. Hammonia Maritime Services, Inc., et al.*,[6] the Court of Appeals held that a temporary total disability becomes permanent only when so declared by the company-designated physician within the period 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. The appellate court found that only 102 days have passed from the time petitioner signed off from his vessel on 21 January 2006 up to the time the company-designated physician made a pronouncement on 3 May 2006 that he was fit to resume sea duties. And even if the computation made by the NLRC were to be adopted, the appellate court ruled that the maximum 240-day treatment period has not yet expired when the company-designated physician made a pronouncement on petitioner's fitness to return to work.

On 12 April 2010, the Court of Appeals denied petitioners' motion for reconsideration. Hence, this petition.

Petitioner raises the following grounds for the allowance of the petition:

1. Whether or not the Honorable Court of Appeals erred in substituting the findings of facts of the Labor Arbiter and NLRC in affirming the assessment of fit to work issued by the company-designated physician even if petitioner was permanently unfit for further sea service regardless of the number of days he was disabled.

2. Whether or not the Honorable Court erred in dismissing the award of attorney's fees and damages.[7]

Petitioner insists that it is not the duration or period for the issuance of a medical certificate that matters in disability proceedings but the incapacity of the worker to earn wages in whatever capacity regardless of the number of days he was disabled. Petitioner avers that the medical certificates issued by the company-designated physician are palpably self-serving and biased in favor of the company who sought their services and therefore should not be given evidentiary weight and value. Petitioner claims that his choice physician's assessment was in harmony with the Department of Health (DOH) Administrative Order No. 176, series of 2000, on the ground that petitioner could no longer qualify with the minimum in-service eyesight standards thereof, thus, he is permanently unfit for work at sea. Petitioner suggests that the entirety of his medical records, history and improvement to treatment should be the paramount consideration in awarding disability benefits because the alleged fitness to work cannot defeat the actual medical condition of petitioner on the ground that he failed to earn wages for the past four years and six months already. Petitioner reiterates his entitlement to damages and attorney's fees.

Respondents defend the decision of the appellate court in affirming the findings of the company-designated physician because it is the latter who is mandated to determine the fitness and disability of the seafarer. In this case, respondents allege that sufficient

medical examination and diagnosis were conducted by the company-designated physician spanning for almost four months. On the other hand, petitioner was seen by his personal doctor only once and for the sole purpose of determining disability. Moreover, respondents assert that petitioner also affirmed the findings of the company-designated doctor when he executed a certificate of fitness for work.

The principal issue for our resolution is whether petitioner is entitled to permanent disability benefits.

The mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits.

Entitlement of seafarers to disability benefits is governed not only by medical findings but also by contract and by law. By contract, Department Order No. 4, series of 2000, of the Department of Labor and Employment Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC) and the parties' Collective Bargaining Agreement (CBA) bind the seafarer and the employer. By law, the Labor Code provisions on disability apply with equal force to seafarers.[8]

Article 192(c)(1), Chapter VI, Title II, Book IV of the Labor Code, as amended, states that a disability which lasts continuously for more than 120- days is deemed total and permanent.

Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, reads:

> SECTION 2. Disability. x x x
>
> (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.

The provision adverted to is Section 2, Rule X of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, which states:

> SECTION 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.

By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other. The terms under the POEA-SEC are to be read in accordance with what the Philippine law provides.[9]

Section 20(B)(3) of the POEA-SEC states 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. x x x

The *Vergara*[10] ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus:

> [T]he 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 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.[11]

As the rule now stands, the mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits.[12] We affirm the Court of Appeals' holding that petitioner is not entitled to permanent total disability benefits. As correctly observed by the Court of Appeals:

> Applying this in the case at bench, the NLRC's finding that private respondent was entitled to permanent total disability benefits because he was unable to perform his work for more than 120 days in untenable. It appears that only 102 days have passed from the time private respondent signed-off from his vessel on January 21, 2006 up to the time the company-designated physician made a pronouncement on May 3, 2006 that he was fit to resume sea duties. Verily, the initial 120-day medical treatment period has not yet lapsed. Even if we were to adopt the computation made by the NLRC that private respondent's injury was a continuing disability from December 2, 2005, when he was first declared unfit to work at the Port of Spain until May 3, 2006, still the maximum 240-day treatment period has

> not yet expired when the company-designated physician made a pronouncement on private respondent's fitness to return to work.[13]

Petitioner's invocation of the ruling in the case of *Crystal Shipping, Inc. v. Natividad*[14] was likewise found by the Court of Appeals to be inapplicable, to wit:

> Moreover, the ruling in *Crystal Shipping, Inc. v. Natividad* case in that the seafarer therein "was unable to perform his customary work for more than 120 days which constitutes permanent total disability" cannot be applied as a general rule in the instant case because it involved a different set of facts. In *Crystal Shipping case*, the seafarer was completely unable to work for three years and was undisputably unfit for sea duty due to his need for regular medical check-up and treatment which would not be available if he were at sea. It was also clear in that case that the seafarer's disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under such circumstances, a ruling of permanent and total disability was called for in accordance with the operation of the period for entitlement that we described above. However, in the case at bench, private respondent's medical treatment period lasted only for 102 days before the company-designated physician made a pronouncement that he was already fit to resume sea duties.[15]

As a matter of fact, in *Kestrel Shipping*,[16] the Court made the following pronouncement regarding the indiscriminate invocation of *Crystal Shipping* in permanent disability claims, thus:

> This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on Crystal Shipping such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.

We likewise uphold the Court of Appeals' reliance on the medical findings of the company-designated physician.

In a maritime disability claim, the issue that often arises is the conflicting findings between the company-designated physician and the seafarer's chosen physician.

Section 20(B)(3) of the POEA-SEC provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both parties.

We had in several cases upheld the findings of the company-designated physician due

to the non-referral by the seafarer to a third doctor. In *Philippine Hammonia Ship Agency v. Dumadag*,[17] we considered the filing of the complaint by the seafarer as a breach of his contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The case of *Formerly INC Shipmanagement v. Rosales*[18] was categorical in stating that non-referral to a third physician, whose decision shall be considered as final and binding, constitutes a breach of the POEA-SEC.

The more practical consideration in favoring the medical findings of the company-designated physician was explained in *Dalusong v. Eagle Clarc, Shipping*,[19] thus:

> As the Court aptly stated in *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, "the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability." Based on the Disability Report of petitioner's doctor, it appears that he only conducted a physical examination on petitioner before issuing his final diagnosis and disability rating on petitioner's condition. Clearly, the findings of the company-designated doctor, who, with his team of specialists which included an orthopedic surgeon and a physical therapist, periodically treated petitioner for months and monitored his condition, deserve greater evidentiary weight than the single medical report of petitioner's doctor, who appeared to have examined petitioner only once.

Following jurisprudence, the Court of Appeals correctly upheld the fit-to-work order issued by the company-designated physician. After the certification on the fitness for sea duties was issued by the company-designated physician, petitioner sought a second opinion from a private doctor. When the private doctor opined that petitioner was unfit to work, petitioner wasted no time in filing the instant complaint. Verily, he did not bother to seek the opinion of a third person as mandated by the POEA-SEC. Furthermore, the private doctor had only examined petitioner once while the company-designated physician had monitored petitioner's medical condition for several months. As aptly observed by the Court of Appeals:

> It also bears to note that petitioners extended medical assistance to private respondent from the time he arrived in the Philippines up to the time he was declared fit to resume his sea duties. The records show that petitioners referred him to the company-designated physician, Dr. Susannah Ong-Salvador of SHIP where he was diagnosed by the clinic's ophthalmologists. On February 23, 2006, private respondent underwent an operation on his right eye at UST Hospital and was later admitted therein for further management under the care of SHIP's specialists. On March 17, 2006, private respondent again underwent a second operation on his left eye at UST Hospital and was admitted therein for three days. Private respondent's progress was also continuously evaluated and monitored by SHIP's ophthalmologists as shown by the Medical Progress Reports they issued.
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> In all, the company-designated physician acquired a more detailed

> knowledge and familiarity of private respondent's injury and could very well accurately evaluate the latter's degree of disability. The evaluations made by the company-designated physician were never disputed. Even their competence has not been challenged. Besides, as between the company-designated doctor who has all the medical records of private respondent during the duration of his treatment and as against the latter's private doctor who examined for a day as an outpatient, the former's finding must prevail.[20]

Very akin to the case at bar is the case of *OSG Shipmanagement v. Pellazar*[21] where we ruled that the company designated physician's findings, although not binding on the Court, generally prevails over other medical findings. We quote:

> By recognizing that a disagreement between the company-designated physicians and the physician chosen by the seafarer may exist, the POEA-SEC itself impliedly recognizes the seafarer's right to request a second medical opinion from a physician of his own choice. That the seafarer should not be prevented from seeking an independent medical opinion proceeds from the theory that a company-designated physician, naturally, may downplay the compensation due to the seafarer because that is what the employer, after all, expects of him. Accordingly, the Court observed that labor tribunals and the courts are not bound by the medical findings of the company-designated physician and that the inherent merits of its medical findings will be weighed and duly considered.
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> However, even on this context, the NLRC's ruling awarding Pellazar disability benefits based on the Grade 10 rating of Drs. De Guzman and Banaga can fully withstand a Rule 65 challenge since the Grade 10 rating had ample basis in the extensive evaluation and treatment of Pellazar by these two company doctors, including an orthopedic specialist and a physiatrist.
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> In stark contrast, Dr. Sabado, Pellazar's chosen physician, examined him only once and could have treated him for a few hours only, considering as the petitioners point out, that Pellazar came all the way from Antipolo, where he resides, to Dagupan City, where Dr. Sabado is practicing his profession. It is as if, the petitioners aver, Pellazar sought out Dr. Sabado in Dagupan City for a favorable certification.
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> While Dr. Sabado's diagnosis was consistent with that of the company-designated physicians (which centered on the injury in Pellazar's 5th right finger and the resulting loss of grasping power of said fifth finger), Dr. Sabado certified Pellazar to be permanently unfit for sea service. Notwithstanding Dr. Sabado's unfit-to-work certification (which the LA relied upon in ruling in Pellazar's favor), the NLRC gave more credence to the Grade 10 disability rating of Pellazar than the assessment of Dr. Sabado.
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> The NLRC's mere disagreement with the LA, however, does not give rise to grave abuse of discretion, unless the NLRC's contrary conclusion had no basis in fact and law. In the present case, the NLRC ruling was actually

based on the extensive evaluation and treatment of Pellazar's medical condition by the company doctors. Under a Rule 65 petition, the CA does not determine which of the conflicting findings or assessment should be preferred; but rather, whether in deciding to uphold one over the other, the NLRC exceeded the bounds of its jurisdiction or committed grave abuse of discretion. The CA's finding in this regard finds no support in its decision because of its misplaced reliance on the 120-day period, as earlier discussed.

Based on the foregoing, we deny the petition.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution dated 26 January 2010 and 12 April 2010, respectively of the Court of Appeals in CA-G.R. SP No. 110168 are **AFFIRMED**.

SO ORDERED.

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

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[1] *Rollo*, pp. 307-324; Penned by Associate Justice Ramon R. Garcia with Associate Justices Rosalinda Asuncion-Vicente and Elihu A. Ybañez concurring.

[2] Id. at 326-327.

[3] Id. at 52.

[4] Id. at 186.

[5] Id. at 323.

[6] 588 Phil. 895, 913 (2008).

[7] *Rollo*, p. 24.

[8] *Philasia Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, 15 August 2012, 678 SCRA 503, 515 citing *Vergara v. Hammonia Maritime Services, Inc.*, supra note 5 at 908 and *Valenzona v. Fair Shipping Corporation, et al.*, 675 Phil. 713, 725 (2011).

[9] *OSG Shipmanagement Manila, Inc. v. Pellezar*, G.R. No. 198367, 6 August 2014.

[10] Supra note 6.

[11] Id. at 912.

[12] *OSG Shipmanagement Manila, Inc. v. Pellezar*, supra note 9.

[13] *Rollo*, pp. 318-319.

[14] 510 Phil. 332 (2005).

[15] *Rollo*, pp. 319-320.

[16] G.R. No. 198501, 30 January 2013, 689 SCRA 795, 817.

[17] G.R. No. 194362, 26 June 2013, 700 SCRA 530.

[18] G.R. No. 195832, 1 October 2014.

[19] G.R. No. 204233, 3 September 2014.

[20] *Rollo*, pp. 321-322.

[21] Supra note 9.
