753 Phil. 676

THIRD DIVISION

[G.R. No. 211454, February 11, 2015]

MAUNLAD TRANS., INC./CARNIVAL CRUISE LINES, INC., AND MR. AMADO L. CASTRO, JR., PETITIONERS, VS. RODOLFO M. CAMORAL, RESPONDENT.

R E S O L U T I O N

REYES, J.:

On petition for review[1] is the Decision[2] dated November 13, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122396 affirming the Decision dated July 27, 2011 and Resolution dated October 14, 2011 of the National Labor Relations Commission (NLRC) in NLRC NCR-OFW-02-01759-10. The NLRC sustained the Decision dated November 10, 2010 of the Labor Arbiter (LA) awarding to Rodolfo M. Camoral (Camoral) total disability benefits and attorney's fees.

Antecedent Facts

For 18 years since 1991, Camoral was continuously deployed overseas by Carnival Cruise Lines, Inc., a foreign shipping company, through its local agent, Maunlad Trans., Inc. (petitioners). In April 2009, they took him on board *M/S Carnival Sensation* as ice carver for a period of eight months, the company doctors having declared him "Fit for Sea Duty (Without Restriction)" after the requisite physical evaluations. As ice carver, Camoral's job required lifting and carrying heavy blocks of ice and using heavy equipment and tools, working for hours inside the freezer in sub-zero temperature. One day in September 2009 while at work, he suddenly felt excruciating pain in his neck. The pain quickly radiated to his shoulder, chest and hands. It became so intense that he dropped to the floor. Pain relievers could not relieve the pain, and the ship's doctor advised the Chief Chef that Camoral was unfit for further duty on board. On advice of the company doctor in Florida, United States of America, Dr. James E. Carter (Dr. Carter), a Magnetic Resonance Imaging scan was performed on Camoral's cervical spine on September 25, 2009, revealing the following:[3]

> IMPRESSION:
>
> 1. At C5-6, there is a moderately large, broad-based posterior disc herniation of the protrusion type with resultant obliteration of the subarachnoid space ventrally and severe right greater than left bilateral neural foraminal stenosis. There is probable compression of the exiting right greater than left C6 nerves bilaterally.

> 2. At C4-5, there is a small-to-moderate sized, diffuse, posterior broad-based disc herniation of the protrusion type. There is resultant effacement of the subarachnoid space ventrally and a mild amount of right-sided neural foraminal stenosis.
>
> 3. There is slight reversal of the normal lordotic curvature of cervical spine consistent with muscle spasm.[4]

In his medical report dated September 28, 2009, Dr. Carter found Camoral with "Cervical Disc Herniation and Radiculopathy" and declared him "unfit for duty". Camoral was repatriated on October 4, 2009, and on arrival in Manila he was referred to company doctors at the Marine Medical Services of the Metropolitan Medical Center. On October 26, 2009, he underwent a surgical procedure known as "Anterior C5 Discectomy Fusion with Pyramidal Cage and Mastergraft Putting, Plating." In the Operation Sheet, his pre-operative and post-operative diagnosis showed "Cervical Spondylotic Radiculopathy secondary to C4-C5, C5-C6 Disc Protrusion," while the portion on "Description of Organs" stated that he had a "compressed end at C4-5 to C5-6 level and thickened posterior ligaments." He underwent rigorous physical therapy, but after more than five months his condition barely improved, and the pain in his neck, chest and shoulder persisted. He then consulted Dr. Rogelio P. Catapang, Jr. (Dr. Catapang), a renowned Orthopaedic and Traumatology Surgeon, who after a thorough clinical and physical examination of Camoral issued a report on February 22, 2010.[5] The report stated that:

> Present physical examination revealed neck pain more on flexion; presence of a post operative scar anterior neck; neck movement is limited, sudden and strenuous activities may aggravate the condition. Mr. Camoral continues to complain and suffer from neck pain despite continuous therapy. The pain is made worse by neck rotation. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation as a seafarer.
>
> x x x If a long term and more permanent result are [sic] desired however, he should refrain from activities producing torsional stress on the neck and those that require repetitive bending and lifting, things Mr. Camoral is expected to do as a Seafarer.
>
> Some restriction must be placed on Mr. Camoral's work activities. This is in order to prevent the impending late sequelae of his current condition. He presently does not have the physical capacity to return to the type of work he was performing at the time of his injury. He is therefore UNFIT in any capacity for further sea duties.[6]

Camoral failed to get further financial assistance from the petitioners for his subsequent treatment and medications, as well as total disability benefits. He was instead offered $10,075.00 corresponding to Grade 10 disability the company gave him. With no income for more than 120 days and having been declared unfit to return to his previous

job due to loss of his pre-injury capacity, he sued the petitioners before the LA for total disability benefits of US$60,000.00, citing Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers on board Ocean-going Vessels (POEA SEC for brevity).[7]

In their answer, the petitioners argued that Camoral was not entitled to total and permanent disability benefits since he was not assessed by the company doctors with a Grade 1 disability; that Dr. Robert Lim (Dr. Lim), one of the company doctors, noted in his medical report dated December 11, 2009 that after surgery and rehabilitation Camoral was recovering well, and that in his follow-up report dated January 8, 2010, X-Ray examination showed good alignment and fusion, and he advised Camoral to continue medications and rehabilitation; that on January 29, 2010, Dr. Lim noted that Camoral's muscle strength in both upper extremities were graded 5/5, indicating improvement, and on March 5, 2010, Dr. Lim noted that he had reached maximum medical cure; that Dr. Ibet Marie Y. Sih (Dr. Sih), a company neuro and spine surgeon, assessed him with Grade 10 disability with moderate stiffness or one-third limitation of motion of the neck, not Grade 1 disability; that petitioners paid all of his sickness allowance and medical expenses.[8]

Rulings of the LA and the NLRC

On November 10, 2010, the LA rendered judgment, the pertinent portion of which reads:

> Section 20 B of the Standard Terms and Conditions Governing the Employment of Seafarers On-Board Ocean Going Vessels, provides:
>
> 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:
>
> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 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

Under the Section 20B of Standard Contract, an injury or illness to be compensate [sic] must be work-related and has occurred during the effectivity of the contract.

These conditions are met in the instant case x x x.

x x x x

This Office rules in favor of the complainant [finding him] entitled to total disability. This finds support in the [string] of Supreme Court decisions that the inability of the seafarer to return to the same kind of work he was trained to render him permanently disabled.

x x x x

There is no disagreement between the findings of the company- designated physician and complainant's private doctor because both declared that complainant is not fit to go back to work. x x x.

Considering that complainant's position is (sic) an Ice Carver, it is required that he should have full movement of his neck in the performance of his function and the pain and the limitation of his neck movement effectively prevents him from engaging in the same kind of work he was trained for.

The Grade 10 disability made by the company physician is not binding to this Office as it is clear that complainant can no longer return to work.

x x x x

Complainant's claim for damages cannot be granted for lack of basis. But as complainant availed of the services of a lawyer, he is entitled to an award of attorney's fees.

WHEREFORE, a Decision is hereby rendered ordering Respondents jointly and solidarily to pay complainant US$60,000.00 plus ten (10%) percent thereof as and by way of attorney's fees.

SO ORDERED.[9]

The petitioners appealed to the NLRC, which however denied the same in its Decision dated July 27, 2011, the pertinent portion of which reads:

Indeed, it is not disputed that the conditions for compensability of an incapacity resulting from work-connected illness/injury during the term of the contract, have been met in this case.

x x x x

Perusal of the respondents' submitted medical report and disability assessment fails to show how the partial permanent disability assessment was arrived at, as it simply states that complainant is suffering from impediment Grade 10 disability, without any evidence that indeed only 1/3 limitation of motion of the neck or moderate stiffness had affected the complainant.

On the other hand, as shown by the certification issued by Dr. Catapang on February 22, 2010 complainant's disability is permanent and prevents him from further sea duties. The medical opinion also categorically declares that complainant continues "to suffer from neck pain despite continuous therapy" and that "he should refrain from activities producing torsional stress on the neck and those that require repetitive bending and lifting; things that Mr. Camoral is expected to do as a Seafarer."

x x x x

x x x The test to determine its gravity is the impairment or loss of one's capacity to earn and not its mere significance. Permanent total disability means disablement of the employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform or any kind of work which a person of his mentality and attainment can do.

x x x x

Accordingly, We find the medical opinion of complainant's own doctor to be more credible, and sustain the assessment as to complainant's permanent incapacity that has rendered him unfit to work as seafarer, thus entitling him to [sic] awarded disability compensation.

We sustain the award of attorney's fees of ten (10%) percent as the complainant had sought legal representation pursuing his valid contractual claims.

WHEREFORE, respondents' appeal is DISMISSED for lack of merit. The Decision dated November 10, 2010 stands AFFIRMED.

SO ORDERED.[10]

The petitioners' Motion for Reconsideration was denied in the Resolution dated October 14, 2011 of the NLRC.

Ruling of the CA

On petition for *certiorari* to the CA, citing Section 20B(6) of the POEA SEC, the petitioners insisted that regardless of whether the disability is total or partial, any compensation should be based on the grading provided in the POEA SEC, which in this case is Grade 10 disability as assessed by the company doctors.[11]

But the appellate court upheld the NLRC, ruling that *firstly*, Section 20 of POEA SEC, which is deemed written into the seafarer's contract, provides for the minimum requirements acceptable to the government before it approves the deployment of Filipino seafarers on foreign ocean-going vessels, and that *secondly*, the two elements required for an injury or illness to be compensable concurred in the case: a) the injury or illness is work related, and b) and it occurred during the term of the seafarer's contract.[12] The pertinent portion of Section 20 reads:

> SECTION 20. COMPENSATION AND BENEFITS. —
>
> (B) COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> 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.
>
> 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.
>
> 5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

> 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 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.[13]

The CA cited *Maersk Filipinas Crewing, Inc./Maersk Services Ltd. v. Mesina*[14] on what constitutes permanent as well as total disability, thus:

> Permanent disability is 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. *Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days*.[15] (Italics ours)

In concluding that Camoral's disability is permanent and total, the CA noted that "he became unfit to continue the same kind of work he was hired for by the [p]etitioners for more than 120 days as also established by the findings and recommendations made by the company doctors and by Dr. Catapang, the private physician whom private respondent hired."[16] The CA also held that while under Section 32 of the POEA SEC, only injuries or disabilities classified as Grade 1 may be considered as total and permanent, if, however, even with a disability grading from 2 to 14, hence, partial and permanent, the seafarer is incapacitated to perform his usual sea duties for more than 120 days or 240 days, depending on the need for further medical treatment, under legal contemplation he is totally and permanently disabled. The CA further said that "an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the [POEA SEC] but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code."[17]

In contrast, the CA cited Article 192(c)(1) of the Labor Code expressly granting to Camoral total permanent disability:

> Art. 192 (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[.]
>
> x x x x

The CA also invoked Section 2(b), Rule VII of the AREC which provides, to wit:

> Sec. 2. Disability
>
> x 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.
>
> x x x x

The CA also concurred in the award of attorney's fees to Camoral on the basis of Article 2208 of the Civil Code, since he was compelled to hire a lawyer due to the petitioners' unreasonable refusal to pay his benefits.

Petition for Review in the Supreme Court

In the instant petition, insisting that the factual conclusion of the appellate court as to Camoral's disability was based on speculation and manifestly mistaken inferences, the petitioners point out that Camoral was assessed with a Grade 10 disability within the 240-day period allowed to the employer by law; that Camoral was seen by his private doctor only on one single consultation, whereas the company-designated doctors treated him over an appreciable length of time; and the award of attorney's fees was erroneous since they complied with all their obligations under the POEA SEC, and the denial of Camoral's claim for total disability benefits was based on just, legal, and valid grounds.

Ruling of the Court

The petition is devoid of merit.

The petitioners admit in their petition that on the 150th day of Camoral's treatment, March 5, 2010, his maximum medical cure or recovery was reached, at which time he was finally assessed with a Grade 10 disability, with moderate stiffness, or one-third limitation of motion of the neck. Thereafter, the petitioners refused further medical assistance and offered him $10,075.00 as partial permanent disability benefit, which Camoral however declined, insisting that his disability is total and permanent.[18]

Camoral's treatment extended beyond 120 days and although the maximum cure was attained, both the company doctor and Camoral's private doctor agreed that in his condition he could no longer return to his job as ice carver. Significantly, the company's neuro-spine surgeon, Dr. Sih, in her letter-bulletin[19] particularly noted that "considering the patient's nature of work (entailing heavy weight lifting), he is assessed to be disabled/not fit to go back to work." Camoral's own physician, Dr. Catapang,

found that he continued to complain and suffer from neck pain despite continuous therapy, and the pain is made worse by neck rotation, something that obviously cannot be prevented in a manual occupation, and he concluded that Camoral has lost his pre-injury capacity and is UNFIT to work back at his previous occupation as a seafarer.

The issue now before the Court is whether the disability grading provided by the petitioners for Camoral's impediment must control. The Court says no.

In *Vergara v. Hammonia Maritime Services, Inc., et al.*,[20] the Court harmonized the POEA SEC with the Labor Code and the AREC in holding that: (a) the 120 days provided in Section 20-B(3) of the POEA SEC is the period given to the employer to determine the fitness of the seafarer to work, during which 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 by a maximum of 120 days, or up to 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 days 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.[21]

As noted in *Kestrel Shipping Co., Inc. v. Munar,*[22] the POEA SEC provides merely the minimum acceptable terms in a seafarer's employment contract, and that in the assessment of whether a seafarer's injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities found 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.[23] Article 192(c) of the Labor Code provides that temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the AREC, shall be deemed *total and permanent*; Section 2(b) of Rule VII of the AREC also provides that:

> [D]isability 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. (Italics ours)

Thus, 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 days or 240 days, as is the case here, then he shall be deemed totally and permanently disabled.[24] In *Crystal Shipping, Inc. v. Natividad,*[25] the Court specifically ruled that it is of no consequence that he recovered, for what is important is that he was unable to perform his customary work for more than 120 days, and this constitutes permanent total 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.[26] (Citations omitted and italics ours)

In *Alpha Ship Management Corporation v. Calo,*[27] the Court said:

An employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.[28]

Significantly, the NLRC noted that the medical report and disability assessment submitted by the petitioners after more than 120 days of treatment and rehabilitation did not show how the *partial* permanent disability assessment of Camoral was arrived at. It simply stated that he was suffering from impediment Grade 10 disability, but without any evidence that in fact only one-third limitation of motion of the neck or moderate stiffness had affected Camoral. But even without this observation, it is not disputed that Camoral has been declared unfit by both the petitioners' and Camoral's doctors to return to his previous occupation. This, to the Court, is akin to a declaration of permanent and total disability.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr., and *Jardeleza, 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 11, 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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[1] *Rollo*, pp. 29-49.

[2] Penned by Associate Justice Socorro B. Inting, with Associate Justices Mario V. Lopez and Stephen C. Cruz concurring; id. at 51-62A.

[3] Id. at 52-53.

[4] Id. at 53.

[5] Id. at 53-54.

[6] Id. at 54.

[7] Id. at 33, 55.

[8] Id. at 55.

[9] Id. at 56-57.

[10] Id. at 57-58.

[11] Id. at 61.

[12] *Nisda v. Sea Serve Maritime Agency, et al.*, 611 Phil. 291, 316 (2009).

[13] *Rollo,* pp. 59-60.

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

[15] *Rollo,* p. 61.

[16] Id.

[17] Id.

[18] Id. at 33.

[19] Id. at 91, 97.

[20] 588 Phil. 895 (2008).

[21] Id. at 912-913.

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

[23] Id. at 809.

[24] Id. at 809-810.

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

[26] Id. at 568.

[27] G.R. No. 192034, January 13, 2013, 713 SCRA 119.

[28] Id. at 120.
