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SECOND DIVISION

[G.R. No. 212878, February 01, 2016]

MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION CO., LTD., W. BOCKSTLEGEL REEDEREI (GERMANY), ORLANDO D. ALIDIO AND ANTONIO GALVEZ, JR., PETITIONERS, VS. WILFREDO L. CABATAY, RESPONDENT.

DECISION

BRION, J.:

We resolve the present petition for review on *certiorari*[1] which seeks to nullify the May 31, 2013 decision[2] and June 4, 2014 resolution[3] of the Court of Appeals in CA-G.R. SP No. 120698.

The Antecedents

The respondent Wilfredo Cabatay (*Cabatay*) entered into a ten-month contract of employment as *able seaman* with the **petitioners** Marlow Navigation, Philippines, Inc., (*agency*) and its principal Marlow Navigation Co., Ltd., (*Marlow Navigation*), for the vessel *M/V BBC OHIO*. The contract was supplemented by a collective bargaining agreement or the Total Crew Cost Fleet Agreement (*TCC-FA*)[4] between the International Workers Federation (*ITF*) and Marlow Navigation. He boarded the vessel on November 23, 2009.

While on duty on December 30, 2009, Cabatay fell from a height of four meters in his work area; his side, shoulder, and head were most affected by his fall. He was brought to a hospital in Huangpu, China, where he was diagnosed with "*Left l-4 Verterbra Transverse Bone broken (accident)*." He was declared unfit to work for 25 days. On January 7, 2010, he was medically repatriated.

Cabatay arrived in Manila on January 8, 2010, and was immediately referred to the company doctor, Dr. Dolores Tay (*Dr. Tay*), of the International Health Aide Diagnostic Services, Inc., for examination and treatment. He underwent several tests, including a CT scan and a repeat audiometry and MRI.

On March 19, 2010, Cabatay complained of right shoulder pain. On April 13, 2010, he underwent surgery on the *rotator cuff* on his shoulder. After surgery, he missed several appointments with Dr. Tay and failed to undergo his physiotherapy on time, starting it only on May 25, 2010. Earlier, or on May 7, 2010, Dr. Tay gave Cabatay an interim disability assessment of Grade 10 for his shoulder injury and Grade 3 for impaired hearing. She expected Cabatay's hearing and shoulder problems to be resolved within

three to six months, although he was still under treatment as of June 3, 2010.

On June 9, 2010, Dr. Tay issued a combined 36% disability assessment for Cabatay based on the compensation scale under the TCC-FA,[5] thus: (1) 5% for communication handicap of severe to total; (2) 2% for hearing handicap of mild to medium; (3) 3% compensation for each ear—hampering *tinnitus* and distortion of hearing; (4) 8% for his spine injury with medium severe fracture without reduction of mobility; and (5) 15% for his shoulder injury, with right shoulder elevation up to a 90-degree angle.

Meantime, or on May 11, 2010, Cabatay filed a complaint against the petitioners for permanent total disability compensation, sickness wages, damages, and attorney's fees. While he did not dispute the company doctor's findings, he argued that he was entitled to permanent total disability benefits since he had lost his employment (profession) due to his injury which, he claimed, is compensated under the TCC-FA at US$125,000.00.

The Compulsory Arbitration Rulings

In his decision[6] of January 4, 2011, Labor Arbiter (*LA*) Quintin B. Cueto III found that Cabatay had lost his employment as a seaman and awarded him permanent total disability compensation of US$125,000.00 under the TCC-FA. The evidence, LA Cueto stressed, showed that Cabatay was permanently unfit for sea service in any capacity, despite the company doctor's 36% disability grading. He considered Dr. Tay's prognosis of the resolution of Cabatay's hearing problem from three to six months a mere optimistic assessment.

The petitioners appealed to the National Labor Relations Commission (NLRC) which rendered a decision[7] setting aside LA Cueto's award. It also ordered the petitioners to pay Cabatay, jointly and severally, $45,000.00 in permanent partial disability compensation equivalent to Dr. Tay's combined 36% disability assessment, plus $1,000.00 attorney's fees.

Cabatay moved for, but failed to obtain, a reconsideration from the NLRC, leaving him no option but to seek relief from the CA through a Rule 65 petition for *certiorari*. He charged the labor tribunal with grave abuse of discretion for setting aside LA Cueto's award due to his failure to question Dr. Tay's findings, without ruling on the substantive issues of the case.

The CA Decision

In its decision under review, the CA granted the petition, reversed the NLRC ruling, and reinstated LA Cueto's award. It held that under existing jurisprudence,[8] Cabatay's disability had become permanent total, considering that while he was injured on December 30, 2009, he was still being given medical attention on June 3, 2010, a period of more than 120 days, or a total of 155 days.

The CA explained that while the treatment can be extended up to a maximum of 240 days as in Cabatay's case, he is considered under temporary disability within the same

period. His condition, it pointed out, "is still subject to the fact that the company physician has to make a determination whether he is fit for sea service or not; in any event, it did not negate the fact that if the seafarer was disabled continuously for more than 120 days, he is considered permanently disabled."[9] It noted that Dr. Tay had not declared Cabatay fit to work within the 240-day period.

The petitioners moved for reconsideration, reiterating the same arguments they raised in the petition. Additionally, they manifested that Cabatay had already executed the NLRC award of $46,000.00 ($45,000.00 disability compensation and $1,000.00 as attorney's fees), thereby accepting "the correctness and propriety of the judgment award."[10] This was the reason, they explained, why they earlier moved to have the case declared moot and academic.[11] The appellate court denied the motion.

The Petition

The petitioners now ask the Court for a reversal of the CA rulings on the grounds that: (1) Cabatay's claim had been mooted when he enforced the NLRC award; (2) he is not entitled to permanent total disability compensation as Dr. Tay gave him only a combined 36% disability rating; and to damages, as they were in good faith in responding to his condition; (3) under the circumstances, his inability to work for more than 120 days does not constitute permanent total disability; and (4) petitioners Antonio Galvez, Jr., and Orlando Alidio are not liable to Cabatay's claim since they are mere corporate officers of the agency.

The petitioners insist that Cabatay is entitled only to $45,000.00 in disability compensation representing the combined 36% disability rating given to him by Dr. Tay, and which had already been paid to him. This disability rating, they stress, was based on the compensation schedule under the very same TCC-FA relied upon by the labor arbiter for his decision. On the state of Cabatay's health, they urge the Court to take notice that his condition had "vastly improved as a result of his treatment, including arthroscopy surgery which the petitioners provided to him."[12]

Further, the petitioners maintain that while Cabatay argues that he has already lost his profession and is entitled to 100% compensation, Section 19.3 on *Permanent Medical Unfitness* of the TCC-FA provides that "*any seafarer assessed at less than 50% disability under the attached Annex 3* ***but certified as permanently unfit for further sea service by a doctor appointed mutually by the Owners/Managers and the ITF shall be entitled to 100% compensation***."[13]

The above CBA provision, they point out, was ignored in the resolution of Cabatay's claim. They submit that they proposed to have his medical condition referred to a mutually appointed doctor for determination, but he refused. His refusal, they argue, "should be taken as an admission against his interest."[14]

The petitioners dispute the CA's pronouncement that Cabatay's mere inability to perform his duties for 120 days rendered him totally and permanently disabled. They contend that the 120-day rule for permanent total disability does not apply to his case

since the company-designated physician had already made an assessment of his disability, which should be respected, pursuant to Section 20 (B) 3 of the POEA-SEC.

Lastly, the petitioners reiterate that Cabatay is not entitled to damages and attorney's fees because they have not committed any act of bad faith in dealing with him. From the moment he was repatriated, they point out, he was taken care of, and was referred to the company doctor for examination and treatment until he attained maximum cure.

Cabatay's Position

In his comment[15] dated September 22, 2014, Cabatay prays for a dismissal of the petition for lack of merit, contending that:

1. His claim for full disability benefits had not been mooted even after he secured the execution of the $46,000.00 awarded by the NLRC. The ruling in *Career Philippines Ship Management, Inc. v. Geronimo Madjus*,[16] invoked by the petitioners, is not squarely applicable in his situation. In that case, the manning agency executed the judgment award in favor of the seafarer to prevent its imminent execution while it pursued its petition for *certiorari* with the CA.

In the same case, the Court considered the *Conditional Satisfaction of Judgment* as an amicable settlement between the parties, which rendered the agency's petition for *certiorari* academic, thereby putting closure to the case; otherwise, it would place the seafarer at a disadvantage. The Court explained that while the agency had other remedies available to it, such as its petition for *certiorari* itself and eventually an appeal to the Court, the seafarer could no longer pursue other claims, including the award of interest that may accrue during the pendency of the case.

In the present dispute, Cabatay points out, he was the one who enforced the NLRC award, without prejudice to his petition for *certiorari* before the CA. He simply moved for execution of the uncontested portion of the award, which is allowed under the NLRC rules of procedure; but unless he makes an unequivocal waiver of his right to pursue the case, the petitioners should not assume that he is giving up the balance of his claim.

2. He is entitled to full disability benefits. The TCC-FA, whose applicability the petitioners acknowledge, requires only that the seafarer is deprived of employment on account of an accident which occurred during his tour of duty, to be entitled to 100% compensation. Thus, all that he has to prove is the loss of his profession because of his disability.

He insists that he has already lost his employment or his "profession." The company doctor's certification showed that he has a severe communication handicap, severe fracture of the spine, and impeded elevation of the arm at 90 degrees. Moreover, the petitioners themselves have not re-hired him. This is an indication, he submits, that he would no longer pass any pre-employment medical examination (P.E.M.E).

3. The award of attorney's fees to him is proper because he had to secure the services

of a lawyer in order to vindicate his rights as there was no assurance that the petitioners would have granted his just demands had the matter not gone through the legal process.

4. Finally, the inclusion of Galvez and Alidio as parties in the case is called for because they are responsible officers of an agency engaged in the hiring of ship manpower; as such, they are solidarity liable with the agency and the foreign employer for his disability compensation claim under Section 10 of R.A. No. 8042, the *Migrant Workers and Overseas Filipinos Act*.

The Court's Ruling

"*Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by law and by contract*," and so the Court declared in *Vergara v. Hammonia Maritime Services, Inc., et al.*[17]

Guided by this Court pronouncement, **we find merit in the petition**. Based on the medical findings, the governing law—the POEA-SEC—and the contract between the parties—the TCC-FA—as well as applicable jurisprudence, we hold that the respondent Cabatay is entitled only to disability benefits as awarded by the NLRC.

The medical Jindings/Cabatay's disability assessment

On record, upon his arrival in Manila on January 8, 2010, following his medical repatriation, Cabatay was immediately referred to Dr. Tay, the company-designated physician, for examination and treatment. He was under Dr. Tay's medical care and management for six months or until June 9, 2010, when she gave him a combined 36% disability assessment. All this time, he underwent several tests, a CT scan, audiometry and MRI, as well as therapy sessions, at the petitioners' expense.

Cabatay did not object to Dr. Tay's assessment, yet he filed a claim for permanent total disability compensation, which the labor arbiter granted declaring that he was entitled to fiill disability benefits because he had lost opportunities for his employment/profession. On appeal, the NLRC set aside the arbiter's decision and relied on Dr. Tay's disability assessment "in the absence of any substantial proof in support of complainant's bare allegation of loss of profession."[18] The CA, in turn, upheld the arbiter's award, holding that since Cabatay was "disabled continuously for more than 120 days, he is considered permanently disabled," and the "CBA provides that the seafarer is entitled to full benefits even if he suffered less than 50% of the total disability under the schedule so long as he is no longer fit for sea duty."[19]

The POEA-SEC; the TCC-FA

We find that the CA ruling disregarded relevant provisions of the POEA-SEC and the TCC-FA. This is a reversible error as we shall discuss below.

As intimated earlier, the POEA-SEC and the TCC-FA govern Cabatay's employment with the petitioners. These two instruments are the law between the parties as the Court

emphasized in *Philippine Hammonia Ship Agency, Inc., v. Eulogio Dumadag*.[20]

Under the 2002 POEA-SEC, it is the company-designated physician who declares/establishes the fitness to work or the degree of disability of a seafarer who is repatriated for medical reasons and needs further medical attention.[21] Thus, under Section 20 (B) 3, the seafarer is required to submit to a post-employment medical examination by the company-designated physician.[22]

On the other hand, under the TCC-FA,[23] "*The disability suffered by the Seafarer shall be determined by a doctor appointed mutually by the Owners/Managers and the ITF, and the Owners/Managers shall provide disability compensation to the Seafarer in accordance with the percentage specified in the table below xxx*"[24] The TCC-FA also provides for a Compensation Scale under its Annex 3 upon which Dr. Tay, the company-designated physician, based her assessment of Cabatay's disability.

There is no question that there had been compliance with Section 20 (B) of the POEA-SEC in regard to Cabatay's post-employment medical examination. It is also established that he went through an intensive treatment, including special medical procedures and therapy sessions, under the care and management of Dr. Tay for six months or for 180 days within the 240-day extended period allowed under the rules implementing the employees compensation law.[25] At the conclusion of his treatment and therapy program, Dr. Tay gave him a 36% disability assessment pursuant to the compensation schedule under the TCC-FA.

As Cabatay himself admitted, he did not dispute Dr. Tay's findings and neither did he offer a contrary finding. The NLRC therefore committed no grave abuse of discretion when it awarded Cabatay disability compensation in accordance with Dr. Tay's assessment, there being no disagreement on the assessment. Be this as it may, we are not unmindful of the fact that under the TCC-FA, the seafarer's disability shall be determined by a doctor mutually appointed by the employer (owner/manager) and the union (ITF). There was no such determination in this case, either under Section 19.2 as cited above, or Section 19.3 under the TCC-FA as invoked by the petitioners.

The absence of a disability assessment by a doctor chosen by the parties, however, will not invalidate Dr. Tay's assessment, not only because Cabatay accepted Dr. Tay's findings, but also because he refused the petitioners' proposal that his medical condition be referred to a mutually appointed doctor for determination.[26] Cabatay never denied this particular submission of the petitioners.

The 120-day rule; loss of employment/profession

In reversing the NLRC decision, the CA declared that while Cabatay's treatment was extended (up to a maximum of 240 days),[27] it did not negate the fact that he was disabled continuously for more than 120 days and therefore permanently disabled,[28] especially when Dr. Tay had not declared Cabatay fit to work within the extended period. This is a misappreciation of the significance of the 120-day rule and the 240-day extended period as clarified in applicable rulings of the Court.

In *Vergara v. Hammonia*,[29] the Court explained what to expect within this period in terms of the seafarer's medical condition, thus:

> *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 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 medical condition.* (underscoring and emphasis ours)

The question of why no fit-to-work declaration was issued by Dr. Tay is answered by her combined 36% disability assessment for Cabatay. The CA thus erred in holding that since his disability went beyond 120 days, he had become permanently and totally disabled. Again, in Vergara, the Court stressed: "*This declaration of a permanent total disability after the initial 120 days of temporary 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*."[30]

Also, in *Splash Philippines, Inc. v. Ruizo*, the Court said that the 120-day rule "*cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists*."[31]

Since Dr. Tay had timely and duly made a disability assessment for Cabatay, the CA likewise erred in affirming LA Cueto's opinion that he is entitled to permanent total disability benefits because he had lost his employment/profession. Neither can Cabatay's submission that he had lost his profession in contemplation of the TCC-FA prevail over Dr. Tay's assessment, not only because he did not dispute the assessment, but also because he did not go through the procedure under the agreement on how a disability is determined, permanent total or otherwise.

Needless to say, a seafarer cannot claim full disability benefits on his mere say-so in complete disregard of the POEA-SEC and the CBA, which are, to reiterate, the law between the parties and which they are duty bound to observe.[32] And so it must be in Cabatay's case, especially when he refused the petitioners' offer[33] that his medical condition be referred to a mutually appointed doctor under Section 19.3 of the TCC-FA, to determine whether, despite Dr. Tay's combined 36% disability assessment under Annex 3 of the agreement, he is permanently unfit for further sea service. Absent such

a determination (certification) by a mutually appointed doctor, we hold that Dr. Tay's assessment should stand.

This being the case, we find no need to discuss the rest of Cabatay's arguments, particularly his claim that he has not been re-hired by the petitioners and that he will not anymore pass a pre-employment medical examination. In any event, there is no showing that he sought a re-hiring with the petitioners and was refused, or that he was ever subjected to a P.E.M.E. and failed it.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE** and the March 31, 2011 decision of the National Labor Relations Commission is **REINSTATED**.

SO ORDERED.

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

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[1] *Rollo*, pp. 3-27; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 40-51; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan.

[3] *Id.* at 78-79.

[4] CA *rollo*, pp. 119-134.

[5] *Id.* at 131-134; TCC-FA, Annex "3."

[6] *Id.* at 160-172.

[7] *Id.* at 211-220.

[8] *Iloreta v. Philippine Transmarine Carriers, Inc.*, G.R. No. 183908, December 4, 2009, 607 SCRA 796.

[9] *Supra* note 2, at 9, par. 3.

[10] *Rollo*, p. 55; Petitioners' Motion for Reconsideration before the CA, p. 3, par. 4.

[11] CA *rollo*, pp. 299-303.

[12] *Rollo*, p. 16; Petition, p. 14, par. 4.

[13] CA *rollo*, p. 123.

[14] *Supra* note 1, at 14, par. 6.

[15] *Id.* at 82-97.

[16] 650 Phil. 157 (2010).

[17] 588 Phil. 895, 908 (2008).

[18] *Supra* note 7, at 1.

[19] *Supra* note 2, at 9, last paragraph.

[20] G.R. No. 194362, June 26, 2013, 700 SCRA 65.

[21] Section 20 (B) 2.

[22] Section 20 (B) 3.

[23] *Supra* note 4.

[24] *Id.*, Section 19.2 on DISABILITY.

[25] Book IV, Rule X, Section 2, Rules and Regulations Implementing the Labor Code.

[26] *Supra* note 13.

[27] *Id.*

[28] *Supra* note 19.

[29] *Supra* note 17.

[30] *Id.* at 915.

[31] G.R. No. 193628, March 19, 2014, 719 SCRA 496.

[32] *Supra* note 30.

[33] *Supra* note 14.