THIRD DIVISION

[G.R. No. 195878, January 10, 2018]

MAGSAYSAY MITSUI OSK MARINE, INC., KOYO MARINE, CO. LTD., AND CONRADO DELA CRUZ, PETITIONERS, VS. OLIVER G. BUENAVENTURA, RESPONDENT.

DECISION

MARTIRES, J.:

This petition for review on certiorari seeks to reverse and set aside the 18 March 2010 Decision[1] and the 28 February 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 109150 which reversed and set aside the 19 January 2009 Resolution[3] of the National Labor Relations Commission *(NLRC).* The NLRC affirmed the 30 May 2008 Decision[4] of the Labor Arbiter *(LA).*

THE FACTS

Petitioner Magsaysay Mitsui OSK Marine, Inc. *(Magsaysay),* on behalf of its principal Koyo Marine Co. Ltd., hired respondent Oliver G. Buenaventura *(Buenaventura)* as an ordinary seaman on board the vessel Meridian. The contract was for nine months, with a basic monthly salary of $403.00 and subject to the JSU collective bargaining agreement *(CBA).*[5]

On 25 January 2007, Buenaventura met an accident wherein a mooring winch crushed his right hand. As a result, he suffered a fracture of the right first metacarpal bone and open fracture of the right second metacarpal bone, which required emergency surgical procedures both done in Japan.[6]

On 21 February 2007, Buenaventura was medically repatriated. He was referred to the Maritime Medical Service, the company-designated clinic, and was attended to by Dr. Stephen Hebron *(Dr. Hebron).* Dr. Hebron then referred Buenaventura to Dr. Celso Fernandez *(Dr. Fernandez),* an orthopedic surgeon. On 3 August 2007, Dr. Hebron declared Beunaventura fit to work after undergoing conservative management, continuous rehabilitation physiotheraphy, and occupational therapy. Nevertheless, Buenaventura still felt pain in his hand especially during cold weather.[7]

In a medical certificate dated 12 September 2007, Dr. Hebron stated that according to Dr. Fernandez, the MC plates in Buenaventura's right hand might be contributing to the pain. According to him, the removal of the MC plates would cost around P70,000.00, which would not be shouldered by Magsaysay. This prompted Buenaventura to consult

Dr. Rodolfo Rosales *(Dr. Rosales)* who found him unfit to work and recommended a ten-week physical therapy. He also consulted Dr. Venancio Garduce, Jr. *(Dr. Garduce),* an orthopedic surgeon, who diagnosed him with: (a) inability to extend the right hand; (b) weak grip, grasp and pinch; (c) healed flap, dorsum of hand; (d) deformity of the thumb right hand atrophy; and (e) traumatic arthritis, carpo-metacarpal joints in his right hand. Dr. Garduce opined that it would be difficult for Buenaventura to continue to work as a seaman.[8]

Based on the differing opinions of his physicians of choice, Buenaventura filed a complaint for disability compensation under the CBA, recovery of medical expenses; moral, exemplary, and nominal damages; and attorney's fees.

The LA Ruling

In its 30 May 2008 decision, the LA dismissed Buenaventura's complaint. It ruled that Buenaventura was not suffering from total and permanent disability because he was already declared fit to work by the company-designated physician on 3 August 2007. The LA explained that the company-designated physician's declaration of fitness, absent any showing of bad faith or bias, should be considered as the only basis in awarding disability benefits. It highlighted that before Buenaventura was declared fit to work, he had been subjected to appropriate medical attention and that his condition was improving to normal. The LA disregarded the findings of Buenaventura's physicians of choice because they had examined him only for a short period of time. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint for lack of merit.
>
> All other claims are likewise denied for want of any basis.[9]

Aggrieved, Buenaventura appealed before the NLRC.

The NLRC Ruling

In its 19 January 2009 resolution, the NLRC affirmed the LA decision. It opined that Buenaventura was not entitled to disability benefits because he was found fit to work by the company-designated physician. The NLRC highlighted that the company-designated physician was in the best position to determine Buenaventura's fitness to work considering the extensive examination and treatment conducted on him. It agreed that the findings of Buenaventura's own doctors held little weight because there was insufficient evidence to show that they had conducted a thorough examination and treatment of Buenaventura. The NLRC noted that the lone medical report was issued only after a single consultation. The dispositive portion reads:

> **WHEREFORE,** the foregoing considered, the instant appeal is **DISMISSED** for lack of merit. The Decision appealed from is **AFFIRMED** in its entirety. [10]

Buenaventura moved for reconsideration but it was denied by the NLRC in its 23 March 2009 Resolution.[11] Undeterred, he appealed before the CA.

The CA Ruling

In its assailed 18 March 2010 decision, the CA reversed the NLRC decision. The appellate court explained that the seafarer is not precluded from getting a second opinion as to his condition for claiming disability benefits. As such, it disagreed that the only basis for awarding disability benefits are the findings of the company-designated physician and that it is not conclusive upon the seafarer or the court.

Further, the CA elucidated that Buenaventura was entitled to total and permanent disability benefits because he was declared fit to work only after six months from the time he was medically repatriated. It pointed out that under present jurisprudence, a seafarer is entitled to permanent disability benefits when he is unable to perform his job for more than 120 days from the time of his repatriation. Thus, it ruled:

> **WHEREFORE,** premises considered, the Resolutions dated January 19, 2009 and March 23, 2009 rendered by the NLRC are **SET ASIDE**. Private respondents are **ORDERED** to pay petitioner the following amounts:
>
> 1) Seventy-Eight Thousand Seven Hundred Fifty US Dollars (US$78,750.00) as permanent and total disability benefits;
> 2) Thirty Thousand Pesos (Php30,000.00) as nominal damages; and
> 3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.[12]

Magsaysay moved for reconsideration but it was denied by the CA in its assailed 28 February 2011 resolution.

Hence, this appeal raising the following:

ISSUES

I

> **WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN AWARDING FULL AND PERMANENT DISABILITY BENEFITS TO THE RESPONDENT DESPITE THE FACT THAT RESPONDENT WAS DECLARED FIT TO WORK BY THE**

COMPANY-DESIGNATED PHYSICIAN. THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN SHOULD BE GIVEN WEIGHT IN ACCORDANCE WITH THE RULINGS OF THIS HONORABLE COURT IN THE CASES OF MAGSAYSAY MARITIME CORP. ET AL. V. VELASQUEZ, (G.R. No. 179802, 14 NOVEMBER 2008) AND MARCIANO L. MASANGCAY V. TRANS-GLOBAL MARITIMIE AGENCY, INC. AND VENTONOR NAVIGATION, INC., (G.R. No. 172800, 17 OCTOBER 2008);[13]

II

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN CONSIDERING THAT MR. OLIVER BUENAVENTURA IS TOTALLY AND PERMANENTLY DISABLED BECAUSE HE WAS ALLEGEDLY SICK OR UNABLE TO WORK FOR MORE THAN 240 DAYS DESPITE THE FACT THAT (1) POEA CONTRACT MEASURES DISABILITY BENEFITS IN TERMS OF GRADING AND NOT BY DAYS; AND (2) RESPONDENT WAS DECLARED FIT TO WORK WITHIN 240 DAYS;[14] **AND**

III

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW WHEN IT AWARDED NOMINAL DAMAGES AND ATTORNEY'S FEES DESPITE ABSENCE OF BAD FAITH ON THE PART OF PETITIONERS IN DENYING RESPONDENT'S MONEY CLAIMS.[15]

OUR RULING

The petition is meritorious.

Notice and opportunity to explain satisfies administrative due process

The Labor Tribunals opined that the findings of the company-designated physicians should be the sole basis for disability benefits and could be set aside only when medical conclusions were tainted with bad faith and malice. On the other hand, the CA explained that the findings of the company-designated physician are not conclusive upon the seafarer or the courts.

The Court agrees with the appellate court.

It is true that the company-designated physician will have the first opportunity to examine the seafarer and thereafter issue a certification as to the seafarer's medical

status. On the basis of the said certification, seafarers then would be initially informed if they are entitled to disability benefits or not. Seafarers, however, are not precluded from challenging the diagnosis of the company-designated physicians should they disagree.

In fact, such mechanism is categorically provided for under the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC),* as revised. Section 20(A) thereof states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding between the parties. Undoubtedly, seafarers have the option to seek another opinion from a physician of their choice and, in case the latter's findings differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties.

Thus, if the reasoning of the labor tribunals were to be adopted, the options available to seafarers would be restricted as they could only challenge the findings of the company-designated physician if there was malice or bad faith. Under the POEA-SEC, the presence of bad faith or malice on the part of company-designated physicians is not required before a seafarer may seek the opinion of another doctor.

Failure to refer conflicting findings to a third doctor

Unsatisfied with the findings of the company-designated physician, Buenaventura consulted with Dr. Rosales and Dr. Garduce, both of whom found him unfit to continue work as a seafarer. Considering the conflicting findings of his physician of choice, Buenaventura was bound to initiate the process of referring the findings to a third-party physician by informing his employer of the same,[16] which is mandatory considering that the POEA-SEC is part and parcel of the employment contract between seafarers and their employers.[17] Instead of following the procedure set forth under Section 20 of the POEA-SEC, Buenaventura initiated the present complaint for disability benefits without informing Magsaysay of the differing medical opinions of Dr. Rosales and Dr. Garduce.

In *Magsaysay Maritime Corporation v. Simbajon,*[18] the Court reiterated the effects of failing to comply with the requirement of referral to third-party physicians:

> The glaring disparity between the findings of the petitioners' designated physicians and Dr. Vicaldo calls for the intervention of a third independent doctor, agreed upon by petitioners and Simbajon. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors. After being informed of Dr. Vicaldo's unfit-to-work findings, Simbajon proceeded to file his complaint for disability benefits with the LA. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination. Dr. Vicaldo, too, is a

medical practitioner not unknown to this Court, as he has issued certifications in several disability claims that proved unsuccessful.

In *Philippine Hammonia,* we have ruled that **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** We explained:

> The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. **The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability.**

Similarly, we note that Simbajon was the only one who knew of the conflicting results between Dr. Vicaldo's findings with that of the petitioners' designated physicians. The petitioners had no reason to consider a third doctor because they were not aware that Simbajon secured a separate independent opinion regarding his disability. Thus, the obligation to comply with the requirement of securing the opinion of a neutral, third-party physician rested on Simbajon's shoulders. By failing to observe the required procedure under the POEA-SEC, he clearly violated its terms, i.e., the law between the parties. And without a binding third-party opinion, the fit-to-work certification of petitioners' designated physicians prevails over that of Dr. Vicaldo's unfit-to-return-to-work finding.

Lastly, we have observed that Dr. Vicaldo only examined Simbajon once. We take this is in comparison with the series of tests and treatments made by Magsaysay's designated physicians to Simbajon. Between the two, the latter's medical opinion deserves more credence for being more thorough and exhaustive.[19]

On the other hand, in *C.F. Sharp Crew Management, Inc. v. Castillo,*[20] the Court clarified that the failure to refer conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts, viz:

> In the instant case, respondent did not seek the opinion of a third doctor. Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician.

> Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.[21]

Thus, as it stands, failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice grants the former's medical opinion more weight and probative value over the latter. Nevertheless, it does not mean that the courts should adopt it hook, line and sinker as it may be set aside if it is shown that the findings of the company-designated physician have no scientific basis or are not supported by the medical records of the seafarer. The diagnosis of the company-designated physician may be set aside if it is attended with clear bias, manifested by the lack of scientific relation between the diagnosis and the symptom or where the opinion is not supported by the medical records.[22]

In the case at bar, Buenaventura did not initiate the process of referring the conflicting findings of his physicians of choice to a third doctor. Consequently, the findings of the company-designated physicians deserve greater weight and could be set aside only with a showing of a clear bias against Buenaventura. Here, the seafarer was assessed by an orthopedic surgeon and was subjected to a lengthy evaluation and treatment before a certification of fitness to work was issued. A review of the records also shows that there is insufficient evidence to hold that the company-designated physicians acted with clear bias against Buenaventura.

120-day period vis-à-vis
240-day period

The CA further found that Buenaventura should be entitled to permanent and total disability benefits because the fit-to-work certification was issued only after six months from his repatriation, or after the lapse of the 120-day period.

In *Elburg Shipmanagment Phils., Inc. v. Quiogue,*[23] the Court harmonized the perceived conflicting decisions on the period when the company-designated physician must issue a certification of fitness or disability rating as the case may be:

> An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

The above-stated analysis indubitably gives life to the provisions of the law as enunciated by *Vergara.* **Under this interpretation, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect.** This interpretation is also supported by the case of *C.F Sharp Crew Management, Inc. v. Taok,* 37 where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

> (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and **there is no indication that further medical treatment would address his temporary total disability,** hence, justify an extension of the period to 240 days;
>
> (b) 240 days had lapsed without any certification being issued by the company-designated physician;

x x x x

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

Summation

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

The Court is not unmindful of the declaration in *INC Shipmanagement* that "[t]he extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages." Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. The treatment period can be extended to 240 days if the company-designated physician provided some sufficient justification. Equally eminent, however, is the Court's pronouncement in the more recent case of ***Carcedo*** that *"[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician,* ***subject to the periods prescribed by law.***"[24] (emphases and italics in the original)

As such, the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same. In this case, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed. The company-designated physicians did not sit idly by and wait for the lapse of the said period. Buenaventura's further need of treatment necessitated the extension for the

issuance of the medical assessment. It is noteworthy that the seafarer was declared fit to work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.

WHEREFORE, the 18 March 2010 Decision and the 28 February 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 109150 are **REVERSED and SET ASIDE.** The complaint for total and permanent disability benefits is **DISMISSED.**

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

February 27, 2018

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

Sirs / Mesdames:

Please take notice that on **January 10, 2018** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on February 27, 2017 at 9:45 a.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

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[1] *Rollo,* pp. 14-36.

[2] Id. at 53-56.

[3] Id. at 172-175; penned by Commissioner Pablo C. Espiritu, Jr., and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III.

[4] Id. at 178-186; penned by LA Romelita N. Rioflorido

[5] Id. at 15.

[6] Id.

[7] Id. at 15-16.

[8] Id. at 16.

[9] Id. at 186.

[10] Id. at 175.

[11] Id. at 176-177.

[12] Id. at 35-36.

[13] *Rollo,* p. 68.

[14] Id. at 82.

[15] Id. at 88.

[16] *INC Navigation Co. Philippines Incorporated v. Rosales,* 744 Phil. 774, 786-787 (2014) citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag,* 712 Phil 507, 520 (2013) further citing Section 20(B)(3) of the POEA-SEC.

[17] *Philippine Hammonia Ship Agency, Inc. v. Dorchester Marine Ltd.,* 712 Phil. 507, 520 (2014).

[19] Id. at 842-844.

[20] G.R. No. 208215, 19 April 2017.

[21] Id.

[22] *Nonay v. Bahia Shipping Services, Inc.,* G.R. No. 206758, 17 February 2016, 784 SCRA 292, 323.

[23] 765 Phil. 341 (2015).

[24] Id. at 361-363.