THIRD DIVISION

[G.R. No. 237487, June 27, 2018]

ALDRINE B. ILUSTRICIMO, PETITIONER, V. NYK-FIL SHIP MANAGEMENT, INC./INTERNATIONAL CRUISE SERVICES, LTD. AND/OR JOSEPHINE J. FRANCISCO, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the September 27, 2017 Decision[1] and February 15, 2018 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 149491 entitled "*NYK-Fil Ship Management, Inc./International Cruise Services Ltd, Josephine J. Francisco v. Aldrine B. Ilustricimo*." The assailed rulings modified the amount of disability benefits awarded by the Panel of Voluntary Arbitrators[3] (VA) of the National Mediation and Conciliation Board (NCMB) to petitioner Aldrine B. Ilustricimo in its October 25, 2016 Decision.[4]

Factual Antecedents

Petitioner was engaged by respondent International Cruise Services Ltd., through respondent NYK-Fil Ship Management, Inc. (NYK), as a Quarter Master onboard its vessels from 1993 to 2014. His last employment with the respondents was on board the vessel *MV Crystal Serenity* last April 2014. Prior to his embarkation, petitioner underwent a routine Pre-Employment Medical Examination and was declared physically fit to work.

In November 2014, while *MV Crystal Serenity* was on its way to Florida, USA, petitioner started experiencing gross hematuria, or blood in his urine. He reported the matter to his superiors and was given antibiotics for suspected urinary tract infection. Due to his medical condition, petitioner was brought to a hospital in Key West, Florida, where he was subjected to a CT Scan. The results revealed the presence of three polypoid masses in his bladder. Petitioner was medically repatriated on November 22, 2014 and immediately referred to the company-accredited hospital for treatment. Dr. Nicomedes Cruz (Dr. Cruz), the company-designated doctor, diagnosed him with "urothelial carcinoma of the urinary bladder, low grade" or "bladder cancer."[5]

After undergoing a series of chemotherapy sessions and operations, petitioner's attending doctors assessed him with an *interim* disability rating of Grade 7 in a report[6] dated March 6, 2015. In the same report, Dr. Cruz noted that risk factors for petitioner's illness include "occupational exposure to aromatic amines and cigarette

smoking." Despite the interim disability grading given, the company doctor noted, in a report[7] dated June 23, 2015, that petitioner still complains of "on and off hypogastric pain." He was then advised to undergo repeat cystoscopy. On June 30, 2015,[8] Dr. Cruz issued petitioner with a final assessment of Grade 7 disability-moderate residuals or disorder of the intra-abdominal organ.

In September 2015, petitioner underwent another operation using his own funds.[9] This prompted him to secure the opinion of another physician, Dr. Richard Combe, who diagnosed him with bladder mass and declared him unfit to work due to his need to undergo instillation chemotherapy and cystoscopy every three months, thus:[10]

> Remarks/Recommendations: Pt. is being scheduled for instillation chemotherapy [&]cystoscopy every 3 months hence unfit to work

Thereafter, petitioner, thru counsel, sent respondents a letter[11] dated October 16, 2015, claiming total and permanent disability benefits. Petitioner further declared in the said letter his willingness to undergo another examination to prove the extent of his disability being claimed, thus:

> Dear MS FRANCISCO:
>
> This pertains to the disability case of the above-named seafarer who was medically repatriated due to medical reasons-Urotherial Carcinoma of the Urinary Bladder. He underwent series of chemotherapy. However, despite such medical treatment, he remains incapacitated until today.
>
> He consulted an independent medical expert and was found to be still suffering from the said permanent disability and declared seafarer is already totally UNFIT to resume his work as a seaman. A copy of the Second Medical Report is hereto attached and marked as ANNEX A as well as the records of his surgical operation last October 6, 2015.
>
> As a result thereof, the seafarer is claiming total and permanent disability benefits in accordance with the law and his CBA. He is willing to undergo another test/examination to confirm his present disability which has incapacitated him from resuming his work as a seaman. Please be guided accordingly.
>
> For the Firm:
>
> (SIGNED)
> ATTY. ARNOLD M. BURIGSAY
> Counsel for Seafarer

Notwithstanding petitioner's communication, respondents failed to respond, prompting him to file a complaint for total and permanent disability before the NCMB.

Ruling of the VA

On October 25, 2016, the VA issued a Decision in favor of the petitioner and, accordingly, ordered respondents to pay him total and permanent disability benefits in the amount of USD95,949.00. The dispositive portion of the judgment states:

> WHEREFORE, premises considered, respondents are hereby ordered to pay herein complainant the sum equivalent to Grade 1 disability benefits for ratings under the Collective Bargaining Agreement in the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE US DOLLARS (USD95,949.00).
>
> All other claims are DENIED and dismissed for lack of merit under the law, jurisprudence and equity.
>
> SO ORDERED.

Aggrieved, respondents elevated the case via a petition for review before the CA.

Ruling of the CA

The CA granted the petition in the assailed Decision and adjudged respondents liable only for partial permanent disability benefits under the parties' Collective Bargaining Agreement amounting to USD40,106.98, thus:

> WHEREFORE, premises considered, the petition is GRANTED. The October 25, 2016 Decision of the Panel of Arbitrators of the National Conciliation Mediation Board (NCMB) in MVA-026-RCMB-NCR-176-05-11-2015 is REVERSED and SET ASIDE. Petitioners NYK-FIL SHIP MANAGEMENT INC./INTERNATIONAL CRUISE SERVICES, LTD. And JOSEPHINE J. FRANCISCO are ORDERED to JOINLY AND SEVERALLY pay respondent Aldrine B. Ilusticimo the amount of FORTY THOUSAND ONE HUNDRED SIX DOLLARS AND NINETY-EIGHT CENTS (US$40, 106.98) or its equivalent amount in Philippine currency at the exchange rate prevailing during the time of payment.
>
> The award shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.
>
> SO ORDERED.

According to the CA, while petitioner claims to have secured the opinion of a second doctor, no such medical certification from the adverted personal doctor is extant in the records of the case, and that only a copy of the October 16, 2015 letter-request from petitioner's counsel seeking total and permanent disability benefits from the respondents was submitted. The CA likewise agreed with the respondents' postulation that, even on the assumption that petitioner had indeed secured the opinion of a second doctor, petitioner failed to seek the opinion of a third doctor as mandated under the 2010 Philippine Overseas Employment Agency – Standard Employment Contract

(POEA-SEC). Thus, without the second doctor's certification and the non-referral of the case to a third doctor, the CA ruled that petitioner's disability benefits must be based on the final disability assessment made by the company-designated doctor.

Petitioner moved for, but was denied, reconsideration by the CA. Hence, this petition.

Petitioner claims that the CA's reliance on the Grade 7 disability rating given by the company-designated doctor is based on the flawed finding that he failed to secure the opinion of a second doctor. He likewise faults the respondents for the non-referral of the case to a third doctor as required under Section 20(A)(3) of the POEA-SEC since the latter ignored his request to undergo another medical examination to prove the extent of the disability being claimed.

Respondents, for their part, insist that petitioner's illness is not compensable since it is not listed as an occupational disease under Section 32 of the POEA-SEC. Assuming that petitioner's condition is disputably presumed to be work-related, the burden lies upon him to prove that his work contributed/aggravated his illness, a burden which, according to the respondents, he failed to discharge. And even if petitioner's illness is compensable, respondents maintain that the disability rating of Grade 7 given by its doctor should prevail in view of his failure to prove that he sought a second medical opinion and to seek for the opinion of a third doctor, as provided for in the POEA-SEC.

Issue

The sole issue for the consideration of the Court is whether or not the CA erred in ruling that petitioner is not entitled to total and permanent disability benefits.

Our Ruling

We grant the petition.

Petitioner's illness is work-related

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[12] The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related.[13] Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.[14]

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer.[15] It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[16]

In the present case, it is undisputed that petitioner suffered an illness while on board the M/V Crystal Serenity. What needs to be determined is whether petitioner's illness is work-related, and, therefore, compensable.

According to the VA, petitioner suffered from "cancer of the urinary bladder" due to the malignant tumors found in his urinary bladder.[17] The VA then considered the illness as work-related based on Section 32[18] of POEA-SEC. The VA added that even if petitioner's illness is not among those specifically mentioned in Section 32, the same is deemed work-related since the risk factors for the illness include occupational exposure to aromatic amines as stated on the company doctors' medical certification.

The CA, meanwhile, concluded that petitioner failed to discharge the burden of proving the causality of his illness and his work with the respondents. Coupled with the petitioner's failure to seek the opinion of a third doctor, the appellate court gave more weight and credence to the Grade 7 final disability rating given by the respondents' doctors.

As a rule, the Court does not review questions of fact, but only questions of law, in an appeal by *certiorari* under Rule 45 of the Rules of Court.[19] It is not to reexamine and assess the evidence on record, whether testimonial and documentary.[20] Nevertheless, this rule admits of certain exceptions,[21] such as when the findings of fact of the lower courts or tribunals are conflicting, as in the instant case.

We are inclined to agree with the findings of the VA.

The Medical Abstract/Discharge Summary[22] dated January 23, 2015 contains the following entries:

> Discharge Impression or Diagnosis:
> **BLADDER CANCER**
> s/p TUR-BT (2014)
> s/p INTRAVESICAL CHEMOTHERAPY (1st SESSION, 01/22/15)
> (Emphasis supplied)

While the medical report dated March 6, 2015 issued by respondents' doctor states:

1. The prognosis is fair.
2. The plan of further management, estimated length and cost of further treatment will depend on the result of the recommended cystoscopy and bladder tumor check.
3. The **risk factors are occupational exposure to aromatic amines and cigarette smoking**.
4. The interim disability grading under the POEA schedule of disabilities is Grade 7 – moderate residuals or disorder of the intrabdominal organ.[23] (Emphasis supplied)

No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the

respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.

Moreover, it is worthy to note that respondents themselves did not dispute petitioner's entitlement to disability benefits. They only dispute that his disability is total and permanent. In their position paper before the VA, respondents averred:

> Respondents emphasize that this is not a case of respondents totally denying without legal basis complainant's entitlement to disability compensation. On the other hand, respondents are *merely upholding the law between the parties – the PSEC* – in arguing that complainant is only entitled to Grade 7 disability compensation based on the assessment of the company-designated physician. Hence, complainant's condition cannot be considered under all probabilities under the PSEC as assessable beyond what has been given by the company-designated doctor.
>
> Therefore, from the cold facts of this case, complainant is only entitled to disability compensation equivalent to Grade 7 disability assessment. x x x (Italics and underscoring in the original)

From the foregoing, what respondents assail is the amount of disability benefits due to the petitioner, and not his entitlement thereto. Hence, to the mind of this Court, there is no real issue with respect to the work-relatedness and compensability of petitioner's illness.

No breach of petitioner's duties under the POEA-SEC

Anent the matter of compliance with the third-doctor referral procedure in the POEA-SEC, Section 20(A)(3) of the contract 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:

> SECTION 20. COMPENSATION AND BENEFITS
>
> 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:
>
> 3. x x x
>
> **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. (Emphasis supplied)

This referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third doctor

referral provision in the contract. Stated otherwise, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision shall be final and binding on the parties.[24]

According to the respondents, petitioner's second medical opinion only came to their knowledge during one of the scheduled mandatory conferences before the VA.[25] Citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag (Hammonia)*,[26] *Silagan v. Southfield Agencies, Inc.*,[27] and *TSM Shipping Phils., Inc. v. Patiño*,[28] they argue that petitioner's failure to communicate his separate medical certification prior to the filing of the complaint not only constitutes a breach of his contractual obligations under the POEA-SEC, but also renders the complaint premature and is a ground for the dismissal of his claim for disability benefits.

Respondents' reliance on the above-stated cases is misplaced. In *Hammonia*, the seafarer-claimant utterly disregarded the third-doctor provision and filed a claim for permanent total disability benefits right after securing the opinion of four doctors of his choosing. It is against this factual backdrop that We declared that the seafarer-claimant's filing of the complaint without having consulted a third doctor constitutes a breach of his duty under the POEA-SEC. In the same vein, the seafarer-claimants in *Silagan* and *TSM Shipping* never informed their employers of their intent to consult a third doctor after consulting a second doctor.

In stark contrast, respondents do not deny receiving petitioner's October 16, 2015 letter despite their insistence that he failed to activate the third doctor provision. In fact, respondents repeatedly insisted that the letter was not meant to dispute the company-designated doctor's assessment, but rather to inform them that petitioner needed continued medical assistance. On the assumption that petitioner indeed "belatedly" informed respondents of the opinion of his second doctor and his intent to refer his case to a third doctor, the fact remains that they have been notified of such intent. In *Formerly INC Shipmanagement Incorporated v. Rosales*,[29] We reiterated Our earlier pronouncement in *Bahia Shipping Services, Inc. v. Constantino*[30] that when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and *the company thereafter carries the burden of activating the third doctor provision*:

> x x x Constantino bears the burden of positive action to prove that his doctor's findings are correct, **as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor** who, as the POEA SEC provides, can rule with finality on the disputed medical situation. (Emphasis supplied)

The POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory

conference, the burden to refer the case to a third doctor has shifted to the respondents. This, they failed to do so, and petitioner cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.

Petitioner is entitled to total and permanent disability benefits

In any event, the rule that the company-designated physician's findings shall prevail in case of non-referral of the case to a third doctor is not a hard and fast rule.[31] It has been previously held 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.[32]

The June 30, 2015 final report of the company doctor reads:

1. The patient has reached maximum medical cure.
2. The final disability grading under the POEA schedule of disabilities is Grade 7– moderate residuals or disorder of the intraabdominal organ.

Despite the foregoing assessment, the VA disagrees that petitioner merely suffers from a moderate disorder of intraabdominal organ and with the final disability grading given. The VA said:

> Having said the above, this Panel is also of the opinion that this type of disorder in the internal organ is not simply moderate but is of a ***serious*** nature. Thus, the grade 7 rating under the list of occupation disease does not seem to fully describe the gravity of the cancer suffered by herein complainant. It is thus submitted that the occupational disease should be that of a serious nature or that which is considered of a "***severe residual of impairment of intra-abdominal organ which requires regular aid and attendance that will [disable] worker to seek any gainful employment***" which is equivalent to a Grade 1 rating. The Panel finds it hard to accept the submission of respondents that herein seafarer's cancer is but a mere "***moderate residual of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea***." x x x (Emphasis in the original)

The VA noted that petitioner's illness is serious in nature considering the company doctors' requirement for him to undergo periodic cystoscopy despite having undergone chemotherapy and surgery. It further observed that petitioner was never declared "cancer-free" and "fit to work" by his attending physicians and his illness persisted despite the final disability grade of 7 given. For the VA, this means that petitioner could no longer return to the seafaring profession and is, thus, permanently and totally disabled.

We concur with the VA's conclusion.

In keeping with the avowed policy of the State to give maximum aid and full protection to labor, the Court has applied the Labor Code concept of disability to Filipino seafarers.

[33] Thus, We have held that the notion of disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. Hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[34]

In *Hanseatic Shipping Philippines Inc. v. Ballon*,[35] We defined total disability as "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." In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met.[36] A permanent partial disability, on the other hand, presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[37]

Petitioner cannot be expected to resume sea duties if the risk of contracting his illness is associated with his previous occupation as Quarter Master. Indeed, records do not show that he was re-employed by respondent NYK or by any other manning agency from the time of his repatriation until the filing of the instant petition. Moreover, the recurrence of mass in petitioner's bladder, the requirement by both the company doctor and his personal doctor that he undergo repeat cystoscopy to monitor polyp growth, his subsequent operation to remove the growing polyps in his bladder even after the lapse of the 240-day period for treatment and despite the final disability grading given, all sufficiently show that his disability is total and permanent.

Petitioner's disability being permanent and total, he is entitled to 100% compensation in the amount of US$95,949.00 as stipulated in par. 20.9 of the parties' CBA and as adjudged by the VA.

WHEREFORE, the petition is **GRANTED**. The September 27, 2017 Decision arid February 15, 2018 Resolution of the Court of Appeals in CA G.R. SP No. 149491 are hereby **REVERSED** and **SET ASIDE**. The October 25, 2016 Decision of the Panel of Voluntary Arbitrators of the National Mediation and Conciliation Board is hereby **REINSTATED**. Respondents are ordered to jointly and severally pay petitioner Aldrine B. Ilustricimo the amount of US$95,949.00 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ*., concur.

July 9, 2018

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **June 27, 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 July 9, 2018 at 3:33 p.m.

Very truly yours,

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

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[1] Penned by Associate Justice Ma. Luisa Quijano-Padilla, with the concurrence of Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda; *rollo*, pp. 21-33.

[2] Id. at 34-36.

[3] Composed of MVA Edgar Recina, Romeo Cruz, Jr., and Leonardo Saulog.

[4] *Rollo*, pp. 37-47.

[5] As stated in the Medical Abstract/Discharge Summary; id. at 133.

[6] Id. at 163.

[7] Id. at 164.

[8] Id. at 165.

[9] Id. at 139, based on the Record of Operation dated October 6, 2015.

[10] Id. at 138.

[11] Id. at 140.

[12] *De Leon v. Maunlad Trans, Inc., et. al*., G.R. No. 215293, February 8, 2017. (citations omitted)

[13] Sec. 20A(4) of the POEA-SEC.

[14] *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, September 16, 2015, 770 SCRA 609.

[15] *Grieg Philippines, Inc. et. al. v. Gonzales*, G.R. No. 228296, July 26, 2017.

[16] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210 (2013), citations omitted.

[17] Page of the VA's decision.

[18] Under the sub-paragraph on "kidney" and more specifically under "residuals or disorder of the intra-abdominal organ."

[19] *Cavite Apparel, Incorporated v. Marquez*, G.R. No. 172044, February 6, 2013,690 SCRA 48.

[20] *Litonjua v. Eternit Corporation*, G.R. No. 144805, June 8, 2006, 490 SCRA 204.

[21] *Valencia v. Classique Vinyl Products Corporation*, G.R. No. 206390, January 30, 2017, citing *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189.

[22] *Rollo*, p. 130.

[23] Id. at 163.

[24] *Silagan v. Southfield Agencies, Inc., et. al*., G.R. No. 202808, August 24, 2016, citing *Formerly INC Shipmanagement, Incorporated v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438.

[25] *Rollo*, p. 147.

[26] G.R. 194362, June 26, 2013, 700 SCRA 530.

[27] Supra note 24.

[28] G.R. No. 210289, March 20, 2017.

[29] G.R. No. 195832, October 1, 2014, 737 SCRA 438.

[30] G.R. No. 180343, July 9, 2014.

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

[32] *Maersk Filipinas Crewing Inc. v. Mesina*, G.R. No. 200837, 697 SCRA 601.

[33] *Quitoriano v. Jebsens Maritimes, Inc*., G.R. No. 179868, January 21, 2010, 610 SCRA 529.

[34] Id., citing *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438.

[35] *Hanseatic Shipping Philippines Inc. v. Ballon*, G.R. No. 212764, September 9, 2015.

[36] *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262 (2011).

[37] *Sunit v. OSM Maritime Services, Inc*., G.R. No. 223035, February 27, 2017. (citations omitted)