622 Phil. 832

FIRST DIVISION

[G.R. No. 183908, December 04, 2009]

JOELSON O. ILORETA, PETITIONER, VS. PHILIPPINE TRANSMARINE CARRIERS, INC. AND NORBULK SHIPPING U.K., LTD., RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Joelson O. Iloreta (petitioner) was on February 22, 2002 hired by Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K., Ltd. (respondents) as Able Seaman on board the vessel *M/S Nautilus* for a period of nine months with a basic monthly salary of US$558 exclusive of overtime pay and other benefits. He was a member of the Associated Marine Officer and Seaman's Union of the Philippines which had a Collective Bargaining Agreement (CBA) with respondents.

On July 12, 2002, while pushing drums full of caustic soda, petitioner complained of chest pains. He later noticed that whenever he exerted physical effort, the pains persisted. When the vessel was docked at the port of Santos, Brazil on August 2, 2002, he was referred to the Centro Medico Internacional and was diagnosed by Dr. Heraldo de Carvalho to be suffering from "Angina pectoris; Arterial hypertension" which he described as "a serious heart disease, involving life risk." On the doctor's recommendation, petitioner was repatriated to the Philippines on August 16, 2002, with medical escort, to undergo further "heart investigation (cinecoronarioangiography) and surgery if necessary."[1]

Petitioner was confined on August 18, 2002 at St. Luke's Medical Center under the care of respondents' company-designated physician Natalio G. Alegre (Dr. Alegre). He underwent "coronary angiography" and "coronary angioplasty" on August 24, 2002 and September 16, 2002, respectively,[2] the expenses for which, as well as his sickness allowance for 120 days, were paid by respondents.[3]

After undergoing post-surgical check-ups, petitioner was on December 17, 2002 cleared by Dr. Alegre "to return to former work as a seaman with maintenance medications of Plavix 75 mg, and Lipitor 10 mg" and in was fact issued a confirmatory certification declaring him "Fit to resume former work."[4]

His chest pains and dizziness during physical exertion having persisted, petitioner sought a *second* opinion from an independent cardiologist, Dr. Efren R. Vicaldo (Dr. Vicaldo) of the Philippine Heart Center who, on April 22, 2003, diagnosed him to be

suffering from

> Hypertensive Cardiovascular Disease
> Coronary Artery Disease, one vessel
> (left anterior descending artery)
>
> Impediment Grade IV (68.66%).[5] (Underscoring supplied)

And petitioner was declared "unfit to resume work as seaman in any capacity" as "his illness is considered work-aggravated" to which regular "lifetime medication to control his blood pressure [and] to prevent reocclusion of his coronaries."[6]

Petitioner thereupon asked respondents for full permanent disability benefits, but was unsuccessful, hence, he filed on July 14, 2003 a complaint to recover permanent total disability compensation, damages and attorney's fees before the National Labor Relations Commission (NLRC) Arbitration Office in Quezon City.[7]

Respondents maintained that petitioner is not entitled to disability benefits in view of the company-designated physician's certification of fitness to resume former work.[8]

The parties later agreed to refer petitioner for examination by a *third* physician, Dr. Reynaldo P. Fajardo (Dr. Fajardo) of the Philippine Heart Center[9] who, on July 20, 2004, issued a Medical Certificate[10] with findings similar to those of Dr. Vicaldo's, *viz*:

> Hypertensive Cardiovascular Disease / Coronary Artery Disease,
> Chronic Stable Angina, Single Vessel Involvement (Left Anterior Descending [A]rtery), S/P Percutaneous Coronary Intervention, Class II-III
> Impediment Grade IV (68.66%) (Underscoring supplied),

after noting that petitioner's "history of effort-related angina since July 12, 2002 [has] persisted up to the present"; that "[d]espite Percutaneous Coronary Intervention done on [him], several factors predisposing to recurrence of coronary events can be aggravated by [his] continued employment"; and that his illness is "work-related stress."[11]

By Decision of June 23, 2005, Labor Arbiter Daniel J. Cajilig found for petitioner, awarding US$60,000 disability compensation to petitioner, in this wise:

> [S]ince it has not been denied that complainant is a member of the seaman's Union, perforce, his claims must be based on the provision of the existing CBA which provides as follows:
>
> ***20.1.4. Compensation for Disability***

20.1.4.1. A seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident regardless of fault but excluding injuries caused by seafarer's willful act, whilst serving on board, including accidents and work-related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall, in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. x x x.

20.1.4.2. The degree of disability which the Employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by seafarer and his Union disagrees with the assessment, a **3rd doctor** may be **agreed jointly** between the Employer and the seafarer and his Union. And **the 3rd doctor's decision** shall be **final** and **binding** on both parties.

x x x x

20.1.4.4. The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:

Degree of Permanent Disability	Rate of Compensation	
%	Ratings US$	Officers US$
100	60,000	80,000
75	45,000	60,000
60	36,000	48,000
50	30,000	40,000
40	24,000	32,000
30	18,000	24,000
20	12,000	16,000
10	6,000	8,000

with any differences, including less than 10% disability, to be *pro rata*.

20.1.5. Permanent Medical Unfitness - A seafarer whose disability is assessed at **50% or more** under the POEA Employment Contract shall, for the purpose of this paragraph, **be regarded as permanently unfit for further sea service in any capacity** and **entitled to 100% compensation, *i.e.,*** US$80,000.00 for officers and **US$60,000.00** for ratings. Furthermore, any seafarer assessed at less than 50% disability

> under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.[12] (Emphasis and underscoring supplied)

And the Labor Arbiter also awarded petitioner attorney's fees in the amount of US$6,000 on finding that he was compelled to engage a lawyer to pursue his claims. Thus the Labor Arbiter disposed:

> **WHEREFORE**, prescinding from the foregoing considerations, the complainant is hereby ordered paid his total disability compensation by the respondents, jointly and severally in the amount of **SIXTY THOUSAND (US$60,000.00) US DOLLARS** plus 10% of the total monetary awards as and for **attorney's fees in the amount of US$6,000.00** or its Philippine Peso equivalent at the time of actual payment.
>
> The rest of the claims are denied for lack of merit.
>
> SO ORDERED.[13] (Emphasis in the original)

The NLRC affirmed the Labor Arbiter's decision with modification by reducing the award of attorney's fees to US$1,000. Thus it disposed:

> WHEREFORE, premises considered, the appeal is hereby dismissed. The DECISION of the Labor Arbiter is hereby AFFIRMED subject to the modification that the award of attorney's fee is reduced to US$1,000.[14] (Underscoring supplied)

Their motion for reconsideration having been denied, respondents brought the case on Certiorari to the Court of Appeals which, by Decision[15] of June 28, 2007, affirmed with modification the NLRC decision by reducing the disability compensation to US$34,330 and deleting the award of attorney's fees in this wise:

> While agreeing to the factual findings of the NLRC, we are constrained to reduce the amount of the award for disability benefits following Dr. Fajardo's finding of Impediment Grade IV (68.66%) in relation to the Schedule of Disability under Section 32 of the POEA Standard Contract for Seaman. Under the said schedule, Iloreta with an Impediment Grade IV is entitled to US$50,000.00 x 68.66% or the amount equivalent to US$34,330.00.
>
> As regards the award of Attorney's fees, the same must be deleted for the NLRC failed to show any basis for its award of US$1,000.00. We must not forget that the policy as it stands is that no premium should be placed on the right to litigate. This is simply not awarded every time a party wins a

> suit. Besides, the petitioners were never amiss in their responsibility to Iloreta. In fact, they shouldered all the expenses for the angiogram and angioplasty plus the allowance equivalent to 120 days.[16] (Underscoring supplied)

Petitioner's Motion for Partial Reconsideration of the appellate court's decision having been denied by Resolution of July 15, 2008,[17] he filed the present Petition for Review on *Certiorari*, faulting the Court of Appeals in not upholding **(a)** the permanent total disability compensation awarded to him by the Labor Arbiter and affirmed by the NLRC, and **(b)** the award by the Labor Arbiter of attorney's fees.

Respondents counter that while petitioner's disability is "permanent," the same "is only partial" since the *third* doctor, Dr. Fajardo, found him to have only a Grade IV disability impediment of 68.66%. They thus conclude that the appellate court's decision "has sufficient factual and legal justification."[18]

The petition is impressed with merit.

The Court has applied the Labor Code concept of permanent total disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor,[19] it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being 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.[20]

Remigio v. National Labor Relations Commission[21] summarizes the laws and jurisprudence on the application of the Labor Code concept of disability compensation to the case of seafarers, *viz*:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects" (Art. 1700).
>
> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x.
>
> x x x x
>
> There are three kinds of disability benefits under the Labor Code, as

amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

> Sec. 2. *Disability*.- (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (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.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

x x x **the test** of whether or not an employee suffers from `**permanent total disability**' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is **unable to perform his customary job for more than 120 days** and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), **then the said employee undoubtedly suffers from `permanent total disability' regardless of whether or not he loses the use of any part of his body.**

A **total** disability does not require that the employee be absolutely disabled or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom** (*Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a **total** disability is **considered permanent if it lasts continuously for more than 120 days**. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

> 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. x x x.
>
> 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. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[22] (Emphasis and underscoring supplied)

Applying the standards reflected above *vis-à-vis* the fact that from the time petitioner was medically repatriated on August 16, 2002 up to the time he filed his complaint for disability compensation on July 14, 2003 or for almost eleven (11) months, petitioner remained unemployed, his disability is considered permanent and total.

The *third* physician, Dr. Fajardo, whose findings are final and binding on the parties, certified that[23] petitioner is suffering from a life-risk and work-related heart ailment (hypertensive cardiovascular disease/coronary artery disease, chronic stable angina). Dr. Fajardo thus cautioned that although petitioner had undergone "Percutaneous Coronary Intervention," his illness "can be aggravated by [his] continued employment" which can cause the "recurrence of [the] coronary events." Significantly, the doctor's impression matches that of petitioner's physician Dr. Vicaldo that petitioner is "unfit to resume work as seaman in any capacity" as "his illness is considered work-aggravated."

Under paragraph 20.1.5 of the parties' CBA, it is stipulated that "[a] seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall x x x be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e.*, x x x US$60,000.00 for ratings."[24] Petitioner's disability rating being 68.66%, he is entitled to a 100% disability compensation of US$60,000, as correctly found by the Labor Arbiter and the NLRC. So *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*,[25] enlightens, thus:

> *Apropos* the appropriate disability benefits that respondent is entitled to, we find that Suganob is entitled to Grade 1 disability benefits which corresponds to total and permanent disability. . .
>
> x x x **To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent**.
>
> **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any of his body**. Clearly, Suganob's disability is **permanent** since he was unable to work from the time he was medically repatriated on September 17, 2001 up to the time the complaint was filed on April 25, 2002, or more than 7 months. Moreover, if in fact Suganob is clear and fit to work on October 29, 2001, he would have been taken back by petitioners to continue his work as a Chief Cook, but he was not. **His disability is undoubtedly permanent**.

> **Total disability, on the other hand, does not mean absolute helplessness.** In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Total disability does not require that the employee be absolutely disabled, or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom**. Both the company-designated physician and Suganob's physician found that Suganob is **unfit to continue his duties as a Chief Cook since his illness prevented him from continuing his duties as such**. Due to his illness, he can no longer perform work which is part of his daily routine as Chief Cook like lifting heavy loads of frozen meat, fish, water, etc. when preparing meals for the crew members. **Hence, Suganob's disability is also total**.[26] (Emphasis supplied)

As for the deletion by the appellate court of the award of attorney's fees, the Court deems it just and equitable to reinstate the same, petitioner having been compelled to litigate due to respondents' failure to satisfy his valid claim.[27] The NLRC ruling reducing to US$1,000 the Labor Arbiter's award of attorney's fees stands, petitioner not having appealed therefrom and, in any event, it being reasonable.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. The NLRC Decision dated August 31, 2005 is **REINSTATED**.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and *Villarama, Jr.,* concur.

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[1] Medical reports dated August 2, 7 & 8, 2002, *rollo*, pp. 40-42.

[2] Medical reports dated August 24, 2002 & September 16, 2002, id. at 43-44.

[3] CA Decision dated June 28, 2007, id. at 141.

[4] Id.; Respondents' Position Paper, id. at 70 (underscoring supplied).

[5] Medical Certificate, id. at 45.

[6] "Justification of Impediment Grade IV (68.66%) for Seaman Joelson O. Iloreta" dated April 22, 2003, id. at 46 (underscoring supplied).

[7] Petitioner's Position Paper, id. at 47, 62-63.

[8] Respondents' Position Paper, id. at 65, 71.

[9] CA Decision, id. at 142.

[10] Id. at 81.

[11] "Clinical Data Rationalizing Recommendation of Impediment Grade IV (68.66%) for Seaman Joelson O. Iloreta," id. at 82 (underscoring and emphasis supplied).

[12] Id. at 95-96.

[13] Id. at 96-97.

[14] Id. at 103.

[15] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo concurring, id. at 140-148.

[16] CA Decision, id. at 146-147.

[17] Id. at 157.

[18] Id. at 173-174 (emphasis and underscoring supplied).

[19] Section 3, Article XIII of the 1987 Constitution; *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 206-211; *Austria v. Court of Appeals*, Phil. 926, 933.

[20] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448.

[21] Supra, note 19.

[22] Id. at 207, 209-211.

[23] Par. 20.1.4.2 of the parties' CBA provides: "The degree of disability which the Employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by the seafarer and his Union disagrees with the assessment, a **3rd doctor** may be agreed jointly between the Employer and the seafarer and his Union. And **the 3rd doctor's decision** shall be **final** and **binding** on both parties (underscoring and emphasis supplied). Section 20.B.3 of the POEA Standard Employment Contract for Seaman has a similar provision.

[24] Paragraphs 20.1.4.4 and 20.1.5 of the parties' CBA (underscoring and emphasis supplied).

[25] Supra, note 20, citing *Austria v. Court of Appeals*, supra note 19; *Government Service Insurance System v. Cadiz*, 453 Phil. 384 (2003); *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, 405 Phil. 487 (2001).

[26] Id. at 446, 448-449.

[27] *RFM Corporation-Flour Division v. Kapisanan ng Manggagawang Pinagkaisa-RFM (KAMPI- NAFLU- KMU)*, G.R. No. 162324, February 4, 2009, 578 SCRA 34, 38.
