SECOND DIVISION

[G.R. No. 237063, July 24, 2019]

FRANCIVIEL* DERAMA SESTOSO, PETITIONER, VS. UNITED PHILIPPINE LINES, INC., CARNIVAL CRUISE LINES, FERNANDINO T. LISING, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 149802, *viz*:

1) Decision[1] dated August 24, 2017 reversing the NLRC's grant of total and permanent disability benefits to petitioner Franciviel Derama Sestoso; and

2) Resolution[2] dated January 25, 2018 denying petitioner's motion for reconsideration.

The Proceedings before the Labor Arbiter

In his Complaint dated January 18, 2016, petitioner Franciviel Derama Sestoso sued respondents United Philippine Lines, Inc. (UPLI), Carnival Cruise Lines, and UPLI's owner Fernandino T. Lising for total and permanent disability benefits, moral and exemplary damages, and attorney's fees.[3]

Petitioner essentially alleged:

On July 2014, respondent UPLI in behalf of its foreign principal Carnival Cruise Lines hired him as Team Headwaiter on board M/V Carnival Inspiration for a period of 6 months.[4]

On October 31, 2014, he did his usual task of cleaning the dining table. But this time, when he knelt to clean the dining table, a sharp pain radiated down his right knee. Hence, as soon as the vessel docked at Los Angeles, California, he underwent a Magnetic Resonance Imaging (MRI) at a shore side clinic. The result showed a complex tear of the medial meniscus and degenerative joint changes. It also revealed the

arthroscopy or knee surgery he had in February 2014.[5] He, nevertheless, continued working while on pain relievers until he finished his contract and got repatriated on February 13, 2015.[6]

Upon his arrival in the country, company-designated physician Dr. Mylene Cruz-Balbon subjected him to a series of examinations and treatments and eventually referred him to orthopedic surgeon Dr. William Chuasuan, Jr., for further evaluation and management.

On June 25, 2015, Dr. Chuasuan, Jr. recommended him for surgery and suggested a disability rating of Grade 10 – stretching of knee ligaments. Dr. Chuasuan, Jr. opined he had already reached the maximum medical improvement level.[7] In her Medical Report[8] dated June 25, 2015, Dr. Cruz-Balbon noted and referred to Dr. Chuasuan, Jr.'s findings and recommendation. On July 28, 2015, Dr. Cruz-Balbon issued a certification[9] and letter[10] bearing her final diagnosis on him as of June 4, 2015, *i.e. Osteoarthritis, Medial Meniscal Tear, Right Knee; S/P Arthroscopic Partial Menisectomy and Debridement of Osteophytes, Rights Knee*.[11] Notably, neither of the two documents dated July 28, 2015 contained any disability rating or certificate of fitness to work.

Dr. Cruz-Balbon stopped giving him medical treatment since June 26, 2015 despite his need for further treatment. Neither Dr. Cruz-Balbon nor Dr. Chuasuan, Jr. gave him a final and definite disability rating within the 120/240-day window.[12]

He was constrained to consult another orthopedic – Dr. Victor Gerardo E. Pundavela, who diagnosed him with *Severe Degenerative Osteoarthritis, right knee; Degenerative Osteoarthritis, left knee; Medial Meniscal Tear, right knee s/p Arthroscopic Meniscectomy and Debridement*. The latter assessed him to be partially and permanently disabled/unfit to work as a seafarer.[13]

For their part, respondents countered that petitioner was not entitled to disability benefits since his recurrent knee pain was, as found by his own specialist, a pre-existing illness, hence, not compensable. If at all, petitioner was entitled only to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. For this rating was more reflective of petitioner's real health condition. They, nonetheless, offered Grade 10 disability benefits to petitioner out of sheer goodwill. But, as it was, petitioner refused it.[14]

The Labor Arbiter's Ruling

By Decision dated May 24, 2016, the labor arbiter awarded Grade 10 disability benefits to petitioner. The labor arbiter ruled that although petitioner's illness was found to be pre-existing, he was still entitled to the Grade 10 disability grading given by company-designated Dr. Cruz-Balbon who closely monitored and treated him for months.[15]

The Ruling of the National Labor Relations Commission

On petitioner's appeal, the National Labor Relations Commission (NLRC) awarded him permanent and total disability benefits through its Decision dated August 31, 2016. The NLRC ruled that the grading assigned by Dr. Cruz-Balbon was a mere suggestion, hence, it was not a valid and final disability assessment. Dr. Cruz-Balbon's failure to issue a definite and final disability assessment within two hundred forty (240) days rendered petitioner's disability permanent and total. It, therefore, ordered respondents to pay petitioner US$60,000.00 plus ten percent (10%) as attorney's fees.[16]

Respondents' motion for reconsideration was denied through Resolution dated December 22, 2016.[17]

The Proceedings Before the Court of Appeals

Dissatisfied, respondents sought to nullify the NLRC dispositions via a petition for *certiorari* before the Court of Appeals. They argued that petitioner's illness was not compensable because it was pre-existing. If at all, petitioner was only entitled to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. This rating was in accordance with the schedule of disability grading under the POEA Contract. Finally, the award of attorney's fees was improper since there was no showing of bad faith on their part.[18]

Court of Appeals' Ruling

By Decision[19] dated August 24, 2017, the Court of Appeals reversed. It ruled that petitioner's disability was not compensable for it was a preexisting illness, *i.e. Osteoarthritis*. Too, petitioner allegedly failed to allege and prove that his illness was aggravated by his working conditions. Thus, the 120/240 window was found to be inapplicable.

Petitioner's motion for reconsideration was denied under Resolution[20] dated January 25, 2018.

The Present Petition

Petitioner now implores the Court to review and reverse the Decision dated August 24, 2017 and Resolution dated January 25, 2018 of the Court of Appeals both denying his claim for total and permanent disability benefits on the ground that his illness was pre-existing and did not appear to have been aggravated by his employment with respondents. The fact that the company-designated physician gave petitioner a Grade 10 disability rating shows his illness is work-related.[21]

On the other hand, respondents maintain that petitioner is not entitled to disability benefits since his illness was pre-existing, hence, not-work related, nor compensable.

For this reason, the 120/240 window does not apply. Assuming petitioner's disability was compensable, he is only entitled to disability benefit corresponding to Grade 10.

Issue

Did the Court of Appeals commit reversible error when it denied the award of total and permanent disability benefits to petitioner?

Ruling

The petition is meritorious.

Petitioner's illness is work-related and compensable.

In ***More Maritime Agencies, Inc. v. NLRC***[22] the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is work-related or has aggravated the seafarer's condition, thus:

> **But even assuming that the ailment of Homicillada was contracted prior to his employment with the MV Rhine, this fact would not exculpate petitioners from liability. Compensability of an ailment does not depend on whatever the injury or disease was preexisting at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is indeed safe to presume that, at the very least, the arduous nature of Homicillada's employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it**. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury independent of any pre-existing weakness or disease. (Emphasis supplied)

This brings to fore the following question: Who has the burden of proving that petitioner's illness is work-related or has aggravated his condition at work?

Under the 2010 POEA-SEC, "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness."[23] Section 20 (A) (4) further provides that "Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision speaks of a legal presumption of work-relatedness in favor of the seafarer. As such, the employer, and not the seafarer, has the burden of disproving the presumption by substantial evidence. ***Romana v. Magsaysay Maritime Corporation***[24] is in point:

> Thus, in *Racelis v. United Philippine Lines, Inc. and David v. OSG Shipmanagement Manila, Inc.,* the Court held that **the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence,** which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."

It must be emphasized, though, that the presumption under Section 20-B (4)[25] is only limited to "work-relatedness" of an illness and does not cover or extend to "compensability." ***Atienza v. Orophit***[26] elucidates:

> Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. **It does not cover and extend to *compensability*. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. **This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:**
>
> SECTION 32-A. OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer. (Emphasis supplied)

Unlike "work-relatedness," no legal presumption of compensability is accorded to the seafarer. As such, the seafarer bears the burden to prove substantial evidence that the conditions of compensability have been satisfied. This applies for both listed occupational disease and non-listed illness.[27] ***Atienza v. Orophil***[28] lucidly decrees:

> Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

If the employer fails to successfully dispute the work-relatedness of the seafarer's illness, and the latter, in turn, has established compliance with the conditions for compensability, the issue now shifts to a determination of the nature of the disability (*i.e.*, permanent and total or temporary and total) and the amount of disability benefits due the seafarer.[29]

Here, respondents mainly rely on the alleged pre-existence of petitioner's illness and have failed to refute the presumption of its work-relatedness or aggravation by reason of his work. The presumption, therefore, remains in place in petitioner's favor, *i.e.* his injury or illness was work-related or was aggravated by his work condition.

Both the company-designated doctor and Dr. Chuasuan, Jr. agreed that petitioner suffered from *Osteoarthritis* and got repatriated after finishing his employment contract. *Osteoarthritis* is listed as an occupational disease which is presumed to be work-related. Under Section 32-A (21) of the 2010 POEA-SEC, for *Osteoarthritis* to be considered as an occupational disease, it must have been contracted in any occupation involving:

a. Joint strain from carrying heavy load, or unduly heavy physical labor, as among laborers and mechanics;

b. Minor or major injuries to the joint;

c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports

activities;

d. Extreme temperature changes (humidity, heat and cold exposures) and;

e. Faulty work posture or use of vibratory tools.

In ***Centennial Transmarine, Inc. V. Quiambao,***[30] where the seafarer was diagnosed with *Osteoarthritis*, the Court ruled that since the seafarer's work involved carrying heavy loads and the performance of other strenuous activities, it can reasonably be concluded that his work caused or at least aggravated his illness. The Court declared the seafarer's ailment to be work-related and compensable or was aggravated by his work condition.

Further, in ***De Leon v. Maunlad Trans., Inc.***,[31] the Court considered the headwaiter's work as a contributory factor in the development of his illness because he had already experienced its symptoms during his employment contract with respondents therein prior to his last employment contract with them.

Here, it cannot be denied that petitioner's work was contributory in causing or, at least, increasing the risk of contracting his illness.

For one, a headwaiter's tasks involve carrying heavy food provisions; cleaning the galley, pantries, and store rooms; washing, cleaning and preparing tables; serving food; restocking supplies in pantries, and exposure to extreme temperature changes. Surely, under these prevailing conditions at work, petitioner's osteoarthritis could be considered as having arisen in the course of his employment either by direct causation or aggravation due to the nature of his work.

For another, petitioner had been performing the same tasks and exposed to the same risks during his employment with respondents, not just under the last but even under his prior contract of employment with them. As shown in his private physician's medical report, petitioner had been working for respondents as headwaiter for a long time even before his last employment contract with them in July 2014. It also reveals that symptoms of his illness had already manifested as early as January 2014 while he was working for respondents as team headwaiter in his last assignment on board the same ship, M/V Carnival Inspiration. A sharp pain also radiated down his knee when he knelt down to clean the dining table. Due to the recurrent knee pain despite medication, he was certified unfit to work and eventually repatriated on January 17, 2014.

Upon repatriation, he was referred to the company-designated physician. He underwent arthroscopy or knee surgery in February 2014, followed by a series of physical therapy and regular medical evaluation until he was certified fit to work on May 2014. Thereafter, he resumed his work with respondents in July 2014 under the subject contract of employment, during which, he got injured again in his right knee in October 2014. Despite his persistent and worsening knee pain and the shore side doctor's advice for surgery, petitioner continued with his tasks, taking only pain relievers to get

him through. He eventually got repatriated on February 13, 2015 after finishing his contract. At that time, his right knee pain already belonged to Grade 9 category.[32] Based on these findings and after physical examination and ancillary tests, the private physician found that petitioner's condition could have been caused by the repeated stress and strains in petitioner's knees and the unavoidable faulty work posture he suffered while performing his tasks, especially when bending down while cleaning tables or floors and lifting heavy food provisions.

Petitioner's illness had become total and permanent in view of the lapse of the 120/240 window.

Petitioners claims to be entitled to total and permanent disability benefits due to the company-designated physician's failure to issue a definite and final disability assessment within the 120/240 window. Respondents, on the other hand, counter that petitioner is not enttitled to disability benefits. They argue that 120/240 window does not apply here because petitioner's illness being pre-existing is not work-related. If at all, petitioner is only allegedly entitled to Grade 10 disability rating assigned by the company-designated physician.[33]

Permanent disability is the inability of a worker to perform his job for more than one hundred twenty (120) days, regardless of whether he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[34]

Under Article 192 (c) (1) of the Labor Code, as amended, in relation to Rule VII, Section 2 (b) and Rule X, Section 2 (a) of the Amended Rules on Employees' Compensation (AREC), the following disabilities shall be deemed as total and permanent:

> Art. 192. Permanent Total Disability. - x x x.
>
> x x x x x x x x x
>
> (c) **The following disabilities shall be deemed total and permanent:**
>
> **(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.**

Rule VII
Benefits

> Sec. 2. Disability - x x x.
>
> x x x x x x x x x
>
> **(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.**
>
> Rule X
> Temporary Total Disability
>
> x x x x x x x x x
>
> Sec. 2. Period of entitlement - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. **However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System**. (Emphases supplied)

But when may a seafarer's disability be considered total and permanent by operation of law? ***Pastor v. Bibby Shipping Philippines, Inc.***[35] teaches:

> Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no ***definitive 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. But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day

> period. Otherwise, **the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance**. If this significant act is performed and an extension was duly made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. **The consequence for non-compliance within the extended period of the required assessment is likewise the *ipso jure* grant to the seafarer of permanent and total disability benefits, regardless of any justification**. (Emphasis supplied)

Here, the records are bereft of any showing that the company-designated physician gave petitioner a final and definite disability rating within the 120/240 days prescribed. Petitioner was repatriated on February 13, 2015. He was referred to the company-designated physician who gave him medical attention and treatment up to June 26, 2015 or for more than 120 days from his repatriation. Since petitioner in fact required further treatment and medical attention beyond the 120-day period, his total and temporary disability was deemed extended. The company-designated physician then had until two hundred forty (240) days from repatriation within which to issue his final assessment of disability on petitioner. As it was, the company-designated physician failed to do so.

The letter[36] issued by the company-designated physician on July 28, 2015 is hardly the final assessment required by law. It merely stated that petitioner underwent thorough treatment from February 27, 2015 to June 4, 2015 due to his *Osteoarthritis*. The same holds true for his Medical Report dated June 25, 2015, merely noting Dr. Chuasuan, Jr.'s "comments" on petitioner's medical condition, sans any definite, nay final disability rating. None of the letters and reports issued by the company-designated physician and by Dr. Chuasuan, Jr. can be treated as definite and conclusive because petitioner remains incapacitated beyond the 240-day period. He still feels recurrent pain in his knee which renders him incapable to perform his usual task as team head waiter[37] in any vessel. Too, there is no showing that he had been re-employed by respondents or in any vessel for that matter. Indeed, petitioner's continued unemployment until this very day clearly indicate his total and permanent disability.

Verily, by operation of law, petitioner's disability became total and permanent for which he is entitled to the corresponding benefits.[38]

Considering that petitioner was forced to litigate and incur expenses to protect his rights under the law, the award often per cent (10%) attorney's fees is in order.[39]

Lastly, pursuant to ***C.F. Sharp Crew Management, Inc. v. Santos***[40] and ***Nacar v. Gallery Frames***,[41] the Court imposes on the monetary awards legal interest at six percent (6%) per annum from the date of finality of this decision until full payment.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 24, 2017 and

Resolution dated January 25, 2018 of the Court of Appeals in CA-G.R. SP No. 149802 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED** to jointly and severally pay petitioner Franciviel Derama Sestoso the aggregate amount of US$60,000.00 or its peso equivalent at the time of payment, representing total and permanent disability benefits, and ten percent (10%) attorney's fees. This amount shall earn six percent (6%) interest per annum from the date of finality of this decision until full payment.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and *J. Reyes, Jr., JJ.,* concur.

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* Also spelled as "Franciveil" in some parts of the Rollo.

[1] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob, *rollo*, pp. 11-21.

[2] *Rollo*, pp. 23-25.

[3] *Id*. at 13.

[4] *Id*. at 73-74.

[5] Annex "G," *rollo*, pp. 81-82.

[6] *Rollo*, pp. 12-13.

[7] *Id*. at 13 and 92.

[8] *Id*. at 91.

[9] Annex "H," *rollo*, pp. 83.

[10] Annex "H-1," id. at 84.

[11] *Rollo*, pp. 83-84.

[12] *Id*. at 13-14.

[13] Annexes "J" to "J-1," id. at 89-90.

[14] *Rollo*, p. 14.

[15] *Id*. at 14-15.

[16] *Id* at 15.

[17] *Id*. at 12 and 16.

[18] *Id*. at 11 and 16-17.

[19] *Id*. at 11-21.

[20] *Id*. at 23-25.

[21] *Id*. at 27-51.

[22] 366 Phil. 646, 654-655 (1999).

[23] See Item 12, Definition of Terms, 2010 POEA-SEC.

[24] 816 Phil. 194, 204 (2017).

[25] Section 20 (B) (4) in the 2000 POEA-SEC.

[26] 815 Phil. 480, 493-494 (2017).

[27] See *Romana v. Magsaysay Maritime Corporation*, supra note 24, at 205.

[28] G.R. No. 191049, August 7, 2017, supra note 26, at 496.

[29] See *Romana v. Magsaysay Maritime Corporation*, supra note 24, at 211.

[30] 763 Phil. 411, 424-425 (2015).

[31] See 805 Phil. 531, 542-543 (2017).

[32] *Rollo*, pp. 89-90.

[33] Id. at 124.

[34] *Hanseatic Shipping Philippines Inc. v. Ballon*, 769 Phil. 567, 583-584 (2015); see *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 244 (2015); see *Maersk Filipinos Crewing, Inc. v. Mesina*, 710 Phil. 531, 547-548 (2013) citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

[35] G.R. No. 238842, November 19, 2018.

[36] Annexes "H" to "H-1," *rollo*, pp. 83-84.

[37] *Rollo*, p. 90.

[38] *Carcedo v. Maine Marine Phils., Inc.*, 758 Phil. 166, 184 (2015); *Libang, Jr. v. Indochina Ship Management, Inc.,* 743 Phil. 286, 300 (2014); *United Philippine Lines, Inc. v. Sibug*, 731 Phil. 294, 302 (2014); *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, 728 Phil. 297, 312 (2014); *Magsaysay Maritime Corporation v. Lobusta*, 680 Phil. 137, 151-152 (2012) and *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358, 393 (2010).

[39] *United Philippine Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014) and *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, 728 Phil. 297, 314 (2014).

[40] See G.R. No. 213731, August 1, 2018.

[41] 716 Phil. 267, 283 (2013).
