FIRST DIVISION

[G.R. No. 196455, July 08, 2019]

CENTENNIAL TRANSMARINE INC., EDUARDO R. JABLA, CENTENNIAL MARITIME SERVICES & M/T ACUSHNET, PETITIONERS, V. EMERITO E. SALES, RESPONDENT.

D E C I S I O N

CARANDANG, J.:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated January 21, 2011 of the Court of Appeals (CA) Special Fifth Division awarding the payment of total permanent disability benefits to respondent Emerito E. Sales (Sales).

The Facts of the Case

Sales was hired by Centennial Transmarine, Inc. (CTI), a local manning agency acting for and in behalf of its principal Centennial Maritime Services, to work as Pumpman on board M/V Acushnet for nine (9) months.[3]

Sales claims that sometime in April 2006, while transferring the portable pump to the main deck, he slipped and hit the floor. Although in pain from the fall, Sales ignored it and continued with his work, which included carrying heavy objects. However, the pain on his lower back persisted. On May 5, 2006, Sales reported that he was suffering from lower back pain.[4] He was initially given an ointment for relief but this did not treat his back pain. Sales sought for medical assistance and was then referred to a physician in Antwerp, Belgium. Upon examination, Sales was initially diagnosed to be suffering from "acute traumatic lumbago with ischialgia right leg",[5] and was recommended for medical repatriation to the Philippines for further evaluation and medical treatment.

On May 12, 2006 or two (2) days after his repatriation, Sales was referred to CTI's company-designated physician. He underwent a magnetic resonance imaging test (MRI). Sales' MRI results showed that he was suffering from "degenerative changes of the lumbar spine including disc protrusions at L5-S1 and probably L4-L5."[6] Sales was recommended by the physician to undergo surgery, but he refused. In a Letter[7] dated July 10, 2006, the company-designated physician advised that Sales see a rehabilitation doctor for evaluation whether he can be treated conservatively thru physical therapy. On July 20, 2006, Sales began his "conservative" treatment with the company-designated physician.

During his treatment with the company-designated physician, Sales sought for a second opinion of his medical condition at the same hospital he was treated. In a

Medical Certification[8] dated September 20, 2006, Sales was assessed with disability grading "8", describing it as "partial permanent disability." Sales' physician advised that "[h]e requires constant physical therapy/rehabilitation and may require surgery in the future if his pain symptoms [worsen]. He is totally UNFIT TO WORK as a Seaman."

The following day, on September 21, 2006, the company-designated physician issued a Medical Certification[9] advising Sales to continue physical therapy sessions. He was also advised to undergo surgery, which is a more "definitive treatment", but Sales, again, refused. In a Letter[10] dated September 22, 2006, the company-designated medical director reported that Sales had undergone 10 physical therapy sessions. The report further stated that "(t)here is no visible problem with ambulation. At this point, patient is advised against lifting heavy objects which gives him 1/3 loss of lifting power x x x." The company-designated physician issued Sales' disability assessment with "GRADE 11."[11]

On October 4, 2006, Sales filed a complaint with the National Labor Relations Commission (NLRC) claiming entitlement to permanent and total disability benefits, attorney's fees, and moral and exemplary damages. Sales argues that he remained unfit for sea duty for more than 120 days. He lost his capacity to obtain employment as seaman; that he was not able to get any employment due to his conditions. Sales also claims that he should be compensated for disability benefits under the provisions of the Collective Bargaining Agreement (CBA) because he sustained his injuries from an accident on board the vessel.

On September 28, 2007, the NLRC, though Labor Arbiter (LA) Ligerio Ancheta, ruled in favor of Sales. The LA held that Sales should be paid permanent and total disability benefits in accordance with the CBA. He was able to prove having sustained an injury onboard the vessel which eventually caused his disability. The LA was unconvinced of the allegations of CTI that no accident took place onboard M/V Acushnet. Had there been no accident during Sales' employment with the company, CTI would not have repatriated Sales to the Philippines nor covered for his medical expenses thereafter. The LA sustained the assessment of Sales' physician in finding Sales "TOTALLY UNFIT TO WORK AS A SEAMAN."

CTI appealed the LA's decision with the NLRC arguing that the assessment of Sales' physician should not be upheld because he is not the company-designated physician. CTI emphasized that, despite recommendation of the company doctor, Sales refused to undergo surgery, which amounted to a breach of duty.

On April 2, 2009, the NLRC reversed and set aside the decision of the LA. Contrary to the findings of the LA, the NLRC held that there was no evidence of Sales' accident and that the latter failed to elaborate the incidents of the accident that caused his medical injury. Hence, there was no basis to apply the provisions of the CBA for purposes of payment of disability benefits. The NLRC also held that the initial medical assessment of Sales abroad and the MRI readings of the company-designated physician gave the impression that his conditions of "degenerative change of the lumbar spine" was internal to his body and not caused by an external incident, such as the accident that Sales alleged. Finally, the NLRC held that while Sales' physician assessed him to be

unfit to work, the same did not show if Sales' unfitness was due to the accident that he alleged.

On reconsideration, the NLRC awarded Sales disability benefits in accordance with the Grade 11 assessment issued by the company-designated physician.

Sales appealed the NLRC decision and resolution with the CA on *certiorari*. On January 21, 2011, the CA, Special Fifth Division, ruled in favor of Sales. The CA found that Sales had been employed with CTI years prior to his accident in 2006. The lower back pain manifested during his last tour of duty. Sales' job as pumpman entailed tedious manual tasks that aggravated the work related pressure on his lower-back. The physicians who examined him found his injury to be work-oriented, as it could have developed over the years he was working as seaman for CTI. Hence, his injury is compensable.

Anent payment of disability benefits, the CA held that Sales is entitled to permanent and total disability benefits. While the disability grading of the company-designated physician and Sales' physician varied, the CA held that both physicians assessed Sales to have suffered from excruciating back pain. CTI is precluded from questioning the assessment of Sales' physician because the company allowed Sales to seek the opinion of a second physician. The CA held that Sales' disability went beyond 120 days since his repatriation. The CA emphasized that permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that one was trained for or accustomed to perform. In this case, Sales was awarded permanent and total disability benefits amounting to US$78,750 because he could neither return to work as pumpman nor as a seaman in any other capacity. He was also awarded P25,000.00 moral damages, P25,000.00 exemplary damages and 10% attorney's fees.

CTI moved to reconsider the CA decision but the same was denied in the Resolution[12] dated April 12, 2011. Hence, the instant petition.

Based on the facts, this Court holds that Sales' injury is compensable. It is undisputed that Sales has been in the employ of CTI since February 2000.[13] Over six years later or in May 2006, Sales reported his back pain to the company for which he was medically repatriated. Upon his return to the Philippines, Sales was further examined by the company-designated physician and was assessed to have degenerative changes of his lumbar spine. From the foregoing, this Court agrees with the CA that Sales' condition could have developed over the years he was working as seaman for CTI. Sales' job as pumpman entailed manual labor, and his lower back pain could have manifested only during his tour of duty in May 2006. While there may be no records on Sales' accident, facts concerning the nature of his work, the longevity of his service with CTI and his persistent back pains on board the vessel and subsequent repatriation due to such back pain, sufficiently establish that his condition is attributable to his work and, as such, entitles him to compensation. The company-designated physician also found Sales' condition to be work-related.[14] In this wise, CTI's emphasis on Section 20(D) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) finds no application in the instant case. Said provision reads:

> Section 20. COMPENSATION AND BENEFITS

x x x x

> D. No compensation and benefits shall be payable in respect or any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, **provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.** (Emphasis ours)

CTI argues that Sales is not entitled to compensation because of his refusal to undergo surgery. As discussed, facts sufficiently show that the back injury of Sales is work-related and compensable. Sales' back pains occurred during the term of his employment while he was onboard the vessel. This Court also cannot agree with the bare allegations of CTI that Sales must have figured into an accident after his tour of duty. We emphasize that Sales was medically repatriated due to his complaints of back pain during his term of employment and initial findings of his back injury. The theory of CTI is improbable.

Further, if, as CTI argues, Sales' refusal for surgery was a breach of duty, then CTI should have immediately stopped the medical treatment of Sales. From the facts, Sales refused to undergo surgery as early as July 2006. Yet, CTI continued observing and treating Sales conservatively through physical rehabilitation. CTI had several opportunities to notify Sales, during his treatment and physical therapy sessions, that not resorting to surgery is a breach and would forfeit his disability benefits. Further, if Sales had indeed abandoned treatment, CTI would not have issued a disability assessment in September 2006 because Sales had not completed his treatment. The foregoing factual incidents do not convince this Court that CTI considered Sales to have breached his duty.

This Court, however, agrees with CTI that non-observance of the 120/240-day rule will not automatically entitle a seafarer to permanent and total disability benefits. It has been settled that the application of the 120/240 day rule shall depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.[15]

While Sales remained unfit for sea duty for more than 120 days, records show that he was still under observation and medical treatment with the company-designated physician. Thus, to require CTI to immediately issue a final disability assessment, while still undergoing treatment, would be premature. Further, although the disability gradings of the company-designated physician and Sales' physician varied, both medical assessments show that Sales only suffered from partial disability. The remarks of both physicians on Sales' conditions were consistent requiring him to continue physical therapy and to have surgery.[16] As discussed and following the provisions of the POEA-SEC,[17] the disability shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid. The disability gradings as provided in the POEA-SEC must prevail. As to which disability assessments to uphold, this Court finds for CTI. Upon review of the disability assessments, We find that the company-designated physician is more knowledgeable of the conditions of Sales, having monitored and treated the latter from his repatriation in May 2006 to the issuance of the disability assessment in September 2006. Sales' 8-day

evaluation by his physician pales in comparison to the 5-month treatment he had with the company-designated physician. In fact and to reiterate, the observations in the assessment issued by Sales' physician and the company-designated physician were consistent. The company-designated physician's disability grading was not arrived at arbitrarily. In addition, facts do not show that the parties agreed for an assessment of a third physician to settle the disability grading of Sales. Agreeing to a third physician for a final assessment would have been prudent, more so for Sales, who was contesting the company-designated physician's assessment. Thus, for lack of an assessment of a third physician coupled with the foregoing facts, this Court upholds the Grade 11 rating of the company-designated physician.

Anent the issue of applying the provisions of the CBA, this Court finds it to be proper. Section 20.1.4.1 of the CBA provides:

> 20.1.4 COMPENSATION FOR DISABILITY
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> 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 by excluding injuries caused by a seafarer's willful act, **whilst serving on board including accidents and work related illness occurring whilst travelling 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. In determining work-related illness, reference shall be made to the Philippine Overseas Employees Compensation Law and/or Social Security Law. (Emphasis ours)

Clear from the foregoing facts, Sales' 1/3rd loss of motion or lifting power of the trunk was rooted from a work-related injury. Hence, the provisions of the CBA will apply. This Court cannot subscribe to CTI's position that only permanent disabilities resulting from an accident will be covered by the CBA. The special clauses on CBAs must prevail over the standard terms and benefits formulated by the POEA-SEC.[18] The seafarer will always have the minimum rights as per the POEA-SEC, but to the extent a CBA gives better benefits, these terms will override the POEA-SEC terms. This is so because a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in consonance with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution.[19] In any case, this Court finds that the fall of Sales while transferring the portable pump constitutes an accident. This Court in *NFD International Manning Agents, Inc. v. Illescas*,[20] cited the Philippine Law Dictionary defining the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."[21] To Our mind, Sales slipping and hitting the floor falls within the above-quoted definition. Thus, the schedule of impediment grading and appropriate money award provided in Section 20.1.4.4 must be followed. Sales is awarded $11,757.00.

This Court, however, agrees with CTI that the conditions for the award of permanent and total disability benefits provided in Section 20.1.5 of the CBA[22] are not present. Said provision states that:

> 20.1.5 Permanent Medical Unfitness
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> A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e. US$131250.00 for senior officers, US$110,000.00 for junior officers and US$ 82,500 for ratings (effective January 1, 2007). **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.** (Emphasis ours)

In this case, the medical assessment of the company-designated physician only shows partial disability grading of Sales.[23] There were no categorical remarks that he was unfit for further sea service. Although Sales was recommended to continue physical therapy, he was also required to have surgery as a "more definitive treatment." To this Court's mind, the condition of Sales is not considered by the company-designated physician as permanent.

With respect to Sales' money claims for moral and exemplary damages, We do not find any cause to grant the same for lack of factual and legal basis. Likewise, We do not find any evidence to show bad faith on the part of CTI for paying compensation according to the grading issued by the company-designated physician.

WHEREFORE, the Decision dated January 21, 2011 of the Court of Appeals, Special Fifth Division is **MODIFED**. Petitioner company Centennial Transmarine, Inc. is **ORDERED** to **PAY $11,757.00** as disability compensation to Emerito E. Sales, plus ten percent (10%) attorney's fees and all amounts shall earn six percent (6%) interest *per annum* from the date of filing of claim on October 4, 2006 until fully paid. **SO ORDERED.**

Bersamin (C.J.), Del Castillo, Jardeleza, and *Gesmundo, JJ*., concur.

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[1] *Rollo*, pp. 84-104.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court), with Associate Justices Sesinando E. Villon and Stephen C. Cruz, concurring; id. at 13-34.

[3] Id. at 185-186.

[4] Id. at 186.

[5] Id. at 197.

[6] Id. at 198.

[7] Id. at 252.

[8] Id. at 228.

[9] Id. at 253.

[10] Id. at 254.

[11] Id.

[12] Id. at 36.

[13] Id. at 14, CA decision dated January 21, 2011.

[14] Id. at 253.

[15] *See Splash Philippines, Inc. v. Ruizo*, 730 Phil. 162, 175 (2014).

[16] *Rollo*, pp. 228 and 253.

[17] Section 20 A, par. 6, Memorandum Circular No. 10 (Series of 2010).

[18] *See Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corp., et al*., 688 Phil. 582, 601 (2012).

[19] Id.

[20] 646 Phil. 244 (2010).

[21] Id. at 260.

[22] *Rollo*, p. 215.

[23] Id. at 254.
