SECOND DIVISION

[G.R. No. 226385, August 19, 2019]

CELSO S. MANGUBAT, JR., PETITIONER, VS. DALISAY SHIPPING CORPORATION, WEALTH SHIPPING LIMITED AND DANNY DADILA, RESPONDENTS.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Resolutions dated April 19, 2016[2] and August 15, 2016[3] of the Court of Appeals (CA) in CA-G.R. SP No. 142820. The CA dismissed the petition for *certiorari* assailing the Resolution[4] dated May 29, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 03-000251-15, which affirmed with modification the Labor Arbiter's (LA) Decision[5] dated February 17, 2015 in NLRC NCR Case No. (M) 10-13089-14 finding that petitioner Celso S. Mangubat, Jr. (petitioner) was not entitled to disability benefits.

Facts

The factual findings of the LA, as affirmed by both the NLRC and the CA, are as follows:

> Complainant [(petitioner herein)] was contracted by the respondents to work as an oiler on board the vessel M.V. SG Capital [for] a period of [10 months]. He joined the vessel on February 19, 2014. On February 28, 2014, complainant and the 4th Engineer performed maintenance work on the motor of a purifier situated at a narrow area. While they were trying to lift the motor, complainant took a step but went out of balance and fell off with his right leg hitting the deck floor x x x. Complainant was brought to a hospital in Australia and was repatriated for medical treatment on March 14, 2014. Complainant was referred to the company-designated physician and specialist at the Marine Medical Services of the Cardinal Santos Medical Center. Complainant was diagnosed to have a depressed fracture at the lateral tibial plateau of his right leg x x x. On April 9, 2014, complainant underwent Diagnostic Arthroscopy and Synovectomy in the knee joint and Percutaneous Screw Fixation of Sagittal Split Fracture at the Proximal Tibia of his right leg x x x and thereafter underwent physical rehabilitation program. As of May 5, 2014, complainant's range of motion of his right knee was 0 to 110 degrees (normal is 0 to 135) but swelling in his right knee was

> noted and-complainant complained of right knee pain x x x. As of June 9, 2014[,] the range of motion of complainant's right knee had increased to 115 degrees but there was still mild swelling in his right knee and complainant still [complained] of intermittent pain in his knee x x x. As of July 11, 2014, the range of motion of complainant's right knee was already full and complainant can do one leg squat, but complainant claimed to still have an on and off pain in his right knee. Complainant was advised to continue rehabilitation program for strengthening x x x. [A]s of July 25, 2014, the company-designated physician noted that complainant's manual muscle test was already 5/5 and complainant is ambulatory and can do activities such as bending his knees x x x. As of August 8, 2014, the company-designated physician noted that there was neither swelling nor instability in the joint and that complainant is ambulatory without difficulty and has no pain on weight bearing x x x. On the same day, the company-designated surgeon, who further noted that complainant has no calf atrophy and needed no further physical therapy, declared complainant as fit to work x x x. Complainant presented a medical certificate dated September 23, 2014 issued by the San Geronimo General Hospital in Morong, Rizal indicating that complainant was "treated" thereat from "July 9, 2014 up to present 9/23/2014" with the remarks that complainant needs further physical therapy, probably another year of intense therapy, because of muscle atrophy in right lower extremity x x x.[6]

During the conciliation proceedings under the Single-Entry Approach (SEnA) of the Department of Labor and Employment (DOLE), petitioner moved for the referral of the matter to a third doctor.[7] The conciliator-mediator, however, denied the request claiming it was not the SEnA's jurisdiction to rule on such matter.[8] As a result of this, on October 22, 2014, petitioner filed the complaint against respondents Dalisay Shipping Corporation, Wealth Shipping Limited and Danny Dadila (respondents).[9]

LA Decision

In his Decision dated February 17, 2015, the LA ruled that petitioner is not entitled to disability benefits.[10] The LA found that respondents provided petitioner with medical care by addressing his injury through surgical procedures, physical therapy, medical tests, and monitoring until his range of motion on his right knee was restored to normal and he became ambulatory without difficulty and with weight-bearing capacity.[11] The LA also found that the findings of the company-designated physician can be relied upon because the physician acquired a detailed familiarity with petitioner's medical condition. The medical treatment provided to petitioner was detailed and the tests conducted and their results were likewise indicated by the company-designated physician.[12] On the other hand, petitioner's own doctor failed to indicate the treatment provided to him and the tests conducted.[13] Given this, the LA relied on the findings of the company-designated physician that petitioner was already fit to work and was therefore not

entitled to disability benefits.[14] The dispositive portion of the LA Decision states:

> **WHEREFORE,** premises considered, judgment is hereby rendered dismissing this case for lack of merit.
>
> **SO ORDERED.**[15]

NLRC Resolution

The NLRC affirmed the LA Decision but directed the payment of financial assistance in the amount of USD7,000.00.[16] The NLRC found that the findings of the company-designated physician were more credible than that of the seafarer's physician and that petitioner failed to prove his entitlement to permanent and total disability benefits.[17] Nonetheless, the NLRC awarded financial assistance as an equitable concession.[18] The dispositive portion of the NLRC Resolution states:

> WHEREFORE, premises considered, the appeal is **DENIED** and the Decision dated 17 February 2015 is **AFFIRMED** with the modification directing respondents-appellees jointly and severally liable to pay financial assistance to complainant-appellant in the amount of **USD7,000.00** in Philippine Peso equivalent at the time of payment.
>
> SO ORDERED.[19]

CA Resolution

In the assailed CA Resolution, the CA dismissed the petition for lack of merit.[20] The CA ruled that the LA and the NLRC already conducted a painstaking review of the evidence submitted by the parties and concluded that petitioner's injury in his knee was only partial and already addressed and cured.[21] The CA also ruled that when the factual findings of the NLRC coincide with that of the LA, and both of which are supported by substantial evidence, these are accorded great respect and finality.[22]

The CA ruled that a petition for *certiorari* is limited to the correction of errors of jurisdiction and does not include the correction of the NLRC's evaluation of evidence.[23] The inquiry is limited whether the NLRC acted in excess of jurisdiction or where it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility.[24] The CA found that the NLRC's act of sustaining the LA Decision could not be considered a grave abuse of discretion that would warrant the issuance of a writ of *certiorari.*[25] The dispositive portion of the CA Resolution states:

WHEREFORE, the instant petition is **DISMISSED** for lack of merit.

SO ORDERED.[26]

Petitioner filed a motion for reconsideration but this was denied by the CA. Hence, this Petition.

Issue

The issue for the Court's resolution is whether the CA acted correctly in dismissing the petition for *certiorari.*

The Court's Ruling

The Petition is denied.

In his Petition, petitioner essentially seeks a review of the factual findings of the LA and the NLRC that he was fit to work and that he was not entitled to disability benefits. He argues that the failure to refer to a third doctor should be taken against respondents.[27] The Court finds that the CA acted correctly in dismissing the petition for *certiorari.*

The NLRC and the LA were both correct in ruling that petitioner was fit to work based on the findings of the company-designated physician and that petitioner failed to prove that he was entitled to disability benefits.

Section 20(A) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract[28] (POEA-SEC) states:

SECTION 20. COMPENSATION AND BENEFITS

A. **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:

x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

   x x x x

   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

   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.

From the foregoing, after medical repatriation, the company-designated physician must assess the seafarer's fitness to work or the degree of his disability. After this, the seafarer may choose his own doctor to dispute the findings of the company-designated physician, and if there is conflict, the matter is referred to a third doctor, whose findings shall be binding on the parties.

Jurisprudence has elaborated on the requirements for the validity and procedure for disputing the assessment of the company-designated physician. For the company-designated physician's assessment to be considered valid, it must be timely made and ***must state the fitness or degree of disability of the seafarer.***[29]

Once the company-designated physician has issued the valid assessment, the seafarer may dispute it by referring to his own doctor, thus:

> x x x ***resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment.*** Such assessment from the company-designated physician, to

> reiterate, must be definite and timely issued. x x x[30] (Emphasis and italics in the original)

The seafarer has then the duty to signify his intent to challenge the company-designated physician's assessment and, in turn, the employer must respond by setting into motion the process of choosing the third doctor. As the Court ruled in *Pastor v. Bibby Shipping Philippines, Inc.*:[31]

> Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation. In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.[32]

The Court further explained in *Sunit v. OSM Maritime Services, Inc.*[33] that for the third doctor's assessment to be valid and binding between the parties, the assessment must be definite and conclusive:

> Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, **the appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties.**[34] (Emphasis in the original)

The foregoing shows that it is required for both the company-designated physician and the third doctor to arrive at a definite and conclusive assessment of the fitness or disability rating of the seafarer for their assessment to be considered as valid.

The same standards to determine the validity of the assessment should be the same for the company-designated physician, seafarer's physician, and the third doctor. Thus, in order for the seafarer to dispute the assessment of the company-designated physician, the assessment of the seafarer's doctor should state the seafarer's fitness to work or the disability rating.

Here, it is beyond dispute that the company-designated physician found that petitioner was fit to work. This was a valid assessment and the seafarer may dispute this by

referring to his own doctor, which he did. Petitioner's doctor, on the other hand, issued a certification that merely stated that he was "Unfit to work for a year yet. Needs physical therapy because of muscle atrophy."[35] The Court finds that the assessment of the seafarer's doctor is not definite because it failed to state the seafarer's fitness to work or indicate his disability grade. The assessment is invalid.

Similarly, in *Sunit v. OSM Maritime Services, Inc.*,[36] the Court found that an assessment that indicated a need for further rehabilitation is deemed an indefinite assessment and is therefore invalid, thus:

> In the case at bench, despite the disability grading that Dr. Bathan issued, petitioner's medical condition remained unresolved. For emphasis, Dr. Bathan's certification is reproduced hereunder:
>
> > This is to certify that SUNIT, REYNALDO consulted the undersigned on 17 Feb. 2014 at Faculty Medical Arts Building, PGH Compound, Taft Ave., Manila.
> >
> > x x x x
> >
> > **Patient is Gr. 9 according to POEA Schedule of disability. Patient is not yet fit to work and should undergo rehabilitation.** (emphasis supplied)
>
> The language of Dr. Bathan's assessment brooks no argument that no final and definitive assessment was made concerning petitioner's disability. If it were otherwise, Dr. Bathan would not have recommended that he undergo further rehabilitation. Dr. Bathan's assessment of petitioner's degree of disability, therefore, is still inconclusive and indefinite.[37]

The same is true for the assessment of petitioner's own doctor. It merely stated that he was unfit to work for a year and that he needed to undergo physical therapy. The assessment is inconclusive and indefinite and therefore not considered a valid assessment.

Given the foregoing, although petitioner indeed moved for the referral to a third doctor during the conciliation and mediation stage,[38] and respondents failed to heed such request, such failure to heed the request cannot be taken against respondents because the assessment of petitioner's own doctor was invalid. Given the lack of a valid and definite assessment from the seafarer's doctor, the definite and valid assessment of the company-designated physician stands and is binding on the seafarer. The CA, NLRC, and LA were therefore all correct in relying on the assessment by the company-designated physician that petitioner was fit to work, and in ruling that petitioner is not entitled to any disability benefit.

WHEREFORE, premises considered, the Petition is **DENIED.** The Resolutions dated April 19, 2016 and August 15, 2016 of the Court of Appeals in CA-G.R. SP No. 142820 are **AFFIRMED.**

SO ORDERED.

Carpio,[*] *Acting C.J., (Chairperson), J. Reyes, Jr., Lazaro-Javier,* and *Zalameda, JJ.,* concur.

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[*] Designated as Acting Chief Justice per Special Order No. 2699 dated August 15, 2019.

[1] *Rollo,* pp. 8-29.

[2] Id. at 31-34. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Samuel H.Gaerlan and Ma. Luisa C. Quijano-Padilla.

[3] Id. at 50-51.

[4] Id. at 75-86. Penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Alan A. Ventura.

[5] Id. at 65-74. Penned by Labor Arbiter Alberto S. Abalayan.

[6] Id. at 70-72; citations omitted.

[7] Id. at 63.

[8] Id.

[9] See id. at 65.

[10] Id. at 72.

[11] Id. at 72-73.

[12] Id. at 73.

[13] Id.

[14] Id. at 72.

[15] Id. at 74.

[16] Id. at 85-86.

[17] Id. at 83-85.

[18] Id. at 85.

[19] Id. at 85-86.

[20] Id. at 34.

[21] Id. at 33.

[22] Id.

[23] Id.

[24] Id. at 33-34.

[25] Id. at 34.

[26] Id.

[27] Id. at 18.

[28] POEA Memorandum Circular No. 10 (Series of 2010), AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS, October 26, 2010.

[29] See *Pastor v. Bibby Shipping Philippines, Inc.,* G.R. No. 238842, November 19, 2018, pp. 8, 11.

[30] Id. at 11; citation omitted.

[31] Id.

[32] Id. at 11.

[33] 806 Phil. 505 (2017).

[34] Id. at 517.

[35] *Rollo,* p. 62.

[36] Supra note 33.

[37] Id. at 519.

[38] *Rollo,* p. 64.
