

SECOND DIVISION

[G.R. No. 227934, September 04, 2019]

JERRY BERING TALAUGON, PETITIONER, VS. BSM CREW SERVICE CENTRE PHILS., INC., BERNARD* SCHULTE SHIPMANAGEMENT LTD. AND DANILO MENDOZA, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review^[1] seeks to set aside the following issuances of the Court of Appeals in CA-G.R. SP No. 144155:

1. Decision^[2] dated August 31, 2016, finding petitioner entitled to partial permanent disability benefits; and
2. Resolution^[3] dated October 18, 2016, denying petitioner's motion for reconsideration.

The Antecedents

On October 17, 2014, petitioner Jerry Bering Talaugon sued respondents BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd., and Danilo Mendoza for full disability benefits, damages, and attorney's fees.

Petitioner's Version

Respondents employed him as an oiler on board M/T Erika Schulte. His duties included maintaining the engine's machinery, sewage, lighting, and air-conditioning. During his employment, he felt dizzy and nauseous. His lower abdomen was painful. He got hospitalized in Saudi Arabia and diagnosed with "Renal Colic Lumbago post Zoster Neuralgia." He was given pain medications and advised to be repatriated for further treatment.^[4]

On January 18, 2014, he returned to the country and thereafter consulted with company-designated physician Dr. Richard Olalia. The latter diagnosed him with "Hyperthesia, Ruled out Hansen's Disease, L4-L5 Disc Protrusion, Disc Dessication" and advised therefor physical therapy.^[5]

On April 3, 2014, another company-designated physician Dr. Godfrey Robeniol found a tumor in his spinal cord. A few days later, he underwent surgery for tumor removal.^[6]

After undergoing surgery and physical therapy, he went back to, yet, another company-designated physician Dr. Gilbert Rañoa. The latter observed that he was still suffering lower back pain probably due to his lumbar spondylosis. Dr. Rañoa then declared that his illness was not work related. Dr. Rañoa, nonetheless, offered to give him a disability grading of 11.^[7]

He, thereafter, sought the opinion of his personal physician, Dr. Venancio Garduce who concluded that due to the weakness of his upper extremities, it was impossible for him to be employed again as seafarer. Dr. Garduce opined he was entitled to a Grade 3 disability rating.^[8]

Respondents' Version

While on board, petitioner noted blisters on his right lumbar region accompanied by fever, headache, and body pain. The blisters, however, healed without medication. Upon petitioner's repatriation, company designated Dr. Robert Lim found him suffering from Hyposthetics (nerve damage).^[9]

Petitioner underwent an MRI which showed L4-L5 disc protrusion and disc dessication. Since his back pain persisted, another MRI was done where a tumor was discovered in his spine.^[10]

In April 25 2014, he had the tumor excised. On May 15, 2014, he was seen by Dr. Mylene Cruz-Balbon who noted that while he continued with his rehabilitation, "the prognosis of returning to (his) sea duties is guarded." Yet another company physician, Dr. William Chuasuan, Jr. found that petitioner was suffering from a grade 11 disability for slight rigidity or 1/3 loss of motion or lifting power.^[11]

The Ruling of the Labor Arbiter

By Decision dated May 3, 2015, Labor Arbiter Nicolas awarded petitioner permanent total disability compensation. The labor arbiter ruled that the company-designated physicians failed to make a final assessment of petitioner's condition within 120/240 window period. Petitioner's disability had, therefore, become total and permanent.^[12]

The Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC modified the award to partial permanent disability. It stressed that Dr. Chuasuan, Jr.'s assessment of petitioner's condition equivalent to grade 11 disability was made within the 120-day period from the latter's repatriation on January 17, 2014. Even arguing that his treatment lasted beyond 120 days, the extended period was justified because petitioner needed further medical treatment.^[13]

The Ruling of the Court of Appeals

By Decision dated August 31, 2016, the Court of Appeals affirmed. It noted that from the time petitioner got repatriated on January 18, 2014 up to the time Dr. Chuasuan, Jr. recommended a grade 11 disability on May 15, 2014, only 117 days had elapsed. Also, Dr. Chuasuan, Jr. had actually given petitioner a final assessment within the 120-day period, hence, the latter cannot be deemed totally and permanently disabled.^[14]

By Resolution dated October 18, 2016, petitioner's motion for reconsideration was denied.^[15]

The Present Petition

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He reiterates that the company physicians failed to make a final disability assessment of his illness within the 120/240 window. The law, thus, presumes that his disability had become permanent and total. But even arguing that a final and definite assessment was made within the prescribed period, he was still unable to return for sea duty after his illness. Thus, he should be deemed permanently and totally disabled.^[16]

For their part, respondents counter that company physician Dr. Chuasuan, Jr. actually issued Medical Report dated May 15, 2014, finding petitioner's illness equivalent to grade 11 disability. The assessment was issued within 120 days from the time he got repatriated. Hence, the same dispels petitioner's claim for permanent total disability compensation.^[17]

The Core Issue

Is petitioner entitled to permanent total disability benefits?

The Ruling

As a rule, only questions of law may be raised via a petition for review under Rule 45 of the Rules of Court. This rule, however, is not absolute and admits certain exceptions, e.g. where the factual findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC, as in this case. The Court, therefore, may look into such conflicting views and make its own factual determination of the real extent and character of petitioner's ailments.^[18]

Petitioner vigorously asserts that he is entitled to permanent total disability benefits because the company-designated physicians failed to make a final assessment of his illness. Respondents, on the other hand, insist that after a series of evaluation, Dr. Chuasuan, Jr. actually gave petitioner a disability grade of 11 within 120 days from the time petitioner got repatriated.

In ***Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.***, the Court set the following guidelines to determine a seafarer's disability, *viz*:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.^[19]

Based thereon, two (2) requisites must concur for a determination of a seafarer's condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive.

Here, we agree with the Court of Appeals that the company-designated physician made an assessment on petitioner's illness within the 120-day period. Records show that Dr. Chuasuan, Jr. declared petitioner's disability rating as Grade 11 on May 15, 2014 or 117th day since he was evaluated and had been undergoing continuous medical treatment.

The next question: was the assessment final and definitive?

Section 20(B) of POEA-SEC^[20] provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Here, Medical Report dated May 15, 2014 contained the following observations: "the prognosis of returning to (his) sea duties is guarded" and "If patient is entitled to a disability, his suggested disability grading is Grade 11 - slight rigidity or 1/3 loss of motion of lifting power of the trunk."^[21]

This is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician. For there was nothing on record showing that the company designated physician explained

in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover.^[22]

In ***Carcedo v. Maine Marine Phils., Inc.***, the Court ruled that the company-designated physician's disability assessment was not definitive since the seafarer continued to require medical treatments thereafter. Considering that the doctor failed to issue a final assessment, Carcedo's disability was declared to be permanent and total.^[23]

In ***Island Overseas Transport Corp. v. Beja***, a month after the seafarer Beja's knee operation, the company-designated physician issued Grades 10 and 13 partial disability grading of his medical condition. The Court considered these assessments as tentative because the seafarer continued his physical therapy sessions, which even went beyond 240 days. Further, the company-designated physician "did not even explain how he arrived at the partial permanent disability assessment," nay, provided any justification for his conclusion that Beja was inflicted with Grades 10 and 13 disability.^[24]

Another. In ***Orient Hope Agencies Inc. v. Jara***, the Court considered that aside from the belated assessment of seafarer Jara's injury, the medical report did not contain any definitive declaration as to his fitness to work. On the contrary, the report stated that as of his last check up, he was still complaining of left knee pain. Under the circumstances, it would be improbable to expect that by the last day of the 240-day period, Jara would have fully recovered from his injury or regained his pre-injury capacity as to be able to go back to his sea duty.^[25]

Consequently, without a final and definitive assessment from the company-designated physician on petitioner's disability, the same is deemed permanent and total by operation of law.

At any rate, 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. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.^[26]

Indeed, given petitioner's persistent back pain, it is highly improbable for him to perform his usual tasks as oiler in any vessel, thus, resulting in his loss of earning capacity.

ACCORDINGLY, the petition is **GRANTED**. The assailed Decision dated August 31, 2016 and Resolution dated October 18, 2016 of the Court of Appeals in CA-G.R. SP No. 144155 are **REVERSED AND SET ASIDE**. Respondents BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd. and Danilo Mendoza are ordered to pay petitioner Jerry Bering Talaugon US\$60,000.00 as permanent and total disability benefits and attorney's fees equivalent to ten percent (10%) of this amount. Legal

interest of 6% per annum is imposed on the total judgment award from the finality of this Decision until fully paid.

SO ORDERED.

Carpio, (Chairperson), Caguioa, J. Reyes, Jr., and Zalameda, JJ., concur.

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

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Socorro B. Inting, *rollo*, pp. 28-43 A.

[3] *Rollo*, pp. 45-47.

[4] *Rollo*, pp. 29-30.

[5] *Id.* at 30.

[6] *Id.* at 30.

[7] *Id.* at 30.

[8] *Id.* at 30-31.

[9] *Id.* at 31.

[10] *Id.* at 31

[11] *Id.* at 31 and 37.

[12] *Id.* at 32.

[13] *Id.* at 32-33.

[14] *Id.* at 28-43.

[15] *Id.* at 45-47.

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

[17] *Id.* at 76-82.

[18] See *Aldaba v. Career Philippines Ship-Management, Inc.*, 811 Phil. 486, 494-495 (2017).

[19] See 765 Phil. 341, 362-363, (2015).

[20] Section 20. COMPENSATION AND BENEFITS.

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B. 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:

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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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. 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. 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.

[21] *Rollo*, p. 38.

[22] See *Orient Hope Agencies Inc. v. Jara*, G.R. No. 204307, June 6, 2018.

[23] See 758 Phil. 166, 184 (2015).

[24] See 774 Phil. 332, 347 (2015).

[25] *Supra* note 22.

[26] *Id.*



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