FIRST DIVISION

[G.R. No. 246125, June 23, 2020]

PACIFIC OCEAN MANNING, INC., V. SHIPS UK LTD., SOUTHERN SHIPMANAGEMENT CO. S.A. AND/OR ENGR. EDWIN S. SOLIDUM, PETITIONERS, VS. RAMON S. LANGAM, RESPONDENT.

D E C I S I O N

REYES, J. JR., J.:

This is a petition for review on *certiorari*[1] seeking to reverse and set aside the Decision[2] dated December 12, 2018 and the Resolution[3] dated March 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157086.

The Facts

On May 10, 2016, Ramon S. Langam (respondent) was hired as chief cook by Pacific Ocean Manning, Inc. for its principal, V Ships UK Ltd./Southern Shipment Co. S.A. (collectively, petitioners), on board the vessel "*Cochrane*." Prior to embarkation, respondent underwent pre-employment medical examination and was declared fit for sea duty.[4]

On January 2, 2017, respondent was cooking in the vessel's kitchen when the hot cooking oil "accidentally splashed, splattered and hit his right eye." To relieve the pain, he immediately washed his eye with running water and resumed with his normal activities. The following day, he felt persistent pain in the right eye which appeared to be swollen and experienced blurred vision. He initially sought medical assistance from the ship doctor but due to lack of proper medical equipment in the vessel, he was brought to a hospital in Korea. The attending physician in Korea declared respondent unfit for duty in order to rule out optic nerve neuritis and ischemic syndrome in the right eye. On January 5, 2017, respondent was medically repatriated.[5]

On January 9, 2017, respondent reported to petitioners and requested a post-medical evaluation. He was referred to the company-designated physician at the Chinese Medical Hospital. Based on Dr. Carter S. Rabo's prognosis, respondent is unlikely to recover his vision to its normal acuity. Thus, respondent continued with the medical treatment. He claimed that there was hardly an improvement in his medical condition when he was informed by the company-designated physician that his treatment was already discontinued. He asked for a copy of the final assessment and an explanation of his true medical condition but he was refused and referred to petitioner. The latter allegedly reasoned that the medical reports and assessment were confidential.[6]

To ascertain his medical condition, respondent's family referred him to an independent medical expert, Dr. Eileen Faye Enrique-Olanan (Dr. Enrique-Olanan) who requested him to undergo diagnostic test. Dr. Enrique-Olanan diagnosed respondent with optic atrophy in the right eye and attested to his unfitness for sea service.[7]

Respondent went to see Dr. Michael Bravo (Dr. Bravo) for consultation. Dr. Bravo confirmed that respondent is suffering from optic atrophy in the right eye and declared him unfit for sea duty "because of his very poor vision and poor color perception of the right eye and blurred vision on the left, which can affect his depth perception."[8]

Respondent informed petitioners of the findings of Dr. Enrique-Olanan and Dr. Bravo, requested for a third medical opinion, and sought for the payment of disability benefits. Petitioners refused, prompting respondent to file a complaint for payment of permanent and total disability benefits, moral and exemplary damages, and attorney's fees against them before the Panel of Voluntary Arbitrators.

Petitioners, for their part, averred that respondent's employment contract is covered by an overriding collective bargaining agreement (CBA) which provides for disability benefits only on disability as a result of an accident. It alleged that when respondent returned to the Philippines on January 5, 2017, he was immediately referred to the company-designated physician at Trans Global Health System, Inc.[9]

On February 22, 2017, after several tests and procedures, the attending medical specialist diagnosed respondent with optic atrophy and the neurologist opined demyelinating disease. The neurologist suggested that lumbar puncture be performed to confirm or rule out other diseases but respondent refused. Respondent underwent a test for neuromyelitis optica (NMO) to determine the need to continue with his steroid treatment. Upon review of the NMO test results, the specialist stated that petitioner is unlikely to recover his vision to its normal acuity. Thus, on August 25, 2017, the company-designated physician declared that respondent's final disability grading is "Grade 7 per Philippine Overseas Employment Administration (POEA) contract eye #7." [10]

Petitioners offered respondent disability benefits equivalent to Grade 7 assessment based on the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) but the latter refused the same.[11]

After the conciliation proceedings failed, the parties filed a submission agreement referring the case to the Panel of Voluntary Arbitrators (PVA) for resolution.

The PVA Ruling

In its Decision[12] dated June 5, 2018, the majority of the PVA ruled in favor of respondent and ordered petitioners Pacific Ocean Manning Inc. and/or V Ships UK Ltd. and/or Southern Shipmanagement Co. S.A. and/or Engr. Edwin S. Solidum to pay jointly and severally respondent permanent total disability benefits in the amount of US$102,308.00 and attorney's fee equivalent to 10% of the total judgment award or its

peso equivalent at the time of actual payment. The PVA declared that petitioners failed to act on respondent's request for referral to a third doctor despite having shown the conflicting medical assessment of the company-designated physician and his physicians of choice. It stated that the declaration of Grade 7 disability is doubtful and biased on its face because respondent has yet to fully recover from his condition. It likewise emphasized that the fact that respondent was not re-deployed is an eloquent proof of permanent disability.

Petitioners moved for reconsideration but the same was denied in a Resolution dated August 6, 2018.

The CA Ruling

In its Decision dated December 12, 2018, the CA affirmed the June 5, 2018 Decision of the PVA. It accorded great weight to the findings of respondent's doctors of choice Dr. Enrique-Olanan and Dr. Bravo that he can no longer perform his usual work as a seaman with consequent impairment of his earning capacity and, thus, entitled to permanent and total disability benefits.

Petitioners moved for reconsideration but the same was denied in a Resolution dated March 21, 2019.

Hence, this petition.

Our Ruling

The petition is granted.

Petitioners contend that respondent is not entitled to total and permanent disability as he was validly assessed with a Grade 7 disability by the company-designated physician. They stress that the medical certificates issued by Dr. Enrique-Olanan and Dr. Bravo were based on a one-time consultation and, therefore, cannot prevail over the assessment of the company-designated physician after a series of medical treatment and examination. They also question the award of attorney's fees emphasizing that the right to litigate does not carry with it the right to seek compensation by way of attorney's fees.

Respondent, on the other hand, argues that petitioners did not inform him of his actual medical condition and refused to furnish him a copy of the final assessment of the company-designated physician at the time when his medical treatment was discontinued and upon the lapse of the 120/240 day period of medical treatment. He notes that petitioners failed and refused to refer him for the mandatory third medical opinion under the conflict resolution provision of the POEA-SEC.

The entitlement to disability benefits of a seafarer who suffers illness or injury during the term of his contract is governed by Section 20 (B) (6) of the POEA-SEC which provides:

> SEC. 20. COMPENSATION AND BENEFITS. -
>
> x x x x
>
> 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:
>
> x x x x
>
> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

Analyzing the foregoing, an injury or illness is compensable when it is work-related AND when it existed during the term of the seafarer's employment contract. Specifically, under Section 32 (A) of the POEA-SEC, the compensability of the occupational disease and the resulting disability is determined by the fulfillment of these conditions: (1) the seafarer's work must involve the risks described; (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.[13]

The PVA, in its June 5, 2018 Decision, stated: "*[I]t is worthy to note that a perusal of the parties' respective pleadings yielded that the work-relatedness, and the existence of [respondent] 's illness during the term of his employment contract were never expounded to be crucial issues by the contending parties. For this, as far as this Panel is concerned, these are already non-issues, the main consideration being whether the Grade 7 assessment deserves belief.*"[14] Considering the uniform factual findings of the PVA and the CA, the Court accords not only respect but also finality to their findings and are deemed binding upon us as long as they are supported by substantial evidence.[15] Further, whether or not respondent's eye ailment is compensable is essentially a factual matter which this Court cannot review in a Rule 45 petition as it is not a trier of fact.[16] Thus, the only issue left for determination is whether the respondent is entitled to total and permanent disability benefits.

Settled is the rule that the right to disability benefits of every seafarer is a matter governed by law, contract, *i.e.*, collective bargaining agreement and the POEA-SEC, and the medical findings.[17]

Section 20 (B) (3) of the POEA-SEC provides:

> 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.

In *Rickmers Marine Agency Phils., Inc. v. San Jose,*[18] the Court echoed the above standard procedure in claiming total and permanent disability benefits in this wise:

1. The seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. If physically incapacitated to do so, written notice to the agency within the same period shall be deemed compliance.

2. The seafarer shall cooperate with the company-designated physician on his medical treatment and regularly report for follow-up check-ups or procedures, as advised by the company-designated physician.

3. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within 120 days from repatriation. The period may be extended to 240 days if justifiable reason exists for its extension (e.g., seafarer required further medical treatment or seafarer was uncooperative).

4. If the company-designated physician fails to give his assessment within the period of 120 days or the extended 240 days, as the case may be, then the seafarer's disability becomes permanent and total.

Respondent was medically repatriated on **January 5, 2017** and immediately underwent treatment under the supervision of the company-designated physician. According to petitioners, respondent was seen by the company-designated physician and specialists on the following dates:

> January 11, 2017 Respondent complained of blurring of vision on his right eye. The specialist recommended "Perimetry, OTC of optic nerve, and MRI of the brain." [19]
>
> January 23, 2017 Respondent underwent perimetry test and Optical Coherence Tomography (OCT) of the optic nerve.

	Results showed thinning of the nerve fiber layer. [20]
February 22, 2017	The attending specialist's assessment was optic atrophy while the neurologist opined demyelinating disease. [21]
May 8, 2017	The neurologist recommended that lumbar puncture be performed to confirm or rule out other disease but respondent refused to undergo the procedure. The attending specialist likewise recommended that respondent undergo neuromyelitis optica (NMO) test to determine if the steroid treatment shall continue."[22]
June 19,2017	The attending specialist evaluated the NMO test and declared that respondent is unlikely to recover his normal vision.[23]

On **August 25, 2017,** the company-designated physician issued a medical report giving respondent a final disability rating of "Grade 7 per POEA contract eye #7." While the company-designated physician's final assessment was not issued within the 120-day period as initially required by the POEA-SEC, it was given 232 days from the date the respondent was repatriated. We have held in *Marlow Navigation Philippines, Inc. v. Osias*[24] that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits. The 120-day treatment period may be extended when there exists sufficient justification such as when further medical treatment is required or when the seafarer is uncooperative.[25] In this case, when the 120-day treatment period expired on May 5, 2017, the company-designated physician has determined that they needed more medical tests and procedures in evaluating respondent's condition. In fact, before the 120-day period expired, the attending physicians recommended that respondent undergo evoked potential tests. Three (3) days after the 120-day period expired, the neurologist suggested that respondent undergo lumbar puncture test to confirm or rule out other diseases but he refused. The close and continuous monitoring of respondent's condition by the company-designated physicians immediately before and after the lapse of the 120-day treatment period would show that his eye ailment could not be completely addressed in such a limited period of time. Indubitably, the extension of the treatment period from 120 days to 240 days was satisfactorily justified. Here, the final medical assessment of the company-designated physician was issued well-within the 240-day period which expires on **September 2, 2017.**

It is interesting to note that the ophthalmological reports issued by respondent's physicians of choice Dr. Enrique-Olanan and Dr. Bravo were dated June 20, 2017 and July 12, 2017, respectively, or 66 days and 44 days before the company-designated physicians even issued their own final medical report. Both ophthalmological reports, however, were silent as regards the diagnostic tests and medical procedures conducted and their results that led Dr. Enrique-Olanan and Dr. Bravo to conclude that respondent "is no longer advised to go back to his job as a seaman"[26] and that he "is unfit as a seafarer" because of his poor vision and poor color perception in the right eye.[27] More

importantly, neither Dr. Enrique-Olanan nor Dr. Bravo certified that respondent's condition is characterized as total and permanent disability. It may be gleaned from these facts that respondent hastily sought second and third medical opinion without awaiting the issuance of the company-designated physician's final assessment or the expiration of the 240-day period. He did so while his treatment was still ongoing under the medical supervision of the company-designated physicians. After obtaining a favorable medical evaluation from his physicians of choice, respondent heavily relied on their ophthalmological reports to support his claim for total and permanent disability benefits.

Time and again, the Court has enunciated that the seafarer has the right to seek the opinion of other doctors but this is on the presumption that the company-designated physician had already issued a final certification as to his fitness or disability and he disagreed with it.[28] This is not obtaining in this case as there was yet no final assessment from the company-designated physician as to respondent's fitness or unfitness to resume his duties as a seafarer or final disability grading of respondent's illness. Clearly, respondent did not observe the proper procedure for claiming disability benefits. Consequently, respondent is only entitled to partial permanent disability which corresponds to Grade 7 disability assessment as reflected in the company-designated physician's final medical report. He is therefore entitled to 41.80% US$50,000.00 or US$20,900.00 representing grade 7 disability compensation pursuant to the Schedule of Disability of Allowances in Section 32 of the POEA-SEC.

Finally, the Court sees no reason to award the attorney's fees for failure of the respondent to show that petitioners acted in bad faith in denying his claim for permanent total disability benefits. As aptly held by the Court in *Rickmers Marine Agency Phils., Inc.,* held:

> Being compelled to litigate is not sufficient reason to grant attorney's fees. The Court has consistently held that attorney's fees cannot generally be recovered as part of damages based on the policy that no premium should be placed on the right to sue. Under Article 2208 of the Civil Code, factual, legal, and equitable grounds must be presented to justify an award for attorney's fees. Absent a showing of bad faith on the part of petitioners, the award of attorney's fees is deemed inappropriate.[29]

WHEREFORE, the petition is **GRANTED**. The Decision dated December 12, 2018 and the Resolution dated March 21, 2019 of the Court of Appeals in CA-G.R. SP No. 157086 are **SET ASIDE.** Respondent Ramon S. Langam is **DECLARED** to be entitled to, and petitioners Pacific Ocean Manning, Inc., V. Ships UK Ltd., and Southern Shipmanagement Co. S.A., are adjudged solidarily liable for, the amount of US$20,900.00 or its peso equivalent. The respondent is hereby **DIRECTED** to return to the petitioners any amount received in excess thereof.

SO ORDERED.

Peralta, C.J., (Chairperson), *Caguioa, Lazaro-Javier* and *Lopez, JJ.,* concur

[1]*Rollo*, pp. 3-38.

[2]Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Samuel H. Gaerlan and Pablito A. Perez, concurring; id. at 44-65.

[3]Id. at 64-65.

[4]Id. at 67.

[5]Id. at 68.

[6]Id. at 68-69.

[7]Id. at 69-70.

[8]Id. at 70-71.

[9]Id. at 72-73.

[10]Id. at 73-74.

[11]Id. at 74.

[12]Id. at 66-81.

[13]*Vetyard Terminals & Shipping Services, Inc. v. Suarez,* 728 Phil. 527, 532 (2014).

[14]*Rollo*, p.75.

[15]*Cabaobas v. Pepsi-Cola Products Philippines, Inc.,* 757 Phil. 96, 119 (2015).

[16]*Bright Maritime Corp. v. Racela,* G.R. No. 239390, June 3, 2019.

[17]*Gomez v. Crossworld Marine Services, Inc.*, 815 Phil. 401, 416 (2017).

[18]G.R. No. 220949, July 23, 2018.

[19]*Rollo*, p. 9.

[20]Id.

[21]Id.

[22]*Rollo*, p. 10.

[23]Id.

[24]773 Phil. 428, 443 (2015).

[25]Id.

[26]*Rollo*, p.70.

[27]Id. at 71.

[28]*Olaybal v. OSG Shipmanagement Manila,* Inc., G.R., 761 Phil. 534, 547 (2015).

[29]Supra note 18.
