SECOND DIVISION

[G.R. No. 233071, September 02, 2020]

MAGSAYSAY MARITIME CORP. AND KEYMAX MARITIME CO., LTD., PETITIONERS, VS. JOSE ELIZALDE B. ZANORIA, RESPONDENT.

D E C I S I O N

INTING, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[2] dated March 7, 2017 and the Resolution[3] dated July 25, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146585 which affirmed with modification the Decision dated February 19, 2016 of the National Conciliation and Mediation Board (NCMB) Panel of Voluntary Arbitrators in MVA-091-RCMB-NCR-071-02-07-2015.

The Antecedents

On March 21, 2013, Keymax Maritime Co., Ltd, (petitioner Keymax), through its local agency, Magsaysay Maritime Corp. (petitioner Magsaysay) (collectively, petitioners), hired Jose Elizalde B. Zanoria (respondent) as Chief Mate or Chief Officer on board the vessel Brilliant Sky[4] with a basic monthly salary of US$1,427.00/month.[5]

As Chief Mate or Chief Officer, respondent was responsible for overseeing the safety and security of the ship, crew, passengers, and cargo. He was responsible for the loading and unloading of the cargo, as well as, its safe stowage. He acted as a "watchstander," who took responsibility of what was called the "4-8 watch"—watching from a suitable vantage point for four hours at a time from 4 a.m. to 8 a.m. and then 12 hours again later to ensure that the ship is compliant with the regulations and conventions governing safety, and with the regulations governing pollution. In other words, respondent was not only responsible for keeping the ship safe from attack or damage, but also to ensure that it would not fall below the standards set by the regulatory bodies.[6]

Respondent faithfully and religiously performed his job. However, while working on board the vessel, he had a blurring vision of the right eye.[7]

On March 27, 2014, in Georgia, Atlanta, USA, where the vessel was at port, Dr. Markesh Manocha checked on respondent and found the latter to be suffering from *macular hole OD, traumatic cataract OD,* and *chorioretinal scars OD*.

On April 2, 2014, respondent was medically repatriated to the Philippines. Petitioners directed him to the Association of Marine Officers and Seaman's Union of the Philippines (AMOSUP) Hospital for his post-medical examination. Dr. George C. Pile (Dr. Pile), the company-designated physician, examined him and gave his initial diagnosis of *macular hole, right eye, senile, mature cataract, right, error of refraction*. Likewise, Dr. Pile diagnosed him as unfit to work and that respondent's condition was work-oriented. Hence, Dr. Pile recommended that respondent undergo "flourescein angiography, optical coherence tomography (OCT) right eye, and cardio-pulmonary clearance."[8]

On April 11, 2014, respondent went back to Dr. Pile and was diagnosed with *lamellar macular hole, right eye, epiretinal membrane with macular edema, right eye, senile, mature, cataract, error of refraction*. Dr. Pile noted again that it was work-oriented; that flourescein angiography and optical coherence tomography of his right eye was done; that respondent was still for cardiopulmonary clearance prior to cataract surgery of his right eye; and that respondent started Nevenac eye drop to his right eye three times daily. Dr. Pile recommended respondent for phacoemulsification with PCIOL implantation of his right eye.[9]

On May 23, 2014, respondent underwent phacoemulsification with PCIOL implantation of his right eye.

On May 24, 2014, respondent was discharged and was instructed to take eye drop medications. He went back to Dr. Pile for follow-up consultations.[10]

Then, on August 6, 2014, or after 122 days, Dr. Pile issued a medical certificate stating that respondent needed to come back on August 13, 2014 for final disposition.[11]

On August 13, 2014, Dr. Pile told respondent that he was already unfit to work as a seafarer and that he would be given a grading for his disability. When respondent asked petitioner Magsaysay for a copy of the medical certificate, he was never given a copy despite demands.[12]

On November 25, 2014, respondent, relying on Dr. Pile's assessment that he could no longer return to work as a seafarer, filed a grievance proceeding with the AMOSUP.[13]

On January 23, 2015, a deadlock was declared after several offers and counter-offers between the parties.[14]

On February 6, 2015, respondent filed a Notice to Arbitrate with the NCMB. However, no amicable settlement was likewise reached at the NCMB proceedings.[15]

Respondent needed to support the findings of Dr. Pile that he was no longer fit to work as a seafarer because of his condition. Thus, he sought a medical opinion from an independent government ophthalmologist, Dr. Emmanuel M. Eusebio (Dr. Eusebio), who found that his illness was "permanent in nature" and "his overall capacity to work as a seaman might be compromised." Dr. Eusebio, therefore, concluded that respondent was "no longer fit to resume his previous work as a seaman." Dr. Eusebio's Medical

Evaluation Report[16] reads:

> This is the case of Jose Elizalde Bueno Zanoria, 53 years old, male, single, Filipino, and presently residing at Kawit, Medellin, Cebu.
>
> He sought consult because of progressive blurring of vision of the right eye of 1 year duration.
>
> On physical examination, visual acuity with glasses were as follows:
>
> OD: 20/200 OS: 20/20 with correction
>
> He was diagnosed to have senile, mature, cataract, right, for which he underwent phacoemulsification with PCIOL implantation of the right eye. There was also associated lamellar macular hole on the right eye, with error of refraction.
>
> The above findings are permanent in nature; as such, his overall capacity to work as a seaman might be compromised. He is therefore no longer fit to resume his previous work as a seaman.[17]

After five months from the time respondent filed his complaint with the AMOSUP, petitioners manifested that they would be filing the same complaint before the National Labor Relations Commission (NLRC) to challenge the jurisdiction of the NCMB.

On April 20, 2015, respondent was then constrained to file a Motion to Appoint a Panel of Voluntary Arbitrators with the NCMB which was opposed by petitioners. Consequently, petitioners withdrew their complaint with the NLRC and agreed to select a Panel of Voluntary Arbitrators.

On September 4, 2015, when petitioners filed their Position Paper[18] with the NCMB, they already released Dr. Pile's Medical Certification[19] dated September 22, 2014 stating that from April 7, 2014 up until the time the certification was issued, respondent was found to be unfit. The Medical Certification reads:

> This is to certify that Mr. Jose Elizalde B. Zanoria has been to me for Consultation from 07 April 2014 to 22 September 2014 and is found to be [ ] FIT [/] UNFIT.
>
> Chief Complaint:
> Blurring of vision of the right eye
>
> History of Present Illness:
> Progressive blurring of vision of the right eye.

Visual acuity with glasses OD: 20/200, OS: 20/20

Diagnosis:
Senile, mature, cataract, right
S/P Phacoemulcification with PCIOL
implantation right eye.
Lamellar Macular hole, right eye
Error of refraction

[/]Work Oriented [ ] NOT Work Oriented
Sunlight and UV exposure

Treatment Medication:
S/P Phacoemulcification with PCIOL
implantation right eye, 23 May 2014

Approximate Period of Treatment/Prognosis and or Disability:
Disability Grade 10 for (50%) loss of vision of one eye.

Hospitalization: [ ] Needed [/] Not Needed

Recommendation/Remarks:
Presently Visual Acuity on the right eye has improved up to 20/40 only. Left eye is still 20/20. Although vision on the right eye has remarkably improved, it is still inadequate for his position.[20]

Ruling of the Panel of Voluntary Arbitrators

On February 19, 2016, the Panel of Voluntary Arbitrators rendered a Decision ruling that respondent was permanently disabled. It ruled that the Collective Bargaining Agreement (CBA) provision containing permanent disability benefits greater than the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) should be applied.[21] The dispositive portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered ordering respondents Magsaysay Maritime Corporation and/or Keymax Maritime Co., Ltd. to jointly and severally pay complainant Jose Elizalde Zanoria the following:

1) US$ 159,914 or the peso equivalent at the time of payment – by way of full permanent disability benefits;

2) US$9,960 (2,2490 (sic) x 4 months) – by way of sickness allowance;

3) 10% of the award by way of attorney's fees.

All other claims are dismissed for lack of merit. Manila, February 19, 2016.

SO ORDERED."[22]

Petitioners moved for the reconsideration of the Decision, but the Panel of Voluntary Arbitrators denied it in a Resolution dated May 20, 2016.

Petitioners filed a Petition for Review (under Rule 43 of the Revised Rules of Court) with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Retraining Order[23] with the CA.

Ruling of the CA

In the petition for review under Rule 43 of the Rules of Court with the CA, petitioners raised the following grounds for the latter's consideration, to wit:

I.

WHETHER THE [PANEL OF VOLUNTARY ARBITRATORS] ERRED IN AWARDING DISABILITY BENEFITS TO RESPONDENT IN THE AMOUNT OF US$159,914.00; *and*

II.

WHETHER THE [PANEL OF VOLUNTARY ARBITRATORS] ERRED IN AWARDING SICKNESS ALLOWANCES, AND 10% OF THE TOTAL JUDGMENT AWARD AS AND FOR ATTORNEY'S FEES.[24]

On March 7, 2017, the CA rendered the assailed Decision[25] affirming the findings of the Panel of Voluntary Arbitrators that respondent should be considered as permanently and totally disabled. The dispositive portion of the Decision reads:

WHEREFORE, premises considered and subject to the above disquisitions, the *petition* is hereby PARTLY GRANTED. The *Decision* dated February 19, 2016 and *Resolution* dated May 20, 2016 of the National Conciliation and Mediation Board Panel of Voluntary Arbitrators in MVA-091-RCMB-NCR-071-02-07-2015 are accordingly AFFIRMED with MODIFICATION such that petitioners are now ordered to pay respondent Jose Elizalde B. Zanoria the amount of US$ 60,000.00 (US$ 50,000 x 120%) payable in its peso equivalent at the time of payment as permanent disability benefits instead of US$159,914.00. The rest of the February 19, 2016 Decision stands.

SO ORDERED.[26]

Feeling aggrieved, both parties filed their respective partial motions for reconsideration.[27]

On July 25, 2017, the CA issued the assailed Resolution[28] denying the motions.

Hence, the instant petition.

Issues

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AWARDING TOTAL AND PERMANENT DISABILITY BENEFITS TO PRIVATE RESPONDENT

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN RULING THAT RESPONDENT IS ENTITLED TO SICKNESS ALLOWANCES AND ATTORNEY'S FEES.

III. PETITIONERS HAVE RECENTLY DISCOVERED THAT PRIVATE RESPONDENT BOARDED A SUBSEQUENT OCEAN-GOING VESSEL WITH ANOTHER EMPLOYER DESPITE A PENDING CLAIM FOR TOTAL DISABILITY BENEFITS.[29]

Ruling of the Court

The Court denies the petition for failure of the petitioners to show that the CA committed any reversible error in the challenged Decision dated March 7, 2017 and the Resolution dated July 25, 2017.

The issue of whether the CA erred in upholding the Panel of Voluntary Arbitrators' findings that respondent is entitled to total and permanent disability benefits, sickness allowance, and attorney's fees is clearly factual in nature. As such, this cannot be entertained in a Rule 45 petition where the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the courts below.[30] Thus, the petition should be denied in the absence of any *exceptional circumstances*[31] as to merit the Court's review of factual questions that have already been settled by both the Panel of Voluntary Arbitrators and the CA.

The petition for review on *certiorari* likewise shows that petitioners are still hinging on the same arguments, to wit: (1) that the partial disability assessment Grade 10 as determined by the company-designated physician should be upheld by the CA;[32] (2) that the proper procedure under the POEA-SEC to resolve conflicting medical assessments is to refer the matter to a neutral third doctor which was not complied with or refused by the respondent;[33] thus, it is only the company-designated

physician's assessment that should determine the extent of respondent's disability, *i.e.*, disability grading of Grade 10 for 50% loss of vision of one eye;[34] (3) that attorney's fees are not to be awarded in the absence of gross and evident bad faith.[35] These were already proffered, exhaustively discussed, and settled before the Panel of Voluntary Arbitrators and the CA.

As correctly ruled by the CA, Dr. Pile, the company-designated physician, issued the Medical Certification on September 22, 2014 containing a partial disability assessment of respondent.[36] However, the certification merely stated "[*d*]*isability Grade 10 for (50%) loss of vision of one eye*", but without an explanation or description of the disability.[37] Further, the certification reads, "[*p*]*resently Visual Acuity on the right eye has improved up to 20/40 only. Left eye is still 20/20. Although vision on the right eye has remarkably improved, it is still inadequate for his position.*"[38] Following the earlier ruling of the Court, in the absence of a definite assessment of respondent's fitness or disability, or failure to show how the partial disability assessment was arrived at, or without any evidence to support the assessment, then this is akin to a declaration of permanent and total disability.[39] Further, well-settled is the rule that a partial disability signifying a continuing capacity to perform one's customary task is undeniably incompatible with the finding that a seafarer is unfit for duty.[40]

In the case, Dr. Pile's assessment of respondent's disability as partial or Grade 10 for the 50% loss of vision of one eye is clearly in conflict with the declaration in the same medical certification that respondent is *"still inadequate for his position."* In other words, this should already be considered as "*akin to a declaration of permanent and total disability*." The CA ruled, thus:

> The inconsistency between the partial disability assessment – which should render respondent still fit for his position – and the declaration that he is no longer "adequate" for his position cannot be reconciled, compounded by the fact that the said contradiction is contained in one *Medical Certification*.
>
> Therefore, the only just and legal conclusion that could be made from the inability of a seafarer to return to his previous position, which renders him without a steady source of income, is a declaration of permanent and total disability amounting to Grade 1 Disability under the POEA-SEC.[41]

As to the issue that the award of sickness allowance is without basis, the Court affirms the ruling of the CA that the Panel of Voluntary Arbitrators correctly found that petitioners failed to pay respondent's sickness allowance pursuant to the CBA of the parties. The only defense raised by petitioners is that the sums of money due to respondent, including the questioned sickness allowance, have already been duly paid the latter.[42] However, the Court finds that petitioners failed to support this defense of payment. Hence, the Panel of Voluntary Arbitrators' award of the sickness allowance in favor of respondent is hereby upheld.

Lastly, petitioners argue that respondent boarded a subsequent ocean-going vessel with another employer despite his pending claim for total disability benefits;[43] that it is petitioners' stand that the award of total and permanent disability benefits should be denied as there could be no claim for disability benefits if the seafarer was subsequently engaged as a seafarer.[44]

The Court disagrees.

In *Crystal Shipping, Inc. v. Natividad*,[45] the Court had the occasion to rule that it was of no moment that a seafarer had recovered, for what was important was that the latter was unable to perform his customary work for more than 120 days, and this already constituted as a permanent total disability. Thus:

> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.[46] (Underscoring supplied.)

Given the circumstances, the Court finds that the conclusion of the CA is not tainted with grave abuse of discretion to warrant its reversal.

WHEREFORE, the petition is **DENIED**. The Decision dated March 7, 2017 and the Resolution dated July 25, 2017 of the Court of Appeals in CA-G.R. SP No. 146585 are **AFFIRMED**.

Perlas-Bernabe, (Chairperson), Hernando, and *Delos Santos, JJ.,* concur.
Baltazar-Padilla, J., On leave.

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[1] *Rollo*, pp. 29-54.

[2] *Id*. at 58-67; penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a member of the Court), concurring.

[3] *Id*. at 84-86.

[4] *Id*. at 58-59.

[5] *Id*. at 162, 208.

[6] *Id*. at 59.

[7] *Id*.

[8] *Id*.

[9] See Position Paper dated September 16, 2015 filed by Jose Elizalde B. Zanoria with the National Conciliation and Mediation Board, Office of the Voluntary Arbitrator, *id*. at 180-207.

[10] *Id*. at 186.

[11] See Medical Certification dated August 6, 2014, *id*. at 289-290.

[12] *Id*. at 60.

[13] *Id*.

[14] *Id*. at 187.

[15] *Id*.

[16] *Id*. at 291.

[17] *Id*.

[18] *Id*. at 135-159.

[19] *Id*. at 178-179.

[20] *Id*.

[21] *Id*. at 61.

[22] *Id*.

[23] *Id*. at 97-130.

[24] *Id*. at 61-62.

[25] *Id*. at 58-67.

[26] *Id*. at 66.

[27] *Id*. at 68-82, 87-95.

[28] *Id*. at 84-86.

[29] *Id*. at 39.

[30] See *Far Eastern Surety and Insurance Co., Inc. vs. People*, 721 Phil. 760, 770 (2013), citing *Remalante vs. Tibe*, 241 Phil. 930, 935 (1988).

[31] See *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 213 (2005), stating therein the following exceptional circumstances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgement is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in marking its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the findings of facts are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[32] *Rollo*, p. 40.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 47.

[36] *Id*. at 64.

[37] *Id*.

[38] *Id*. at 64-65.

[39] *Maunlad Trans., Inc./Carnival Cruise Lines, Inc. et al. v. Camoral*, 753 Phil. 676, 691 (2015), citing *Alpha Ship Mgm't Corp./Chan et al. v. Calo*, 724 Phil. 106, 125 (2014).

[40] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 246 (2015), citing *Maunlad Trans., Inc./Carnival Cruise Lines, Inc. et al., v. Camoral, supra* note 39 at 688-689.

[41] *Rollo*, p. 65.

[42] *Id*. at 46.

[43] *Id*. at 48.

[44] *Id*. at 49.

[45] 510 Phil. 332 (2005).

[46] *Id*. at 341. Citations omitted.
