

TSM SHIPPING PHILIPPINES, INC., MOWINCKEL SHIP MANAGEMENT AND ALFONSO DEL CASTILLO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND FREDDIE BALONTONG, ...

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MACALINO, J:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court seeking to annul and set aside the Decision[2] dated November 29, 2012 of the National Labor Relations Commission (NLRC), which modified the Decision[3] dated September 24, 2012 of Labor Arbiter Cheryl Ampil (the Labor Arbiter); and the NLRC Resolution[4] dated January 28, 2013, which denied petitioners' Motion for Reconsideration in NLRC LAC (OFW-M) 10-00090-12; (NLRC NCR (M) 01-00222-12). The dispositive portion of the NLRC Decision dated November 29, 2012 reads:

“WHEREFORE, the judgment on appeal is MODIFIED as to the permanent total disability from USD 60,000.00 to USD 90,000.00.

All the other awards are affirmed in toto, and payable in peso equivalent at the time of payment.

SO ORDERED.”[5]

FACTS

Private respondent Freddie Balontong (private respondent) had been employed as a fitter by petitioner TSM Shipping Philippines, Inc. (TSM) since 1998.[6] On January 3, 2011, he was re-hired by TSM as a fitter on board the vessel “Goya” (the vessel), for and in behalf of its foreign principal, petitioner Mowinckel Ship Management. Petitioner Alfonso del Castillo was an officer of TSM. Private respondent's employment contract was for a period of 8 months with a basic salary of Seven Hundred Eighty-One Dollars (USD781.00).[7]

On January 5, 2011, private respondent underwent a pre-employment medical examination and was declared “fit for employment.”[8] On January 27, 2011, he joined the vessel.[9] He was assigned to perform the following tasks:

- Fi[t] and assembl[e] fabricated parts of machinery, engines and other metal apparatus;
- Examin[e] drawings and list materials to obtain parts specifications;
- Pla[n] sequence of operation;
- Examin[e] parts of flaws and chec[k] accuracy of fit using gauges, micrometers and other measuring devices[;]
- Assist Engineers in overhauling (Main Engines, Auxiliary Engines);
- Repair, fabricate, lay-out pipeline according to ship specification approved by the Chief Engineer;

- Welding, repair ship plates, bracket approved by Chief Engineer;
- Machining, fabricate fitting, flanges, ship spare fittings, maintain and secure ship engine tools in workshop according to ship maintenance program.”[10]

On May 21, 2011, however, while performing his tasks as a fitter, private respondent was injured. He stated that when he was tightening the bolts and nuts of the inductor valve, he got out-balanced and he felt a sudden onset of pain on his back and right leg joints.[11] He was given timely medical attention in Argentina and was diagnosed with “Lumbago.”[12]

On July 21, 2011, he was sent to a doctor in China because he complained that he was suffering pain from his right leg joints.[13] He was declared “not fit for work to prevent worse condition of the patient.”[14]

On August 1, 2011, private respondent was medically repatriated. He declared that he was timely referred by TSM to the company-designated doctors at the University Physicians Medical Center. On August 16, 2011, his MRI results indicated the following impression:

“Multilevel discogenic and osteophytic central canal and bilateral foraminal stenoses, as described. Lumbar spondylosis.”[15]

On November 22, 2011, his “EMG-NCV[16] studies showed right S1 Radioculopathy, incomplete, with acute denervation changes.”[17]

Private respondent stated that because his condition did not improve, he also consulted an independent doctor who declared him unfit in any capacity for further sea duties as a seafarer.[18]

Since his repatriation on August 1, 2011 until April 19, 2012, private respondent had attended a total of 96 physical therapy sessions.[19]

Allegedly, private respondent asked for assistance from petitioners but his request was unheeded.[20]

On January 5, 2012, private respondent filed a complaint[21] for disability benefits, sickness allowance, reimbursement of medical expenses, damages and attorney's fees.

Because the parties were unable to settle amicably, they were required to file their respective position papers.

In his position paper,[22] private respondent alleged that he is entitled to permanent and total disability benefits amounting to Ninety Thousand Dollars (USD90,000.00) because he sustained an injury as a result of an accident while aboard the vessel. He alleged that his medical condition remains and he needs continued treatment. He also stated that on February 16, 2012, he was found to be suffering from lower back pain and weakness of his right lower extremity. He also averred that since his repatriation on August 1, 2011 until his last recorded therapy on April 19, 2012, he has been under medical care for more than eight months or approximately 259 days.

In addition, private respondent said that his entitlement to disability pay, sickness allowance and medical reimbursement is based on his employment contract, as well as on the POEA Standard Employment Contract (POEA-SEC) and the Collective Bargaining Agreement (CBA) that govern his employment.

For their part, petitioners stated in their position paper[23] that on January 3, 2012, the company-designated physician declared that private respondent has reached “maximum medical cure.” On January 4, 2012, he issued his final disability assessment of “Grade 8 – moderate rigidity or 2/3 loss of motion or lifting power of the trunk” on private respondent. Petitioners argued that private respondent is not entitled to permanent and total disability benefits and is only entitled to receive compensation corresponding to said disability grading given by the company-designated physician.

In their reply,[24] petitioners averred that it is the POEA-SEC that should be applied in the case, not the CBA. This is because private respondent attached only portions of the alleged CBA he is claiming under and not a full copy thereof. They also claimed that private respondent failed to prove that he met an accident from which his disability arose.

On September 24, 2012, the Labor Arbiter rendered a Decision finding for private respondent, the decretal portion of which reads:

“WHEREFORE, respondent TSM Shipping (Phils.) Inc. and/or respondent Mowinckel Ship Management are hereby ordered to pay the complainant the Philippine peso equivalent at the time of actual payment of the following amounts:

Permanent total disability compensation

US[D]60,000.00

Sickness allowance

____3,604.62

(US[D]781.00x120days=US[D]3,604.62) US[D]63,604.62

26days

10% attorney's fees

____6,360.46

US[D]69,965.08

The liability of the respondents for the judgment is solidary.

SO ORDERED.”[25]

The parties filed their respective appeals before the NLRC.[26]

On November 29, 2012, the NLRC modified the Decision of the Labor Arbiter and awarded permanent and total disability benefits in favor of private respondent amounting to Ninety Thousand Dollars (USD90,000.00).

Petitioners moved for a reconsideration.²⁷ On January 28, 2013, the NLRC denied petitioners' motion for reconsideration.

ISSUES

“- Whether public respondent gravely abused its discretion and acted whimsically when it awarded full disability compensation in favor of the private respondent despite the disability grading issued by the company-designated physicians;

- Whether public respondent gravely abused its discretion and acted whimsically when it granted private respondent's Notice of Partial Appeal and awarded disability compensation under the CBA despite the fact that private respondent's disability did not arise from an accident; and
- Whether public respondent gravely abused its discretion and acted whimsically when it affirmed the award of sickness allowance and attorney's fees.”[28]

In the instant Petition for Certiorari, petitioners contend that the NLRC gravely abused its discretion when it granted full disability compensation in favor of private respondent because the company-designated physician determined that he is suffering from a disability with a grade 8 rating based on the POEA-SEC. They also allege that the NLRC gravely abused its discretion when it applied the CBA in the determination of the disability compensation in favor of private respondent. They argue that there is no evidence that would show that private respondent met an accident in the course of his employment that resulted to his injury. They likewise claim that they have already paid private respondent's sickness allowance. Hence, there is no reason to award the same to private respondent. Lastly, petitioners stated that the grant of attorney's fees is unjustified because they did not remiss from fulfilling their obligation and that their acts were not tainted with bad faith.

OUR RULING

A Petition for Certiorari under Rule 65 of the Rules of Court involves questions of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. This means that there must be a clear showing that the discretion was exercised arbitrarily or despotically.[29]

In order that a writ of certiorari be issued in the case, petitioners must establish that the NLRC acted arbitrarily or despotically in granting private respondent's claim for permanent and total disability benefits under the CBA, as well as in granting the latter's claim for sickness allowance and attorney's fees.

A. Whether private respondent is entitled to permanent and total disability benefits

Records show that while on board the vessel and doing his work as a fitter, private respondent lost his balance and fell. Consequently, when he consulted a doctor in Argentina, he was diagnosed with “Lumbago” or “lumbosacral strain.”[30] Later, when examined by a doctor in China, he was found to be unfit for work already. Thus, he was medically repatriated in the Philippines. Upon his return, he was referred to the company-designated physicians and the results of his MRI and EMG-NCV were as follows:

“Multilevel discogenic and osteophytic central canal and bilateral foraminal stenoses, as described. Lumbar spondylosis.”[31]

“EMG-NCV studies showed right S1 Radiculopathy, incomplete, with acute denervation changes.”[32]

There is no dispute that private respondent sustained a work-related disability. Petitioners only argument is that private respondent's medical condition does not result to his permanent and total disability. Instead, they claim that the latter suffered from a disability which was assessed at “Grade 8 – moderate rigidity or 2/3 loss of motion or lifting power of the trunk”[33] by the company-designated physician.

While this Court notes the determination made by the company-designated physician on the status of the disability of private respondent, it cannot be denied that the latter's medical condition renders him continually unable to engage in his usual work as a seaman.

It has been held that when the illness or injury of a seaman prevents him from engaging in gainful employment for more than 120 or 240 days, as the case maybe, he shall be deemed permanently and totally disabled. He is

likewise to be considered permanently and totally disabled if his medical condition remains unresolved.[34]

Permanent and total disability is also defined in our Labor Code in this manner:

“ART. 192. Permanent total disability. –

xxx

xxx

xxx

c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules.”

Permanent disability is the inability of an employee to do his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work, which a person of his mentality and attainment could do.[35]

Here, records reveal that private respondent's medical condition remains unresolved. Since his repatriation on August 1, 2011 until his last recorded therapy on April 19, 2012, he has been under medical care for more than 8 months. There is no question that he cannot engage in his usual gainful employment by reason of his condition. As stated by the NLRC, “with the permanent loss of 2/3 of his lifting power, bending or twisting reflexes, he can n[o] longer return to his former work as a seafarer, considering that his position as Fitter requires mobility and carrying power.”[36]

Indeed, disability should not be viewed more on its medical significance but on the loss of earning capacity; and permanent and total disability actually means disablement of an employee to earn wages in the same or similar kind of work that he was trained or accustomed to do,[37] as in this case.

Based on the foregoing, this Court shares the finding of the NLRC that private respondent is entitled to permanent and total disability benefits.

B. Whether private respondent's entitlement to disability benefits should be pursuant to the CBA or the POEA-SEC

We holds that private respondent is entitled to claim disability benefits based on the CBA.

Article 12 of the CBA provides for disability compensation in case the following circumstances occur:

“If an officer due to no fault of his own, suffers an occupational injury as a result of an accident or an occupational disease, while serving on board or while travelling to or from the vessel on Company's business or due to marine peril, and as a result his ability to work is permanently reduced, totally or partially, and never to be declared fit the company shall pay him a disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be the maximum:

Radio Officers,

Chief Stewards, Electricians

Electro Technicians

USD 110,000

Ratings USD 90,000”[38]

Based on the report of the Master of the vessel the following incident occurred on May 21, 2011:

“Title: Fitter Freddie M. Balontong – Pain in his right leg joints when doing engine maintenance xxx

xxx

xxx

xxx

Underlying cause(s) of incident

Whilst tightening bolt and nuts of inductor valve he was out balance[d] and feel sudden pain on right leg joints.”[39]

We agree with the finding of the NLRC that private respondent's injury was a result of an accident.

A CBA is the law between the contacting parties and compliance therewith in good faith is required by law.[40] On the other hand, an accident is defined as an unintended and unforeseen injurious occurrence, not attributable to mistake, negligence, neglect or misconduct. It also means such event that happens by chance or fortuitously, without intention and design.[41]

As already stated above, private respondent met an accident while he was tightening bolt and nuts and lost his balance and fell. The injury he sustained was a result of an accident because said event was unintended, unforeseen, and only happened by chance. This injury was also the proximate cause for the determination of his lumbar spondylosis and radiculopathy, which render him unable to return to work as a seaman.

For these reasons, we find that private respondent is entitled to receive disability benefits based on the CBA.

C. Whether private respondent is entitled to sickness allowance and attorney's fees

Petitioners allege that they paid private respondent sickness allowance, however, there is no evidence to support such claim. Thus, we agree with the NLRC to award the same in favor of private respondent pursuant to Section 20(A)(3) of the POEA-SEC, to wit:

“Section 20. Compensation and Benefits

A. Compensation and Benefits for Injury or Illness

xxx

xxx

xxx

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.”

Lastly, private respondent is entitled to attorney's fees under Article 2208 of the Civil Code,⁴² which can be

recovered in actions for indemnity under workmen's compensation and employer's liability laws.

WHEREFORE, premises considered, the Decision dated November 29, 2012 and the Resolution dated January 28, 2013 of the National Labor Relations Commission in NLRC LAC (OFW-M) 10-00090-12; (NLRC NCR (M) 01-00222-12) are hereby AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Villon, S.E., J. Chairperson and Corales, P.B., JJ., concur.

[1] Rollo, pp. 3-31.

[2] Rollo, pp. 41-58.

[3] Rollo, pp. 312-330.

[4] Rollo, pp. 60-61.

[5] Rollo, p. 57.

[6] Rollo, p. 175.

[7] Rollo, p. 176.

[8] Rollo, p. 178.

[9] Rollo, p. 134.

[10] Rollo, p. 135.

[11] Rollo, p. 135.

[12] Rollo, p. 181.

[13] Rollo, p. 184.

[14] Rollo, p. 185.

[15] Rollo, p. 187.

[16] Electromyogram-Nerve Conduction Velocity

[17] Rollo, pp. 258-259.

[18] Rollo, pp. 140-141, 260-261.

[19] Rollo, p. 257.

[20] Rollo, p. 141.

[21] Rollo, pp. 96-98.

- [22] Rollo, pp. 131-172.
- [23] Rollo, pp. 99-116.
- [24] Rollo, pp. 274-290.
- [25] Rollo, p. 330.
- [26] Rollo, pp. 331-349, 412-439.
- [27] Rollo, pp. 62-71.
- [28] Rollo, pp. 8-9.
- [29] Leonis Navigation Co., Inc. vs. Villamater, G.R. No. 179169, March 3, 2010.
- [30] Rollo, p. 6.
- [31] Rollo, p. 187.
- [32] Rollo, pp. 258-259.
- [33] Rollo, p. 102.
- [34] Kestrel Shipping Co., Inc. vs. Munar, G.R. No. 198501, January 30, 2013.
- [35] Ibid.
- [36] Rollo, p. 54.
- [37] Magsaysay Maritime Corp. vs. Lobusta, G.R. No. 177578, January 25, 2012.
- [38] Rollo, p. 213.
- [39] Rollo, p. 182.
- [40] HFS Philippines, Inc. vs. Pilar, G.R. No. 168716, April 16, 2009.
- [41] NFD International Manning Agents vs. Illescas, G.R. No. 183054, September 29, 2010, citing Black's Law Dictionary and Philippine Law Dictionary.
- [42] Article 2208, New Civil Code

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx

xxx

xxx

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

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