

MARLOW NAVIGATION PHILIPPINES, INC. / MARLOW NAVIGATION CO., LTD. AND MR. ANTONIO GALVEZ, JR., PETITIONERS, VS. GEOFFREY M. TORMIS AND NATIONAL LABOR RELATIONS COMMISSION (SIXTH...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the August 30, 2013 Decision[2] of the National Labor Relations Commission (NLRC), Sixth Division, in labor case docketed as NLRC LAC No. OFW-M-06-000639-13 (NCR-OFW-M-05-07411-12) which reversed the May 30, 2013 Decision[3] of the Labor Arbiter. Also assailed in this petition is the October 16, 2013 Resolution[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioner.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Geoffrey M. Tormis (“private respondent”) was hired by the petitioner Marlow Navigation Philippines, Inc. (“petitioner”), which is a local manning agency, on behalf of its principal, petitioner Marlow Navigation Company, Ltd. He was employed as Able Bodied Seaman on board the vessel “M/V Viola” for a stipulated period of ten (10) months.[5] He signed his contract on January 6, 2011.

Prior to his deployment, the private respondent underwent a series of medical examinations wherein he was found to be “fit to work” by the company-designated physician.[6]

The private respondent's duties involved strenuous manual work which include pushing, pulling, lifting and carrying heavy loads of provisions on board the vessel.

On August 6, 2011, while the private respondent was doing a painting job at the port side of M/V Viola, a sudden strong wave hit the ship. By reason of the foregoing, the private respondent lost his balance and fell on a hard object. He experienced back pains and leg muscle cramps thereafter.

Since the pain persisted and was becoming more intense, he requested for immediate medical assistance and was then brought to a doctor in Cotonou Benin, Africa on August 11, 2011. He was given medication and was advised to rest for a week.

On August 17, 2011, since his condition was not improving, he was brought to another doctor in Malabo, Equatorial Guinea. After his condition was assessed, he was diagnosed with lumbosciatalgia and was declared unfit to work. Part of the doctor's recommendation was his medical repatriation for further evaluation and treatment.

Upon his arrival in the Philippines, the private respondent immediately reported at the petitioner's office on September 9, 2011 to seek for medical assistance. He was then referred to the Manila Doctors Hospital where he

was admitted. He likewise underwent pelvic traction and daily physiotherapy.

On September 16, 2011, an MRI of his lumbosacral spine was performed on the private respondent at the Cardinal Santos Medical Center. He was later diagnosed with lumbar disc herniation. On September 23, 2011, the private respondent underwent laminotomy, discectomy[7]. He was discharged from the hospital on September 30, 2011 but continued his physiotherapy in an out-patient basis.

After more than four months of treatments, on February 27, 2011, the private respondent was declared “fit to work” by Dr. Joy Ellen Buella-Barrameda, the company-accredited doctor of the petitioners[8].

Unfortunately, despite the series of treatments and the findings as to his condition as fit to work, he continued to feel pain on his back and on his legs. On account of the foregoing, he sought for a re-evaluation of his medical condition from the petitioners through a letter dated March 23, 2012[9].

However, no further action was taken by the petitioners which prompted the private respondent to write another letter to the former on April 10, 2012[10] which indicated his intention to seek for a second opinion from a doctor of his choice.

The private respondent then sought for a second medical opinion from Dr. Renato Runas (“Dr. Runas”). On April 17, 2012, Dr. Runas confirmed that the private respondent was unfit to continue his work as a seaman. Despite his surgery, the private respondent was already incapacitated to continue his work as a seaman caused by the back injury which he sustained on board the vessel. The private respondent was assessed to be no longer able to carry heavy objects or to perform other strenuous activities as this may only aggravate his condition and result to further severe damage. According to Dr. Runas, the private respondent was suffering from partial permanent disability equivalent to Grade 8 impediment based on the POEA Contract[11].

Thus, on May 15, 2012, the private respondent filed a complaint against the petitioners for payment of disability benefits, medical and sickness allowance, moral and exemplary damages and attorney's fees[12].

In denying their liability, the petitioners contended that the private respondent had no cause of action against them in view of the medical report declaring him to be fit to resume his duties as a seafarer by the company-designated physician. The private respondent alleged that the findings of the company-accredited doctor must be given greater consideration since he was in the constant care of the latter. Also according to the POEA Contract, if the company-accredited physician declares a seafarer to be fit to work, he is bound by such declaration. With respect to the private respondent's claim for sickness allowance, the petitioner asserted that they had duly paid the same as evidenced by the sickwages account which were duly signed by the former.

After considering the arguments of both parties, Labor Arbiter Virginia T. Luyas-Azarraga rendered a Decision dated May 30, 2013, pertinent portions of the said decision stated as follows:

“After a careful examination of the arguments of the parties and the evidence that they presented, this Office finds complainant to be fit to work as a seaman and is thus not entitled to disability benefits. The findings of the company physician that he is fit to work, as can be seen from the medical reports submitted by respondents was a result of a more elaborate examination and treatment of his condition. As compared to the one day examination and treatment of Dr. Runas which does not appear to be supported by any medical examination or treatment, this Office is inclined to uphold the findings of the company physician.

xxx xxx xxx

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered dismissing the claim for disability benefits.

“All other claims are likewise denied for being bereft of any merit.

“SO ORDERED.”

Dissatisfied, the private respondent appealed from the decision of the Labor Arbiter to the NLRC.

On August 30, 2013, the NLRC, Sixth Division rendered the assailed Decision[13] which granted the appeal and reversed and set aside the decision of the Labor Arbiter, to wit:

“WHEREFORE, the appealed Decision dated 30 May 2013 is SET ASIDE and a new one entered ordering the Respondents jointly and severally, to pay the Complainant his disability benefits in the amount of US\$60,000.00 plus 10% thereof by way of attorney's fees.

“SO ORDERED.”

According to the NLRC, when conflicting medical assessments as to a seafarer's medical condition exist, the law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice. Moreover, the NLRC opined that there was no evidence adduced by the parties that the private respondent had, in fact, been re-employed or has found employment in the same kind of work up to the present time. Withal, the private respondent's injury had prevented him from pursuing his usual work and earn therefrom.

The petitioners filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution[14] dated October 16, 2013, viz:

“WHEREFORE, the Respondents' Motion for Reconsideration is hereby DENIED for lack of merit. No further Motion of the same tenor shall be entertained.

“SO ORDERED.”

Unstirred by the foregoing disposition of the NLRC, the petitioners filed the instant petition with this Court assigning the following acts of grave abuse of discretion purportedly committed by the NLRC, to wit:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED FULL DISABILITY BENEFITS DESPITE THE FACT THAT THE PRIVATE RESPONDENT WAS NOT ENTITLED THERETO.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN IGNORING JURISPRUDENCE THAT FINDINGS OF COMPANY DOCTORS ARE ENTITLED TO GREAT WEIGHT IN DETERMINING AS TO WHETHER A SEAFARER IS ENTITLED TO DISABILITY BENEFITS.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN THE CONSTRUCTION OF THE LABOR CLAUSE AS THE SAME SHOULD ONLY BE APPLIED WHEN THERE IS DOUBT AS TO THE EVIDENCE OF THE PARTIES.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ITS CONCLUSION THAT THE NON-REHIRING OF A SEAFARER AFTER AN INJURY IS SYNONYMOUS TO THE LATTER BEING DISABLED.

V.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE PRIVATE RESPONDENT IS NOT ENTITLED TO DAMAGES AND ATTORNEY'S FEES.

In a nutshell, the primordial issue to be resolved in this case is whether or not the NLRC committed grave abuse of discretion when it ruled that the private respondent was entitled to permanent total disability benefits from the petitioners, contrary to the findings of the company-designated physician that the former was already fit to work.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be bereft of merit.

At the onset, it is well to emphasize that, in resolving disputes on disability benefits, the fundamental consideration has been that the POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, its provisions must be construed and applied fairly, reasonably and liberally in their favor because only then can its beneficent provisions be fully carried into effect[15].

The petitioners' assertion that the private respondent's condition and disability can only be assessed by the company-designated physician is a blatant misconception of the provisions of the law. Section 20 (B), paragraph (3) of the POEA-SEC provides that:

“Section 20 (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

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.”
(Emphasis supplied)

Based on the afore-quoted provision, it is crystal clear that the determination by the company-designated physician pertains only to the entitlement of the seafarer to sickness allowance and nothing more. Moreover, the

said provision recognizes the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. In fact, it allows a third opinion in case the seafarer's doctor disagrees with the assessment of the company-designated physician. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seamen. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers[16].

In the present petition, the petitioners set forth the contention that the NLRC erred in holding that they were liable for US\$60,000.00 in total and permanent disability benefits. The petitioners averred that it was inaccurate for the NLRC to state that the private respondent had suffered a total disability since the POEA Contract provides that the company-designated physician's declaration as to the fitness to work of a seaman is binding upon the seafarer. For the petitioners, the company-designated physician's assessment or evaluation of the private respondent's condition should prevail over that of his doctor-of-choice.

There is no dispute that the private respondent's injury is work-related and that he is entitled to disability benefits. The bone of contention now is how to classify such injury in order to determine the amount of benefits due to him.

In *Vergara v. Hammonia Maritime Services, Inc.*[17], the Supreme Court ruled as follows:

“The Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition sine qua non prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seaman.”

In this case, the private respondent and the petitioners entered into a contract in accordance with the POEA-SEC. The private respondent's claim for disability compensation could have been resolved bilaterally had the parties observed the procedure laid down in the POEA-SEC.

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

“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.

X X X X

“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.”
(Emphasis supplied)

As above-mentioned, as an extrajudicial measure of settling the differences between the medical findings of the company-accredited physician and the seafarer's doctor-of-choice, the POEA-SEC gives the parties the option of agreeing jointly on a third doctor whose assessment shall break the impasse and shall be the final and binding diagnosis[18].

In the instant case, the private respondent sought for a second medical opinion from Dr. Runas who confirmed that he had already become incapacitated to perform seafarer duties by reason of his condition. As early as the proceedings before the Labor Arbiter, the private respondent had stated his willingness to be re-evaluated by a third doctor who shall be chosen upon agreement by both parties. However, the petitioners did not give him the opportunity to do so. Clearly, the petitioners' refusal to agree on a third doctor to re-evaluate the condition of the

private respondent was a violation of the procedure as laid down in the POEA SEC. The dispute regarding the private respondent's medical condition could have been easily clarified and resolved had the parties observed and stayed true to the procedure laid down in Section 20 (B), par. 3 of the POEA-SEC.

Ostensibly, whatever reasons the petitioners might have in disregarding the conflict-resolution procedure under the POEA-SEC and the CBA, the same cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. Given the circumstances under which the petitioners refused to act on the private respondent's request for a new assessment by a third doctor as well as the inherent merits of the doctors' conflicting assessments, the fit-to-work certification issued by the company-accredited doctor cannot be upheld on its face.

Considering that the parties did not jointly resort to seek the opinion of a third physician in the determination and assessment of the private respondent's disability or the absence of it, the credibility of the findings of their respective doctors must be properly evaluated on the basis of their inherent merits.

A careful perusal of the record of the case would reveal that Dr. Ellen Joy Buella-Barrameda, the company-accredited doctor who issued the fit to work certification to the private respondent was not an expert doctor who is qualified to assess the condition of the private respondent. The medical records of the private respondent show that it was Dr. Jose Bautista, an orthopedic surgeon and Dr. Arnel Malaya, a physiatrist, who both attended to the former's medical needs with respect to his surgery and therapy sessions. Thus, the findings of Dr. Buella-Barrameda, a general practitioner, is inconclusive for purposes of determining the fitness of the private respondent to perform seafarer's duties.

In contrast, the private respondent's doctor-of-choice, Dr. Runas, is an orthopedic surgeon. Dr. Runas evaluated and assessed the private respondent's lumbar and lower extremities whereas Dr. Buella-Barrameda only based her assessment on the private respondent's upper body physical capacity such as grip strength, pinch strength and hand dexterity.

Evidently, such ambiguous assessment, vis-à-vis that made by the private respondent's independent physician cannot be a basis for a clean bill of health. The determination of the company designated physician cannot prevail over the specific assessment made by the independent physician.

With respect to the private respondent's non-hiring, the petitioners submit that the NLRC gravely abused its discretion when it held that the fact that they did not rehire the private respondent was the most convincing proof that his inability to work was due to his illness. They contend that, being a seafarer, the private respondent is a contractual employee whose employment is terminated upon the contract's expiration. In short, his non-rehiring should not be taken against them as it is their prerogative to hire or not to hire him.

We find the pronouncement of the NLRC with respect to the private respondent's non-hiring by the petitioners as a convincing proof of his illness or disability as without basis. There is no evidence on record showing that the private respondent sought re-employment with the petitioners or that it was a matter of course for the petitioners to re-hire him after the expiration of his contract. Neither was there evidence that the private respondent had applied with other manning agencies.

Nevertheless, as lengthily discussed above, this conclusion does not alter the fact that, as a result of the private respondent illness, he was rendered incapacitated to perform his customary work as a seafarer. Otherwise stated, the private respondent is entitled to permanent total disability benefit considering that he would not be able to resume work and that it is probable that he would not be hired by other maritime employers. Firmly entrenched is the rule that, 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.[19]

Anent the issue of attorney's fees, suffice it to state that, under Article 2208 of the New Civil Code, attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fee is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. Such conditions being present in the case at bar, we find that an award of attorney's fee is warranted.

On a final note, it is worthy to state that, in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State to give maximum aid and protection of labor[20].

When applied to Filipino seafarers, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate to the risks that they brave on board the vessel every single day[21].

All told, this Court concludes that the NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction in awarding to the private respondent permanent and total disability benefits as well as attorney's fees.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant petition. The Decision dated August 30, 2013 rendered by the National Labor Relations Commission, Sixth Division, in NLRC LAC No. OFW-M-06-000639-13 (NCR-OFW-M-05-07411-12) as well as the Resolution dated October 16, 2013 are hereby AFFIRMED.

SO ORDERED.

Peralta, Jr.,[*] and Paredes, JJ., concur.

[*] Acting Senior Member vice J. Elbinias per Office Order No. 221-14-ABR dated May 21, 2014.

[1] Rollo, pp. 3-40.

[2] Ibid, pp. 46-53.

[3] Ibid, pp. 277-282.

[4] Ibid, pp. 55-57

[5] Ibid, p. 86.

[6] Ibid, p. 131.

[7] Ibid, p. 191.

[8] Ibid, pp. 100-101.

[9] Ibid, p. 193.

[10] Ibid, p. 194.

[11] Ibid, pp. 195-196.

[12] Ibid, pp. 82-83.

[13] Ibid, pp. 24-33.

[14] Ibid, pp. 34-35.

[15] Seagull Maritime Corp. v. Dee, 548 Phil. 660, 671-672 (2007).

[16] Magsaysay Maritime Services v. Laurel, G.R. No. 195918, March 20, 2013.

[17] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[18] Maersk Filipinas Crewing Inc. v. Mesina, G.R. No. 200837, June 5, 2013.

[19] Ulibas vs. Republic, 83 SCRA 819; Roma vs. WCC, 80 SCRA 1270.

[20] Micornesia Resources Dynacom Shiled Shipping Ltd. and Singa Ship Management, A.S. vs. Fabiolo Cantomayor, G.R. No. 156573, June 19, 2007; Bernardo Remigio vs. NLRC, C.F. Sharp Crew Mgt., Inc. and New Commodore Cruise Line, Inc., G.R. No. 159887, April 12, 2006.

[21] Seagull Maritime Corp., et al v. Dee and NLRC, G.R. No. 165156, April 2, 2007.

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