

PAROLA MARITIME AGENCY CORPORATION, SYNCRO SHIPPING, CO., LTD. – KOREA, AND/OR SHIRLEY P. ORO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND LEO AND...

Ponente: SADANG, J.

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SADANG, J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court with prayer for issuance of a writ of preliminary injunction and/or temporary restraining order (TRO) seeking to set aside the Decision[1] dated January 22, 2013 of the public respondent National Labor Relations Commission (Fourth Division) in NLRC NCR LAC No. OFW (M) 08-000708-12 / NLRC NCR Case No. OFW M 09-14326-11 which reversed and set aside the Decision dated June 8, 2012 of the Labor Arbiter, and the Resolution[2] dated March 12, 2013 denying the Motion for Reconsideration.

The petition stems from the complaint filed by private respondent Leo Andreau M. Rondario (hereafter, Rondario) against Parola Maritime Agency Corporation (Parola, for brevity), an employment agency duly licensed by the Philippine Overseas Employment Administration (POEA), Syncro Shipping Co. Ltd.-Korea, a foreign corporation represented by Parola Maritime as agent, and Shirley P. Oro, in her capacity as president of Parola, and/or OS Concord, for permanent and total disability benefits, moral and exemplary damages, and attorney's fees.

Rondario, in his Position Paper[3] averred that: He was employed by Parola in behalf of its principal, Syncro Shipping, as an ordinary seaman on board the vessel MT OS Concord for a duration of seven months under a contract which commenced on March 24, 2011. Sometime on May 12, 2011, while he was on maintenance duty at the ballast tank, his right leg slipped from the three-step stringer and he fell and injured his right hand. He was immediately given first aid treatment and the next morning he was brought to Sim Seong Hospital in Yeosu, Korea where he was operated on and confined for a few days. He was discharged from the hospital on May 17, 2011 and repatriated to the Philippines. Upon his arrival in Manila, he reported to Parola for post-employment medical examination and was referred to the Sachly International Health Partners (SHIP) supervised by Dr. Susannah Ong-Salvador. He underwent a series of examinations and was treated as an out-patient. Throughout January 2012, he consulted with Dr. Manuel C. Jacinto, Jr. who diagnosed him to be suffering from "(f)racture, xxx displaced, comminuted, distal Radius R" and assessed his disability as total and permanent.[4] Due to his serious injuries, he is physically unfit to resume his work as a seafarer.

Rondario claimed entitlement to full permanent and total disability compensation of \$60,000.00 in accordance with the POEA Standard Employment Contract (POEA-SEC).

In their Position Paper,[5] Parola, Syncro Shipping and Oro (hereafter, petitioners) admitted that Rondario sustained injury on his right hand while on duty aboard OS Concord, however, they averred that: The incident happened because Rondario did not secure the safety hook of his harness, thus, "personnel deficiency" was the

cause of the mishap as shown in the Undesired Incident Report[6] and Incident Investigation Report.[7] Upon his repatriation, Rondario was immediately referred to the company-designated physician, Dr. Ong-Salvador of SHIP. Per Medical Progress Report, dated September 5, 2012, Rondario was scheduled to start with twelve sessions of physical therapy and to consult with the ortho-surgeon and physiatrist. On September 15, 2012, Dr. Ong-Salvador reported that Rondario's injury was showing good callous formation and was thus cleared from the ortho-surgeon standpoint. Thereafter, Rondario did not attend his follow-up consultations scheduled on September 26 and October 7, 2011 as shown in the Medical Reports[8] issued by Dr. Ong-Salvador. On October 19, 2011, Dr. Ong-Salvador, in her Reply to Medical Query, rendered a final disability grade 10 under the POEA Contract which connotes "loss of grasping power for small objects between the folds of finger of one hand." [9] Dr. Ong-Salvador further opined that Rondario was likely to be fit to work in 4-6 months had he followed the normal course of treatment. Rondario did not continue with his treatment and petitioners were surprised by the filing of the complaint.

In his Reply,[10] Rondario insisted on his claim, arguing that after more than 120 days of treatment, the company-designated physician confirmed that he was not fit to work but, in an effort to favor petitioners, she downgraded his injury to disability grade 10. In view of the clear bias of the company-designated physician, the assessment of his (Rondario) personal physician should prevail.

Petitioners countered in their Reply[11] that Rondario is disqualified from claiming compensation and benefits due to his wilful breach of safety procedures and his unjustified refusal to continue with the necessary physical therapy for his rehabilitation. They contended that the findings of Rondario's personal physician were made hastily after a single consultation and without any objective test conducted.

On June 8, 2012, Labor Arbiter (LA) Eduardo J. Carpio rendered a Decision[12] disposing thus:

WHEREFORE, premises considered, Complainant's claim for payment of full disability benefits is dismissed for lack of merit. Respondents are hereby ordered to pay complainant disability benefits equivalent to 20% of Grade 12 pursuant to the POEA Standard Employment Contract.

All other claims are dismissed for lack of merit.

SO ORDERED.

The LA held that by discontinuing his consultation and physical therapy sessions, Rondario prevented his injury from getting healed and it would be unfair and unjust to make the petitioners pay the full disability benefits. The LA gave more credence to the findings of the company-designated physician considering that she conducted a more extensive evaluation of the injury than Rondario's private physician.

On July 26, 2012, Rondario filed a Memorandum of Appeal[13] challenging the LA decision.

On January 22, 2013, the NLRC (Fourth Division) issued the assailed Decision setting aside the LA decision. The fallo reads:

WHEREFORE, premises considered, the appeal of the complainant is hereby granted.

Accordingly, the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new one ENTERED finding respondents jointly and solidarily liable to pay complainant permanent and total disability benefit in the sum of SIXTY THOUSAND US DOLLARS (US\$60,000.00) plus ten percent (10%) of the total monetary award as attorney's fees.

SO ORDERED.[14]

Petitioners filed a Motion for Reconsideration[15] but it was denied in the assailed Resolution dated March 12,

2013 for lack of merit;[16] hence, this petition on the following grounds:[17]

- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting private respondent total and permanent disability benefits. Public respondent failed to consider that disability is measured by gradings and only those falling under Grade 1 of the POEA Contract shall be considered as permanent and total.
- Private respondent is only suffering from a partial disability which defeats and negates the very claim for full disability benefits under the POEA Contract.
- Private respondent is guilty of Medical Abandonment which effectively caused the forfeiture of his right to claim disability benefits against Respondents.
- Private respondent can be declared fit to work had he not voluntarily committed medical abandonment.
- The proximate cause of private respondent's injury was his own willful act, that is, his failure to comply with the safety procedures of the Company.
- Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in giving credence and weight to the assessment of private respondent's personal physician;
- Private respondent's personal physician is not privy to the treatment of Private respondent's illness. His assessment was belatedly obtained on 30 January 2012 or about eight (8) months from private respondent's repatriation sometime May 2011;
- The assessment of private respondent's personal physician was rendered after a single fleeting consultation, without any objective test whatsoever;
- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in disregarding the jurisprudence dated 2012 April 16 of Ison vs. Crewserve Inc., et al., G.R. No. 173951, that is the company-designated physician who is entrusted with the task of assessing a seaman's disability;
- The Honorable Supreme Court holds that the finding of the company-designated physician who spent considerable time and effort in treating seafarer is entitled to great weight, credence and respect. This is also the very recent pronouncement of the Highest Court in the case of Ruben D. Andrada vs. Agemar Manning Agency, Inc., G.R. No. 194758, 24 October 2012;
- The Honorable Supreme Court in the recent case dated 2012 April 18 of Santiago v. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, upheld the finding of the company-designated physician when the employee fails to submit to a third physician as provided in the POEA Contract; and
- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding attorney's fees as private respondent's claim to it is bereft of factual, legal and equitable justification.

Petitioners prayed for the issuance of a TRO and/or writ of preliminary injunction to restrain private respondent from enforcing the assailed January 22, 2013 decision of the NLRC; however, the prayer for injunctive relief was denied in the Court's Resolution[18] dated May 27, 2013.

Rondario filed a Comment[19] to the petition on June 28, 2013 to which petitioners filed a Reply.[20]

RULING

There is no dispute that private respondent sustained injuries while he was on duty as an ordinary seaman on board OS Concord thus entitling him to disability benefits. Both the LA and the NLRC found that Rondario suffered from a work-related injury.

The issue is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Rondario's disability is total and permanent and in awarding attorney's fees.

Petitioners contend that Rondario only suffered from a partial disability which negates his claim for full disability benefits under the POEA Contract. They argue that the idea that a seafarer is totally and permanently disabled no matter his disability grading applies only where there is a CBA that provides for a permanent unfitness clause. They aver that the POEA-SEC only compensates disabilities on the basis of their gradings and not on the number of days a seafarer is under treatment or given sickness allowance.

There is no question that the POEA-SEC is deemed incorporated in every employment contract of Filipino seafarers embarking on ocean-going ships. However, the POEA-SEC is not the only guideline in resolving disability claims. In a number of cases, the Supreme Court has applied the Labor Code concept of permanent total disability to seafarers.[21] In the leading case of Vergara v. Hammonia Maritime Services Inc.[22] it was ruled that the POEA-SEC must be read in harmony with the pertinent provisions of the Labor Code on disability. An impediment should be characterized as total and permanent not only under the schedule of disabilities in Section 32 of the POEA-SEC but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation implementing Title II, Book IV of the Labor Code.[23]

The Labor Code provides:

ART. 192. PERMANENT TOTAL DISABILITY

x x x x x x x x

(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; (Underscoring supplied)

x x x x x x x x

Specifically, the rules referred to in the foregoing provision are Sections 1 and 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which state:

SECTION 1. Condition to entitlement. - An employee shall be entitled to an income benefit for temporary total disability if all the following conditions are satisfied:

- (1) He has been duly reported to the System;
- (2) He sustains the temporary total disability as a result of the injury or illness;
- (3) The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such illness or injury occurred before the employee is duly reported to the System.

SECTION 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Underscoring supplied)

Section 20 of the POEA-SEC[24] states:

SECTION 20. Compensation and Benefits.-

A. Compensation and Benefits for Injury and 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 x x x x

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. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month. (Underscoring supplied)

From the foregoing provisions, the following rules may be derived: (a) the 120 days provided under the POEA-SEC is the period given to the employer to determine fitness to work and if the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within the 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.[25]

In his Comment,[26] Rondario maintains that the aforecited Section 20 of the POEA-SEC provides a "maximum cure period" of 120 days only. He argues that despite the examination and treatment for more than 120 days as recommended by the company-designated physician he was still unfit to work, thus, he is entitled to full permanent and total disability benefits. The contention is untenable.

A seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days does not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.[27]

In the present case, Rondario was repatriated on May 17, 2011. After the lapse of the 120-day period, his injury still required treatment and he was scheduled for check-up and physical therapy. However, he did not return for such treatment and, upon the request of Parola, Dr. Ong-Salvador finally graded Rondario's disability as grade 10[28] on October 19, 2011 or 155 days after respondent's repatriation. Although the finding was made beyond the 120-day period it was well within the 240-day period. It is clear that Rondario's disability did not automatically become total and permanent under the law.

While it has been held that disability must be understood less on its medical significance but more on the loss of earning capacity[29] that ruling cannot be applied in Rondario's case. The evidence shows that the debilitating effects of his injury could have been mitigated or even cured if he had completed the recommended treatment and physical therapy. However, Rondario did not show up for his scheduled check-up on September 26, 2011 due to personal reasons. He also did not show up at the next scheduled check-up on October 7, 2011. Due to his lack of cooperation, Rondario deprived himself of the benefits of rehabilitation. The consequence of his omission is stated in the POEA-SEC, thus:

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. (Underscoring supplied)[30]

There is merit in the petitioners' contention that the NLRC committed grave abuse of discretion amounting to excess or lack of jurisdiction in giving more weight and credence to the findings of Rondario's physician than the diagnosis of the company-designated physician.

It is clear from the POEA-SEC that the company-designated physician shall have the authority to assess the nature and status of the injury or illness sustained by the seafarer and thereafter declare his fitness or unfitness to work. True, the company-designated physician's assessment shall not be binding upon the employer company and seafarer-claimant and respondent is not precluded from seeking a second, even third, medical opinion. However, the POEA-SEC provides for a procedure in case the claimant disagrees with the assessment. It provides that "(i)f 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." [31] In this case, no third doctor was agreed upon by the parties because Rondario hastily filed his complaint with the LA.

As found by the LA, Rondario's physician observed the injury on a single occasion and issued his Medical Certificate[32] on that basis. Further, as contended by petitioners, said certificate was issued eight (8) months after Rondario's repatriation. The certificate is also not supported by x-rays and diagnostic tests or procedures.[33] On the other hand, the findings of the company-designated physician as to the nature and extent of the injury are supported by an X-Ray Report on the right forearm (Annex J), X-Ray Report on the wrist (Annex J-1), another X-Ray Report on the "wrist APL" (Annex J-3), and a Medical Certification as to the proposed treatment of the injury. Unfortunately, as shown in the Medical Progress Reports,[34] Rondario did not show up for his scheduled physical therapy sessions, follow-ups with the orthosurgeon and consultations with the physiatrist, prompting Dr. Ong-Salvador to inform Parola of his "non-reporting status." Inasmuch as the findings of the company-designated physician are based on relevant and competent evidence and considering that there was no third doctor agreed upon by the parties whose findings would have been final and binding on them the findings of the company-designated physician must be upheld.[35]

In finding that Rondario's disability is total and permanent, the NLRC reasoned thus: "We are of the view that complainant suffered from permanent total disability for the loss of his grasping power had rendered him incapacitated to resume his work as a seafarer for as of date, even respondents (petitioners, herein) themselves failed to manifest with certainty that complainant could still qualify for re-hiring as one of their crew on board anyone of their vessels." [36]

We find that the NLRC committed grave abuse of discretion amounting to excess or lack of jurisdiction considering that its aforesaid finding is not supported by the evidence. As discussed earlier, the Reply to Medical Query (RMQ) issued by the company-designated physician shows that Rondario's disability was given a "final disability grade 10 under POEA contract which connotes loss of grasping power for small objects between the folds of finger of one hand and this is already permanent." The disability grade given by the company-designated physician conforms with Section 32 of the POEA-SEC. Grade 10 disability is only total and temporary, not total and permanent. In her RMQ, Dr. Ong-Salvador also stated: "Patient is likely to be fit to work in 4-6 months post-operatively had he followed the normal course of treatment." Ostensibly, the NLRC's ruling that petitioners did not state with certainty that Rondario could still qualify for rehiring is based on this finding. However, a reading of the RMQ shows that the uncertainty refers not to the nature of the disability which was rated as grade 10, but to the period of healing if the rehabilitative treatment is observed. Unfortunately, whether Rondario could

have fully recovered from his injury after rehabilitation can no longer be known because of his lack of cooperation and he only has himself to blame for it. Nonetheless, he should still be entitled to the benefits that correspond to a grade 10 disability as determined by the company-designated physician.

The award of attorney's fees must be deleted. As a matter of sound public policy, the award of attorney's fees remains the exception rather than the rule. It is necessary for the NLRC to make express findings of facts and law that would bring the case within the exceptions.[37] In this case, the NLRC ruled that Rondario was compelled to hire the services of a lawyer because Parola refused to pay his claims. However, the evidence shows that at the time that Rondario filed his complaint with the LA, Parola had not refused his claim. As noted by the LA, the records show that Rondario lodged his complaint on September 19, 2001, or even before the company-designated physician could issue an assessment of his disability.[38] Moreover, even assuming that Rondario was compelled to file his complaint his claim for total and permanent disability is not supported by the evidence. It cannot be said therefore that petitioners acted in bad faith in refusing to satisfy his claim.

WHEREFORE, premises considered, the petition is GRANTED. The National Labor Relations Commission's (Fourth Division) Decision dated January 22, 2013 and Resolution dated March 12, 2013 are ANNULLED and SET ASIDE. Judgment is hereby rendered ordering petitioners to pay private respondent Leo Andreu M. Rondario disability benefits corresponding to grade 10 (US\$50,000.00 x 20.15%) as provided in the POEA-SEC.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo, pp. 41-52.

[2] Id. at 54-56.

[3] Id. at 120-137.

[4] Id. at 154.

[5] Id. at 76-100.

[6] Id. at 107.

[7] Id. at 108.

[8] Id. at 113-114.

[9] Id..at 115.

[10] Id.at 165-187.

[11] Id. at 155-164.

[12] Id. at 196.

[13] Id. at 199-232.

[14] Id. at 51-52.

[15] Id. at 57-68.

[16] Id. at 55.

[17] Id. at 11-12.

[18] Id. at 256-259.

[19] Id. at 265-281.

[20] Id. at 289-302.

[21] Remigio v. NLRC, G.R. No. 159887, April 12, 2006, 487 SCRA 190, citing Philippine Transmarine Carriers v. NLRC, G.R. No. 123891, February 28, 2001, 353 SCRA 47.

[22] Jesus E. Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd, G.R. No. 172933, October 6, 2008.

[23] Kestrel Shipping Co., Inc./Capt. Amador P. Servillon and Atlantic Manning Ltd., v. Francisco D. Munar, G.R. No. 198501, January 30, 2013.

[24] POEA Memorandum Circular No. 10-10 dated October 26, 2010, Re: Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

[25] Id. citing Vergara, supra note 22.

[26] Rollo, pp. 265-282.

[27] Supra, note 23.

[28] Supra, note 9.

[29] Philimare, Inc./Marlow Navigation Co., Ltd. v. Sukanob, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448, citing Austria v. Court of Appeals, G.R. No. 146636, August 12, 2002, 387 SCRA 216, 221.

[30] POEA Memorandum Circular No. 10-10, Section 20(A)(3).

[31] POEA Memorandum Circular No. 10-10, Section 20 (A) (3), fourth paragraph.

[32] Rollo, p. 154

[33] Id. at 17.

[34] Rollo, pp. 111, 113-114.

[35] See Santiago v. Pacbasin Shipmanagement, Inc., G.R. No. 194677, April 18, 2012.

[36] Rollo, p. 51.

[37] Amelia Delas Santos v. Jebsen Maritime, Inc., G.R. No. 154185, November 22, 2005.

[38] Decision, Rollo at p. 195.

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