

CAREER PHILIPPINES SHIPMANAGEMENT INCORPORATED, AND/OR COLUMBIA SHIPMANAGEMENT LTD. AND VERLOU CARMELINO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) A...

Ponente: VILLON, J.

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VILLON, J.:

This Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assails on ground of grave abuse of discretion, the Decision dated July 16, 2012[1] rendered by the National Labor Relations Commission (NLRC)-2[nd] Division in LAC NO. 05-000486-12 which reversed the Decision dated April 27, 2012[2] of Labor Arbiter Pablo A. Gajardo, Jr. Likewise assailed is the Resolution dated August 31, 2012[3] which denied petitioners' Motion for Reconsideration.

The facts of the case, as culled from the records are as follows:

Petitioners Career Philippines Shipmanagment Incorporated, and Verlou Carmelino, in behalf of their foreign principal, petitioner Columbia Shipmanagement Ltd. hired private respondent Paulino M. Aldaba (or "private respondent") as Bosun for work on board the vessel M/V Cape Frio with a basic monthly salary of US\$564.00.[4]

On April 4, 2011, in the course of the performance of his duties, private respondent was accidentally hit by twisted chains made of heavy metal causing him to fall which resulted to "back injury".[5]

On April 7, 2011, when the vessel reached the Port of Hongkong, private respondent was examined at the Quality Health Care Medical Center, by Dr. Thomas Wong. The examination showed a fracture on private respondent's back, for which he was declared unfit to work. He was immediately repatriated.[6]

Upon arrival in Manila on April 11, 2011, petitioners referred private respondent to the company-designated physician at NGC Medical Specialist Inc. for treatment and rehabilitation. The x-ray examination on his back showed a "misalignment of distal sacrum that may suggest fracture".[7] Likewise, the x-ray examination on his thoracic spine revealed an "anterior wedging deformity, T11 Osteopenia and early degenerative osseus changes".[8]

After the continuing evaluation and medical treatment for 163 days, the company-designated physician issued a Medical Report dated September 29, 2011, to wit:

"1.

The patient has reached maximum medical cure.

2.

The final disability grading under the POEA schedule of disabilities is Grade 8- moderate rigidity or two thirds (2/3) loss of Thereafter, motion or lifting power of the trunk." [9]

Thereafter, private respondent consulted Dr. Misael Jonathan A. Ticman, an Orthopedic Surgeon and Diplomat, Philippine Board of Orthopedics, for an independent assessment of his medical condition. Dr. Ticman's findings showed that private respondent's injury resulted to his total permanent disability making him unfit to work as a seafarer in any capacity.[10]

Private respondent then demanded for total permanent disability compensation. Petitioners did not heed his demand. However, they expressed their willingness to compensate private respondent the amount corresponding to Grade 8 disability rating based on the medical findings of the company-designated physician.

Hence, private respondent filed a complaint for payment of total and permanent disability benefits, as well as expenses medical expenses with prayer for damages and attorney's fees against petitioners with the Arbitration Board of the NLRC, docketed as NLRC-NCR-OFW (M)- 12-19022-11.[11]

On April 27, 2012, Labor Arbiter Pablo A. Gajardo, Jr. rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to jointly and severally pay complainant Paulino M. Aldaba disability benefits in the amount of US\$16,795.00 which is equivalent to a Grade 8 disability under the POEA Contract, or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED."

Petitioners appealed to the NLRC. On July 16, 2012, the 2nd Division thereof, rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the Decision dated April 27, 2012 of Labor Arbiter Pablo A. Gajardo is hereby reversed. Respondents, jointly and severally, are hereby ordered to pay Complainant-Appellant by way of permanent and total disability compensation the amount of US\$60,000.00, pursuant to the POEA Standard Contract and to pay attorney's fees of 10% of the total award.

SO ORDERED."

Petitioners' Motion for Reconsideration of the assailed Decision was denied in the NLRC Resolution dated August 31, 2012, to wit:

"WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration is hereby DENIED for lack of merit.

No further Motion of similar nature shall be entertained.

SO ORDERED."

Hence, the present petition for certiorari, petitioners raising the following issues:[12]

I. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN CONSIDERING THE COMPLAINANT-APPELLANT TOTALLY AND PERMANENTLY DISABLED BY THE MERE LAPSE OF 120 DAYS. IN THE RECENT CASE, ALLEN H. SANTIAGO V. PACBASIN SHIPMANAGEMENT INC. (G.R. NO. 194677, APRIL 18, 2012), THE HONORABLE SUPREME COURT RULED THAT THE PRIVATE RESPONDENT CANNOT BE CONSIDERED TOTALLY AND PERMANENTLY DISABLED AS A PROPER PARTIAL DISABILITY GRADING WAS ASSESSED WITHIN THE 240 PERIOD.

II. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS

ERROR IN DISREGARDING SECTION 20-B (6) OF THE POEA CONTRACT WHICH PRESCRIBES THAT ANY DISABILITY WHETHER TOTAL OR PARTIAL SHALL BE COMPENSATED IN ACCORDANCE WITH THE SCHEDULE OF DISABILITY BENEFITS IN SECTION 32 OF THE POEA CONTRACT.

III. THE HONORABLE LABOR ARBITER CORRECTLY FOUND THAT DISABILITY BENEFITS IF ANY SHOULD NOT EXCEED THE GRADE 8 DISABILITY ASSESSMENT AS DETERMINED BY THE COMPANY DOCTOR IN ACCORDANCE WITH THE POEA CONTRACT AND RECENT JURISPRUDENCE.

IV. THE PRIVATE RESPONDENT'S PERSONAL PHYSICIAN DID NOT DECLARE ANY DISABILITY ASSESSMENT. SERIOUS ERROR WAS COMMITTED BY THE 2ND DIVISION WHEN IT STATED THAT PRIVATE PHYSICIAN DETERMINED A GRADE 1 DISABILITY ASSESSMENT.

V. THE HONORABLE 2[nd] DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN UPHOLDING THE SINGLE CONSULTATION MEDICAL REPORT OF SEAFARER'S PRIVATE PHYSICIAN OVER THE COMPLETE SET OF MEDICAL REPORTS OF THE COMPANY DESIGNATED PHYSICIAN SHOWING MONITORING AND TREATMENT FROM 12 APRIL 2011 UNTIL 29 SEPTEMBER 2011.

VI. THE HONORABLE 2[nd] DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN ADOPTING THE BARE AND BASELESS ALLEGATION OF FACTS AS STATED BY THE PRIVATE RESPONDENT DESPITE EVIDENCE PRESENTED TO THE CONTRARY.

VII. IN FACT, THE PRIVATE RESPONDENT IS IN THE FIRST INSTANCE IS NOT ENTITLED TO ANY DISABILITY BENEFITS AS HIS ALLEGED INJURY/DISABILITY WAS CAUSED BY:

A. HIS OWN WILLFUL ACT OR INTENTIONAL BREACH OF DUTY; AND

B. SAID INJURY/DISABILITY IS DIRECTLY ATTRIBUTABLE TO SAID WILLFUL ACT OR INTENTIONAL BREACH OF DUTY.

VIII. GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE HONORABLE LABOR COMMISSION IN AWARDING ATTORNEY'S FEES EQUAL TO TEN PERCENT (10%) OF THE MONETARY AWARD.

PETITIONER (SIC) IS NOT ENTITLED TO ATTORNEY'S FEES THERE BEING NO BAD FAITH ON THE PART OF PETITIONERS IN DENYING THE FORMER'S EXORBITANT CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS.

The petition is meritorious.

Undisputedly, private respondent's injury is work-related and he is, therefore, entitled to disability benefits. The issue now in this petition hinges on the classification of such injury in order to determine the appropriate disability benefits due him.

The Labor Arbiter sustained petitioner's entitlement to disability benefits in the amount corresponding to Grade 8 disability rating, as assessed by the company-designated physician. However, on appeal, the NLRC ruled that the recommendation of private respondent's doctor-of-choice was tenable and awarded him total and permanent disability benefits corresponding to Grade 1 disability rating.

Petitioners now argued that private respondent's medical condition does not merit a Grade 1 disability rating as to entitle him to total permanent disability benefits considering that the company-designated physician already made a Grade 8 disability rating well within the 240-day period.

We agree with the petitioners.

Under Section 32 of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, even those injuries or disabilities with a grading only of from 2 to 14, hence, partial and permanent, if they incapacitated a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, would legally entitle him to total and permanent disability benefits.

Thus, a temporary total disability only becomes permanent when so declared by the company-designated physician within the period that he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment without a declaration of either fitness to work or the existence of a permanent disability.[13]

In the case at bar, the company-designated physician made a disability rating on the 163rd day of medical treatment, which was beyond the 120-day temporary total disability period but, nevertheless, well-within the 240-day period. Private respondent, apparently dissatisfied, sought further medical treatment from a doctor of his own choice who eventually opined that he could no longer resume work as a seafarer due to a permanent total disability.

Section 20-B (3) of the POEA-SEC clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. A seafarer may consult a doctor of his choice and in case the latter's findings differ from those of the company-designated physician, the opinion of a third doctor chosen by both parties may be secured and such shall be final and binding.[14] The same procedure should be observed in case a seafarer, believing that he is totally and permanently disabled, disagrees with the declaration of the company-designated physician that he is partially and permanently disabled.[15]

Private respondent did not avail of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. While private respondent had the right to seek a second opinion, the final determination of whose decision must prevail should be done in accordance with the prescribed procedure. Not having complied with the procedure mandated by law, this Court is constrained to uphold the certification made by the company-designated physician.

At any rate, Dr. Ticman's findings should not be given more weight than those of the company-designated physician. Records show that private respondent underwent series of medical treatment as supervised by the company-designated physician. He was even referred to an orthopedic surgeon for an in-depth treatment. The company-designated physician had a detailed knowledge of his medical condition and monitored the progress of his treatment. After 163 days of medical treatment, the company-designated physician issued the appropriate disability rating based on the medical records available and the results obtained therefrom. More telling is the fact that they were independent medical practitioners whose expertise and knowledge were never disputed. Too, the results of their examination contested by private respondent not being satisfied by the given disability rating, he immediately consulted a doctor of his own choice. Clearly then, as between the findings of the company-designated physician who examined private respondent throughout the duration of his illness/injury and those of a doctor who merely examined him for the purpose of determining his disability benefits, the former should prevail. Thus, We sustain the Labor Arbiter's findings and conclusions, to wit:

"This Office holds that the complainant is entitled to US\$16,795.00 or the equivalent of the Grade 8 Disability Assessment of the company doctor.

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"The parties are governed by the POEA Contract and both parties have cited Section 20.B.6 which provides that:

'In case of permanent total or partial disability of the seafarer during the term of the employment caused by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of this Contract.'

"Hence, regardless of whether the disability is partial or total, temporary or permanent, compensation should be based on the schedule of benefits (Gradings) provided under the POEA Contract. In this case, while the company doctor has assessed a Grade 8 disability – moderate rigidity of two-third (2/3) loss of motion or lifting power of the trunk in accordance with the schedule found in Section 32 of the POEA Contract, Dr. Ticman has not provided any degree of disability.

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"Further, in *Magsaysay Maritime Corporation and/or Wastefel-Larsen Management A/S vs Oberto S. Lobusa* (G.R. No. 177578, January 25, 2012), the Supreme Court ruled that:

'According to Vergara, these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand with the first paragraph of Section 20 (B) (3) of the 2000 POEA Standard Employment Contract which reads:

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.'

Vergara continues:

'As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

"Proceeding from above, the complainant cannot be automatically declared entitled to permanent total disability benefits because of a mere lapse of 120 days. This Office notes that the requirement of a proper disability assesment within the prescribed 240 period was complied with in the instant case." [16]

Finally, this Court is not convinced by petitioners' submission that private respondent's injury/illness was caused by his willful and/or intentional act knowing fully well that the consequences thereof would jeopardize not only his employment but his livelihood and even the subsistence of his family.

However, it bears reiteration that attorney's fees are not awarded as a matter of course every time a party wins. No premium is placed on the right to litigate.[17] Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[18] Thus, as the Labor Arbiter correctly ruled, "complainant's claim for damages and attorney's fees

cannot be granted."[19]

WHEREFORE, premises considered, the present Petition for Certiorari is GRANTED. The assailed Decision dated July 16, 2012 and the Resolution dated August 31, 2012 of the National Labor Relations Commission (NLRC)-2nd Division in LAC NO. 05-000486-12 are hereby REVERSED and SET ASIDE. The Decision dated April 27, 2012 of the Labor Arbiter in NLRC-NCR-OFW (M) 12-19022011 is hereby REINSTATED.

SO ORDERED.

Sadang, M.Q.C.,[*] and Corales, P.B., JJ., concur.

[*] Vvice Justice Florito S. Macalino per Office Order No. 469-14-ABR dated November 14, 2014

[1] Rollo, pp. 50-60

[2] Rollo, pp. 67-79

[3] Rollo, pp. 62-64

[4] Annex "A", Contract of Employment, Rollo, p. 170

[5] Annex "B", Incident Report, Rollo, pp. 171-172

[6] Annex "C", Medical Examination Report dated April 7, 2011, Rollo, p. 173

[7] Annex "D", Radiographic Report dated May 10, 2011, Rollo, p. 174

[8] Annex "E", "E-1", Radiographic Report, Rollo, p. 175

[9] Rollo, p. 160

[10] Annex "B-1", "B-2" dated February 6, 2012, Rollo, pp. 231-232

[11] Rollo, pp. 103-104

[12] Rollo, pp. 13-15

[13] Fair Shipping Corporation vs Joselito T. Medel, GR No. 177907, August 29, 2012

[14] Section 20 [3]. Compensation and Benefits for Injury or Illness. — xxx xxx xxx

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 binding on both parties.

[15] Vergara vs Hammonia Maritime Services, Inc., 567 SCRA 610

[16] Decision (Labor Arbiter) dated April 27, 2012, Rollo, pp. 74-79

[17] Benedicto vs Villaflores, 632 SCRA 446

[18] ABS-CBN Broadcasting Corp. vs Court of Appeals, 301 SCRA 572

[19] Decision dated April 27, 2012, Rollo, p. 79

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