

MAERSK-FILIPINAS CREWING, INCORPORATED, MAILYN P. BORILLO AND COPENHAGEN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION) AND ALFREDO B. BAUTISTA, RESPONDE...

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is a Petition for Certiorari assailing, on the ground of grave abuse of discretion amounting to lack of or excess of jurisdiction, the Decision[1] dated 29 December 2011 of public respondent National Labor Relations Commission (NLRC) rendered in NLRC LAC No. 06-000555-11 that affirmed the award to private respondent of total permanent disability benefit and sickness allowance. The dispositive portion reads:

“x x x

WHEREFORE, premises considered, the appeal is DISMISSED and the assailed decision of Labor Arbiter Lilia S. Savari is AFFIRMED in all respects except for the award of attorney's fees which is deleted.”

Also assailed is NLRC Resolution[2] dated 29 March 2012, denying petitioners' motion for reconsideration.

THE FACTS

On 08 April 2010, petitioner Maersk-Filipinas Crewing, Inc. re-employed[3] private respondent Alfredo Bautista as Able Seaman, for and on behalf of its foreign principal – herein petitioner Copenhagen/A.P. Moller A/S – for a period of six (6) months with a monthly salary of US\$585.00. The contract was executed and approved pursuant to the Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA Standard Contract).

In May 2010, while performing his work on board M/V Richard Maersk, private respondent experienced severe pain on his back and numbness on his right leg that radiated to his feet while performing his task. Despite medication, private respondent's condition did not improve. In the second week of June 2010, private respondent was admitted to a local hospital in Lithuania where he was diagnosed to be suffering from spinal injury and was declared to be unfit for work.

Consequently, private respondent was repatriated to the Philippines on 20 June 2010. Upon arrival in Manila the following day, private respondent reported to his employer and was referred[4] to their accredited physician Dr. Natalio G. Alegre II, of the Alegre Medical Clinic for further evaluation and treatment. Dr. Alegre initially diagnosed[5] private respondent to have Low Back Pain Secondary to a Herniated Disc, and asked the latter to consult a rehabilitation specialist and undergo Magnetic Resonance Imaging (MRI) on his lumbosacral spine. Accordingly, in July 2010, private respondent was examined[6] by an orthopedic specialist and underwent[7] a Radiology and MRI at St. Luke's Medical Center. He was also subjected[8] to physical therapy and drug medication from August to September 2010 by petitioners' accredited doctors.

However, despite months of extensive and continuous evaluation, monitoring and treatment, private respondent's condition did not improve. Thus, on 24 September 2010, Dr. Alegre issued private respondent's disability assessment of Grade 8 or 2/3 loss of motion on lifting power of the trunk[9] under the POEA Standard Contract. He was likewise advised to continue with his therapy and medication.

Not convinced of the assessment by the company doctors, private respondent consulted a private physician - Dr. Manuel Jacinto, Jr. - for a second opinion. After evaluation, Dr. Jacinto issued the Medical Certificate[10] dated 08 October 2010 certifying that private respondent has Central Disc Herniation in his spine which is classified as total and permanent disability, and thus, declared him to be unfit for sea duties.

Based on Dr. Jacinto's findings, private respondent asked petitioners for total permanent disability benefits, but the claim was denied. Hence, on 14 October 2010, private respondent lodged the present complaint for payment of total permanent disability benefits under the Collective Bargaining Agreement of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP-CBA), balance of sick wages, as well as damages and attorney's fees against petitioners.

On 13 May 2011, the Labor Arbiter rendered a Decision in favor of private respondent, granting, with the exception of damages, his money claims, but basing, however, the award of his total and permanent disability benefits under the POEA Standard Contract, and not on AMOSUP-CBA, the dispositive portion of which reads:

“x x x

WHEREFORE, a Decision is hereby rendered ordering Respondents jointly and severally to pay complainant US\$60,000.00 as total permanent disability benefit, US\$1,170.00 as balance in sick wages plus 10% of the total award as and by way of attorney's fees.”

Both parties appealed to the NLRC. On 29 December 2011, the NLRC rendered the now assailed Decision affirming the Labor Arbiter's decision, but deleting, however, the award of attorney's fees. It held that private respondent was entitled to total permanent disability benefit since he could no longer work anymore as a seafarer after sustaining said injury while in petitioners' employ nor can he be employed in any other job elsewhere. This disposition finds support in the case of *Seagull Maritime Corporation v. Dee*[11] where the Supreme Court held that there was total and permanent disability when seafarers became disabled to earn wages in the same kind of work they were trained or accustomed to perform. It also ruled that the company-designated physician was not the only one who can give disability ratings since the law grants private respondent the right to seek second opinion from other doctors. It further denied petitioners' claim that they already paid in full private respondent's sickness allowance for lack of evidence.

Petitioners moved for reconsideration, but the same was denied in the now assailed Resolution dated 29 March 2012.

In this petition, it is argued that:

PUBLIC RESPONDENT, IN REFUSING TO DISMISS THE ABOVE-CAPTIONED LABOR COMPLAINT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION.

I.

THE MEDICAL OPINION ISSUED BY PETITIONER SHIP-OWNER'S ACCREDITED DOCTORS ON PRIVATE RESPONDENT'S MEDICAL CONDITION IS FIRMLY GROUNDED AND, AS SUCH, ITS PLAIN IMPORT SHOULD HAVE BEEN ACCORDED SUPERIOR EVIDENTIARY WEIGHT.

II.

THE RELIANCE OF PUBLIC RESPONDENT ON THE DEFINITION OF TOTAL PERMANENT DISABILITY AS ENUNCIATED IN SEAGULL MARITIME CORPORATION V. JAYCEE DEE AND NATIONAL LABOR RELATIONS COMMISSION, G.R. NO. 165156, 2 APRIL 2007 IS MISPLACED. ARTICLE 192 OF THE LABOR CODE IS INAPPLICABLE TO SEAFARERS.

III.

ASSUMING ARGUENDO THAT THE PRESUMPTIVE PERMANENT DISABILITY RULE LAID DOWN IN ARTICLE 192 OF THE LABOR CODE IS APPLICABLE TO SEAFARERS, IT SHOULD BE NOTED THAT THE ACCREDITED DOCTORS OF PETITIONER SHIP-OWNER ISSUED A FINAL ASSESSMENT OF PRIVATE RESPONDENT'S MEDICAL CONDITION WITHIN ONE HUNDRED TWENTY (120) DAYS. UPON ISSUANCE OF THE ASSESSMENT, PRIVATE RESPONDENT'S DISABILITY CAN NO LONGER BE PRESUMED TO BE TOTAL AND PERMANENT.

OUR RULING

The petition is devoid of merit.

Deemed written in every Filipino seafarer's employment contract is the POEA Standard Employment Contract. This is a set of standard provisions established and implemented by the POEA and which contains the minimum requirements prescribed by the government for employment of seafarers.[12] It is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels;[13] and as such, its provisions should be construed and applied fairly, reasonably and liberally in their favor to fully carry into effect its beneficent purpose.[14]

Section 20 (B) of the POEA Standard Contract provides the conditions for the award of disability benefits to seafarers for injury or illness sustained. Thus,

“x x x

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

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.

x x x”

From the foregoing, two (2) requirements should concur in order for a disability to be compensable, to wit: a.) that the injury or illness must be work-related; and b.) that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[15] Otherwise stated, to be entitled to compensation and benefits under POEA Standard Contract, it is not sufficient to establish that seafarer's injury or illness has rendered him or her permanently or partially disabled, but it must likewise be shown that there is a causal connection between seafarer's illness or injury and the work for which he or she had been contracted for.[16]

In this case, We agree with public respondent NLRC that private respondent is entitled to claim disability benefits under the POEA Standard Contract. It is evident that the spine injury suffered by private respondent is work-related since it was sustained and/or became aggravated while he was discharging the strenuous functions of Able Seaman on-board his assigned vessel during the tenure of his employment with petitioners. In point of fact, this is not denied by petitioners; hence, the work-related character of such injury is conclusive.

It was also evident that private respondent duly complied with the mandatory requirement of the POEA Standard Contract by presenting himself to petitioners' physician for a post-medical examination within three (3) days after repatriation. By reason thereof, petitioners' liability to grant disability pay to private respondent is indubitable.

Now, the more pressing issue is to determine the correct disability grading of private respondent's injury in the light of the contrasting rating of the physician. Petitioners assert that private respondent is entitled to partial and permanent disability benefit of only Grade 8 under the POEA Standard Contract since it was the disability assessment issued by company-designated physician whose findings are accurate and reliable as he extensively monitored and treated private respondent since his repatriation. On the other hand, private respondent posits that he is entitled to permanent total disability benefits considering the gravity or seriousness of his injury that rendered him unable to perform his usual work. In the process, he disputes the evaluation of the company-designated doctor for being inaccurate and obviously biased towards petitioners.

After a careful consideration of the records, We affirm the conclusion of public respondent and the labor arbiter that private respondent is entitled to total permanent disability benefits. Under the Labor Code, permanent disability is the inability of a worker to perform his or her job for more than one hundred twenty (120) days, regardless of whether he or she loses the use of any part of the body; while a total disability means the disablement of the worker to earn wages in the same kind of work he or she was trained or accustomed to perform, or any other kind of work which a person of his or her mentality and attainments could do.[17] Indeed, total disability does not mean absolute helplessness nor does it require that the workers be completely disabled or totally paralyzed.[18] What is necessary is that the injury should be such that the workers could not pursue their usual work and earn therefrom.[19]

Prescinding from these jurisprudential guides, it is Our view that private respondent's spine injury is classified as total and permanent disability because it prevented him from being re-employed as an Able Seaman on-board petitioners' ship, or for that matter, from being employed in the same kind of job elsewhere for over one hundred twenty (120) days from the time it was sustained in May 2010. Indeed, the fact that private respondent is now unfit or incapacitated for sea service is validated by the separate findings[20] of parties' respective doctors, indicating that private respondent is now incapable of performing the strenuous physical activities required of his former post as Able Seaman on account of the tenderness and restriction of movement of his lower spine and trunk. In fact, up to this time, there is no showing that private respondent became employed in any other available work outside of the maritime industry, or that he was able to engage in a livelihood for himself and his family since being repatriated. Hence, taking into consideration the degree and extent of his injury, private respondent is entitled to total permanent disability benefit of Grade 1 under the POEA Standard Contract.

Petitioners argue that the reliance of the NLRC in the case of *Seagull Maritime Corporation vs. Jaycee Dee* to justify the award of total permanent disability benefits is misplaced because the Labor Code definition of total permanent disability does not apply to seafarers claiming under the POEA Standard Contract. Further, even granting *arguendo* that the definition applies, the grant of total permanent disability benefits should still be denied since private respondent's injury could not be deemed anymore as total and permanent due to company-designated doctor's timely release of his disability assessment within the 120-day presumptive period from the time of repatriation.

The argument does not persuade. It should be emphasized that the Labor Code's provision on total permanent disability applies with equal force to seafarers.[21] Verily, entitlement of seafarers on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.[22] The material statutory provisions are Article 191 – 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.[23] In fact, the Supreme Court used the Labor Code concept of total permanent disability to Filipino seafarers in accordance with the avowed policy of the State to give maximum aid and full protection to labor, it holding that what is being compensated is not the injury or illness but the inability to work resulting in the impairment of one's earning capacity.[24] Truly, the applicability of Labor Code provision on permanent disability, particularly Article 192(c) (1), is already a settled matter.[25] Also, the fact that the company-designated physician gave private respondent's disability grading ninety-six (96) days after repatriation (or within the 120-day period stated under Article 192 of Labor Code) does not negate the total and permanent character of said injury considering that what determines the nature or degree of one's injury is not when the disability assessment was issued, but, rather, what is the seafarer's condition after sustaining the injury. Indeed, the fact that private respondent became disabled to return to his usual or customary work made his injury permanent and total, regardless of the date of issuance of disability grading. If the seafarer's condition remains the same despite the lapse of 120 days of post-employment medical exam and treatment without him/her being employed at his/her usual job, then it is certainly total permanent disability.[26]

Moreover, petitioners are mistaken in asserting that it is only the company-designated physician that can assess with finality the disability of private respondent. Although it is the company-designated doctor who should declare that a seafarer suffered permanent disability during employment, it does not deprive a seafarer, however, of his right to seek a second opinion.[27] In such a case, a seafarer may consult a physician of his choice.[28] In case of disagreement between the two (2) assessments, the parties may agree to refer the seafarer to a third doctor, whose evaluation shall be final and binding on them.[29]

In this instance, there was no third doctor appointed by the parties to settle the differences between the disability assessments of the company-designated physician and private respondent's doctor-of-choice. In such a case, the more equitable solution is to review the inherent merits of both physicians' respective findings to ascertain the true disability grading of the private respondent, rather than just to hastily and blindly accept the company-designated physicians' findings, as what petitioners suggest. The disability assessments of the parties' respective doctors are not final, binding or conclusive on the seafarers, labor tribunals or the courts since their findings shall be first evaluated on their inherent merits.[30]

All told, after evaluating the contrasting medical findings of the parties' respective physicians, We agree with the ruling of public respondent that it is the disability assessment of private respondent's doctor-of-choice which is more consistent with his true condition. While it is conceded that the company-designated doctor had conducted extensive and rigorous monitoring and treatment of private respondent since his repatriation, still, his assessment cannot be upheld as it simply downplayed or downgraded the disability grading of his injury, and it was not in accord with his present state of health. In the same vein, even though private respondent's doctor-of-choice

examined him only once, his evaluation was still based on company-designated doctor's findings. Notably, given that both doctors based their assessments on the same medical findings, the interpretation made by the independent physician of private respondent appears to be more accurate and reflective of his condition since it considered his earning capabilities and the degree and extent of his injury. Disability should be understood more on the loss of earning capacity, rather than on the medical significance of the disability.[31] It is because in disability compensation, it is not the injury that is compensated, rather, it is the incapacity to work resulting in the impairment of one's earning capacity.[32]

As for the sickness allowance, We are in agreement with public respondent that petitioners have failed to prove that these have already been paid in full. One who pleads payment has the burden of proving it, and even where employees must allege non-payment, the general rule is that the burden rests on employers to prove payment, rather than on workers to prove non-payment.[33] It is because the pertinent files, payrolls, records, remittances and other similar documents are not in the possession of the employee, but in the employer's custody and absolute control.[34] Indeed, none of the foregoing documents was adduced by petitioners to show payment of the balance of private respondent's sickness allowance. As such, private respondent should be paid of the same pursuant to the POEA Standard Contract.

WHEREFORE, the foregoing considered, the petition is DENIED. The Decision dated 29 December 2011 and the Resolution dated 29 March 2012 of public respondent NLRC are SUSTAINED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Rollo, pp. 47-58.

[2] Rollo, pp. 60-62.

[3] Contract of Employment, Id., p. 72.

[4] Medical Referral, Rollo, p. 95.

[5] Medical Certificate dated 22 June 2010, Id., pp. 96-97.

[6] Medical Certificate dated 08 July 2010, Id., p. 101.

[7] Medical Certificate dated 30 July 2010, Id., p. 103.

[8] Medical Certificates dated 05 August 2010 and 02, 14 and 16 September 2010, Id., pp. 104-107.

[9] Medical Certificate, Rollo, pp. 108-109.

[10] Id., p. 161.

[11] G.R. No. 165156, April 2, 2007.

[12] *Jebsens Maritime, Inc. vs. Undag*, G.R. No. 191491, December 14, 2011.

[13] *Bergesen D.Y. Philippines, Inc. vs. Estenzo*, G.R. No. 141269, December 9, 2005.

[14] *Bergesen D.Y. Philippines, Inc. vs. Estenzo*, *supra*.

[15] *Magsaysay Maritime Corporation vs. National Labor Relations Commission*, G.R. No. 186180, March 22, 2010.

- [16] Masangkay vs. Trans-Global Maritime Agency, Inc., G.R. No. 172800, October 17, 2008.
- [17] Philimare, Inc./Marlow Navigation Co., Ltd. vs. Suganob, G.R. No. 168753, July 9, 2008, Crystal Shipping, Inc. vs. Natividad, G.R. No. 154798, October 20, 2005, Seagull Maritime Corp. vs. Dee, *supra*.
- [18] Fil-Star Maritime Corporation vs. Rosete, G.R. No. 192686, November 23, 2011.
- [19] Fil-Star Maritime Corporation vs. Rosete, *supra*.
- [20] Medical Certificates of Dr. Alegre, at Note 8, and Dr. Jacinto, Jr., at Note 10.
- [21] Valenzona vs. Fair Shipping Corporation, G.R. No. 176884, October 19, 2011.
- [22] Philasia Shipping Agency Corporation vs. Tomacruz, G.R. No. 181180, August 15, 2012.
- [23] Magsaysay Maritime Corporation vs. National Labor Relations Commission, *supra*.
- [24] Quitariano vs. Jebsens Maritime, Inc., G.R. No. 179868, January 21, 2010.
- [25] Philasia Shipping Agency Corporation vs. Tomacruz, *supra*.
- [26] Oriental Shipmanagement Co., Inc. vs. Bastol, G.R. No. 186289, June 29, 2010.
- [[27]] NYK-FIL Ship Management, Inc. vs. Talavera, G.R. No. 175894, November 14, 2008.
- [28] Seagull Maritime Corp. vs. Dee, *supra*, at Note 11.
- [29] Seagull Maritime Corp. vs. Dee, *supra*, at Note 11.
- [30] Wallem Maritime Services, Inc. vs. Tanawan, G.R. No. 160444, August 29, 2012.
- [31] Wallem Maritime Services, Inc. vs. Tanawan, *supra*.
- [32] Cabuyoc vs. Inter-Orient Navigation Shipmanagement, Inc., G.R. No. 166649, November 24, 2006.
- [33] Mayon Hotel & Restaurant vs. Adana, G.R. No. 157634, May 16, 2005.
- [34] G & M (Phil.), Inc. vs. Batomalaque, G.R. No. 151849, June 23, 2005.

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