

CTI GROUP PHILIPPINES, INC., MARIA FE YUDE AND/OR CARNIVAL CRUISE LINE, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND RHODERICK U. INIBA, JR., RESPONDENTS.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Resolution[1] dated February 3, 2012 and the Resolution[2] dated March 19, 2012, both issued by the National Labor Relations Commission (NLRC) in NLRC LAC NO. 10-000904-11, NLRC OFW CASE NO. (M) 03-04242-11 entitled “Rhoderick U. Iniba Jr. v. CTI Group Philippines, Inc. and/or Carnival Cruise line and/or Maria Fe Yude”. The dispositive portion of the Resolution dated February 3, 2012 reads, as follows:

X X X

"WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered declaring the appeal without merit and the appealed decision AFFIRMED. "SO ORDERED."

X X X X

On the other hand, the dispositive portion of the Resolution dated March 19, 2012 reads, as follows:

X X X

"WHEREFORE, the motion for reconsideration is denied for lack of merit. “NO FURTHER MOTION OF SIMILAR NATURE SHALL BE ENTERTAINED.

"SO ORDERED."

X X X

THE ANTECEDENTS

This case stemmed from the Complaint filed by Rhoderick U. Iniba before the Labor Arbiter against CTI Group Philippines, Inc. and/or Carnival Cruise Line and/or Maria Fe Yude, petitioners herein, for recovery of permanent disability compensation under POEA Standard Employment Contract with claim for moral and exemplary damages and attorney's fees.

In his position paper,[3] Rhoderick U. Iniba, as complainant, alleged that he had been employed by CTI Group, on behalf of its principal Carnival Cruise Line, Miami Florida, U.S.A., as Assistant Waiter with a basic salary of US\$1,200.00 a month exclusive of overtime and other benefits. His employment contract has commenced on July 24, 2010. On the last week of July of the same year, complainant complained of on and off right knee pain on the left. He reported his physical and medical condition to his Supervisor who advised him to go to the Infirmary for

medical check-up and treatment. He was given medications which afforded temporary relief. Despite medications, complainant's condition worsened so he was referred to the ship's doctor who advised him to consult a doctor at the Port of Jamaica for further examination and treatment.

On November 3, 2010, complainant underwent MRI for further evaluation due to persistence of symptoms with the following results: "Anterior cruciate ligament repair appear intact. Degenerative signal intensity in the posterior horn of the medial meniscus."

Complainant was medically repatriated on November 14, 2010 and arrived in Manila on November 16, 2010. Upon arrival in Manila, he immediately reported to CTI Group for his post employment medical examination. The latter referred complainant to the company-accredited physician at the Metropolitan Medical Center.

On November 18, 2010, complainant was seen and examined by Dr. Mylene Cruz-Balbon, company-designated physician, who diagnosed complainant with "degenerative changes, posterior horn, medial meniscus, right knee." Dr. Cruz-Balbon recommended complainant to undergo Diagnostic Arthroscopy Notch Plasty & Debridement, Right Knee. Thereafter, he was treated as an out-patient.

On January 4, 2011, the complainant was admitted due to T/C Meniscal Tear-S/P ACL Repair Right Knee and he underwent Diagnostic Arthroscopy, Notch Plasty & Debridement the following day under the supervision of Dr. D. Wee. He was discharged from the hospital on January 7, 2011.

On February 9, 2011, complainant again consulted Dr. Mylene Cruz-Balbon and was diagnosed with "degenerative changes, posterior horn, medial meniscus, right knee; s/p diagnostic arthroscopy, notoplasty and debridement, right knee."

On June 1, 2011, complainant consulted Dr. Manuel C. Jacinto, Jr. of Sta. Teresita General Hospital, an independent practitioner, to seek a second opinion. After examination, he was found to be suffering from "degenerative changes, posterior horn, medial meniscus right knee".[4] Dr. Jacinto, Jr. issued the following remarks:

x x x

"Patient's condition on discharge: no improvement was noted on the patient.

Remarks: Patient's condition started at work and symptoms of pain right knee and limitation of motion and swelling persisted despite management and medications, thus, he was assessed to be physically unfit to go back to work. [/] Total Permanent"

x x x

Because of this injury sustained by complainant which was deteriorating, he claims that he is no longer fit to resume his work as seafarer as an aftermath of his clavicle injury.

For their part, petitioners alleged in their Position Paper[5] that in November 2010, complainant complained of a pain radiating from his right knee to his foot. He underwent MRI and was diagnosed as having degenerative signal intensity in the posterior horn of the medial meniscus. He was medically repatriated on November 14, 2010 and referred to the Metropolitan Medical Center for his medical treatment and evaluation.

On April 27, 2011, after several months of treatment, the orthopedic surgeon who attended to complainant's medical treatment finally declared complainant as stable with the corresponding Grade 10 disability.[6]

For several months, complainant was under the care of the company-designated physician. During the entire period, complainant underwent extensive medications and treatment. The company-designated physician made a

regular report of the progress of complainant's recovery from November 18, 2010 to April 27, 2011. Despite ongoing medical treatment, complainant instituted a complaint on March 14, 2011 asking for disability benefits, moral and exemplary damages and attorney's fees and other benefits provided by law.[7]

The issues put to fore are the following: (1) whether or not complainant is entitled to permanent total disability compensation of USD60,000.00; and (2) whether or not complainant is entitled to his other monetary claims.

On July 25, 2011, the labor arbiter rendered a Decision, the dispositive portion of which reads, as follows:

X X X

“WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay jointly and severally complainant the sum of USD60,000.00, or its peso equivalent at the time of payment, representing his permanent total disability compensation; and attorney's fees equivalent to 10% of the monetary award.

“All other claims are dismissed for lack of merit.

“SO ORDERED.”

X X X

The labor arbiter held that the Medical Certificate issued by the company-designated doctors on April 27, 2011, which reads:

X X X

“This is a follow-up report on Asst. Team waiter Rhoderick U. Iniba who was initially seen here at Metropolitan Medical Center on November 18, 2010 and was diagnosed to have Degenerative Changes, Posterior Horn, Medial Meniscus, Right Knee; S/P Anterior Cruciate Ligament Repair, Right Knee; S/P Diagnostic Arthroscopy, Notchplasty and Debridement, Right Knee on January 5, 2011.

“He is under the care of an Orthopedic Surgeon and Physiatrist.

“Patient still complains of right knee pain.

“Functional assessment done showed weakness of the right knee extensors. There is note of crepitations on the knee towards flexion and extension. He has minimal difficulty doing ascending and descending stairs, prolonged standing and walking > 20 minutes and jumping.

“The specialist opines that patient has already reached maximum medical improvement.”

X X X

was issued after the lapse of more than five (5) months reckoned from complainants' repatriation on November 14, 2010. While complainant still complained of a right knee pain, the company-designated specialist opined that complainant has already reached maximum medical improvement, making it clear that the latter was not yet cured despite the lapse of more than 120 days under the care and treatment of the company-designated physicians. He is therefore unfit to go back to work as Assistant Team Waiter. The labor arbiter found the medical assessment of complainant's private doctor, Dr. Manuel C. Jacinto, Jr. to be more credible as it is reflective of the actual physical and medical condition of the complainant, since no improvement in his medical condition was noted as of June 1, 2011. The labor arbiter concluded that, since the injury of complainant is such that he cannot pursue his usual work and earn therefrom, his disability is total, and since it lasts continuously for more than 120 days, the total disability is permanent. Complainant is therefore entitled to a disability compensation of USD60,000.00. As to the issue of damages, the labor arbiter found no justification to award moral and exemplary damages in favor of

complainant for want of evidence of bad faith on the part of the employer. He was however granted attorney's fees equivalent to 10% of the monetary award.

CTI Group Philippines, Inc., Maria Fe Yude and/or Carnival Cruise Line filed their Memorandum of Appeal with the NLRC, alleging the following arguments:

1. The Labor Arbiter gravely erred in dispensing with the schedule of disabilities and impediments for injuries suffered as well as its corresponding grades.
2. The Labor Arbiter gravely erred when it declared complainant-appellee as permanently disabled based solely on the medical certificate issued by Dr. Manuel Jacinto, Jr., the latter's own physician.
3. The Labor Arbiter gravely erred when it granted 10% attorney's fees despite his own findings of facts that respondents-appellants were not guilty of bad faith.

The NLRC ruled that complainant, having been disabled to work and treated for more than four (4) months or 120 days without any valid exceptional reason for its extension, the disability is total and permanent, entitling him to Grade 1 disability benefits. The NLRC also upheld the award of attorney's fees in favor of complainant.

CTI Group Philippines, Inc. and/or Carnival Cruise Line and/or Maria Fe Yude filed a Motion for Reconsideration but the same was denied by the NLRC through the Resolution dated March 19, 2012. Hence, this petition.

THE ISSUES BEFORE US

Petitioners come to Us praying for the reversal of the assailed Resolutions and for the dismissal of the Complaint, raising the following posers, to wit:

I

WHETHER OR NOT THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DECLARED THAT PRIVATE RESPONDENT IS ENTITLED TO FULL DISABILITY BENEFITS BECAUSE HE WAS UNABLE TO RETURN TO WORK FOR MORE THAN 120 DAYS.

II

WHETHER OR NOT THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT AUTOMATICALLY GRANTED FULL DISABILITY BENEFITS WITHOUT APPLYING THE LATEST JURISPRUDENCE ON DISABILITY.

III

WHETHER OR NOT THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT GRANTED ATTORNEY'S FEES DESPITE THE ABSENCE OF BAD FAITH OR MALICE ON THE PART OF PETITIONERS. THE REFUSAL OF PETITIONERS TO PAY PRIVATE RESPONDENT HIS DEMAND FOR FULL DISABILITY BENEFITS IS IN ACCORDANCE WITH THE LAW, CONTRACT AND JURISPRUDENCE.

Petitioners contend that the mere lapse of 120 days is not controlling in determining disability benefits because the implementing rules and regulations of the Labor Code envisioned an extension of up to 240 days within which disability is to be determined.

OUR RULING

The petition is meritorious.

As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, We do not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, We may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[8]

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings. The relevant legal provisions are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation (AREC). The relevant contracts are the POEA Standard Employment Contract (SEC), the collective bargaining agreement (CBA), if any, and the employment agreement between the seafarer and his employer.[9]

Under Section 32 of the 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 disability grading from 2 to 14 which are partial and permanent, may also be deemed total and permanent. Article 192(c)(1) of the Labor Code provides that:

x x x

x x x 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;

x x x

As clarified in the case of Vergara v. Hammonia Maritime Services, Inc.[10]:

x x x

“The rule referred to - Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code - states:

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 ours]

“These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

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

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-SEC and by applicable Philippine laws.[11]

If the initial period of 120 days 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.[12]

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

Here, private respondent was medically repatriated on November 14, 2010. He arrived in Manila on November 16, 2010 and was seen by the company-designated physician on November 18, 2010. He was examined by the company-designated physician on several dates as evidenced by various Medical Reports[14] until he was pronounced to have attained maximum medical improvement on April 27, 2011.[15] Dr. Dennis L. Wee, the company-designated physician, evaluated his medical condition with a disability grading of Grade 10 – stretching leg of ligaments of a knee resulting in instability of a joint.[16] This pronouncement was made on the 164th day from his repatriation.

While it may appear under the POEA-SEC and the Labor Code that the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, the AREC provides that if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days.[17]

The 120th day from the private respondent's repatriation fell on March 14, 2011, the day the complainant filed his complaint with the labor arbiter. Before that date, he was last seen by the company-designated physician on February 28, 2011, as reflected in the Medical Report[18] of the same date, which provides that:

x x x

"This is a follow-up report on Asst. Team Waiter Rhoderick U. Iniba who was initially seen here at the Metropolitan Medical Center on November 18, 2010 and was diagnosed to have Degenerative Changes, Posterior Horn, Medial Meniscus, Right Knee; S/P Anterior Cruciate Ligament Repair, Right Knee; S/P Diagnostic Arthroscopy, Notchplasty and Debridement, Right Knee on January 5, 2011.

"He is under the care of an Orthopedic Surgeon and Physiatrist.

"The range of motion of his right knee remains to be full.

"However, he still complains of pain at the end range of motion (still at pain scale of 3 – 4/10).

"He was advised to continue his rehabilitation program and medications (Celebrex 400mg once daily and Caltrate plus once daily).

"He is to come back on March 21, 2011 for re-evaluation."

x x x

On March 21, 2011, which is already beyond the 120-day period, he was still advised to continue his rehabilitation and he was to come back for re-evaluation on April 4, 2011. In short, private respondent still needed further medical attention beyond the 120-day period, the reason why the company-designated physician was not able to make a declaration as to the fitness or disability of the private respondent before the lapse of such period. An extension of the 120-day period to 240 days is therefore justified. The company-designated physician had until July 12, 2011 to make a declaration as to complainant's fitness or disability but as early as the 164th day, there was already an evaluation that complainant has Grade 10 disability.

The 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if:

- (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
- (b) 240 days had lapsed without any certification being issued by the company-designated physician;
- (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
- (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
- (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
- (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
- (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
- (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[19]

While the company-designated physician declared complainant to be partially and permanently disabled within the 240-day period, he may still be considered to be totally and permanently disabled if other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well, or if he remains incapacitated to perform his usual sea duties.

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, under Section 20-B (3) of the POEA-SEC, he may consult another doctor 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.[20]

On June 1, 2011, after he has already filed a complaint, complainant sought for a second opinion and Dr. Manuel C. Jacinto, Jr., his doctor-of-choice, found him to be totally and permanently disabled. Under Section 20-B (3) of

the POEA-SEC, an opinion of a third doctor chosen by both parties should have been secured, and such finding shall be final and finding. Unfortunately, such procedure was not followed. For his failure to avail of the said procedure, the credibility of the findings of the parties' respective doctors may be properly evaluated by Us, based on their inherent merit.[21]

The doctor more qualified to assess the disability grade of the respondent seaman is the doctor who regularly monitored and treated him. The company-designated physician possessed personal knowledge of the actual condition of complainant.[22] He was the one who regularly monitored his condition for five (5) months. On the other hand, complainant's doctor-of-choice only examined him once. As between the findings of the company-designated physician and the physician appointed by complainant, the former deserves to be given greater evidentiary weight.[23] The company-designated physician's pronouncement that complainant suffers from a Grade 10 disability should therefore prevail.

In a case[24] where the labor arbiter and the NLRC relied on the assessment of a seafarer's physician that he was unfit for sea duty instead of the assessment of the company-designated doctor, and awarded him permanent total disability benefits despite non-resort to a third opinion, it was held that:

x x x

“We find the rulings of the labor authorities seriously flawed as they were rendered in total disregard of the law between the parties — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law.”

x x x

We however sustain the award of attorney's fees to complainant. While as a matter of sound policy, an award of attorney's fees remains the exception rather than the rule, Article 2208 allows recovery of attorney's fees in the following instances:

x x x

“Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

x x x

The Labor Arbiter granted attorney's fees equivalent to 10% of the monetary award on the reason that complainant was constrained to file the case to protect his interest. There is no question that complainant is entitled to disability benefits, the only issue is the amount he was entitled to. Also in a case,[25] it was held that even if petitioners did not withhold payment of a smaller disability benefit, respondent was compelled to litigate

to be entitled to a higher disability benefit.

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The Resolutions dated February 3, 2012 and March 19, 2012, respectively, both issued by the National Labor Relations Commission in NLRC LAC NO. 10-000904-11, NLRC OFW CASE NO. (M) 03-04242-11 is REVERSED AND SET ASIDE. The Decision dated July 25, 2011 of the Labor Arbiter is MODIFIED, in that petitioners are ordered to pay, jointly and severally, Rhoderick U. Iniba, Jr. the sum of USD10,075.00, or its peso equivalent at the time of payment, representing his Grade 10 disability compensation. The award for attorney's fees equivalent to 10% of the monetary award is upheld.

SO ORDERED.

Abdulwahid (Chairperson) and Barza, JJ., concur.

[1] Rollo, pp. 41-50.

[2] Id., pp.52-53.

[3] Id. pp. 109-126.

[4] Medical Certificate at Rollo, p. 132.

[5] Id., pp. 72-90.

[6] Id., p. 108.

[7] Id., pp. 70-71.

[8] Protacio v. Laya Mananghaya & Co., G.R. No. 168654, March 25, 2009, citing Soriano, Jr. v. National Labor Relations Commission, G.R. No. 165594, 23 April 2007, citing Danzas Intercontinental, Inc. v. Daguman, 456 SCRA 382.

[9] C.F. Sharp Crew Management, Inc., et al. v. Taok, G.R. No. 193679, July 18, 2012.

[10] G.R. No. 172933, October 06, 2008.

[11] Id.

[12] Pursuant to Rule X, Section 2, Rules and Regulations Implementing Book IV of the Labor Code.

[13] Vergara v. Hammonia Maritime Services, Inc., supra.

[14] November 18, 2010, November 22, 2010, December 16, 2010, December 23, 2010, January 4, 2011, January 7, 2011, January 14, 2011, January 31, 2011, March 21, 2011, April 13, 2011 and April 27, 2011.

[15] Rollo, p. 107.

[16] Id., p. 108.

[17] See note 9..

[18] Rollo, p. 104.

[19] See note 9.

[20] Kestrel Shipping Co. Inc., et al. v. Munar, G.R. No. 198501, January 30, 2013.

[21] HFS Philippines, Inc. v. Pilar, G.R. No. 168716.

[22] Magsaysay Maritime Corp. v. Velasquez, G.R. No. 179802, November 14, 2008.

[23] Id.

[24] Philippine Hammonia Ship Agency, Inc. v. Dumadag, G.R. No. 194362, June 26, 2013.

[25] NFD International Manning Agents, Inc. v. Illescas, G.R. No. 183054, September 29, 2010.

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