

**JOSE G. DONGON, PETITIONER, VS. NATIONAL LABOR RELATIONS
PROMULGATED: COMMISSION, Y.K. MARITIME AND AGENCY, INC.
AND/OR SEYEONG MARINE CO., LTD. KOREA AND/OR IMPARCIAL O.
TEODOR...**

Ponente: TIJAM, J.

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TIJAM, J.:

This Petition for Certiorari seeks to nullify and set aside the Decision[1] dated June 22, 2011 of the National Labor Relations Commission [NLRC] holding private respondents liable for partial permanent disability benefits of US\$5,225.00 to petitioner, thereby vacating the Labor Arbiter's Decision[2] dated November 10, 2010 which awarded permanent and total disability benefits of US\$60,000.00 and ten percent (10%) thereof as attorney's fees to petitioner. Also assailed is the NLRC's Resolution[3] dated August 31, 2011 which denied petitioner's motion for reconsideration.

Culled from the records are the following facts:

The instant controversy arose from a Complaint[4] for permanent and total disability benefits, sickness allowance, reimbursement of medical expenses, damages and attorney's fees filed on February 9, 2010 by petitioner against private respondents Y.K. Maritime and Agency, Inc. [Y.K. Maritime, for brevity], Seyeong Marine Co., Ltd/Korea [Seyeong Marine, for brevity] and Imparcial O. Teodoro before the Arbitration Branch of the NLRC.

On July 28, 2009, petitioner was hired by Y.K. Maritime, the manning agent of Seyeong Marine, as Wiper[5] for a duration of nine (9) months, with basic monthly salary of US\$415.00, on board M/V Washington.[6]

Prior to petitioner's deployment on August 29, 2009, he was declared fit for employment by the company-designated physician. On August 30, 2009, he joined M/V Washington.

On October 22, 2009, while the vessel was on its way to New Bedford, USA, petitioner suffered abdominal pain, loose bowel movement and vomiting. His condition worsen as he suffered cough and difficulty of breathing.

On October 30, 2009, petitioner was examined at the Southcoast Hospital and was initially diagnosed with Asthma and Abdominal Pain caused by Acute Pancreatitis. Due to his precarious medical condition, Dr. Fuerman David, the examining physician, recommended his repatriation to the Philippines for further medical treatment.[7]

On November 3, 2009, petitioner arrived in the Philippines and on the same day, he reported to Y.K. Maritime which referred him to the company-designated physicians at the Metropolitan Medical Center for post-employment medical examination.

After a series of laboratory tests, the company-designated physician, Dr. Robert D. Lim, [Dr. Lim] initially diagnosed petitioner of "Mild asthma, H. pylori Infection and Fatty Liver." [8] Dr. Lim prescribed medication to petitioner and supervised his treatment.

On November 19, 2009, Dr. Karen Frances Hao-Quan, another company-designated physician, issued a Brief

Clinical History and Medical Certificate stating that petitioner has undergone medical evaluation and treatment from November 4-19, 2009 and diagnosed to be suffering from "Mild asthma, H. pylori Infection and Fatty Liver".[9]

On February 3, 2010, the company-designated physicians issued a medical assessment that petitioner suffered a Grade 12 Disability.[10]

Petitioner underwent a Pulmonary Function Test[11] at the Heart and Lung Diagnostic Clinic which showed that he had "poorly formed flow-volume loop indicative of severe chest restriction."

On May 31, 2010, petitioner's private physician, Dr. May S. Donato-Tan, a specialist in Internal Medicine and Cardiology, diagnosed petitioner to be suffering from the same ailments, "H. pylori Infection, Fatty Liver and Mild Bronchial Asthma" and declared him permanently disabled and unfit for duty in whatever capacity as a seaman.[12]

To bolster his claim for permanent and total disability benefits, petitioner alleged that his illness was work related or he incurred it during the term of his employment with private respondents considering the factors present in his job as a wiper. He claimed that despite medication, he remained unfit to return to his work for more than 120 days from the time of his repatriation. He also claimed that from the onset of his medical treatment up to the present, he has not been declared fit to work by the company-designated physician. He explained that his inability to work for more than 120 days entitled him to permanent and total disability benefit. In fact, more than 7 months had elapsed from the time of his repatriation but still he could not perform his job as a wiper, and his doctor even declared him unfit for sea duty in whatever capacity.

Petitioner further averred that private respondents acted in bad faith when they unjustifiably refused to pay him permanent and total disability benefits under the JSU-AMOSUP CBA, sickness allowance and medical expenses in violation of the POEA Standard Employment Contract. He likewise claimed that he suffered physical pain, mental anguish, sleepless nights and wounded feelings by reason of the continuing refusal of the private respondents to settle his monetary claims, and that he was compelled to secure the services of counsel where he incurred litigation expenses and attorney's fees.

Refuting the claim for full compensation benefit under the POEA-SEC, private respondents argued that the opinion of Dr. Lim, the company-designated physician, is determinative of petitioner's entitlement to disability benefits. They stressed that petitioner was assessed by Dr. Lim to be suffering from a Grade 12 Disability, equivalent to US\$5,225.00, hence, said assessment should be given credence. Private respondents contended that petitioner had been paid his sickness allowance and that his claim for reimbursement of medical expenses must be denied since the same had been directly settled by them with Marine Medical Services of the Metropolitan Medical Center. They also contended that the medical expenses petitioner incurred in other hospitals, without their consent, were not reimbursable. Private respondents further claimed that during the mandatory conference, they offered to pay petitioner the amount of US\$5,225.00 for a Grade 12 Disability but he rejected the same.

On November 10, 2010, the Labor Arbiter rendered a Decision declaring that petitioner was permanently and totally disabled to perform his work as seaman as his ailments had not been addressed even after the lapse of 210 days from the time he was initially diagnosed by the company-designated physician until his private physician assessed him as unfit to work. The Labor Arbiter expounded that prior to petitioner's deployment, he was not suffering from any illness, and while on board M/V Washington, he was made to perform a tedious work, which sired his ailments. In awarding full disability benefits to petitioner, the Labor Arbiter gave due credence to the medical report of petitioner's private doctor that he was permanently disabled and not fit to work in whatever capacity as seaman. On top of the disability benefits, the Labor Arbiter awarded 10% thereof as attorney's fees,

but denied the other monetary claims for lack of basis, thus –

"WHEREFORE, judgment is hereby made ordering the respondents-companies to pay complainant US\$60,000.00 as permanent disability compensation, plus ten (10%) as attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.[13]

Not satisfied with the Labor Arbiter's decision, private respondents brought the case on appeal to the NLRC contending that the company-designated physician assessed petitioner with a Grade 12 Disability which is equivalent to only US\$5,225.00 under the POEA-SEC; and that petitioner's inability to work for more than 120 days is not a justification to declare him permanently disabled.

In its assailed Decision dated June 22, 2011, the NLRC gave due credence to the medical assessment of the company-designated physician that petitioner was only entitled to a Grade 12 Impediment or to US\$5,225.00.[14] The NLRC emphasized that petitioner was given full medical attention from the time of his repatriation up to the time that his disability was assessed by the company-designated physician. The company-designated physician's Grade 12 Impediment was issued even before the lapse of the 240-day period whereby an employer may declare that a partial permanent disability already exists. On the other hand, the NLRC stressed that the certification of petitioner's private doctor merely stated that he was unfit to work but there was no evidence to support that his incapacity was permanent and total. The NLRC disposed of the case as follows:

"WHEREFORE, premises considered, the decision appealed from is VACATED and SET ASIDE. Respondents Y.K. Maritime and Agency Inc., and/or Seyeong Marine Co. Ltd. Korea are ordered to pay complainant Jose Dongon the Philippine Peso equivalent at the time of actual payment of FIVE THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (US\$5,225.00) as partial permanent disability benefits.

SO ORDERED."[15]

Petitioner's motion for reconsideration of the above decision was denied by the NLRC in its Resolution[16] dated August 31, 2011 for lack of merit.

Hence, the present recourse imputing grave abuse of discretion to the NLRC, to wit:

1. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT IT IS ONLY THE COMPANY-DESIGNATED PHYSICIAN WHO CAN PROCLAIM THAT THE SEAMAN SUFFERED PERMANENT DISABILITY, WHETHER TOTAL OR PARTIAL.
2. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING UNDUE CREDENCE TO THE INCONCLUSIVE "GRADE 12" ASSESSMENT OF THE COMPANY-PAID PHYSICIAN.
3. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE UNDISPUTED FACT THAT SEAMAN DONGON REMAINED UNFIT TO WORK AS CERTIFIED BY THE INDEPENDENT PHYSICIAN FOR MORE THAN 120 DAYS AND HIS CONTINUING INABILITY TO PURSUE HIS USUAL WORK AND EARN THEREFROM CONSTITUTES PERMANENT AND TOTAL DISABILITY.
4. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT A SEAMAN'S DISABILITY IS NOT MEASURED IN TERMS OF THE 120-DAY DISABILITY RULE BUT BY GRADINGS ONLY.
5. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT THE GRADE

12 ASSESSMENT OF THE COMPANY PHYSICIAN CANNOT PREVAIL OVER THE FACT THAT SEAMAN DONGON IS UNABLE TO RETURN TO HIS WORK BECAUSE OF A DISABILITY FOR MORE THAN 120 DAYS.

6. THE NLRC ACTED WHIMSICALLY, CAPRICIOUSLY AND DESPOTICALLY IN REVERSING THE LABOR ARBITER'S DECISION (AWARDING PETITIONER'S CLAIMS FOR PERMANENT TOTAL DISABILITY BENEFITS AND ATTORNEY'S FEES) WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS IN FULL ACCORD WITH JURISPRUDENCE AND THE CONSTITUTIONAL MANDATE OF AFFORDING FULL PROTECTION TO LABOR, ESPECIALLY THOSE WORKING OVERSEAS.

The issues for resolution are:

- 1) Whether petitioner was permanently and totally disabled as declared by his private doctor, or merely suffered a Grade 12 Impediment as assessed by the company-designated physician;
- 2) Whether the inability of the petitioner to work for more than 120 days from the time of his repatriation constitutes permanent and total disability; and

2) Whether petitioner is entitled to attorney's fees.

The petition is bereft of merit.

The first and second issues being interrelated, We shall discuss them simultaneously.

The POEA-SEC mandates that a claim for disability benefit for a work-related illness or injury be supported by a post-employment medical report conducted by the company-designated physician, to wit:

Section 20 (B). Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

xxx xxx xxx

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.

xxx xxx xxx

Jurisprudence holds that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer.[17]

We stress at the outset that the nature of petitioner's ailments, i.e., Mild Asthma, H. pylori, Fatty Liver as work-related, is undisputed. What remains contradicted is the disability grade that should be accorded to petitioner's work-related ailments. In denying petitioner's claim for a Grade 1 Disability or permanent and total disability benefit (US\$60,000.00), the NLRC relied on the assessment of the company-designated physician that petitioner is entitled to a Grade 12 Impediment, which is equivalent to US\$5,225.00.

We agree with the NLRC.

Contrary to the assertion of petitioner, the medical assessment of the company-designated physician was neither biased nor arbitrary, but it was in accordance with law and prevailing jurisprudence. We note that Dr. Lim continuously attended, monitored, and treated the petitioner. Dr. Lim possessed personal knowledge of the medical condition of petitioner as he delineated the development of his medical condition from the time he complained of abdominal pain while on board M/V Washington until he was repatriated for medical reasons, and up to the time that he issued the disability assessment on February 3, 2010. Considering the time and effort Dr. Lim devoted to properly monitor and treat petitioner, Dr. Lim's assessment that petitioner was entitled to a Grade 12 Impediment should be given credence.

On the other hand, the disability assessment[18] dated May 31, 2010 of petitioner's private physician, Dr. Tan, was only based on a medical report that resulted from a single examination or treatment, without the required medical tests and/or specialized medical procedures to support the same. Dr. Tan did not even elaborate on how she arrived at her findings. In fine, other than the assessment of Dr. Tan that petitioner is permanently disabled and not fit to work in whatever capacity as seaman, petitioner had nothing to support his claim for full compensation benefit. On this note, the medical examinations conducted by Dr. Lim was much more extensive than the examination conducted by Dr. Tan. Thus, as between the findings of Dr. Lim and Dr. Tan, the former deserves to be given greater evidentiary weight.

Moreover, We are not convinced with petitioner's asseveration that his inability to work for more than 120 days entitled him to a full disability benefit as he was permanently and totally disabled to perform his customary work as a seaman. Petitioner's claim is negated by Dr. Lim's February 3, 2010 assessment of Grade 12 Impediment, which was issued within the 120-day initial period[19] allowed by the POEA-SEC. Suffice it to say that the employer has a maximum period of 240 days to declare that a permanent partial disability exists.[20]

In fact, petitioner filed the complaint for permanent and total disability benefits against the private respondents on February 9, 2010. Apparently, at the time of the filing of the said complaint, only 98 days had elapsed from the time of petitioner's repatriation on November 3, 2009. Hence, the allegation in the complaint that he is permanently and totally disabled since he had remained unfit to return to his work as a wiper for more than 120 days has no basis.

Neither could petitioner validly assert that his inability to work for 7 months or 210 days justified the award of permanent and total disability benefits. We stress that it was only after 210 days from the time of petitioner's repatriation on November 3, 2009 that petitioner's private doctor, Dr. Tan, came up with a contrary medical assessment. True, the petitioner may seasonably oppose the medical assessment of the company-designated physician, however, his independent doctor's assessment cannot be given credence considering that it was only based on a single medical treatment and was issued only during the pendency of the case before the Labor Arbiter. Thus, petitioner's resort to the medical opinion of Dr. Tan was a mere afterthought.

We further note that in case of a dissimilarity of medical assessment by the company-designated physician and the doctor appointed by the employee, a process for resolution is provided by Section 20 (B) (3), paragraph 3 of the POEA-SEC, viz:

"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."

The pronouncement in *Vergara vs. Hammonia Services, Inc. and Atlantic Marine Ltd.* [21] is relevant, thus:

"Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of

whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail."

In this case, the disagreement could have been easily resolved had petitioner faithfully complied with the above mechanism. Hence, in filing the complaint for disability benefit on February 9, 2010 without resort to the prescribed procedure, compensation for full disability benefit in accordance with the private doctors' assessment, should be denied.

Strict rules of evidence are not applicable in claims for compensation and disability benefits, but the Court cannot altogether disregard the mandatory provisions of the law.[22]

For failure of the petitioner to establish his cause of action for permanent and total disability benefits and other monetary claims, We find no basis to award attorney's fees. Irrefutably, during the mandatory conference of this case before the Labor Arbiter, private respondents offered to pay the petitioner the amount of US\$5,225.00 which is equivalent to a Grade 12 Impediment, but the petitioner rejected the offer.

All told, this Court finds that the NLRC acted without grave abuse of discretion in disregarding the medical assessment of petitioner's private physician that he was permanently and totally disabled and not fit to work in whatever capacity as seaman. Thus, the NLRC's award of US\$5,225.00 which is equivalent to a Grade 12 Impediment and the denial of petitioner's claim for attorney's fees were proper.

WHEREFORE, the foregoing considered, the petition is DISMISSED. The assailed June 22, 2011 Decision and August 31, 2011 Resolution of the NLRC are AFFIRMED.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 45-56.

[2] Id., pp. 149-154.

[3] Id., pp. 57-58.

[4] Id., pp. 59-60.

[5] As a wiper, petitioner was assigned to keep navigational watch and assist the engineers in all the maintenance, repair and overhaul of the vessel's engines, machinery and equipment. He was also assigned to handle fire-fighting and life-saving equipment; ensure observance of all safety measures impose by maritime laws on board the vessel and to report any incident that will affect the safe operation of the vessel, Rollo, p. 64.

[6] Id., p. 87, POEA-Approved Contract of Employment.

[7] Id., pp. 88 and 136, Medical Report dated October 30, 2009.

[8] Id., pp. 137-138, Medical Report dated November 6, 2009

[9] Id., pp. 89-90, Brief Clinical History dated November 19, 2009 and Medical Report dated November 19, 2009, both issued by Dr. Karen Frances Hao-Quan.

[10] Id., p. 139, (Private and Confidential Medical Communication dated February 3, 2010, signed by Dr. Karen Frances Hao-Quan and noted by Dr. Ricardo D. Lim) – "His closest interim assessment is Grade 12 – slight

residual or disorder."

[11] Id., p. 91, Pulmonary Function Test dated May 18, 2010.

[12] Id., pp. 92-93, Disability Claim dated May 31, 2010.

[13] Id., p. 154.

[14] Schedule of Disability – Impediment Grade 12 = US\$50,000.00 x 10.45% or US\$5,225.00.

[15] Id., p. 55.

[16] Id., p. 57-58.

[17] Sarocam vs. Interiorient Maritime Ent., Inc. vs. Demaco United Ltd., 493 SCRA 502; German Marine Agencies vs. NLRC, G.R. No. 142049, January 30, 2001.

[18] Page 2 of the Disability Claim dated May 31, 2010, Rollo, p. 93. – "He is therefore given PERMANENT DISABILITY and declared UNFIT FOR DUTY in whatever capacity as a seaman".

[19] Vergara vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933, October 6, 2008. - For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary disability as he is totally unable to work. He receives his basic wage during this period until he is 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. If the 120-day 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 seafarer may, of course, also be declared fit to work at anytime such declaration is justified by his medical condition.

Section 20 (B) COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

xxxx xxxx xxxx

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.

[20] Supra.

[21] G.R. No. 172933, October 6, 2008.

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

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