

GERARDO M. CASTILLO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MAGSAYSAY MARTIME CORP., PRINCESS CRUISE LINES LTD., MR. MARLON M ROÑO AND “SAPPHIRE PRINCESS,” RESPOND...

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

This Petition for Certiorari[1] seeks to set aside the 14 December 2011 Resolution[2] dismissing petitioner’s appeal and the subsequent 31 January 2012 Resolution[3] of public respondent National Labor Relations Commission (NLRC for brevity) in NLRC LAC (OFW-M) Case No. 05-000434-11(8) dismissing his motion for reconsideration.

The Antecedents

Public respondent NLRC found the petitioner Gerardo M. Castillo to have been continuously employed by private respondent Magsaysay Maritime Corporation (hereinafter referred to as MMC) since 1994 for and in behalf of its principal Princess Cruises. For every contract that he was engaged in, he underwent a pre-employment and medical examination and was declared “Fit to Work.” On 15 July 2009, he entered into a contract with private respondents to work as a laundry steward for ten (10) months with a basic monthly wage of US\$ 211.00.[4]

On 22 August 2009, petitioner boarded the vessel “Sapphire Princess.” Six (6) months later, on 28 February 2010, he suddenly experienced lower limb weakness, loss of sensation, numbness and difficulty in walking. He was referred by the master of the vessel to Dr. Laura Teichman, the ship’s physician, and was made to undergo a series of laboratory tests. Petitioner was assessed by the doctor to be suffering from demyelinating polyradiculoneuropathy – underlying cause unknown; possible: chronic inflammatory demyelinating polyneuropathy multiple sclerosis.[5]

Despite his condition, petitioner continued working until he was brought to the Mazatlan Hospital on 31 March 2010. The medical examination conducted on him revealed that he was suffering from “Paraparesia intermittent acute.” He likewise underwent an MRI on his lumbar spine and was assessed with “Degenerative Osteoarticular changes at L5-S1.”[6]

Petitioner was medically repatriated to Manila on 1 May 2010 and was referred to a company-designated physician at the Metropolitan Medical Center and examined by Dr. Esther G. Go on 5 May 2010. He was diagnosed with Demyelinating Polyneuropathy; rule out nerve root compression probably lower thoracic.” On 11 June 2010, he was given a final diagnosis of “Thoracic Spinal Arteriovenous Malformation.”[7] He was also made to undergo MRI at the Cardinal Santos Medical Center and an angiogram at the St. Luke’s Medical Center and was diagnosed to have abdominal veinmalformation (AVM).[8]

He consulted an independent physician, Dr. Manuel C. Jacinto, Jr., on 9 August 2010 at the Sta. Teresita General Hospital for a second opinion. Dr. Jacinto issued him a medical certificate[9] diagnosing him to be suffering from

Demyelinising Polyradiculoneuropathy and assessing his disability to be total and permanent.[10]

Private respondents allegedly refused to provide him further medication and treatment notwithstanding his condition. Claiming that he could no longer work, petitioner sought refuge in the ITF Cruise Ship Model Agreement for Catering Personnel CBA as basis for his entitlement to permanent disability benefits in the amount of US\$ 80,000.00.[11]

In the 12 April 2011 decision,[12] the labor arbiter ruled in favor of herein respondents, viz:

. . . the burden is on the seafarer of proving work-relatedness, or burden of satisfying the conditions in Section 32-A of the 2000 POEA SEC. Complainant has to present evidence to prove that his illness was aggravated or caused by his employment, or how his working conditions have in any way contributed to his illness. It must be noted that while complainant have indeed passed the PEME, such examinations were not exploratory in character, for such illness to have been detected. Respondent having presented substantial proof that the illness of complainant was not work related, is of an unknown cause, and that it is congenital, and was not disputed by complainant by other competent evidence, except that of his independent physician whom he consulted only once, this Office have no recourse but to give weight to respondents' company designated physician's findings.

Perusal of the records, there is likewise no Collective Bargaining Agreement covering the employment contract of the parties. Hence, there is no CBA to apply in the case at bar.

WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[13]

Petitioner appealed but public respondent NLRC dismissed the appeal for lack of merit in its resolution promulgated on 14 December 2011.[14] The motion for reconsideration[15] filed by petitioner was also denied in the 21 January 2012 resolution[16] of public respondent; hence, the instant petition.

Issues to be Resolved

The following issues are submitted to this Court for resolution,[17] to wit:

I

THAT THE HONORABLE PUBLIC RESPONDENT NLRC HAD COMMITTED CLEAR AND PALPABLE ERROR, GRAVE ABUSE OF DISCRETION AND ARBITRARINESS IN HOLDING THAT PETITIONER'S ILLNESSES ARE NOT WORK RELATED OR WORK AGGRAVATED ILLNESS.

II

THAT THE DECISION OF THE HONORABLE PUBLIC RESPONDENT NLRC IS WHIMSICAL AND CAPRICIOUS AS IT IS CONTRARY TO THE EVIDENCE ADDUCED ON RECORDS, CONTRARY TO THE BENEVOLENT PROVISIONS OF PETITIONER'S POEA STANDARD EMPLOYMENT CONTRACT AND CONTRADICTS RELEVANT JURISPRUDENCE PROMULGATED BY THIS HONORABLE COURT OF APPEALS AS WELL AS THE HONORABLE SUPREME COURT.

III

THAT PETITIONER IS INDEED ALREADY ENTITLED TO THE FULL DISABILITY COMPENSATION IN ACCORDANCE WITH THE POEA STANDARD EMPLOYMENT CONTRACT AND OTHER BENEFITS AS HE WAS ALREADY RENDERED TOTALLY UNFIT AS SEAFARER IN ANY CAPACITY DUE TO WORK RELATED AND WORK AGGRAVATED ILLNESS.

Ruling of This Court

The petition must fail.

A joint discussion of the issues is in order for a complete and thorough understanding of the case and the attendant circumstances therein.

Petitioner alleges that he was always found to be in perfect health as borne by his pre-employment medical examinations (PEME) every time he was redeployed by private respondent for the past sixteen (16) years.

The fact that petitioner passed the respondent's pre-employment medical examinations is of no moment. A seafarer only needs to pass the mandatory PEME in order to be deployed on duty at sea. The PEME cannot serve as enough bases to justify a finding of a total and permanent disability because of its non-exploratory nature as consistently ruled in the past.[18] It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short, the "fit to work" declaration in the petitioner's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[19]

According to petitioner, he had been continuously employed by private respondent MMC since 1994 and the last contract he signed with his former employer was on 15 July 2009 as a laundry steward for ten (10) months on board the vessel Sapphire Princess. As with all other kinds of worker, the terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the Philippine Overseas Employment Administration (POEA), called the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (hereinafter referred to simply as Amended Standard Terms and Conditions), which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[20]

When petitioner was last employed by private respondent in July 2009, it was the 2000 Amended Standard Terms and Conditions that applied and were deemed written in or appended to his POEA-Standard Employment Contract. Section 20 (B) (6) of the 2000 POEA Standard Employment Contract provides:

SEC. 20. Compensation and Benefits for Injury and Illness. —

xxx xxx xxx

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

(6) In case of permanent or total disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the disease or illness was contracted.

As could readily be gleaned from the afore-quoted provision, two elements must concur for an injury or illness to be compensable: (1) that the injury or illness must be work related; and (2) that the work-related injury or illness must have existed during the term of the seafarer's employment contract. Stated otherwise, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[21]

The 2000 POEA Amended Standard Terms and Conditions defines work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment" and work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied,"[22] that is:

SEC. 32-A. Occupational Diseases. —

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- 1) The seafarer's work must involve the risks described herein;
- 2) The disease was contracted as a result of the seafarer's exposure to the described risks;
- 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4) There was no notorious negligence on the part of the seafarer.[23]

Jurisprudence requires that the claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. A mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.[24]

Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.[25]

Moreover, the disputable presumption provision in Section 20 (B) does not allow the petitioner to just wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. He still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. A search of the record, nevertheless, will bear that no substantial evidence was presented by petitioner to show that there is a reasonable connection between the nature of his employment or his working conditions and his illness. Petitioner's bare allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions. The beneficiaries must present evidence to prove a positive proposition.[26]

It must also be emphasized that the findings of the company-designated physicians deserve greater weight viz-a-viz the conclusion of petitioner's private doctor which was arrived at after only one consultation.[27]

Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides:

SEC. 20. 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:

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.

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.

This provision clearly provides that if the company-designated physician of the respondent who monitored petitioner's condition and treatment for several months categorically stated that his illness is not work-related but was controverted by petitioner's own physician, 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.[28] This procedure, however, was not availed of by the parties.

Petitioner claims that the job of seafarers on board an ocean vessel is extremely lonely, physical, strenuous and stressful. The volume of work and the strenuous activities on board, coupled with exposure to extreme weather conditions, hazardous fumes, chemicals and substances stored, and the food served, on the vessel contributed to the development and enhancement of his illness that now rendered him totally unfit as a seafarer in any capacity.[29] But petitioner failed to particularly describe his working conditions while on sea duty and did not specifically state how he contracted or developed his illness while on sea duty and how and why his working conditions aggravated it. Neither did he present any expert medical opinion regarding the cause of his Demyelinating Polyradiculoneuropathy. Furthermore, petitioner did not present any written document whatsoever that would clearly validate his claim or visibly demonstrate that the working conditions on board the vessels he served increased the risk of acquiring his illness.

The Labor Arbiter in fact, in the appealed decision, did not give any weight to petitioner's claim that his exposure to chemicals while on board the vessel contributed to his illness, viz:

Complainant's bare assertions that he was exposed to chemicals without specifying what chemicals was he exposed to or how in any way his illness was contracted through his work cannot thus be given weight and credence. Complainant should at least convince this Office how his illness is deemed work related. Failure to establish such fact, we have no recourse but deny his claim as the requirement of its work relatedness or connection is not proven with clear and convincing evidence.[30]

By failing to adduce even an iota of evidence to prove that his illness may have been the result of his exposure to certain chemicals and extreme weather conditions while in the performance of his work in the ocean going vessel he was deployed, petitioner did not give this Court any reason to deviate from the foregoing findings of the labor arbiter.

In fine, petitioner failed to discharge this duty imposed upon him by law to claim the benefits as prayed for in his petition.

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

- [2] Rollo, pp. 59-64.
- [3] Id., pp. 66-67.
- [4] Id., p. 59.
- [5] Id., p. 60.
- [6] Id.
- [7] Id.
- [8] Id., p. 341.
- [9] Id., Annex "M," p. 260.
- [10] Id., p. 60.
- [11] Id.
- [12] Id., pp. 46-47.
- [13] Id., pp. 56-57.
- [14] Id., Annex "B," pp. 58-64.
- [15] Id., Annex "K," pp. 229-253.
- [16] Id., Annex "C," pp. 65-67.
- [17] Id., p. 344.
- [18] Gilbert Quizora vs. Denholm Crew Management (Philippines), Inc., G.R. No. 185412, 16 November 2011
- [19] Id.
- [20] Carlos N. Nisda vs. Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving and Marine Services, G.R. No. 179177, 23 July 2009
- [21] Quizora vs. Denholm, *supra*.
- [22] NYK-Fil Ship Management Inc., and/or Josephine J. Francisco and TMM Co. Ltd., Tokyo, Japan vs. Alfonso T. Talavera, G.R. No. 175894, 14 November 2008, 503 SCRA 595.
- [23] Id.
- [24] Arnaldo G. Gabunas, Sr. vs. Scanmar Maritime Services, Inc., Mr. Vicente Brillantes and IUM Ship Management, G.R. No. 188637, 15 December 2010
- [25] Id.
- [26] Gabunas, Sr. vs. Scanmar, *supra*, citing the case of Spouses Ponciano Aya-ay, Sr. and Clemencia Aya-ay vs. Arpaphil Shipping Corp. and Magna Marina, Inc., G.R. No. 155359, 31 January 2006, 481 SCRA 282.
- [27] Jerry M. Francisco vs. Bahia Shipping Services, Inc. and/or Cynthia C. Mendoza, and Fred Olsen Cruise Lines, Ltd., G.R. No. 190545, 22 November 2010
- [28] Francisco vs. Bahia, et al., *supra*.

[29] Id., pp. 346-347.

[30] Rollo, p. 55.

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