

**VIRJEN SHIPPING CORPORATION, NISSHO ODYSSEY
SHIPMANAGEMENT AND/OR ERICSON MARQUEZ, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION)
AND EDDIE A. BABAC, RES...**

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GALAPATE-LAGUILLES, J:

This petition for certiorari assails the Decision[1] dated August 30, 2012 as well as the Resolution[2] dated October 15, 2012 both rendered by public respondent National Labor Relations Commission (NLRC for brevity) awarding total and permanent disability benefits to private respondent Eddie A. Babac (Babac for brevity).

The facts as culled from the records are as follows:

On January 22, 2009, Virjen Shipping Corporation, a Philippine-registered manning agency, in behalf of its principal, Nissho Odyssey Ship Management, hired private respondent Babac to work as Chief Cook on board the vessel "M/T High Light" for a period of nine (9) months. The terms and conditions of the said contract of employment complied with the Philippine Overseas Employment Administration- Standard Contract for Seafarers (POEA-SEC).[3] After being subjected to the mandatory Pre-Employment Medical Examination (PEME), Babac was declared fit for sea duty and commenced his functions as Chief Cook on July 7, 2009 on board at the Port of Tramandai, Brazil.

In his Position Paper[4], Babac alleged that sometime in November 2009, while the vessel was sailing towards Brazil and while cleaning the meat room, he lifted thereat frozen meat weighing several kilos. The lifting caused him lower back pain.[5] Despite the incident, he continued to perform his job but the pain persisted, causing him numbness. He sought medical treatment in a hospital in Santos, Brazil for hip and back pain on March 27, 2010. The attending physician therein diagnosed him to be suffering from lumbociaity and was subsequently declared "unfit for duty".[6]

Since there was no available personnel to replace him at the time and taking into account the fact that the vessel was Uruguay bound, Babac was not immediately repatriated[7] but was instead advised to rest and to perform light tasks if able to do so with the assistance of some crew members.[8] Babac was finally repatriated back to the Philippines on April 16, 2010 and arrived in Manila last April 21, 2010.[9]

On April 22, 2010, Babac immediately consulted the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz for brevity), for treatment and management of his illness. Dr. Cruz thereafter issued a Medical Report stating the following:

The patient is a 38 year-old, chief cook who claimed he developed low back pain after doing heavy work since November 2009. He sought medical consult in Brazil last March 28, 2010 and was suspected to have lumbar disc herniation. He was given medication. He finished his contract and was referred to our clinic for further evaluation and treatment.

He was seen in our clinic today. There is low back pain with radiation to both legs. On physical examination, patient is conscious, coherent and ambulatory. There is discomfort in flexion of the back. X-ray of the lumbosacral spine was requested. He was referred to our orthopedic surgeon for evaluation and treatment.

Diagnosis:

Lumbosacral strain

R/o disc herniation[10]

Dr. Cruz examined and treated Babac six more times and the procedures conducted were chronicled in various Reports dated April 23, 2010[11], May 5, 2010[12], May 19, 2010[13], June 16, 2010[14], July 21, 2010[15] and August 18, 2010[16]. In his September 29, 2010 Report, Dr. Cruz determined the degree of Babac's disability as follows:

- The patient has reached maximum medical care.

- The disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of motion or lifting power of trunk.[17]

While still undergoing treatment under Dr. Cruz's watch, Babac sought the medical opinion of Dr. Manuel Fidel M. Magtira (Dr. Magtira for brevity) of the Orthopaedic Surgery and Traumatology of Casa Medica, Inc. on July 30, 2010[18]. Dr. Magtira's findings on Babac were essentially summarized in an undated Medical Report, as follows:

XXXX

The significance of this posterior bulge of the degenerated disc and canal stenosis is that this is the area where the nerves run that supply the extremities. This patient has been complaining of back pain. The vast majority of patients responded well to non-surgical treatment though. Probably the most important of which is time. That is to say, that no matter what is done, most cases of acute back and neck pain slowly resolve if given enough time to get better. Active interventions include the use of medications, exercise/therapy, and activity modifications. If a long term and more permanent result are desired however, he should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. Things Mr. Babac is expected to do as a Seaman.

Some restriction must be placed on Mr. Babac's work activities. This is in order to prevent the impending sequelae (sic) of his current condition. He presently does not have the physical capacity to return to the type of work he has performing at the time of his injury. He is therefore permanently UNFIT in any capacity for further sea duties.[19]

Babac thereafter went on to see another doctor in the person of Dr. Manuel Jacinto, Jr. (Dr. Jacinto for brevity) of the Orthopedic Surgery and Traumatology of the Sta. Teresita General Hospital last February 7, 2011. Dr. Jacinto's Medical Report dated February 7, 2011 stated the following:

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

Remarks: The patient's condition started at work and was aggravated by the performance of his duties with low back pain radiating to the posterior thigh, thus, he was assessed to be physically unfit to go back to work.[20]

On April 6, 2011, Babac filed a Complaint[21] against the petitioners before the Regional Arbitration Branch of the Department of Labor and Employment for Disability Benefit, Moral and Exemplary Damages and Attorney's Fees.

Petitioner resisted the claim arguing that Babac performed his work without any medical complaints until March 27, 2010 when he sought medical consultation in Santos, Brazil for 'hip and back pain'. [22] It thus pointed out that the company-designated physician, Dr. Cruz, is solely authorized to determine or assess Babac's disability and that the latter was found to be not suffering from any of the conditions enumerated under Section 32 of the POEA Contract or to any impediment akin thereto. [23] According further to the petitioner, the assessment made by Dr. Cruz was not only made within the allowable 240-day period, but it was the latter, as company physician, who actually managed and supervised Babac's physical condition and the subsequent medical assessment thereon was issued only after months of treatment. [24]

Finding for the petitioner, the Labor Arbiter in a Decision[25] dated April 30, 2012 upheld the disability grading of the company-designated physician disposing of the complaint as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents jointly and severally to pay complainant the amount of \$16,795 as disability benefits.

All other claims are dismissed for lack of factual and legal merit.

SO ORDERED.

Feeling aggrieved by the Decision, Babac appealed before public respondent NLRC and insisted on his claim for full and permanent disability benefits. Said public respondent in its Decision dated August 30, 2012 granted Babac's appeal and awarded the latter full disability benefits. The Decision's decretal portion reads:

WHEREFORE, all premises considered, the appealed Decision dated April 30, 2012 rendered by Labor Arbiter Eduardo G. Magno, is hereby **AFFIRMED** with **MODIFICATIONS**, ordering the respondents jointly and severally to pay the complainant the amount of \$60,000.00 as disability benefits, and 10% attorney's fees.

SO ORDERED. (emphasis supplied)

In a Resolution dated October 15, 2012, [26] public respondent denied petitioner's motion for reconsideration.

Undaunted, petitioner is here before Us arguing that:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING TOTAL AND PERMANENT DISABILITY BENEFITS (OR THE AMOUNT OF \$60,000) TO PRIVATE RESPONDENT NOTWITHSTANDING THE GRADE 8 DISABILITY ASSESSMENT OF THE COMPANY PHYSICIAN WHICH HAS NOT BEEN DISPUTED WITH ANY CREDIBLE EVIDENCE.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ATTORNEY'S FEES DESPITE ABSENCE OF ANY SHOWING THAT PETITIONERS ACTED WITH BAD FAITH OR WERE MOTIVATED BY MALICE IN DENYING PRIVATE RESPONDENT'S EXAGGERATED CLAIM.

Petitioner argues in the main that public respondent NLRC erred in awarding full disability benefits to Babac. It insists that the findings of the company-designated physician should be upheld on the following grounds:

- Under the POEA-SEC contract, the disability of Babac must be determined by the company-designated physician;
- Babac was assessed to be suffering from Grade 8 disability after months of treatment by the company-designated physician; and
- The disability assessment made by Dr. Cruz was made well within the 240-day period.

Babac on the other hand reiterates his prior arguments that he is entitled to an award of permanent disability benefits of sixty thousand dollars (US\$60,000.00) because the disability assessment was issued by the company-designated physician well beyond the 240-day limit set forth by the rules.

The lone issue for resolution is whether or not the public respondent committed grave abuse of discretion when it disregarded the disability grading of the petitioner's company-designated physician.

We grant the Petition.

There is no quibble that Babac's condition was work-related, hence he could be entitled to an award of disability benefits under existing laws and rules. Entitlement to disability benefits, however, is governed not only by relevant medical findings but also by law and contract. The relevant statutory provisions of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees Compensation (ECC) and the provisions of the Philippine Overseas Employment Administration-Standard Employment Contract Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA-SEC), are applicable to the resolution of the instant petition. Under the Labor Code, the following, among others, are disabilities that are deemed total and permanent:

c.1. Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

c.2. xxxxx;[27]

The rule(s) referred to above is Section 2(a), Rule X of the Amended Rules on Employees Compensation, viz:

SEC. 2. 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 any time 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. (emphasis Ours)

x x x x

The said rule, however, should be read hand in hand with Section 20(B)(3) of the POEA-SEC which the parties signed.[28] The said contract provides:

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. (emphasis Ours)

It is clear as day that the foregoing forms an integral part of Babac's contract with petitioner, spelling out what should be done in the event of a disagreement in opinion over the seafarer's medical condition and fitness for sea duty. Procedurally and the foregoing rules as bases, Babac and petitioner should have sought the opinion of a mutually-selected third doctor, but they did not. Instead, Babac filed a Complaint before the Labor Arbiter on April 6, 2011 for Disability Benefit, Moral and Exemplary Damages and Attorney's Fees[29] after securing medical evaluations from different doctors .

We now turn Our focus on the divergent medical assessments on Babac.

Dr. Cruz, the company physician, examined Babac immediately after his repatriation and was issued a report on

the matter.[30] Thereafter, Dr. Cruz met Babac anew for several times and managed the latter's treatment and therapy, all of which were recorded in updated medical bulletins, enumerating the procedures conducted and medications administered on Babac.[31]

On the other hand, Babac's two other personal physicians, Drs. Magtira and Jacinto, met him (Babac) only once, and thereafter issued their respective medical findings, essentially declaring him permanently unfit in any capacity for sea duty. [32]

The company physician's (Dr. Cruz's) disability assessment on Babac was made after months of treatment and therapy and was supported by progressive medical bulletins. Likewise, these procedures were made well within the 240-days set forth by the applicable rules on the matter. The findings of Babac's personal doctors were not as exhaustive as that of Dr. Cruz. Notably, as to how a higher degree of disability assessment was arrived at was not likewise explained by said personal doctors of Babac. Thus, in the absence of any showing of adequate tests to support their findings, the said doctors' assessments, arrived at only after a single session with Babac, cannot be accepted at face value for the familiar rule is that awards of compensation cannot rest on speculations or presumptions.[33] We agree that their brief encounter with Babac's medical profile suggests a superficial assessment if not a haphazard evaluation inclined towards a higher degree of disability on the part of Babac. We find it apt to reproduce the Labor Arbiter's observation on the matter as contained in his Decision:

“xxx the complainant was assessed a Grade 8 disability by the company physician. We note that this Grade 8 assessment came after months of treatment and is supported by medical progress reports xxx. Thus, absent any concrete evidence of fraud or malice in its issuance, the same must be upheld pursuant to express contractual agreement, viz:

“However, if after the repatriation the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.”

This Office nevertheless notes that complainant too, submitted medical reports issued by Dr. Manuel Jacinto, Jr. xxx and Dr. Manuel Fidel M. Magtira xxx. This Office notes, however, that aside from said medical opinions, there is nothing on record to support the findings of complainant's personal doctors. It is also noted that the said medical records appear to have been issued after a single consultation and were for the purpose of determining disability. (emphasis Ours)

With the foregoing observations, We deem it proper to accord credence to the company physician's findings because as held in *Jesus E. Vergara vs. Hammonia Maritime Services and Atlantic Marine Ltd.*[34], the POEA Standard Employment Contract clearly provide 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. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them. 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 assessment is the final determination that must prevail.

Similarly in the case of *Kestrel Shipping et. al. v. Fransisco D. Munar*[35], the Supreme Court held as follows:

(If) after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises. On the other hand, if the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by the seaman and the doctor selected by both the seaman and his employer declare otherwise. As provided under Section 20-B(3) of the POEA-SEC, a seafarer 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. 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. (emphasis Ours)

Neither can We agree with the public respondent's ruling that since more than 120 days had lapsed before the company-designated physician issued his disability grading on Babac, an award of \$60,000.00 disability benefits is in order.

In a number of cases, the Supreme Court held that the company-designated physician has either 120 or 240 days within which to arrive at a definite assessment of the seafarer's fitness to work or permanent disability.[36] Here, records show that Dr. Cruz made his Grade 8 disability assessment on Babac on the 160th day[37] or well within the 240 days maximum period provided by the rules. This assessment came, unlike those made by Babac's personal doctors, after months of rigorous medical treatment and therapy. Hence, contrary to the findings of the public respondent a quo, Dr. Cruz's assessment was made well within the 240 day period. Again, the Labor Arbiter a quo correctly held that:

Finally, anent complainant's reliance on the 120 day ruling of the Supreme Court citing the *Bastol* ruling (and other related cases), this Office so holds that in view of the more recent pronouncement in the case of *Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S v. Oberto S. Lobusta* (G.R. No. 177578, January 25, 2012), where the Supreme Court reiterated its 240-day ruling in *Vergara vs. Hammonia Maritime Services, Inc.*, to wit:

“xxx xxx xxx

“As we outlined above, a temporary total disability only become permanent when so declared by the company physician within the period 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.”

In the instant case, the assessment came prior to the expiration of the 240-day allowable period. As such, this Office so holds that complainant is rightfully entitled to US\$16, 795 pursuant to the Grade 8 disability assessment

of the company physician vis-a-vis the provisions of the governing POEA contract.

In the end, this Court while sympathizing with Babac's plight, who endured not only the high seas in order to earn money so that his family here can have a better living but likewise the challenging working conditions inherent of being a seaman thus resulting to the deterioration of his health, is constrained however to deny his claims for permanent disability benefits absent proof of compliance with the requirements set forth in Section 20 (B), paragraph (3) of the POEA-SEC and absent showing that the assessment made by the company-designated physician was made in bad faith. For the law protecting the rights of employees, authorizes neither oppression nor self-destruction of the employer, for there may be cases where the circumstances warrant favoring labor over the interests of management, but never should the scale be so tilted as to result in an injustice to the employer.[38]

WHEREFORE, foregoing premises considered, the instant petition is hereby GRANTED. The assailed Decision dated August 30, 2012 and the Resolution dated October 15, 2012 of the National Labor Relations Commission are NULLIFIED and the Decision of the Labor Arbiter dated April 30, 2012 in NLRC OFW Case No. (M) 09-13636-12 is REINSTATED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo, pp. 57-74

[2] Id. at pp. 77-78

[3] Issued pursuant to Department Order No. 4 of the DOLE and POEA Memorandum Circular No. 09 both series of 2000

[4] Rollo, pp. 288-308

[5] Id. at p. 295 par. 1

[6] Id. at p. 59; Report of Medical Treatment, Rollo, p. 275

[7] Id. at p. 312

[8] Id. at p. 315

[9] Supra note 6 at p. 59

[10] Rollo, p. 276

[11] Id. at p. 277

[12] Id. at p. 278

[13] Id. at p. 279

[14] Id. at p. 280

[15] Id. at p. 281

[16] Id. at p. 282

[17] Id. at p. 273

[18] Id. at p. 82 last paragraph

[19] Id. at p. 316

[20] Id. at p. 317

[21] Supra Note 4

[22] Rollo, p. 9; Petition par. 5

[23] Id. at p. 22

[24] Id. at p. 28

[25] Id. at pp. 79-90

[26] Id. at p. 77

[27] Article 192 , c.1 of the Labor Code, as amended

[28] Rollo, p. 309

[29] Supra note 4

[30] Supra note 9

[31] Supra note 10-15

[32] Supra note 18 and 19

[33] See *Riño v. Employees' Compensation Commission*, 387 Phil. 612, 620 (2000).

[34] G.R. No. 172933, October 6, 2008 as cited in *Kestrel Shipping Co., Inc./Capt. Amador P. Servillon and Atlantic Manning LTD v. Francisco Munar*, G.R. No. 198501, January 30, 2013

[35] Cf G.R. No. 198501, Jan. 30, 2013

[36] See *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008; *Fair Shipping Corp., and/or Khyu Marine Co., Ltd v. Joselito T. Medel*, G.R. No. 177907, August 29, 2012; *Kestrel Shipping Co., Inc./Capt. Amador P. Servillon and Atlantic Manning LTD v. Francisco Munar*, G.R. No. 198501, January 30, 2013

[37] Rollo, p. 273

[38] See *Southeastern Shipping, Southeastern Shipping Group, Ltd., v. Federico U. Navarra, Jr.*, G.R. No. 167678, June 22, 2010 citing *Ledesma, Jr. v. National Labor Relations Commission*, 537 SCRA 358, 371.

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