

COSME B. MARPURI, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), WALLEM MARITIME SERVICES, INC., TSAKOS SHIPPING & TRADING S.A., AND MR. REGINALDO A. OBEN...

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

Assailed via this Petition for Certiorari under Rule 65 of the Rules of Court filed by Cosme B. Marpuri (petitioner) is the Decision[1] dated July 29, 2011 as well as the October 14, 2011 Resolution[2] issued by the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000010-11-OFW (NLRC NCR M-06-08784-10) which affirmed the ruling of the Labor Arbiter dismissing his claim for permanent total disability benefits under the POEA Standard Employment Contract (POEA-SEC) and denied his Motion for Reconsideration[3], respectively.

The pertinent factual and procedural antecedents are as follows:

Petitioner was employed by private respondent Wallem Maritime Services, Inc. to serve as an Assistant Steward on board the vessel “Inca” which is owned and operated by its foreign principal, private respondent Tsakos Shipping and Trading S.A., for a period of nine (9) months with a basic monthly salary of US\$488.00, excluding overtime pay and other benefits.[4] On November 8, 2009, he left the country to commence work on his assigned vessel. As an Assistant Steward, petitioner's duties included stocking, cleaning, assisting the Chief Cook with the preparation and serving of meals, storeroom operations and inventory.

On January 19, 2010, petitioner felt dizzy and collapsed on the galley floor which caused him to sustain head injury. Three days thereafter, he was brought to Bayshore Medical Center in Houston, Texas where the attending physician, Dr. George Griffin (Dr. Griffin), diagnosed him with “Postural Hypotension, Syncope and Head Injury”. He was consequently repatriated on January 22, 2010 for medical reasons. Upon his arrival, petitioner was referred by his manning agent to Dr. Ramon Estrada and his team of specialists for further evaluation and treatment. After conducting a series of tests, Dr. Estrada issued a Medical Progress Report[5] under date February 17, 2010 certifying petitioner's fitness to work again as a seaman, viz:

“x x x Mr. Cosme B. Marpuri, 47 year old seafarer, followed up in my office last January 29 and February 16, 2010. There was no recurrence of dizziness or any syncopal attack for the last 2 weeks. He is asymptomatic at present and without any subjective complaints. He can now be declared fit to work and to travel. Diagnosis: Syncope (non-recurrent) sec. to overfatigue syndrome.”

Disputing the findings of the company-designated physician, petitioner filed a Complaint for permanent disability benefits, illness allowance, reimbursement of medical expense, damages and attorney's fees against private respondents on June 29, 2010. The case was docketed as NLRC NCR OFW-M-06-08784-10 and assigned to Labor Arbiter Ariel Cadiente. Attempts to conciliate having failed, the Labor Arbiter directed the parties to file their respective Position Papers and other relevant pleadings for the proper and full determination of the case.

In his Position Paper[6], petitioner alleged that while his position as an Assistant Steward appears to be high sounding, in reality, he performs arduous tasks as messman. He averred that his heavy workload and the gruelling conditions of his employment, which required him to work 48 hours per week or 192 hours per month with a maximum of 103 hours of monthly overtime, eventually took a toll on his health and caused him to suffer a compensable illness.

He asseverated that when he collapsed on the ship's galley on January 19, 2011, he was not immediately afforded medical attention despite the fact that they were docked at a port in Texas. It was only when his condition worsened that he was brought to the emergency department of Bayshore Medical Center. Upon his repatriation, petitioner allegedly underwent treatment for over 120 days because the company doctors found him to have hypertension and its complications of heart illness. His treatment was, however, suddenly cut off and the doctors refused to furnish him copies of his relevant medical records. This constrained petitioner to consult an independent physician, Dr. Ruben Chavez (Dr. Chavez), who diagnosed him to be afflicted with rheumatic heart disease, hypertension – stage 1 and congestive heart failure[7]. Consequently, Dr. Chavez declared him unfit for sea duty and permanently disabled as a seaman.

On the basis of the said findings, petitioner claimed permanent total disability benefits under Section 20(b), paragraph 5 of the POEA-SEC[8] stating that his illness was contracted during the term of his contract of employment. Petitioner further alleged that private respondents failed to pay his sickness allowance for 120 days and prayed for damages and attorney's fees in view of the latters' supposed deliberate refusal to pay his claims.

Private respondents countered that petitioner was disqualified from claiming disability benefits under the POEA-SEC because the latter's alleged illness is different from that which caused his repatriation. They pointed out that petitioner was repatriated for Postural Hypotension and Syncopal Attack but his private physician instead diagnosed him with Rheumatic Heart Disease or Congestive Heart Failure. In fact, petitioner was already declared fit to work by Dr. Estrada, the company-designated physician, even prior to the institution of the case. Even the certification issued by Dr. Chavez did not mention that petitioner is still suffering from Postural Hypotension which only proves that petitioner was already cleared from said illness. Private respondents further stressed that the medical conclusions of Dr. Chavez should not be given credence as the same were obtained five months after petitioner was declared fit to work, during which period, the latter's whereabouts were unknown to them.

On October 29, 2010, the Labor Arbiter rendered judgment in favor of private respondents. In dismissing the complaint, he ruled that the company-designated physician's findings should prevail over the certification issued by Dr. Chavez because the former had monitored and treated petitioner's condition for several weeks as compared with the latter. The Labor Arbiter also opined that Dr. Chavez' diagnosis cannot be given much weight since it differed from the cause of petitioner's repatriation. He thus concluded that petitioner failed to discharge the burden of proving that his illness was work-related. The fallo of the decision reads:

“WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of legal and factual merit.

Other claims are likewise dismissed.

SO ORDERED.”[9]

Aggrieved by the above pronouncement, petitioner appealed to the NLRC who on July 29, 2011, issued its now assailed Decision disposing as follows:

“All told, We find no reversible error to have been committed by the Labor Arbiter. Thus, the appeal is denied and the decision under review is hereby AFFIRMED en toto.

SO ORDERED.”

Unfazed, petitioner moved for reconsideration but as earlier mentioned, the same was also denied by the NLRC by Resolution dated October 14, 2011. Hence, the instant petition anchored on the following suppositions:

I

THE NLRC ARBITRARILY DISREGARDED THE EVIDENCE BY RELYING ONLY ON PETITIONER'S "POSTURAL HYPOTENSION" EVEN IF THE MEDICAL DIAGNOSES BY A DOCTOR IN TEXAS ALSO SHOWED HYPERTENSION, A CONDITION RELATED TO THE HEART DISEASE SUBSEQUENTLY DIAGNOSED BY PETITIONER'S DOCTOR.

II

THE NLRC ACTED CAPRICIOUSLY IN TOTAL DISREGARD OF EVIDENCE BY SWEEPINGLY GIVING CREDENCE ON THE COMPANY PHYSICIAN'S TREATMENT OF PETITIONER EVEN IF IT CONSISTED ONLY OF TWO (2) CHECK-UPS, FOCUSED ONLY ON PETITIONER'S SYNCOPE, THUS CANNOT BE CONSIDERED EXTENSIVE.

III

THE NLRC ACTED WHIMSICALLY IN FINDING NO CAUSAL CONNECTION BETWEEN THE DIAGNOSIS OF PETITIONER'S PHYSICIAN AND HIS EMPLOYMENT WITH PRIVATE RESPONDENTS EVEN IF A REASONABLE CONNECTION COULD BE ADDUCED FROM THE RECORDS.

Petitioner essentially contends that the NLRC gravely abused its discretion amounting to lack or in excess of jurisdiction when it denied his claim for disability compensation. According to him, the NLRC violated the avowed policy of the State to accord utmost protection to labor and grievously misapplied the principles governing compensation proceedings because it applied the evidentiary rules strictly against the worker, whose right to social justice is an immutable polestar in our Constitution, and liberally in favor of the employer. Petitioner further avers that the NLRC arbitrarily disregarded the evidence presented before it showing the causal connection between his illness and the nature of his work as an Assistant Steward.

In their Comment[10], private respondents move for the dismissal of the petition on the ground that petitioner failed to comply with the mandatory requirements provided by the Rules of Court. According to them, instead of appending certified true copies of the challenged July 29, 2011 Decision and October 14, 2011 Resolution, petitioner merely attached machine or xerox copies of the same. They argue that such violation of the express provision of the Rules warrants the outright dismissal of the petition. Private respondents also maintain that the NLRC committed no grave abuse of discretion in denying petitioner's claim as there are factual bases and legal justification for the assailed decision.

Before delving into the merits of the case, we shall first resolve the issue on petitioner's alleged non-compliance with the rules governing the proper filing of a petition for certiorari.

Section 3, Rule 46 in relation to Section 1, Rule 65 of the Revised Rules on Civil Procedure laid down the requirements for all cases originally filed in the Court of Appeals, including petition for certiorari, thus:

SECTION 3. Contents and filing of petition; effect of non-compliance with requirements – x x x

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized

representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.”

Based on the foregoing, the petition for certiorari must be accompanied by a copy of the judgment, order, resolution or ruling subject thereof. The provision states that either a legible duplicate original or certified true copy of the same shall be submitted. A "duplicate original copy" is defined as a copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. While a "certified true copy" is understood to be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity.[11] The purpose for this requirement is to assure that such copy is a faithful reproduction of the assailed judgment or order.

In the present case, an examination of the appended NLRC Decision and Resolution readily discloses that they are not "mere machine photocopy" but are, in fact, duplicate original copy of the assailed issuances. The attached copies were duly signed by the officers of the NLRC and each page thereof bore the initials of Commissioner Mercedes R. Posada-Lacap, indicating its authenticity and completeness. Undoubtedly, therefore, petitioner had duly complied with the procedural requirements for the filing of a petition for certiorari.

We shall now proceed to discuss the substantive grounds upon which petitioner based his claim. Records disclose that three days after petitioner collapsed on the vessel, he was diagnosed with Postural Hypotension by the doctor who examined him in Texas who opined that the same may have been due to his anti-hypertensive medicines. The diagnosis did not include any statement relative to rheumatic heart disease or congestive heart failure.

We also note that petitioner's chosen physician, Dr. Chavez, examined him only in June or five months after the company-designated physician declared him to be fit to return to sea duty. It is Our considered view that this belated examination cannot be compared to the examination conducted by Dr. Estrada who had monitored petitioner's medical condition immediately after his repatriation.

We also find as untenable petitioner's contention that Dr. Estrada's examination on him was not extensive because he was only subjected to two check-ups. It must be stressed that it is not the frequency of medical visits which determines the validity or credibility of a medical assessment. The fact remains that the company-designated physician had continuously monitored petitioner's medical condition and treated him from January 29 to February 17, 2010 or until such time that he was already cleared from the illness which caused his repatriation and deemed fit to again assume sea duty.

Finally, we agree with the NLRC's determination that petitioner failed to prove the causal connection between the illness for which he bases his claim for disability benefits and his work as an Assistant Steward. It is true that strict proof of connection is not required for probability, not certainty, is the test of proof in compensation proceedings. This does not mean, however, that petitioner may merely rest on his allegations that his illness is compensable. He must still adduce substantial evidence to prove that the principle can be applied to his case. As held in the case of *Gabunas, Sr. versus Scanmar Maritime Services, Inc*[12], thus:

“We agree with petitioner's argument that to establish whether the illness is work-related, probability – not certainty – is the touchstone. However, the probability referred to must be founded on facts and reason. *Government Service Insurance System v. Emmanuel P. Cuntapay* is instructive as regards the burden resting

on the claimant's shoulder – that of proving the causal link between a claimant's work and the ailment suffered:

'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 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. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.'

It bears emphasizing that while courts of justice adhere to the principle of liberality in favor of the seafarer in construing the POEA Standard Contract, it cannot allow claims for compensation based on surmises. When the evidence presented then negates compensability, the claim must fail, lest it causes injustice to the employer.[13]

In view of the foregoing disquisitions, we find no grave abuse of discretion amounting to lack or in excess of jurisdiction in the assailed judgment of the NLRC. Hence, no cogent reason to disturb its findings.

WHEREFORE, above premises considered, the petition is DENIED. The assailed decision of the National Labor Relations Commission is hereby AFFIRMED.

SO ORDERED.

Carandang (Chairperson) and Gonzales-Sison, JJ., concur.

[1] Rollo, pages 33 to 38

[2] Id., page 40

[3] Id., pages 283-297

[4] Id., page 56

[5] Id., page 98

[6] Id., pages 48-71

[7] Id., page 78

[8] SECTION 20. COMPENSATION AND BENEFITS

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

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

[9] Id., pages 21-31

[10] Id., pages 229-269

[11] Supreme Court Circular No. 3-96

[12] G.R. No. 188637, December 15, 2010 citing GSIS vs Cuntapay, G.R. No. 168862, 553 SCA 520

[13] Estate of Poseido Ortega vs. Court of Appeals, G.R. No. 175005, April 30, 2008, 553 SCRA 649

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