

**RENATO T. TALIDANO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, RICKMERS MARINE AGENCY
PHILIPPINES, INC./ GLOBAL MANAGEMENT LIMITED/ GEORGE C.
GUERRERO, RESPONDENTS.**

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the following issuances of respondent National Labor Relations Commission, Fifth Division, in NLRC LAC No. (OFW-M) 07-000530-10: 1) decision[2] dated January 25, 2011, which affirmed the Labor Arbiter's decision; and 2) resolution[3] dated March 30, 2011, denying petitioner's motion for reconsideration.

The facts of the case are as follows:

On March 10, 2009, petitioner Renato T. Talidano was employed by private respondents Rickmers Marine Agency Philippines, Inc./ Global Management Limited/ George C. Guerrero as engine fitter to work on board M/V Norasia Vaparaiso for a period of seven (7) months with a salary of US\$625.00 per month, plus the usual benefits of fixed overtime pay and vacation leave pay.

Petitioner alleged that he joined the vessel on April 9, 2009; that after three (3) weeks on board the vessel, he felt physical discomfort and body weakness, accompanied by blurring of vision; that when the vessel reached Argentina on May 9, 2009, petitioner was allowed to consult a doctor who diagnosed him to be suffering from ketosis secondary to diabetes mellitus; that he was confined at a hospital for five (5) days from May 9, 2009 up to May 13, 2009; that upon his discharge from the hospital, he was signed off from the vessel and repatriated back to the Philippines on May 19, 2009; and that upon arrival, he was referred by the company-designated physician to the St. Luke's Medical Center. Petitioner stated that the company-designated physician later declared his ailment as not work-related; that his claim for sickness allowance and reimbursement of medical expenses was denied by the respondent local agency; that the blurring of his vision continued, hence he consulted another physician at the Manila Hearing Aid Center, Inc. on November 3, 2009; that an audiogram examination was conducted and the results suggested profound sensorineural hearing loss on the right ear and mild low frequency sensorineural loss on the left ear; and that he was advised to undergo refractive surgery. Petitioner further stated that he consulted an occupational health expert, Dr. Li-Ann L. Orenca on December 1, 2009; and that the doctor issued a medical certificate stating that complainant's diabetes mellitus "was aggravated by exposure to physical and emotional stress at work and due to complication on his vision, cannot be expected to return to his previous employment as a seafarer/ ship fitter." [4]

For their part, private respondents admitted the fact of employment of petitioner as engine fitter but alleged that the latter had a short stint onboard his vessel of assignment of less than one month or only 29 days; that petitioner was repatriated due to "diabetes mellitus, type II"; that the company-designated physician examined petitioner and found that he was suffering from "diabetes mellitus, type II"; that there being no showing that petitioner's

employment caused the said illness, the company-designated physician declared petitioner's condition as not work-related; that despite this finding, they paid petitioner's sickness allowance until the latter's condition was declared as not work-related by the company-designated physician; and that instead of compelling the appointment of a third doctor, petitioner filed a complaint for non-payment of his disability benefits, sickness allowance and damages against them.[5]

On May 14, 2010, Labor Arbiter Jose G. De Vera rendered a decision[6] dismissing petitioner's complaint for lack of merit and finding that the latter's illness was not work-related.

Petitioner filed with the NLRC a Memorandum of Appeal[7] dated June 18, 2010. In a Decision[8] dated January 25, 2011, the NLRC affirmed the decision of the Labor Arbiter, thus:

"Proceeding therefrom, We subscribe fully to the findings of the Labor Arbiter a quo that complainant-appellant is not entitled to disability benefits as he failed to prove that his medical condition is work-connected.

Finding no cogent basis to depart from the ruling of the Labor Arbiter insofar as the nature and etiology of complainant's illness is concerned, the conclusion that complainant's medical condition is not work-related is therefore upheld.

Accordingly, complainant, having failed to establish the conditions for the compensability of his illness, is not entitled to his claims.

The claims for moral and exemplary damages and attorney's fees are denied for lack of substantiation. Complainant failed to establish that the respondents had acted in bad faith or with malice in resisting his claims, and for their part, respondents have shown compliance with their obligations under the approved shipboard contract, thus, militating against the claimed damages and attorney's fees.

WHEREFORE, premises considered, the Decision of the Labor Arbiter dated May 14, 2010 is AFFIRMED.

SO ORDERED."

Petitioner filed a motion for reconsideration[9] which was, however, denied.

In the instant petition for certiorari, petitioner alleged that:

"I
THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S APPEAL AND FINDING THAT THE LATTER'S ILLNESS IS NOT WORK-RELATED.

II
THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE LABOR ARBITER'S RULING THAT PETITIONER IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFIT DESPITE GLARING EVIDENCE, BOTH LEGAL AND FACTUAL, TO THE CONTRARY."[10]

Petitioner contends that the decision of the NLRC has no factual and legal basis; that the facts, circumstances and pieces of evidence presented clearly point to the conclusion that his illness is work-related; that although diabetes mellitus is not among those occupational diseases listed under Section 20 of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), petitioner is compensable having satisfied the requisites provided for under Section 32-A of the POEA-SEC.

The petition is devoid of merit.

Entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but also by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.[11]

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

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:

xxx

In case of permanent total or partial 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 the rules of compensation applicable at the time the illness or disease was contracted.

Pursuant to the aforementioned provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[12]

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 in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These are:[13]

SECTION 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; and
- 4) There was no notorious negligence on the part of the seafarer.

In the case at bar, this Court finds that petitioner failed to prove that his ailment was work-related and was

acquired during his less than a month sea deployment. Petitioner was unable to adduce evidence that his work exposed him to harmful substances and chemicals suspected to increase the risks of acquiring diabetes. Neither was he able to prove that his diabetes was acquired during his employment.[14] Diabetes mellitus is a type of illness which develops over a considerable period of time. It is affected not only by one's work, but also by many factors outside of one's working environment. It is a metabolic and a familial disease to which one is predisposed by reason of heredity, obesity or old age. The nature of diabetes mellitus is in the genetic characteristics of an individual.[15] In the absence of substantial evidence, petitioner's working conditions cannot be assumed to have increased the risk of contracting diabetes.[16]

Moreover, petitioner cannot rely on his Pre-Employment Medical Examination (PEME) to prove that he acquired his illness during employment. While a PEME may reveal enough for vessel interests to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform vessel interests of seafarer's true state of health. The PEME could not have divulged petitioner's illness considering that at that time, the latter's illness was not yet critical. It was only after petitioner felt weakness of body and blurring of vision and after he was subjected to medical examinations that his illness was finally diagnosed as a case of diabetes mellitus, Type II. Disability arising from a pre-existing illness is not compensable.[17]

The POEA-SEC clearly provides 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. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer as the decision final and binding on both of them. In this case, petitioner did not avail of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. Thus, this Court is left without choice but to uphold the certification made by the company-designated physician that petitioner's illness is not work-related.[18]

It is true that the beneficent provisions of the Standard Employment Contract are liberally construed in favor of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. However, in the present case, this Court finds that the factual circumstances do not justify the grant of disability benefits as prayed for by petitioner.[19]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 3-25.

[2] Rollo, pp. 112-120.

[3] Rollo, pp. 133-134.

[4] Rollo, pp. 86-87.

[5] Rollo, pp. 87-88

[6] Rollo, pp. 86-90.

[7] Rollo, pp. 91-111.

[8] Rollo, pp. 112-120

[9] Rollo, pp. 121-132.

[10] Rollo, p. 10.

[11] Magsaysay Maritime Corp. and/or Cruise Ships Catering and Services International N.V. vs. National Labor Relations Commission and Rommel B. Cedol, G.R. No. 186180, March 22, 2010.

[12] Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd. vs. Enrique Undag, G.R. No. 191491, December 14, 2011.

[13] Ibid.

[14] Klaveness Maritime Agency, Inc., et al. vs. Beneficiaries of Anthony S. Allas, G.R. No. 168560, January 28, 2008.

[15] Rollo, p. 83.

[16] Klaveness Maritime Agency, Inc., et al. vs. Beneficiaries of Anthony S. Allas, G.R. No. 168560, January 28, 2008.

[17] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd. vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006.

[18] Santiago vs. Pacbasin Ship Management, G.R. No. 194677, April 18, 2012.

[19] Klaveness Maritime Agency, Inc., et al. vs. Beneficiaries of Anthony S. Allas, G.R. No. 168560, January 28, 2008.

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