

88 ACES MARITIME SERVICES, INC. AND/OR OFFSHORE SPECIALTY FABRICATORS AND/OR JANET A. JOCSON, DB WILLIAM KALLOP, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND BIENVEN...

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

Assailed by 88 Aces Maritime Services, Inc. and/or Offshore Specialty Fabricators and/or Janet A. Jocson, DB William Kallop (“88 Aces, et al.”) in this petition for certiorari filed under Rule 65 of the Rules of Court, are the Resolutions dated June 29, 2011[1] and August 25, 2011[2] of the National Labor Relations Commission (“NLRC”) which it rendered in NLRC LAC (OFW-M) No. 04-000343-11 (NLRC NCR Case No. OFW 05-06663-10), entitled “Bienvenido Mosqueda, Jr., Complainant-Appellant, -vs.- Benhur Shipping Corp./88 Aces Maritime Services, Inc., Offshore Specialty Fabricators, Mr. Edgar B. Bruselas/Ms. Janet A. Jocson, & 'DB William Kallop', Respondents-Appellees”, the dispositive portions of which read:

1) Resolution dated June 29, 2011:

“WHEREFORE, premises considered, the Decision of Labor Arbiter Eduardo J. Carpio dated December 28, 2010 is hereby modified and respondents-appellees are hereby ordered to pay jointly and severally complainant-appellant the following:

1. Permanent disability Compensation in accordance with the POEA Standard Employment Contract in the sum of US\$60,000.00; and
2. Attorney's fees in the sum equivalent to 10% of the judgment award.

SO ORDERED.”[3]

2) Resolution dated August 25, 2011:

“WHEREFORE, premises considered, the instant Motion for Reconsideration is, as it is hereby DENIED. The resolution dated June 29, 2011 STANDS UNDISTURBED.

No further motion of similar nature shall be entertained.

SO ORDERED.”[4] (emphasis supplied)

The Facts

In their petition, 88 Aces, et al. narrated the antecedent facts of the case, viz.:

“Private respondent signed a 4 month POEA approved Contract of Employment as Welder with Benhur Shipping Corporation, hereinafter referred to as Benhur for brevity under the following terms and conditions:

Duration of Contract:

4 months

Position:

Welder

Basic Monthly Salary:

US\$1,670.45

Hours of Work:

48 Hours per week

Overtime:

US\$1,670.45

Vacation leave w/ pay:

30 days upon completion of contract

Point of Hire:

Manila, Philippines

Copy of private respondent's Contract of Employment is attached to the Petitioner's Position Paper as Annex '1'.

On 3 November 2008, seafarer embarked on the vessel DB William Kallop and assumed his duties as Welder. (Annex '2' of the Position Paper)

Sometime in December 2008, the seafarer complained of blurring vision after a foreign body allegedly penetrated his left eye while he was working on a welding machine on board the vessel. (Please see Medical Report dated 20 January 2009 attached as Annex '3' of the Position Paper)

The seafarer consulted a physician in Homa, Louisiana where he was told to have 'foreign body, left eye'. He was then advised to follow up in his home country for further evaluation and management.

On 16 January 2009, seafarer disembarked from the vessel and repatriated to the Philippines. (relevant pages of the seafarer's Seaman's book are attached as Annex '2' of the Position Paper)

Upon arrival in the Philippines, he was seen by the company doctors at Physicians Diagnostic Services Center, Inc. where he was given a diagnosis of 'Left eye injury secondary to foreign body'. Copy of the medical report dated 19 January 2009 is attached to the Position Paper as Annex '3' of the Position Paper.

Thereafter, the seafarer was referred to the company doctors at Marine Medical Services of the Metropolitan Medical Center under the care and supervision of Dr. Robert Lim. Dr. Lim promptly organized a team of specialists for the management of the seafarer's medical condition.

The seafarer underwent a battery of medical examinations, extensive treatments and operations, and successive follow up/check up by the team of specialists. Copies of the pertinent medical reports are attached to the Position Paper as Annexes '3' to '3-S' of the Position Paper.

On 19 May 2009, the company doctor issued a medical report which categorically stated that the seafarer was 'under the care of a Retinal Specialist', the same report likewise noted an interim assessment of Grade 12, slight

residuals of disorder. Copy of the medical report dated 19 May 2009 is attached to the Position Paper as Annex '3-L' of the Position Paper.

Ultimately, after further treatment including Pars Plana Vitrectomy, Air Fluid Exchange, Endolaser and Silicon Oil Injection, Left eye, the company doctor assessed the seafarer with Grade 7 Disability for blindness of one eye.

Seafarer was given a final diagnosed [sic] with 'Proliferative Vitreoretinopathy with Retinal Detachment, Left Eye; S/P Pars Plana Vitrectomy, Air Fluid Exchange, Endolaser and Silicon Oil Injection, Left eye.

In the interim, the principal of then respondent Benhur, Off Shore Specialty Fabricators transferred changed their agent to herein petitioners. As such, the petitioners assumed responsibility for any claims by virtue of an Affidavit of Assumption of Responsibility, a copy of which is attached [as] Annex 'A' of the private respondent's Position Paper.

Pursuant to the findings of the company doctor, the petitioners offered the seafarer US\$20,900 equivalent to Grade 7, which he rejected.”[5] (emphasis Ours)

On May 20, 2010, the private respondent filed a complaint with the NLRC's NCR Regional Arbitration Branch against Benhur Shipping Corporation (“Benhur”), Offshore Specialty Fabricators, and Mr. Edgar B. Bruselas for disability compensation in accordance with the Jones Act of USA; Balance of Sick Wages; Moral and Exemplary Damages; attorney's fees; and other benefits under the law.[6]

On May 25, 2010, summons was served on Benhur Shipping Corp. and Edgar Bruselas.[7]

On June 29, 2010, private respondent filed an Amended Complaint.[8]

On July 8, 2010, Benhur Shipping Corporation and Edgardo Bruselas, through counsel “Emelito A. Licerio”, filed a Motion to Dismiss private respondent's Complaint, explaining in part:

“3. Sometime in November 2008, BENHUR processed and deployed the complainant to the vessel DB William Kallop as Welder with a basic monthly salary of US\$1,670.45 for a period of four (4) months. Attached is the photocopy of the Contract of Employment executed between the complainant and BENHUR marked as Annex 'A'.

4. Sometime in December 2008, 88 ACES MARITIME SERVICES, INC., another duly licensed local manning agency in the Philippines with offices at Unit 1193 Lyra Building, 1191 Quezon Avenue, Quezon City, requested for the enrol[ment] of DB William Kallop under its foreign principal, OFFSHORE SPECIALTY FABRICATORS, INC. Respondent BENHUR through its President, EDGAR BRUSELAS interposed no objection thereto on condition that 88 ACES MARITIME SERVICES, INC., issue the standard requirements of Overseas Employment Administration (hereafter, POEA) in such kind of situation. Subsequently, respondent 88 ACES MARITIME SERVICES, INC. through its President/Managing Director, CARMENCITA A. SARREAL[,] issued the standard Affidavit of Assumption of Responsibility dated 04 December 2008. A photocopy of the letter of BENHUR to POEA dated 04 December 2008 is attached herewith as Annex 'B' while a photocopy of the Assumption of Responsibility is attached herewith as Annex 'C'.

5. By and large, 88 ACES MARITIME SERVICES, INC. through CARMENCITA SARREAL[,] relieved and absolved BENHUR of full and complete responsibility towards the herein complainant. Pertinently, the affidavit of assumption of responsibility reads:

'3. That as agent of the above principal in the Philippines, our company is willing to assume full and complete responsibility for all contractual obligations to its seafarers originally recruited and processed by BENHUR SHIPPING CORPORATION for the vessel DB WILLIAM KALLOP.'

6. The complainant was repatriated to the Philippines on 18 January 2009 after allegedly sustaining an eye injury on 25 December 2008 while on board. Upon his arrival in the Philippines, the complainant reported DIRECTLY to 88 ACES MARITIME SERVICES, INC./OFFSHORE immediately upon his arrival in Manila which referred the complainant to their company-designated clinic at the Metropolitan Medical Center where he was attended to by Dr. Tan and Dr. Antonio Sai (Par. 8, Affidavit/Complaint) and to the University of Santo Tomas for Ophthalmic Ultrasound (Par. 9, id.). The fact that complainant reported to 88 ACES/OFFSHORE upon his repatriation and not to BENHUR only proved that even complainant knew BENHUR has no more contractual responsibility towards him and that the same has been fully assumed by 88 ACES MARITIME SERVICES, INC. and its principal OFFSHORE;

7. It is well worth to note that the assumption of responsibility is a practice sanctioned and legalized under the POEA Rules and Regulations Governing Overseas Employment particularly Section 7 and Section 8, Rule II, Part III. Hence, it is valid and effective between and among the herein parties including the complainant himself. The complainant knew about this assumption as may be gleaned from his act of reporting to 88 ACES/OFFSHORE immediately upon his repatriation;

8. Clearly, the complainant has no more cause of action against said respondents. But complainant is now left without any remedy. He only has to direct his claims against the real party in interest. He must now direct his complaint against 88 ACES MARITIME SERVICES, INC. and OFFSHORE SPECIALTY FABRICATORS, INC.”[9]

Served with copies of the motion to dismiss were “Atty. R.C. Carrera”, counsel for private respondent, and “Del Rosario & Del Rosario”, counsel for 88 Aces, et al.[10]

On July 15, 2010, Labor Arbiter Eduardo J. Carpio issued Summons against petitioner “88 Aces Maritime Svcs., Inc.”[11] The same was served on petitioner on September 1, 2010.[12]

On December 28, 2010, i.e. after the parties submitted their position papers on the case, Labor Arbiter Carpio rendered his decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, decision is hereby rendered ordering the dismissal of complainant's claim for payment of full disability benefits. The disability assessment of Grade 7 issued by the company-designated physician is hereby upheld. Respondents 88 Aces Maritime Services, Inc. and Offshore Specialty Fabricators are hereby ordered to pay complainant, jointly and solidarily, the amount of US\$20,900.00 or its peso equivalent at the time of payment representing complainant's disability benefits for a Grade 7 assessment as per Section 32 of the POEA-Standard Employment Contract.

All other claims are dismissed for lack of basis.

SO ORDERED.”[13]

On April 1, 2011, private respondent appealed from the Arbiter's decision,[14] praying that:

“WHEREFORE, premises considered[,] it is most respectfully prayed before this Honorable Commission that the Decision of the Honorable Labor Arbiter dated December 28, 2010, be MODIFIED and RECTIFIED and that a new judgment be decreed ordering respondents to pay complainant jointly and severally the following:

- Permanent disability compensation in accordance with the POEA Standard Contract of Employment in the sum of SIXTY THOUSAND US DOLLARS (US\$60,000.00);

- Reimbursement of medical expenses in the sum of EIGHT THOUSAND NINE HUNDRED EIGHTY FOUR PESOS AND 75/100 (P8,984.75);

- Moral damages in the sum of THREE HUNDRED THOUSAND PESOS (P300,000.00);
- Exemplary damages in the sum of THREE HUNDRED THOUSAND PESOS (P300,000.00); and
- Attorney's fees in the sum equivalent to 10% of the judgment award.”[15]

On June 29, 2011, the NLRC promulgated its first assailed resolution[16] increasing private respondent's permanent disability award from US\$20,900.00 to US\$60,000.00, with 10% attorney's fees.

On July 27, 2011, the petitioners moved for its reconsideration.[17] However, on August 25, 2011, the same was denied by the NLRC in its second assailed resolution.[18]

Hence, this petition.

ISSUES

In support of their petition, 88 Aces, et al. (now “petitioners”) argue:

- “1. The public respondent NLRC is [sic] committed grave abuse of discretion when it did not serve a copy of the resolution of denying the Motion for Reconsideration to herein petitioners despite the latter being a respondent on record.
2. The NLRC [c]ommitted grave abuse of discretion in entertaining the appeal when insofar as herein petitioners 88 ACES MARITIME SERVICES, INC. AND/OR OFFSHORE SPECIALTY FABRICATORS, AND/OR JANET A. JOCSON AND DB WILLIAM KALLOP, the same was not deemed perfected because complainants did not furnish petitioners a copy of the Appeal upon herein petitioners.
3. The public respondent committed grave abuse of discretion in awarding the seafarer total and permanent disability benefits when he was only assessed by the company-designated doctor to be suffering from a grade '7' disability.
- 3.A. Mere inability to work for 120 days does not render a seafarer totally and permanently disabled.
4. The Honorable Public respondent committed grave abuse of discretion in awarding attorney's fees. Private respondent is not entitled to attorney's fees for lack of legal and factual basis. Complainant has no right to claim attorney's fees because petitioners never committed acts in bad faith towards complainant.”[19]

Such are the issues which We shall resolve in this petition.

Our Ruling

Anent the first issue, the petitioners argue that they were deprived of their right to due process by the Labor Arbiter, the private respondent and the public respondent NLRC Third Division as they were not furnished with:

- (1) a copy of the decision of the Labor Arbiter;
- (2) the appeal of the seafarer; and
- (3) the Resolution of public respondent NLRC's Third Division.[20]

We disagree.

It is settled that in this regard, due process refers to a plain opportunity to be heard.[21] And equally settled is the rule that the filing by an aggrieved party, such as petitioners here, of a motion for reconsideration from the modifying June 29, 2011 Resolution of the NLRC constitutes exhaustion of due process.[22] So with their filing of the instant petition for certiorari. Petitioners, clearly, cannot seek a writ of certiorari on the argued ground of

lack of due process.

Regarding the second issue, the petitioners contend that private respondent's appeal to the NLRC "was not deemed perfected because private respondent did not furnish them a copy of the appeal".

We disagree.

Mcleod vs. NLRC[23] already held that service of a memorandum of appeal on the other party is merely a rundown of the contents of the required memorandum of appeal to be submitted by appellant. Being not, however, a jurisdictional requirement, it does not render the assailed June 29, 2011 Resolution of public respondent infirmed.

Concerning the third issue, the petitioners argue that the NLRC committed grave abuse of discretion in awarding private respondent "total and permanent disability benefits when he was only assessed by the company-designated doctor xxx a grade '7' disability".

We agree.

Under Section 32 of the POEA-SEC, loss of one eye or total blindness of one eye constitutes merely a Grade 7 disability. Such, likewise, is the finding of the company-designated physician.[24] Since under the POEA-SEC's schedule of disability benefits, an impediment grade 7 is entitled only to US\$20,900.00 (US\$50,000.00 x 41.80%), it follows that the disability allowance granted by the Labor Arbiter is correct. Said award must, therefore, be reinstated.

Regarding sub-issue "3-A", the petitioners claim that an inability to work for 120 days does not render a seafarer totally and permanently disabled.

We disagree.

In Dante F. Dela Cruz vs. National Labor Relations Commission, et al.,[25] this Court already held:

"The 240-day rule laid down in the October 6, 2008 Vergara vs. Hammonia case has not been consistently followed by the Supreme Court in many cases now. Tabulated below are the cases where the High Tribunal applied the 120-day rule on permanent total disability as covenanted in the parties' POEA Standard Employment Contract ('POEA-SEC'):

Name of Case	Date of Promulgation	Ponente	Concurring Justices
Iloreta vs. Philippine Transmarine Carriers, Inc.,	G.R. No. 183908		
	December 4, 2009	J. Carpio-Morales	Puno, C.J., Leonardo-De Castro, Bersamin, and Villarama, JJ.
Abante vs. KJGS Fleet Management Manila	G.R. No. 182430		
	December 4, 2009	J. Carpio-Morales	Puno, C.J., Leonardo-De Castro, Bersamin, and Villarama, JJ.
Quitoriano vs. Jebsens Maritime, Inc.	G.R. No. 179868		

December 23, 2009

J. Carpio-Morales

Puno, C.J., Leonardo-De Castro, Bersamin, and Villarama, JJ.

Valenzona vs. Fair Shipping Corporation, G.R. No. 176884

October 19, 2011

J. Del Castillo

Corona, C.J., Leonardo De Castro, Bersamin, and Villarama, JJ.

Wallem Maritime Services vs. Tanawan, G.R. No. 160444

August 29, 2012

J. Bersamin

Serenio, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ.

It is thus suggested that an En Banc ruling be rendered by the High Tribunal stating the reasons why the Vergara vs. Hammonia ruling can or cannot apply to seafarer's disability claims. And, in its deliberation on the matter, it is the hope of this Court that the following legal points be considered.

First. Art. 192 (c)-(1) of the Labor Code [now Art. 198 (c)-(1), as renumbered by R.A. 10151], and the pertinent rules thereon (which served as bases of the Vergara vs. Hammonia 240-day rule), is a provision under Book Four, Title II of the Code on 'Employees Compensation and State Insurance Fund'. Such Book and Title of the Code was not designed, much less intended to apply to seafarers. For, while as a matter of policy, Art. 166 (now Art. 172) thereof provides:

'ART. 166. Policy. – The State shall promote and develop a tax-exempt employees compensation program whereby employees and their dependents, in the event of work-connected disability or death, may promptly secure adequate income benefit, and medical or related benefits.' (emphasis Ours),

Art. 167 (g) [now Art. 173(g)] defines an employee to mean:

'ART. 167. Definition of Terms.

xxx xxx xxx

(g) "Employee" means any person compulsorily covered by the GSIS under Commonwealth Act Numbered One hundred eighty-six, as amended, including the members of the Armed Forces of the Philippines, and any person employed as casual, emergency, temporary, substitute or contractual, or any person compulsorily covered by the SSS under Republic Act Numbered Eleven hundred sixty-one, as amended.' (emphasis Ours)

In this regard, while Section 2 of the GSIS Law provides:

'(c) Employer – The national government, its political subdivisions, branches, agencies or instrumentalities, including government-owned or controlled corporations, and financial institutions with original charters, the constitutional commissions, and the judiciary;

(d) Employee or Member – Any person, receiving compensation while in the service of an employer as defined herein, whether by election or appointment, irrespective of status of appointment, including barangay and sanggunian officials;' (emphasis Ours)

Section 8 of the Social Security Law has been explicit on the point that:

'(c) Employer – Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government: Provided, That a self-employed person shall be both employee and employer at the same time.

(d) Employee – Any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship: Provided, That a self-employed person shall be both employee and employer at the same time.'

Pertinently, seafarers, as a general rule, are not government employees. Neither would those who are recruited by foreign-based employers (through licensed recruitment agencies) be considered as compulsorily covered by the SSS because Section 9 (c) of the Social Security Law, as amended, is clear that:

'(c) Filipinos recruited by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis.' (emphasis Ours)

Being not 'compulsorily covered by the GSIS under Commonwealth Act Numbered One Hundred Eighty-Six, as amended', nor 'by the SSS under Republic Act Numbered Eleven Hundred Sixty-One, as amended', seafarers are concededly, not governed by Book Four, Title II of the Labor Code. Their disability claims are not to be processed under the 'Employees Compensation and State Insurance Fund' of Book IV, Title II of the Labor Code but rather by, as admitted in the NLRC's April 2, 2012 Decision, the POEA-SEC.

Second. Proving further that seafarers' disability claims are not covered by the Employees Compensation and State Insurance Fund is Art. 180 (now Art. 186) of Book Four, Title II of the Code, viz.:

'ART. 180. Settlement of Claims. – The System shall have original and exclusive jurisdiction to settle any dispute arising from this Title with respect to coverage, entitlement to benefits, collection and payment of contributions and penalties thereon, or any other matter related thereto, subject to appeal to the Commission, which shall decide appealed cases within twenty working days from the submission of the evidence.' (emphasis Ours)

On the other hand, Section 10 of Republic Act No. 8042 provides:

'SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

xxx xxx xxx'

With the law being explicit that a seafarer's disability claim cannot be adjudicated by the SSS/GSIS, much less by the Employees Compensation Commission, but by the NLRC's Labor Arbiter under Section 10, R.A. 8042, it then is clear that the law on Employees Compensation and State Insurance Fund, particularly Art. 192 (c), (1) [now Art. 198 (c) (1)] of the Labor Code which was invoked by Vergara vs. Hammonia, does not apply to a seafarer, or sea-based migrant worker.

Third. Reinforcing this Court's view that a seafarer's disability claim is not rooted from the provisions of the Labor Code, particularly the law on Employees Compensation and State Insurance Fund of Book IV, Title II of the Labor Code, is the observation of the Supreme Court (through then Associate Justice, later Chief Justice Reynato S. Puno) in Bernardo Remigio vs. National Labor Relations Commission, viz.:

“Disability” is generally defined as “loss or impairment of a physical or mental function resulting from injury or sickness.” Clearly, “disability” is not synonymous with “sickness” or “illness,” the former being a potential effect of the latter. The schedule in Sec. 30 of the POEA SEC is a Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted. It is not a list of compensable sicknesses. Unlike the 2000 POEA SEC, nowhere in the 1996 POEA SEC is there a list of “Occupational Diseases.”

The unqualified phrase “during the term” in Section 20(B) of the 1996 POEA SEC covers all injury or illness occurring in the lifetime of the contract. The injury or illness need not be shown to be work-related. In *Sealanes Marine Services, Inc. v. NLRC*, we categorically held:

“The argument of petitioners that since cancer of the pancreas is not an occupational disease it was incumbent upon Capt. Arante to prove that his working conditions increased the risk of contracting the same, is not meritorious. It must be noted that his claims arose from the stipulations of the standard format contract entered into between him and SEACORP which, per Circular No. 2, Series of 1984 of respondent POEA was required to be adopted and used by all parties to the employment of any Filipino seamen (sic) on board any ocean-going vessel. His claims are not rooted from the provisions of the New Labor Code as amended. (emphasis Ours) Significantly, under the contract, compensability of the death or illness of seam[e]n need not be dependent upon whether it is work connected or not. Therefore, proof that the working conditions increased the risk of contracting a disease or illness, is not required to entitled [sic] a seaman who dies during the term thereof by reason of such disease or illness, of the benefits stipulated thereunder which are, under Section C(2) of the same Circular No. 2, separate and distinct from, and in addition to whatever benefits which the seaman is entitled to under Philippine laws. (emphasis supplied)”

The principle was reiterated in the recent case of *Seagull Shipmanagement and Transport, Inc. v. NLRC*:

“While indeed, the Labor Code’s provisions on disability benefits under the Employees’ Compensation Commission (ECC) require the element of work-relation for an illness to be compensable, the 1996 POEA SEC giving a more liberal provision in favor of the seafarer must apply. As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. In controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former’s favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State to give maximum aid and protection of labor.” (emphasis Ours)

Significantly, the High Tribunal’s pronouncement in *Remigio vs. NLRC* that a seafarer’s disability claims ‘are not rooted from the provisions of the Labor Code as amended’, has not been abandoned in any other ruling. And, proving the point that *Remigio vs. NLRC* is a sound jurisprudence, it still cited said case even in disputes where the High Tribunal applied the 240-day rule of *Vergara vs. Hammonia*, viz.:

- *Magsaysay Maritime Corp. vs. Lobusta*, G.R. No. 177578, January 25, 2012;
- *Pacific Ocean Manning, Inc. vs. Penales*, G.R. No. 162809, September 05, 2012;
- *Philasia Shipping Agency Corporation vs. Tomacruz*, G.R. No. 181180, August 15, 2012; and
- *Fair Shipping Corp. vs. Medel*, G.R. No. 177907, August 29, 2012.

Fourth. In fact, in the fairly recent case of *Joelson O. Iloreta vs. Philippine Transmarine Carriers, Inc., et al.*, the Supreme Court acknowledged the continued relevance of *Remigio vs. NLRC* in seafarers’ disability claims. Said the Court:

‘*Remigio v. National Labor Relations Commission* summarizes the laws and jurisprudence on the application

of the Labor Code concept of disability compensation to the case of seafarers, viz.:

“The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to 'secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith' and to 'promote and protect the well-being of Filipino workers overseas.' Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to 'the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects (Art. 1700).

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x.

x x x x

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

Sec. 2. Disability. – (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

(c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

'x x x the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from “permanent total disability” regardless of whether or not he loses the use of any part of his body.

A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom (*Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

'Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. x x x

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. (Emphasis and underscoring supplied)”

Applying the standards reflected above vis-a-vis the fact that from the time petitioner was medically repatriated

on August 16, 2002 up to the time he filed his complaint for disability compensation on July 14, 2003 or for almost eleven (11) months, petitioner remain unemployed, his disability is considered permanent and total.' (emphasis supplied)

Fifth. Regarding the question of why the Supreme Court has been applying the Labor Code concept of permanent total disability to claims of seafarers despite their being not governed by the law on Employees Compensation and State Insurance Fund in Book IV, Title II of the Labor Code, the High Tribunal, in *Rizaldy M. Quitariano vs. Jebsens Maritime, Inc., et al.*, explained:

'In accordance with the avowed policy of the State to give maximum aid and full protection to labor, the Court has applied the Labor Code concept of permanent total disability to Filipino seafarers, it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity; hence, disability should be understood less on its medical significance but more on the loss of earning capacity.

xxx xxx xxx

Applying the standards reflected in the immediately quoted ruling of the Court vis-a-vis the fact that it was only on November 16, 2001 that the "fit to work" certification was issued by Dr. Cruz or more than five months from the time petitioner was medically repatriated on May 30, 2001, petitioner's disability is considered permanent and total.

Significantly, it is gathered that petitioner remained unemployed even after he filed on February 26, 2002 his complaint to recover permanent total disability compensation and despite the August 31, 2005 Decision of the NLRC which was affirmed by the Court of Appeals, ordering respondents to 'allow complainant to resume sea duty.'

That petitioner was not likely to fully recover from his disability is mirrored by the Labor Arbiter's finding that his illness would possibly recur once he resumes his sea duties. Such finding could account why petitioner was not re-deployed by respondents.

Petitioner's disability being then permanent and total, he is "entitled to 100% compensation, i.e., US\$80,000 for officers," as stipulated in par. 20.1.7 of the parties' CBA.

Petitioner, having been compelled to litigate due to respondents' failure to satisfy his valid claim, is also entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment, following prevailing jurisprudence.' (emphasis supplied)

"Sixth. But even if We are to assume, arguendo, that Book IV, Title II of the Labor Code applies to seafarers, still, a review of Art. 192 [now Art. 198 (c) (1)], and its Implementing Rules will show that it was not really the intention of the law to disqualify an employee who otherwise was already entitled to a Permanent Total Disability benefit under Title II, Book IV of the Labor Code. To be sure, Art. 192 of the Labor Code provides:

'ART. 192. Permanent total disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution. Provided: That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

(b) The monthly income benefit shall be guaranteed for five years, and shall be suspended if the employee is gainfully employed, or recovers from his permanent total disability, or fails to present himself for examination at least once a year upon notice by the System, except as otherwise provided for in other laws, decrees, orders

or Letters of Instructions. (As amended by Sec. 5, P.D. 1641)

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;' (emphasis Ours)

On the other hand, Rule XI of the Amended Rules on Employees Compensation dated June 1, 1987 provides:

'Rule XI – Permanent Total Disability

SECTION 1. Conditions of employment – (a) An employee shall be entitled to an income benefit for permanent total disability if all of the following conditions are satisfied:

- (1) He has been duly reported to the System;
- (2) He sustains the permanent total disability as a result of the injury or sickness; and
- (3) The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such illness or injury occurred before the employee is duly reported for coverage to the System.

(b) The following total disabilities shall be considered permanent:

(1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided in Rule X hereof;' (emphasis Ours)

Rule X of the same Amended Rules provides on the other hand:

'SECTION 1. Condition to entitlement. – An employee shall be entitled to an income benefit for temporary total disability if all of the following conditions are satisfied:

- (1) He has been duly reported to the System;
- (2) He sustains the temporary total disability as a result of the injury or sickness; and
- (3) The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such illness or injury occurred before the employee is duly reported for coverage to the System.

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 ill 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.

(b) After an employee has fully recovered from an illness as duly certified to by the attending physician, the period covered by any relapse he suffers, or recurrence of his illness, which results in disability and is determined to be compensable, shall be considered independent of, and separate from, the period covered by the original disability in the computation of his income benefit for temporary total disability.” (emphasis Ours)

Perusing the aforequoted Amended Rules, it appears, firstly, that the collective intention of the rules was to provide a prolonged income benefit to an injured or sick member of the SSS/GSIS. It was not the intention of the

rules to leave a covered employee helpless. Neither was it the intention of the rules to disqualify him from a permanent total disability benefit. If the employee is injured, or gets sick, and is thus temporarily disabled, he 'shall be paid' his 'income benefit xxx beginning on the first day of such disability'. He 'shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days xxx'. And, if it requires medical attendance beyond 120 days, the employee must continue to receive his income benefit but not to exceed 240 days from onset of disability. In this regard, it is the System, not the employer, that is given the option: (a) to 'declare the total and permanent status' of disabled employee 'at any time after 120 days of continuous temporary disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System', or (b) to continue paying him his income benefit starting the 121st day of temporary disability up to the 240th day of such temporary disability. Contrary to the impression generated by *Vergara vs. Hammonia*, there is nothing in the rules authorizing the System, much less the employer, to disqualify an employee from availing of a permanent total disability benefit that has already been earned under the employer and employee's contract. If at all, the power given to the 'System' to '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' is proof enough that it was never the intention of the rules to put permanent disability beyond the reach of an ailing or injured employee. For, as provided in the rules, one need not exhaust the 240-day rule to be considered totally and permanently disabled.

Seventh. As early as March 31, 1995, *Coyoca vs. NLRC*, already declared that 'benefits' of a Filipino seaman are to be determined by 'the POEA Standard Employment Contract for Filipino Seamen' and 'by the Rules and Regulations Governing Overseas Employment'. Such is consistent with what the NLRC declared in its now assailed April 2, 2012 decision that 'The relationship between the respondent agency and the complainant seafarer is governed by the POEA-SEC. Not being declared contrary to law, morals, good customs, public order or public policy, the provisions in the POEA-SEC should prevail'. *Vergara vs. Hammonia*'s pronouncement that it is not the POEA-SEC, but rather the 240-day rule as provided in the Rules implementing Art. 192 (c)-(1) (now Art. 198) of the Labor Code that governs, deserves, therefore, a second look.

Eighth. *Remigio vs. NLRC* already held that in case of conflict between the Labor Code's provisions on disability benefits under the Employees' Compensation Commission (ECC) and the 1996 POEA Standard Employment Contract – 'the 1996 POEA SEC giving a more liberal provision must apply'. It thus behooves this Court to apply the 120-day rule as concededly, such is what is provided in the parties' POEA-SEC.

Ninth. Again, in the 2009 case of *Quitoriano vs. Jebsens Maritime, Inc.*, the Supreme Court declared:

'The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."' (emphasis Ours)

To disqualify a seafarer, such as petitioner here, from availing of the 120-day rule on permanent total disability under the parties' standard employment contract, will contravene the purpose for which said POEA-SEC was formulated.

Tenth. In the same *Remigio* case, the Supreme Court held:

'xxx. Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working

conditions, hours of labor and similar subjects.” (emphasis Ours)

Vergara vs. Hammonia's 240-day rule which disregards the 120-day rule in the parties' POEA-SEC – 'a contract of labor’ that is so impressed with public interest’ – is clearly violative of existing laws.

Eleventh. In the recent case of Wallem Maritime Services vs. Tanawan (G.R. No. 160444, August 29, 2012), the Supreme Court, speaking this time through Mr. Justice Lucas P. Bersamin, held:

‘The pertinent provision of the 1996 POEA SEC, which was in effect at the time of Tanawan's employment, was Section 20 (B), which reads:

“SECTION 20. COMPENSATION AND BENEFITS. —

xxx xxx xxx

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS:

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

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after 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.

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.

xxx xxx xxx”

Tanawan submitted himself to Dr. Lim, the company-designated physician, for a medical examination on December 1, 1997, which was within the 3-day reglementary period from his repatriation. The medical examination conducted focused on Tanawan's foot injury, the cause of his repatriation. Nothing was mentioned of an eye injury. Dr. Lim treated Tanawan for the foot injury from December 1, 1997 until May 21, 1998, when Dr. Lim declared him fit to work. Within that period that lasted 172 days, Tanawan was unable to perform his job, an indication of a permanent disability. Under the law, there is permanent disability if a worker is unable to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

That the company-designated physician did not render any finding of disability is of no consequence. Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. Even in the absence of an official finding by the company-designated physician to the effect that the seafarer suffers a disability and is unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days. What clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation). (emphasis Ours)

The High Tribunal's aforequoted observation is so valid and persuasive that this Court finds it difficult not to apply the 120-day rule in its resolution of the parties' dispute at bar.

Lastly, Sec. 20 of the 2002 POEA Standard Employment Contract (which reiterates Sec. 20 (B) (3) of the 1996 POEA-SEC) still provides:

'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 (120) days.

xxx xxx xxx

In their Comment, the private respondents conceded:

'Further, it should be noted that the claim for sickness and permanent disability benefits arose from the stipulations in the standard format contract of employment pursuant to a circular of the POEA. Such circular was intended for all parties involved in the employment of Filipino seamen on board any ocean-going vessel. The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them. Thus, the parties are both bound by the provisions of the POEA Contract which declares that the degree of disability or fitness to work of a seafarer should be assessed by the company-designated physician. [Emphasis ours]'

The 120-day rule, for being a contractual obligation, continues therefore to be a binding law between the parties. It cannot be ignored on the strength of Vergara vs. Hammonia. If Congress, pursuant to Article III, Sec. 10 of the 1987 Constitution, cannot impair obligations under a contract, We see no reason why Vergara vs. Hammonia may be allowed to impair such obligation in the parties' contract.

Pertinently, in the fairly recent case of Betoys vs. National Power Corporation, the Supreme Court, speaking through Mr. Justice Diosdado M. Peralta, held:

'Moreover, Section 63 of the EPIRA law, if misinterpreted as proscribing payment of retirement benefits under the GSIS law, would be unconstitutional as it would be violative of Section 10, Article III of the 1987 Constitution or the provision on non-impairment of contracts.' (emphasis Ours)

Indeed, while as a rule, it is viewed that the non-impairment clause of the Constitution is a limitation merely on the exercise of legislative power and not of judicial or quasi-judicial power, it does not necessarily follow that judicial and quasi-judicial bodies are at liberty to misinterpret the law. For, as emphasized in Betoys vs. National Power Corporation, such misinterpretation 'would be violative of Section 10, Article III of the 1987 Constitution on the provision on non-impairment of contracts'.

On the strength, therefore, of all the afore-discussed legal points, We find it difficult to apply the 240-day rule in the resolution of petitioner's disability claim in this case." (citations omitted)

Guided by the aforequoted opinion of this Court, "We find it difficult to apply the 240-day rule" in the resolution of (private respondent's) disability claim.

Relative to the fourth issue, the petitioners contend that they are not liable for any attorney's fee as they never

“committed acts in bad faith towards” private respondent.

We disagree.

In *PCL Shipping Philippines, Inc. vs. NLRC*,^[26] the Supreme Court already ruled that an award of attorney's fee is proper if the employee was forced to file an action for recovery of his lawful benefits. What We have here is a suit for recovery of lawful benefits. An award of attorney's fee is therefore proper.

WHEREFORE, the petition is partly granted. The assailed resolutions are hereby modified in that the petitioners are directed to merely pay US\$20,900.00 to private respondent as his total permanent disability benefit for his loss of one (1) eye, plus ten percent (10%) thereof as attorney's fees.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pp. 40-51.

[2] *Ibid.*, pp. 63-65.

[3] Rollo, p. 50.

[4] *Ibid.*, p. 64.

[5] Rollo, pp. 7-9.

[6] Records, Vol. I, p. 1.

[7] Records, Vol. I, p. 5.

[8] *Ibid.*, p. 8.

[9] Records, pp. 10-12.

[10] *Ibid.*, p. 14.

[11] Records, Vol. I, p. 26.

[12] *Ibid.*, p. 35.

[13] *Ibid.*, p. 174.

[14] *Ibid.*, pp. 182-213.

[15] Records, Vol. I, pp. 209-210.

[16] *Ibid.*, pp. 227-238.

[17] *Ibid.*, pp. 239-265.

[18] *Ibid.*, pp. 308-310.

[19] Rollo, p. 11.

[20] *Ibid.*, pp. 13-14.

[21] *Westmont Pharmaceuticals, Inc. vs. Ricardo Samaniego*, G.R. No. 146653-54, February 20, 2006; *Sy vs.*

ACL Industries, G.R. No. 168339, October 10, 2008.

[22] Asia World Publishing House, Inc. vs. Hon. Blas Ople, et al., G.R. No. 56398, July 23, 1987.

[23] G.R. No. 146667, January 23, 2007.

[24] Rollo, p. 9.

[25] CA-G.R. SP No. 125519, June 28, 2013.

[26] 511 SCRA 44, 65 (2006).

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