

LORNA PADERNAL, IN BEHALF OF HER HUSBAND, RICHARD PADERNAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, INTERORIENT MARITIME ENT., INC. AND/OR JASMIN P. ARBOLEDA AND/OR...

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed in this Petition for Certiorari under Rule 65 of the 1997 Revised Rules on Civil Procedure is the Decision[1] dated 31 July 2012 and the Resolution[2] dated 22 October 2012 of the National Labor Relations Commission in NLRC LAC No. 05-00484-12 [NLRC OFW Case No. (M) 07-11392-11].

The facts of the case, as culled from the records, are as follows:

Respondent Interorient Maritime Enterprises, Inc. ("Interorient-Philippines") is a domestic corporation engaged in the business of recruitment and placement of seafarers for and on behalf of its foreign principal Interorient Maritime Enterprises, Inc. - Liberia ("Interorient-Liberia"). Jasmin P. Arboleda ("Arboleda") is the President of Interorient-Philippines[3] (Interorient-Philippines, Interorient-Liberia and Arboleda shall be hereafter collectively referred to as "respondents").

On 13 September 2010, Richard Padernal ("Padernal") was contracted by Interorient-Philippines as Third Engineer of Interorient-Liberia's vessel "Navis Mini I".[4] Padernal's contract with Interorient-Liberia was for a period of nine (9) months with additional three (3) months upon their mutual consent. His basic monthly salary was US\$800.00 with a fixed overtime pay of US\$320.00 per month and supplementary wages of US\$1,813.00.[5]

Sometime in March 2011, while the vessel was in Spain and in April 2011 while in Italy, Padernal was medically examined due to stomach pains and was found to be suffering from Gastroenteritis.[6] Thereafter, he was medically repatriated on 12 April 2011.[7]

Upon his arrival in the Philippines on 12 April 2011, Interorient-Philippines referred Padernal to Sachly International Health Partners Diagnostic and Medical Clinic ("Sachly Clinic"). However, since it was a Holy Week, Sachly Clinic could not conduct a full medical examination on Padernal.[8] As such, Padernal's wife Lorna opted to bring him to Medical City for said medical examination.[9] In particular, on 13 April 2011, Padernal underwent an X-ray of his abdomen which showed a "suspicious left upper abdominal density".[10] Also, on 18 April 2011, a computed tomography scan (CT scan) was conducted on his whole abdomen. The CT scan had the following findings –

"Oral and triphasic intravenous contrast enhanced axial CT images of the whole abdomen reveal the following:

A large, well-defined, heterogeneously enhancing mass with multiple central hypodense areas is noted anterior to the stomach, which cannot be separated from the said organ. It measures 21.8 x 15.9 x 18.9 cm (L x W x AP), compressing the gastric cavity and the distal body and tail of the pancreas. No vascular involvement evident.

x x x x x x x x

Impression:

Large heterogenous mass, maybe gastric or mesenteric in origin. A neoplastic process is not ruled out. Considerations include GIST (gastrointestinal stromal tumor) and leiomyosarcoma. Tissue correlation is recommended.

Grade I prostatomegaly.

Thoracolumbar spondylosis."[11]

To confirm the findings of the CT Scan, a pathological test was done on the mass found in Padernal's abdomen on 30 April 2011. Said test showed that the gastric mass was a Neurogenic Type of Gastrointestinal Stromal Tumor (GIST).[12]

In the interim, on 9 May 2011, Dr. Susannah Ong-Salvador ("company-designated physician") of Sachly Clinic issued a Medical Progress Report declaring Padernal's GIST as not work-related. She explained as follows –

"This is a follow-up medical report of Mr. Richard T. Padernal a 52 y/o 3rd engineer with a working impression of Gastrointestinal Stromal Tumor (GIST).

Mr. Padernal was seen at SHIP Clinic today and still complains of bloatedness, occasional peri-umbilical pain relieved by flatus associated with abdominal distention. There were no other signs and symptoms such as dizziness, vomiting, constipation, fever and hematochezia. Vital signs were normal.

Patient was seen and examined by our General surgeon and noted that patient had a gastrointestinal stromal tumor. Immediate gastric surgery which is total gastrectomy and esophagojejunal anastomosis operation (gastric bypass) is warranted. Afterwhich, depending on the degree of the illness if there is a malignant process on-going then there might be a need for a chemotherapy post surgery.

The estimated cost of the contemplated major surgery (total gastrectomy and esophagojejunal anastomosis (gastric bypass) inclusive of professional fees and hospital bills is Php900,000, barring complications.

Please take note that above procedure/operation are vital in the medical management of the patient's illness, thus further delays may cause unnecessary complications that might prohibit the fast recovery of our patient.

A gastrointestinal stromal tumor (GIST) is one of the most common mesenchymal tumors of the gastrointestinal tract (1-3% of all gastrointestinal malignancies). Gastrointestinal stromal tumors originate from stem cells (sic), established in the gastrointestinal zone where essential gastrointestinal function occurs. Most (50-80%) GISTs arise because of a mutation in a gene called c-kit thus considered non-work related.

Prognosis is guarded since patient is compelled to undergo surgery.

Estimated length of further treatment is 4-8 months barring unforeseen complications."[13]

Thereafter, Padernal was confined at Jose Reyes Memorial Medical Center from 16 May 2011 until 30 May 2011. During his confinement, he underwent the following procedures: (1) exploratory laparotomy; (2) tube jejunostomy; (3) Jackson-Pratt (JP) drain; and (4) esophagogastroduodenoscopy. However, his hepatic tumor was not removed as it was unresectable.[14] As such, the company-designated physician recommended that Padernal should first undergo Adjuvant Chemotherapy of oral anti-neoplastic for three months prior to exploratory laparotomy in order to control the growth of the cancer cells.[15]

On 26 July 2011, Padernal underwent exploratory laparotomy with partial gastrectomy at Vicente Sotto Memorial Medical Center.[16] On the same day, as represented by Lorna, Padernal filed a Complaint against respondents

for payment of total and permanent disability benefits, reimbursement of medical, hospital and doctor's expenses, sickness allowance, moral and exemplary damages and attorney's fees equivalent to 10% of the total claim with legal interest until the time of payment.[17]

In his Position Paper, Padernal argued that he is entitled to total and permanent disability benefits because his GIST has rendered him totally and permanently unfit to work as a seafarer. He maintained that, under the Philippine Overseas Employment Administration-Standard Employment Contract ("POEA-SEC"), a permanent total disability simply means the disablement of an employee to earn wages in the same kind of work he was trained to perform or any kind of work which a person of his mentality and attainment could do. Padernal added that his duties require manual labor on board the vessel and has contributed and aggravated the development of his illness. He emphasized that respondents failed to dispute the presumption provided in Section 20-B (4) because the company-designated physician failed to declare that he is suffering from a non-work related illness. Thus, he is entitled to the maximum disability benefit of US\$60,000.00.[18]

Anent Padernal's claim for sickness allowance and reimbursement of medical expenses, he maintained that, under Section 20-B (3) of the POEA-SEC, he is entitled to a total sickness allowance for four months or equivalent to US\$3,200.00 because he has not received any amount from respondents from the time he was medically repatriated. Also, Section 20-B (2) provides that the employer shall be liable for the full cost of such medical, serious dental and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. Padernal asserted that respondents did not reimburse him of the medical expenses he incurred at Medical City, Jose Reyes Memorial Medical Center and Vicente Sotto Memorial Medical Center which had an accumulated amount of Php230,495.56.[19] Thus, he argued that he is also entitled to moral and exemplary damages and attorney's fees because respondents deliberately and wantonly refused to pay their contractual obligations to him.

Respondents countered that Padernal's GIST is not compensable under the POEA-SEC because it is not work-related. They argued that Section 20-B of the POEA-SEC requires a seafarer's illness to be work-related to consider the same as compensable. Moreover, Padernal's GIST is not listed as an occupational disease under Section 32-A of the same contract. Consequently, Padernal has the burden of proving that his GIST was caused by his working conditions on board MV Navis Mini I. Nevertheless, Padernal's work did not involve risks that could have contributed to the development of his GIST. The company-designated physician even declared that his GIST is not work-related because it was not initiated by environmental factors such as stress, but was caused by genetic mutation. Respondents added that they expressed their willingness to shoulder the cost of Padernal's Adjuvant Chemotherapy with anti-neoplastic treatment and gastrectomy. However, it was Padernal who defied the orders of the company-designated physician to first undergo said chemotherapy in order to decrease the size of the tumor and, instead, he immediately arranged for a gastrectomy at Jose Reyes Memorial Medical Center without notifying them. Respondents posited that Padernal's defiance is a clear violation of Section 20-D of the POEA-SEC[20] which mandates that a seafarer's willful breach of his duties to abide by the orders of the company-designated physician's recommended treatment bars any claim for compensation and benefits. Thus, Padernal is not entitled to his claims for permanent and total disability benefits, sickness allowance, damages and attorney's fees.[21]

On 17 April 2012, the Labor Arbiter rendered a Decision granting Padernal's claims, the dispositive portion of which reads –

"WHEREFORE, premises considered, judgment is hereby rendered in favor of complainant Richard Padernal whose claims through his wife Lorna Padernal is meritorious.

Respondents Interiorient Maritime Enterprises, Inc. and/or Interiorient Maritime Enterprises, Inc.-Liberia and/or

Jasmin P. Arboleda who is the President of respondent local agency are jointly and solidarily liable to pay complainant the following:

- Disability Benefits of US \$ 60,000.00; (or in its Philippine currency based on the prevailing rate at the time of payment)
- Medical expense allowance of US\$3,200;
- Reimbursement of hospital expense in the sum of P230,495.56
- Attorney's fees of 10% of the total monetary award.

SO ORDERED."[22]

The Labor Arbiter ratiocinated that the compensability of an ailment does not depend on whether the disease was pre-existing at the time of employment but rather if the disease is work-related or has aggravated his condition. The Labor Arbiter ruled that, considering the nature of Padernal's illness, it is safe to presume that his employment had contributed to its aggravation if indeed it was pre-existing at the time of his employment. The Labor Arbiter added that it is not necessary that the employee be in perfect condition or free from any disease at the time he had the illness for him to be duly compensated for it. While an employer is not an insurer of the health of his employees, he takes them as he finds them and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal healthy person. Furthermore, Padernal was unable to perform his customary work for more than 120 days or even 240 days from his illness, thus, the Labor Arbiter declared that his disability already constitute total permanent disability and an award of total and permanent disability benefit would be germane to the purpose of the benefit, i.e., to help the employee in making ends meet at the time when he was unable to work.

On appeal[23] by the respondents, the NLRC reversed the Labor Arbiter's Decision in its Decision dated 31 July 2012, the fallo of which reads –

"WHEREFORE, the present appeal is hereby GRANTED and the challenged Decision dated April 17, 2012 is REVERSED and SET ASIDE.

Accordingly, the complaint for total and permanent disability benefits is DISMISSED for lack of merit.

SO ORDERED."

[24]

The NLRC ruled that Padernal's GIST is not included or classified as work-related and compensable under the POEA-SEC. In fact the company-designated physician described it as a tumor that originated from stem cells established in the gastrointestinal zone and arise due to a mutation in a gene called c-kit, thus considered non-work related. While there is a disputable presumption that a seafarer's illness is work-related, the NLRC found that the respondents were able to substantially establish that Padernal's illness was caused by genetic mutation and not caused by the nature of his work while employed by respondents. Also, Padernal was unable to present any medical opinion that his GIST was work-related or was a by-product of his employment or at the very least was aggravated by his work as a 3rd Engineer of the vessel. As such, the NLRC ruled that the Labor Arbiter erred in awarding total and permanent disability benefits, sickness allowance, reimbursement of hospital expenses and attorney's fees in favor of Padernal.[25]

Aggrieved, Padernal filed a Motion for Reconsideration[26] which was, however, denied by the NLRC in its Resolution dated 22 October 2012.[27] Hence, the present recourse of Padernal grounded on the following, viz.:

"I.THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE

ABUSE OF DISCRETION IN FINDING THAT THE PETITIONER IS NOT ENTITLED TO RECOVER TOTAL AND PERMANENT DISABILITY BENEFITS FOR MR. PADERNAL'S ILLNESS IS NOT WORK RELATED ACCORDING TO THE COMPANY DESIGNATED DOCTOR.

II.THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN NOT AWARDING REIMBURSEMENT OF MEDICAL EXPENSES PARTICULARLY THE MEDICAL CITY EXPENSE WHICH HAS BEEN ACKNOWLEDGE (SIC) ALREADY BY THE PRIVATE RESPONDENT AND HAD PROMISED TO REIMBURSE THE SAME BEFORE THE OFFICE OF THE LABOR ARBITER.

III.THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN NOT AWARDING SICKNESS ALLOWANCE.

IV.THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN NOT AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.[28]"

The pivotal issue for consideration of this Court is whether the NLRC committed grave abuse of discretion in reversing the Labor Arbiter's Decision and denying Padernal's claim for total and permanent disability benefits, sickness allowance, medical expense reimbursement, moral and exemplary damages and attorney's fees.

At the outset, it must be pointed out that a petition for certiorari is limited to the determination of whether the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the questioned decision.*vs.* For the extraordinary remedy of certiorari to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law. The judgment must be rendered in a capricious, whimsical, arbitrary or despotic manner by reason of passion, prejudice or personal hostility.[30]

In asserting that he is entitled to the above-stated disability benefits, Padernal maintains that the NLRC gravely abused its discretion in giving credit to the company-designated physician's opinion that his GIST is not work-related. Padernal emphasizes that the company-designated physician's findings should not be given credence because she is not an Oncologist but a Fellow of Philippine Dermatology Society (FPDS), as stated in the Medical Report she issued dated 9 May 2011. Also, Padernal argues that since his GIST is not listed as an occupational disease under Section 32-A of the POEA-SEC, Section 20-B (4) thereof applies in his case which provides that illnesses which are not listed as an occupational disease are disputably presumed work-related. Hence, the burden is shifted to the respondents to dispute said presumption of work relation. As such, the NLRC likewise gravely abused its discretion in not awarding reimbursement of medical expenses and payment sickness allowance despite the fact that during the preliminary conference before the Labor Arbiter the respondents manifested that they would pay the expenses of Padernal in Medical City and despite the fact that it is respondents' contractual obligation to provide medical assistance to its seafarers in case of medical repatriation.

The instant petition is devoid of merit.

Entitlement of seamen on overseas work to disability is a matter governed, not only by medical findings, but by law and the contract he signed with his employer.[31] Apart from the signed contract, deemed written therein is a set of provisions set and implemented by the POEA called "The 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels", otherwise known as, the "2000 Philippine Overseas Employment Administration–Standard Employment Contract" ("2000 POEA-SEC").[32] It is considered the minimum requirement acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[33]

The 2000 POEA-SEC provides –

"SECTION 20. COMPENSATION AND BENEFITS

x x x

B. COMPENSATION AND BENEFITS FOR INJURY

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 x x x x x

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 deemed 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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."[34]

In relation thereto, "work-related illness" is defined under the POEA-SEC as "any sickness resulting to the disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[35] Section 32-A of the POEA-SEC explicitly provides –

"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:

- The seafarer's work must involve risks describe herein;
- The disease was contracted as a result of the seafarer's exposure to the describe risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer."

Based on the above-quoted contractual provisions, for an injury or illness to be compensable, two major elements must concur, i.e., (1) that the injury or illness must be work-related; and (2) that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[36] Stated differently, Section 20 (B) of the POEA-SEC provides for the liabilities of the employer only when the seafarer suffers from a work-related injury or illness during the term of his employment.[37] To be entitled to compensation and benefits under said provision, it is not sufficient to establish that the seafarer's illness has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness and the work for which he had been contracted.[38]

The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his right thereto by substantial evidence.[39] In *Arnaldo G. Gabunas, Sr. vs. Scanmar Maritime Services, Inc., et al.*, [40]

the Supreme Court, citing *Government Service Insurance System vs. Emmanuel P. Cuntapay*,^[41] held that the burden is upon the claimant to prove the causal link between a claimant's work and the ailment he suffered, viz.:

"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 vs. Emmanuel P. Cuntapay*, is instructive as regards the burden resting on a 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 work connection and 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."

In the case at bar, Padernal failed to discharge the burden of proving his entitlement to his claims for payment of permanent and total disability benefits, sickness allowance and reimbursement of medical expenses. Padernal failed to substantiate his allegations that his GIST is work-related. He merely relied on Section 20-B (4) of the POEA-SEC without even satisfying the conditions of compensability provided under Section 32-A of the same contract, as clearly referred to in Section 20-B (4).^[42] The evidence on record is totally bare of essential facts on how Padernal contracted or developed his GIST and how his working conditions increased the risk of contracting his illness. The pieces of evidence he presented, namely: X-ray Report dated 13 April 2011,^[43] CT Scan Report dated 18 April 2011,^[44] Ultrasound Guided Biopsy Report dated 20 April 2011,^[45] Surgical Pathology Consultation Report dated 6 May 2011,^[46] Medical Certificate dated 10 June 2011,^[47] Surgical Pathology Report dated 12 August 2011^[48] and the Medical Certificate dated 7 September 2011,^[49] did not indicate nor substantially show that his GIST was acquired or aggravated due to his duties as a 3rd Engineer of respondents' vessel. The said pieces of documentary evidence merely showed the laboratory test and surgical procedures he underwent from the time he was medically repatriated until he filed the Complaint. While strict rules of evidence are not applicable in claims for compensation and mere probability and not the ultimate degree of certainty is regarded as the test of proof in compensation proceedings, it cannot be overemphasized that awards of compensation cannot rest on mere speculations or presumptions.^[50]

On the contrary, respondents were able to substantially show that Padernal's illness is not work-related, as evidenced by the company-designated physician's Medical Progress Report dated 9 May 2011.^[51] It is of no moment that the company-designated physician is not an oncologist because Padernal has failed to present controverting evidence to refute her findings. More importantly, the company-designated physician was able to sufficiently explain that Padernal's GIST is not work-related as the same "arise because of a mutation in a gene called c-kit."^[52]

In *Robbins and Cotran Pathologic Basis of Disease*,^[53] Gastrointestinal Stromal Tumor is described to be caused by the mutations of the genes –

"Pathogenesis.

Approximately 75% to 80% of all GISTs have oncogenic, gain-of-function mutations of the gene encoding the tyrosine kinase c-KIT, which is the receptor for stem cell factor. Approximately 8% of GISTs have mutations that activate a related tyrosine kinase platelet-derived growth factor receptor a (PDGFRA). In sporadic GISTs, c-KIT and PDGFRA gene mutations are mutually exclusive. GISTs appear to arise from, or share a common stem cell with, the interstitial cells of Cajal, which are located in muscularis propria and serve as pacemaker

cells for gut peristalsis. Like GISTs, Cajal cells express c-KIT (also known as CD 117) and CD34. Interestingly, familial GIST, which is rare, is associated with germline c-KIT or PDGFRA mutations; these patients develop multiple GISTs, may also have diffuse hyperplasia of Cajal cells. Mutation of c-KIT or PDGFRA is an early event of sporadic GISTs and is detectable in lesions as small as 3mm. The constitutively active c-KIT and PDGFRA receptor tyrosine kinases produce intracellular signals that activate the RAS and P13K/AKT pathways and thereby promote tumor cell proliferation and survival.

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Clinical Features.

Symptoms of GISTs at presentation may be related to mass effects. Mucosal ulceration can cause blood loss, and approximately half of individuals with GIST present with anemia or related symptoms. GISTs may also be discovered as an incidental finding during radiologic imaging, endoscopy, or resection is the primary treatment for localized gastric GIST. The prognosis correlates with tumor size, mitotic index, and location, with gastric GISTs being somewhat less aggressive than those arising in the small intestine. Recurrence or metastasis is rare for gastric GISTs under 5cm but common for mitotically active tumors larger than 10cm.

Patients with unresectable, recurrent, or metastatic disease often respond to imatinib, a tyrosine kinase inhibitor that inhibits c-KIT and PDGFRA, and is also effective in suppressing BCR-ABL kinase activity in chronic myleoid leukemia (Chapter 13). Development of resistance to imatinib is most often related to secondary c-KIT mutations that limit drug efficacy."^[54]

In the same vein, Padernal is not entitled to his claims for moral and exemplary damages and attorney's fees. Absent any showing of bad faith, fraud or ill motive on the part of respondents, this Court cannot consider Padernal's bare allegations as sufficient to merit the award of moral damages. Consequently, without the award of moral damages, there can be no award of exemplary damages nor attorney's fees.^[55]

In fine, there is no grave abuse of discretion on the part of the NLRC in reversing the Decision of the Labor Arbiter and in ruling that Padernal is not entitled to his claims for total and permanent disability benefits, sickness allowance, reimbursement of medical expenses, moral and exemplary damages and attorney's fees. Padernal failed to clearly demonstrate that the NLRC arbitrarily disregarded evidence before it and that it misapprehended the evidence on record to such an extent that it compels a contrary conclusion if such evidence had been properly appreciated.^[56] The assailed Decision and Resolution were supported by the evidence on record and were in accordance with law and jurisprudence.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. The Decision dated 31 July 2012 and the Resolution dated 22 October 2012 of the National Labor Relations Commission are AFFIRMED.

SO ORDERED.

Zalameda, and Diy, JJ., concur.

[1] Rollo, pp. 30-42.

[2] Rollo, pp. 43-45.

[3] Position Paper for Respondents, p. 2; Rollo, p. 96.

[4] Employment Contract, Rollo, pp. 85, 119.

[5] Id.

[6] Position Paper for the Complainant, p. 5; Rollo, p. 62/Position Paper for Respondents, p. 3; Rollo, p. 97.

[7] Id.

[8] Position Paper for Respondents, p. 3; Rollo, p. 97.

[9] Position Paper for Complainant, p. 5; Rollo, p. 62/Position Paper for Respondents, p. 3; Rollo, p. 97.

[10] X-ray Result dated 13 April 2011, Rollo, p. 86.

[11] CT Scan Results, Rollo, pp. 87-88,123.

[12] Surgical Pathological Consultation Report, Rollo, pp. 90, 126.

[13] Medical Progress Report dated 9 May 2011, Rollo, p. 127.

[14] Medical Certificate dated 10 June 2011, Rollo, p. 92.

[15] Reply to Medical Query dated 16 May 2011, Rollo, p. 128.

[16] Medical Certificate dated 7 September 2011, Rollo, p. 94.

[17] Complaint, Rollo, p. 257.

[18] Position Paper for the Complainant, pp. 10-18; Rollo, pp. 67-75.

[19] Position Paper for the Complainant, pp. 19-22; Rollo, pp. 76-79.

[20] Position Paper for Respondents, p. 15; Rollo, p. 109.

Section 20-D, POEA-SEC –

No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

[21] Position Paper for Respondents, pp. 8-20; Rollo, pp. 102-114.

[22] Decision dated 17 April 2012, pp. 11-12; Rollo, pp. 56-57.

[23] Memorandum of Appeal, Rollo, pp. 189-215.

[24] Decision dated 31 July 2012, p. 12; Rollo, p. 41.

[25] Decision dated 31 July 2012, pp. 8-12; Rollo, pp. 37-41.

[26] Rollo, pp. 250-256.

[27] Rollo, pp. 43-45.

[28] Petition, pp. 7-8; Rollo, pp. 10-11.

[29] Anonas Construction & Industrial Supply Corporation vs. NLRC, G.R. No. 164052, 17 October 2008.

[30] Seagull Maritime Corp. and Seagiant Shipmanagement Co. Ltd. vs. Dee, G.R. No. 165156, 2 April 2007.

[31] Jebsen Maritime, Inc., et al. vs. Undag, G.R. No. 191491, 14 December 2011.

[32] Department Order No. 004-00, 31 May 2000.

- [33] Cootauco vs. MMS Phil. Maritime Services, Inc., et al., G.R. No. 184722, 15 March 2010.
- [34] Emphasis ours.
- [35] Definition of Terms, 2000 POEA-SEC.
- [36] Jebsen Maritime, Inc. vs. Asuncion, et al., G.R. No. 191491, 14 December 2011; Magsaysay Maritime Corporation, et al. vs. National Labor Relations Commission, G.R. No. 186180, 22 March 2010.
- [37] Musnit vs. Sea Star Shipping Corporation and Sea Star Shipping Corporation, Ltd., G.R. No. 182623, 4 December 2009.
- [38] Magsaysay Maritime Corporation, et al. vs. National Labor Relations Commission and Robert Cedol, G.R. No. 186180, 22 March 2010.
- [39] Cootauco vs. MMS Phil. Maritime Services, Inc., et al., G.R. 184722, 15 March 2010.
- [40] G.R. No. 188637, 15 December 2010.
- [41] G.R. No. 168862, 30 April 2008, 553 SCRA 520.
- [42] Jessie V. David, et al. vs. OSG Shipmanagement Manila, Inc. and/or Michaelmar Shipping Services, G.R. No. 197205, 26 September 2012.
- [43] Rollo, p. 86.
- [44] Rollo, pp. 87-88.
- [45] Rollo, p. 89.
- [46] Rollo, p. 90.
- [47] Rollo, p. 92.
- [48] Rollo, p. 93.
- [49] Rollo, p. 94.
- [50] Coastal Safeway Marine Services, Inc. vs. Elmer T. Esguerra, G.R. No. 185352, 10 August 2011.
- [51] Rollo, p. 127.
- [52] Medical Progress Report dated 9 May 2011; Rollo, p. 127.
- [53] Robbins and Cotran Pathologic Basis of Disease 8E Professional Edition (With Expert Consult Online Access) (8th Edition), Kumar et al., Saunders (2009).
- [54] Robbins and Cotran Pathologic Basis of Disease (8th Edition), Kumar et al., Saunders (2009), p. 790
- [55] Acuña vs. Court of Appeals, G.R. No. 159832, 5 May 2006.
- [56] Digitel Telecommunications Phil. vs. Soriano, G.R. No. 166039, 26 June 2006; Philippine Airlines vs. Tongson, G.R. No. 153157, 14 October 2003.

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