

RUDY C. BATCHENETCHA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ALL OCEANS MARITIME AGENCY, INC. AND/OR MR. RICHARD T. VELOSO AND/OR THOME SHIP MANAGEMENT PTE., LTD.,...

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

This is a Petition for Certiorari[1] filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Decision[2] dated 31 January 2012 of public respondent National Labor Relations Commission (NLRC), Fourth Division, in NLRC LAC No. OFW-M-05-000459-11, and its Resolution[3] dated 12 March 2012. The assailed Decision, which was rendered by the public respondent NLRC in the exercise of its appellate jurisdiction, affirmed the Decision[4] dated 30 March 2011 of Labor Arbiter Jose G. De Vera that dismissed the complaint of herein petitioner, docketed as NLRC-NCR Case No. (M)08-11685-10, while assailed Resolution denied petitioner's Motion for Reconsideration[5] dated 20 February 2012 from public respondent's assailed Decision.

FACTS

This case stemmed from a labor complaint[6] for disability benefits, medical reimbursement, illness allowance, damages and attorney's fees filed by petitioner Rudy C. Batchenetcha against private respondents All Oceans Maritime Agency, Inc. ("Agency") and Thome Ship Management Pte., Ltd. ("Thome Ship").

Petitioner avers that he is a seafarer by profession and, since 1982, has been employed by private respondent Agency for and in behalf of Thome Ship.

On 20 August 2008, he entered into a new Contract of Employment[7] with private respondents as an Able Seaman on board Thome Ship's M/V Pacific Navigator, with a basic salary of US\$596.00. After being declared fit to work during his routine pre-employment medical examination, petitioner commenced his duties and responsibilities as Able Seaman, which included the following, to wit:

- Watch standers and may be required to supervise day work of junior rating;
- Stands watch at bow or on wing of bridge to look for obstructions in path of the vessel;
- Measures the depth of water in shallow or unfamiliar waters, using lead line, and telephones or shouts information to the bridge;
- Steers ship by automatic/remote control or manual control and/or uses emergency steering apparatus to steer vessel as directed by navigating officer, chief mate or ship's captain;
- Breaks out rigs, overhauls and stows cargo handling gears, stationary rigging, and running gears;
- Overhauls lifeboats, winch and falls;

- Paints and chips rusts on deck and superstructure of ship;

- Maybe concerned only with one phase of duties such as:

1)

maintenance of ship's gears and decks or watch duties;

2)

and may be known as skilled deckhand on various repairs and maintenance works on deck;

3)

performs other deck works as required by superior officers.

Petitioner claims that the foregoing duties involve performance of strenuous manual works such as lifting, carrying, pulling, pushing or moving materials and provisions. He had to contend with the arduous and frequent overtime works, which caused him strain and fatigue. He further alleges that in his line of work, he was constantly prone to inhalation of and direct contact to injurious and harmful chemicals. He was likewise exposed to varying temperatures of extreme hot and cold, when the vessel crosses ocean and geographical boundaries on harsh weather conditions, and he had to constantly adjust to different timezones. All these factors allegedly contributed to the physical and mental stress he had to endure while working on board a moving vessel. Finally, he avers that his separation from his family during the entire period of his employment contract allegedly causes him emotional stress.

Sometime in October 2008, petitioner experienced pain on his elbows, thumb and right ankle. He also developed scaly rashes starting from his face. He also suffered fever. When petitioner was admitted in Bay Hospital in South Africa, he was treated for Reactive or Infective Arthritis and Hypertension.[8]

Due to his condition, he was repatriated on 28 October 2008. Upon his arrival, he was examined by the company-designated physician Dr. Agnes E. Gorospe, who is an oncologist at the Seamen's Hospital. In a Medical Certification[9] dated 11 November 2008, Dr. Gorospe initially diagnosed petitioner to be suffering from Polyarthritis Uncertain Etiology R/O Disorder, and thus, advised petitioner as follows: "For rheumatology consult at St. Luke's Medical Center."

On 13 November 2008, petitioner underwent a Whole Body Bone Scan, which revealed the following findings: "Abnormal, nonspecific activity in the right femur. Metastatic disease to bone cannot be excluded. CT scan correlation and follow-up study suggested." [10]

In petitioner's Medical Certification[11] dated 2 December 2008, he was diagnosed with Psoriatic Arthritis. Dr. Gorospe noted the following remarks: "Carry out all recommendations of rheumatology service. Rheumatology to give clearance to go back to work."

Thereafter, in a Medical Certification[12] dated 13 January 2009, which petitioner points out to be unsigned, he was declared "Fit to Work" by Dr. Gorospe.

According to petitioner, due to the compelling need for him to go back to work and with a promise of deployment from private respondents, he was constrained to sign a Certificate of Fitness to Work.[13] The promise of deployment did not come true, however, despite his insistent pleas. Moreover, he allegedly continued to feel the

symptoms of his illness, the fit to work certification notwithstanding. Because of his condition, he supposedly was unable to employ himself anew as a seaman.

On 14 May 2009, petitioner then consulted Dr. Efren R. Vicaldo, an internist and cardiologist at the Philippine Heart Center, who diagnosed him with Hypertensive cardiovascular disease; Psoriatic arthritis; Impediment Grade VII (41.80%). Dr. Vicaldo certified petitioner as “unfit to resume work as seaman in any capacity”.[14]

On 16 May 2009, petitioner likewise consulted Dr. Charito F. Cruz-Bermudez, an internist and rheumatologist at St. Luke's Hospital, who similarly diagnosed petitioner with Psoriasis; Psoriatic Arthritis; Hypertension (BP 150/80), and thus, declared petitioner as “NOT physically fit for work”.[15]

On 18 August 2010, petitioner filed his labor complaint against private respondents.

On 6 December 2010, during the pendency of the case before the labor arbiter, petitioner visited another internist and rheumatologist, Dr. Clemente M. Amante, who again diagnosed petitioner of having Hypertension, Essential, Moderate to Severe; Psoriatic Arthritis; Psoriasis Scalp. Dr. Amante also declared petitioner as “no longer fit to work as a seaman due to his medical condition.”[16]

For their part, private respondents allege that after petitioner was declared “Fit to Work”[17] by his attending physician at the Seamen's Hospital, on 13 January 2009, petitioner himself acknowledged the same when he subsequently signed a Certificate of Fitness to Work[18] dated 26 February 2009. In that Certificate, petitioner supposedly confirmed that he “most willingly and voluntarily signed the same with full knowledge of his rights under the law.” Private respondents further allege that nothing was heard of petitioner since then and until he filed a complaint at the Associated Marine Officers' and Seamen's Union of the Philippines (AMUSUP) and later, the National Conciliation and Mediation Board (NCMB) and finally, before the Labor Arbiter.

On 30 March 2011, Labor Arbiter De Vera rendered a Decision[19] finding that petitioner is not entitled to his claim for permanent and total disability benefits, and accordingly, dismissed the complaint for lack of merit, viz:

“WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.”

Petitioner seasonably filed an Appeal[20] before the public respondent NLRC.

On 31 January 2012, public respondent NLRC rendered the assailed Decision[21] affirming decision of the Labor Arbiter. Petitioner then filed a Motion for Reconsideration[22] dated 20 February 2012, but was denied in the assailed Resolution[23] dated 12 March 2012 for lack of merit.

Thus, petitioner filed the instant Petition on the following grounds:[24]

GROUND S

I.

PUBLIC RSPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN UPHOLDING THE UNSIGNED AND PREMATURE CERTIFICATION OF FIT TO WORK ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN;

II.

PUBLIC RSPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR

EXCESS OF ITS JURISDICTION IN NOT FINDING THAT PETITIONER IS SUFFERING FROM PERMANENT TOTAL DISABILITY.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN NOT GRANTING (SIC) THE PETITIONER'S CLAIM FOR FULL DISABILITY BENEFITS UNDER THE CBA AND ATTORNEY'S FEES.

THE COURT'S RULING

The Petition is impressed with merit.

This case, once again, presents the question of whether it is the fit-to-work assessment of the company-designated physician, on one hand, or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work, on the other hand, that should prevail in a maritime disability claim.

Section 20 (B), paragraph (3) of the 2000 Philippine Overseas Employment Administration - Standard Employment Contract for Seafarers (POEA-SEC) provides:

"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.

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."

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. This does not mean, however, that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.[25]

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.[26]

Accordingly, it has been held that if serious doubt exists on the company designated physician's declaration of the nature of a seaman's injury, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. This proof will in turn be used to determine the benefits rightfully accruing to him.[27]

After a careful evaluation of the records, the Court finds sufficient ground to suspect the fit-to-work declaration of Dr. Gorospe in the Medical Certification[28] dated 13 January 2009. It will be recalled that in an earlier Medical Certification dated 2 December 2008, Dr. Gorospe herself noted: “Carry out all recommendations of rheumatology service. Rheumatology to give clearance to go back to work.” Therefrom, it ought to be self-evident that the company-designated physician acknowledged that the determination of petitioner's capacity to resume work, in the light of his illness, rests upon the expert assessment of a rheumatologist. However, Dr. Gorospe prematurely issued the fit-to-work declaration without the necessary clearance of the proper specialist. To Our mind, such a flaw discredits company-designated physician's finding. Accordingly, the consideration of the prognosis of petitioner's independent physicians, two of whom are internists-rheumatologists, is warranted in this case.

In this regard, We note that while it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. This is because resort to a third doctor remains a mere directory not a mandatory provision as can be gleaned from the tenor of Section 20 (B) (3), POEA-SEC itself.[29]

This brings Us to resolve whether petitioner's illness is compensable.

For an injury or illness to be compensable, Section 20 of the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels requires two (2) elements to concur. 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.[30]

There appears to be no dispute that petitioner's illness existed during the term of his employment contract. Hence, what is left for Us to resolve is whether or not the first element is present in this case, or simply put, whether or not illnesses, consisting of Hypertension, Psoriatic Arthritis and Psoriasis, are work-related.

Work-related illness is defined “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.”[31]

Regarding petitioner's Hypertension, Sec. 32-A (20) of the 2000 POEA Amended Standard Terms and Conditions is instructive, to wit:[32]

“20. Essential Hypertension

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.”

Unfortunately for petitioner, none of the documents required under Sec. 32-A (20) of the 2000 POEA Amended Standard Terms and Conditions appear on record to indicate that his Hypertension causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability. Hence, the compensability of petitioner's Hypertension cannot be justified.

On the other hand, however, We find petitioner's psoriatic arthritis and psoriasis to be compensable. At this juncture, it is well to note that psoriatic arthritis (inflammation of joints) is associated with psoriasis (inflammation of skin), as their names denote. One cannot be diagnosed as a case of psoriatic arthritis if he does not have the skin disease.[33]

Our jurisprudence is replete with cases where it was held that the list of illnesses/diseases in Section 32-A does

not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties.[34] Only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of a non-occupational disease.[35]

In *Maersk Filipinas Crewing, Inc., et al. vs. Nelson E. Mesina*,[36] the Supreme Court painstakingly discussed the nature of the disease psoriasis, and found the existence of a reasonable connection between the nature of respondent-employee's work and the affliction of his disease, viz :

“Psoriasis comes from the Greek word "psora" which means itch. It is a common disfiguring and stigmatising skin disease associated with profound impaired quality of life. People with psoriasis typically have sharply demarcated erythematous plaques covered by silvery white scales, which most commonly appear on the elbows, knees, scalp, umbilicus, and lumbar area. Chronic plaque psoriasis (psoriasis vulgaris) is the most common type of the disease which manifests thru plaques of varying degrees of scaling, thickening and inflammation in the skin. The plaques are typically oval-shaped, of variable size and clearly distinct from adjacent normal skin.

As a result of the chronic, incurable nature of psoriasis, associated morbidity is significant. Patients in primary care and hospital settings have similar reductions in quality of life specifically in the functional, psychological and social dimensions. Symptoms specifically related to the skin (i.e., chronic itch, bleeding, scaling, nail involvement), problems related to treatments (mess, odor, inconvenience, time), arthritis, and the effect of living with a highly visible, disfiguring skin disease (difficulties with relationships, difficulties with securing employment, and poor self-esteem) all contribute to morbidity. About one in four patients experience major psychological distress, and the extent to which they feel socially stigmatised and excluded is significant.

Current available treatments for the disease are reasonably effective as short-term therapy. Extended disease control is, however, difficult to achieve as the safety profile of most therapeutic agents limit their long-term use.

Until now, the exact cause of psoriasis remains a mystery. But several family studies have provided compelling evidence of a genetic predisposition to psoriasis, although the inheritance pattern is still unclear. Other environmental factors such as climate changes, physical trauma, infections of the upper respiratory tract, drugs, and stress may also trigger its onset or development.

After a circumspect evaluation of the conflicting medical certifications of Drs. Alegre and Fugoso, the Court finds that serious doubts pervade in the former. While both doctors gave a brief description of psoriasis, it was only Dr. Fugoso who categorically stated a factor that triggered the activity of the respondent's disease — stress, drug or alcohol intake, etc. Dr. Alegre immediately concluded that it is not work-related on the basis merely of the absence of psoriasis in the schedule of compensable diseases in Sections 32 and 32-A of the POEA-SEC. Dr. Alegre failed to consider the varied factors the respondent could have been exposed to while on board the vessel. At best, his certification was merely concerned with the examination of the respondent for purposes of diagnosis and treatment and not with the determination of his fitness to resume his work as a seafarer in stark contrast with the certification issued by Dr. Fugoso which categorically declared the respondent as "disabled." The certification of Dr. Alegre is, thus, inconclusive for purposes of determining the compensability of psoriasis under the POEA-SEC. Moreover, Dr. Alegre's specialization is General Surgery while Dr. Fugoso is a dermatologist, or one with specialized knowledge and expertise in skin conditions and diseases like psoriasis. Based on these observations, it is the Court's considered view that Dr. Fugoso's certification deserves greater weight.

It remains undisputed that the respondent used strong detergent, fabric conditioner, special soap and chemicals in performing his duties as a steward. Stress and climate changes likewise permeate his working environment as with that of any other seafarer. These factors, taken together with Dr. Fugoso's certification, confirm the

existence of a reasonable connection between the nature of respondent's work and the onset of his psoriasis.”

In this case, a review of petitioner's duties as Able Seaman, which include overhaul, repair and maintenance works on the ship, as well as paint jobs and chipping of rusts on the vessel's superstructure gives credence to his claim that he is constantly exposed to harmful chemicals, fumes and emissions, as well as extreme hot and cold outdoor weather conditions. Not to mention, the performance of strenuous manual works that his job entails undeniably causes physical stress and fatigue. Thus, this Court is convinced that there is reasonable causal connection between petitioner's line of work and his development of psoriasis and psoriatic arthritis.

Disability is intimately related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity. To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent.[37]

Permanent disability is the 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.[38] While it is true that a fit-to-work declaration was made by Dr. Gorospe within the 120-day period, We stress what has been earlier discussed that the assessment from the company-designated physician lacks credibility, as it preempted any clearance from a rheumatologist. Clearly, since petitioner was unable to return to work for more than 120 days from the time he was medically repatriated on 28 October 2008, his disability is permanent.

Total disability, on the other hand, does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. 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.[39]

In the Mesina case,[40] the Supreme Court, in characterizing respondent-employee's disability caused by psoriasis as total in nature, ruled in this wise:

“Despite the declaration in the medical reports that psoriasis is not contagious, no profit-minded employer will hire him considering the repulsive physical manifestation of the disease, its chronic nature, lack of long-term cure and the vulnerability of the patient to cardiovascular diseases and some cancers. Its inevitable impact to the respondent's chances of being hired and capacity to continue working as a seaman cannot be ignored. His permanent disability thus effectively became total in nature entitling him to permanent total disability benefits as correctly awarded by the LA and the CA. “

In the case of petitioner, his psoriasis has clearly become more than superficial. Psoriatic arthritis has affected his joints, causing swelling and recurring pain on the joints of his elbows, thumb and ankles, which clearly prevents him from performing the physically demanding duties of an Able Seaman. Thus, to this Court, there is greater reason to consider herein petitioner's disability as total in nature, entitling him to permanent total disability benefits.

Anent petitioner's claim for an award of moral and exemplary damages, this Court is inclined to deny the same in the absence of any clear and convincing evidence of bad faith attributable to private respondents.

Lastly, on the issue of attorney's fees, while private respondents have not been shown to act in gross and evident bad faith in refusing to satisfy petitioner's demands, it is nonetheless true as a matter of law and it has been held in the past that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.[41]

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed Decision dated dated 31

January 2012 and Resolution dated 12 March 2012 of the National Labor Relations Commission (NLRC), Fourth Division, are hereby REVERSED and SET ASIDE. Judgment is hereby rendered ordering private respondents All Oceans Maritime Agency, Inc. and Thome Ship Management Pte., Ltd., jointly and severally, to pay petitioner the following amounts:

- 1) Full disability benefits in the amount of US\$60,000; and
- 2) Attorney's fees equivalent to 10% of the total monetary award.

SO ORDERED.

Bruselas, Jr.,[*] (Acting Chairperson) and Macalino,[**] JJ., concur.

[*]Acting Chairperson, per Office Order No. 156-14-AGT, dated April 23, 2014

[**]Acting Senior Member, per Office Order No. 156-14-AGT, dated April 23, 2014

[1] Rollo, pp. 3-28.

[2]Rollo, pp. 202-214.

[3] Rollo, pp. 223-224.

[4] Rollo, pp. 141-145.

[5] Rollo, pp. 215-222.

[6] Rollo, pp. 78-79.

[7] Rollo, page 29.

[8] Rollo. page 63.

[9] Rollo, page 67.

[10] Rollo, page 68.

[11] Rollo, page 69.

[12]Rollo, page 74.

[13] Rollo, page 291.

[14] Rollo, pp. 75-76.

[15] Rollo, page 77.

[16]Rollo, pp. 70-71.

[17] Supra, see footnote 11.

[18] Supra, see footnote 12.

[19] Supra, see footnote 4.

[20] Rollo, pp. 146-170.

[21] Supra, see footnote 2.

- [22] Supra, see footnote 5.
- [23] Supra, see footnote 3.
- [24] Rollo, pp. 12-13.
- [25] Coastal Safeway Marine Services, Inc. v. Esguerra, G.R. No. 185352, 10 August 2011.
- [26] Seagull Maritime Corp. v. Dee, G.R. No. 165156, 2 April 2007.
- [27] Ibid.
- [28] Supra, see footnote 9.
- [29] Maersk Filipinas Crewing, Inc., et al. vs. Nelson E. Mesina, G.R. No. 200837, 5 June 2013.
- [30] Jebsens Maritime, Inc., et al. vs. Enrique Undag, G.R. No. 191491, 14 December 2011.
- [31] 2000 POEA Amended Standard Terms and Conditions.
- [32] Supra, see footnote 19.
- [33] <http://www.pchrd.dost.gov.ph/index.php/2012-05-23-07-46-36/2012-05-24-00-03-06/3040-rheumatoidarthriti-s-vs-psoriatic-arthritis>, last accessed on 15 April 2014, 2:30 p.m.
- [34] Fil-Pride Shipping, Inc. et al. vs. Edgar A. Balasta, G.R. No. 193047, 3 March 2014.
- [35] GSIS v. Besitan, G.R. No. 178901, 23 November 2011.
- [36] Supra, Maersk Filipinas Crewing, Inc., et al. vs. Nelson E. Mesina.
- [37] Philimare, Inc., et al. vs. Benedicto F. Sukanob, G.R. No. 168753, 9 July 2008.
- [38] Ibid.
- [39] Id.
- [40] Supra, Maersk Filipinas Crewing, Inc., et al. vs. Nelson E. Mesina.
- [41] Supra, Fil-Pride Shipping, Inc. et al. vs. Edgar A. Balasta.

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