

ALSTER INTERNATIONAL SHIPPING SERVICES, INC., JOHANN MK BLUMENTHAL GMBH & CO. KG AND FELIX G. VALENZONA, PETITIONERS, VS. ENRICO GAVIOLA GANTANG, JR. AND NATIONAL LABOR RELATION...

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

This petition[1] for certiorari under Rule 65 of the Rules of Court with prayer for the issuance of temporary restraining order (TRO) and/or preliminary injunction impugns the Decision[2] dated February 26, 2014 of the Third Division of the National Labor Relations Commission (NLRC) and its Resolution[3] dated March 31, 2014 in NLRC LAC No. (OFW-M) 01-000130-14(8).

The antecedent facts as synthesized by the NLRC are as follows:

“Respondent Alster International Shipping Services, Inc., a licensed domestic manning agency, hired complainant Enrico Gaviola Gantang, Jr. as Wiper, on behalf of Johann MK Blumenthal GMBH & Co. KG, the foreign principal, to work on board ‘MV ANNA-DOROTHEA’ for a period of eleven (11) months. He commenced his employment on September 20, 2012.

Complainant averred that on December 23, 2012, the Chief Engineer directed him to assist in repairing the remote of the gangway. While holding the handle, the Chief Engineer opened the electric panel board controlling the gangway and the power turned on. The motor suddenly operated and accidentally complainant injured his right hand. He suffered an open fracture of the 4th metacarpal.

Complainant was repatriated on February 8, 2013. Upon arrival in Manila, he reported to the respondents and was referred to the company-designated physician. He underwent treatment and therapy, but his condition did not improve. He inquired from the company-designated physician when he could go back to work, but the latter did not give him an answer.

Thus, on May 22, 2013, complainant consulted Dr. Fidel Magtira, and after tests and evaluation, the doctor declared him as permanently unfit to work. He continued the therapy sessions until the respondents terminated his medical accommodation. He claimed his disability compensation benefit, but the respondents refused to pay. Hence, he filed this complaint.

Respondents, on the other hand, admitted the complainant's deployment onboard its vessel, and his early repatriation for medical reason. They averred that on December 22, 2012, he sustained a laceration on his right hand when it was hit by a metal. He was given anti-tetanus and suturing in a hospital in Mangalore. His x-ray revealed a fracture of his 4[th] metacarpal. Thus, he was repatriated, and upon arrival in the Philippines, he was referred to the NGC Medical Clinic, Inc. He underwent surgical procedure, Open [R]eduction with Internal Fixation using plates and crews. On August 30, 2013, the company-designated physician assessed him with Disability Grade 10. Respondents assert that complainant is entitled to payment of disability benefit equivalent to Grade 10 only.”[4]

On January 13, 2014, the Labor Arbiter rendered judgment in favor of herein respondent Enrico Gaviola Gantang, Jr., thus -

“ACCORDINGLY, respondents Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG are ordered, in solidum, to pay the following to complainant:

a) TOTAL AND PERMANENT DISABILITY BENEFIT of US\$60,000.00 in its Peso equivalent at the rate of exchange prevailing at the time of actual payment or execution;

b) MORAL DAMAGES of PhP50,000.00;

c) EXEMPLARY DAMAGES of PhP50,000.00; and

d) ATTORNEY'S FEES in an amount equivalent to ten (10%) or the total amount herein awarded.

The foregoing awards shall be subject to 5% withholding tax upon payment/execution only where the same is applicable.[5]

All other claims are DENIED for lack of merit.

Respondent Felix G. Valenzona is EXONERATED from all liabilities.

SO ORDERED.”[6]

The Labor Arbiter ruled that respondent Gantang, Jr. is entitled to total disability benefit because the injury he sustained while working prevented him from working for more than 120 days. The Medical Report issued by Dr. Magtira on May 22, 2013 was likewise given great weight where it was stated that “[I]t is worth mentioning also that Mr. Gantang is a right handed person. xxx He is therefore permanently UNFIT in any capacity for further sea duties.” In awarding moral damages, exemplary damages and attorney's fees, the Labor Arbiter reasoned out in this wise:

“Moral damages are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person.

On the other hand, exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. It is awarded as a deterrent to socially deleterious actions. In quasi-delict, exemplary damages are awarded when the act or omission which caused injury is attended by gross negligence.

From the facts established by complainant's [herein respondent Gantang, Jr.] evidence, respondents [herein petitioners] failed to pay the claims of complainant for total and permanent disability benefits, and sickness allowance. It should be stressed that complainant is simply claiming what is due him pursuant to contractual provisions, i.e. the POEASEC. 'Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.' Respondents' unjustified refusal to comply with their obvious legal and contractual obligations constitute bad faith for having intentionally breach its (sic) sworn duties arising from law and contract, that partakes of the nature of fraud for having failed or omitted the payment of sickness allowance and reimbursement of medical expenses which involve a breach of legal and contractual duty resulting in damage to complainant. Thus, moral damages of PhP50,000.00 and exemplary damages of PhP50,000.00 is (sic) hereby assessed against respondents.

As to attorney's fees, the same is justified under Article 2208 (2) of the Civil Code. Since complainant was compelled to litigate to secure his disability benefit, the award of the said fees is justified. Further, in *Skipper United Pacific, Inc., et al. v. Doza, et al.*, the award of attorney's fees at ten (10%) is based on the total claims of the employee.”[7]

Herein petitioner Felix G. Valenzona who is the President of petitioner Alster International Shipping Services, Inc. was absolved from all liabilities on the ground that he was only acting as corporate agent and so the obligations incurred by him as corporate officer was not his direct accountability but that of the corporation he represents.[8]

On February 26, 2014, the NLRC resolved herein petitioners' appeal by affirming the decision of the Labor Arbiter but deleting the award for moral and exemplary damages.[9]

According to the NLRC, the fracture on the metacarpal of herein respondent Gantang, Jr. can be considered as Grade 1 disability and not merely Grade 10 because he has lost his ability to grip and hold objects as well as his ability to lift and carry. He has lost his ability to perform his work as a Wiper as a result of his injury sustained while performing his work that is why herein petitioners have not offered to re-hire him despite their stand that his disability is not total and permanent.

The NLRC further ruled that “the law does not require that the disease sustained should be incurable to be compensable but what is important is he is unable to perform his customary work for more than 120 days. It does not mean absolute helplessness because 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.”

Although the NLRC sustained the Labor Arbiter's finding that respondent Gantang, Jr. is entitled to permanent and total disability benefit, it deleted the award for moral and exemplary damages for lack of material basis since herein petitioners provided him with immediate medical treatment and merely relied on the company-designated doctor's findings. Consequently, the amount of attorney's fees which should be awarded to respondent Gantang, Jr. is only 10% of his disability compensation.[10]

On his partial appeal before the NLRC, respondent Gantang, Jr. insisted that herein petitioner Felix G. Valenzona should be held solidarily liable with Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG since he is the president of Alster International Shipping Services, Inc.

On the other hand, herein petitioners moved for partial reconsideration of the NLRC Decision insisting that respondent Gantang, Jr. is not entitled to permanent total disability benefit since he was only given partial disability grade 10 by the company-designated physician 203 days from his repatriation which was within the 240-day period required by law. The 120-day doctrine is no longer controlling because it has already been superseded by the pronouncement of the Supreme Court in the 2013 case Magsaysay Maritime Corporation and Westfal-Larse and Co. AS vs. NLRC and Wilcon Capoy. Hence, the complaint for permanent total disability benefit filed by respondent Gantang, Jr. against them should be dismissed.

On March 31, 2014, the NLRC resolved herein respondent Gantang, Jr.'s partial appeal from the decision of the Labor Arbiter and his motion for reconsideration of the February 26, 2014 NLRC decision. At the same time, it passed upon herein petitioners Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG's prayer for the dismissal of respondent Gantang, Jr.'s complaint for permanent total disability benefit. Thus -

“WHEREFORE, the complainant's [herein respondent Gantang, Jr.] partial appeal and motion for reconsideration are GRANTED. The Decision of the Labor Arbiter exonerating Felix G. Valenzona from any liability is SET ASIDE, and a new one issued holding him jointly and severally liable for the judgment award with Alster International Shipping Services, Inc. and Johan MK Blumenthal GMBH & Co. KG.

The Motion for Reconsideration filed by Alster International Shipping Services, Inc. and Johan MK Blumenthal GMBH & Co. KG is DENIED for lack of merit.

SO ORDERED.”[11]

Hence, this recourse by petitioners which hinged on two issues, to wit:

“I.

Whether or not Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding total and permanent disability benefits to Private Respondent.

II.

Whether or not Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding attorney's fees to Private Respondent.”[12]

Petitioners insist that respondent Gantang, Jr. is not entitled to total and permanent disability benefit since he only suffered a partial disability fracture of the fourth metacarpal finger which the company-designated physician rated as Grade 10 disability only. A fracture of a finger cannot be considered as a Grade 1 total and permanent disability either medically or under legal contemplation.[13] The fact that respondent Gantang, Jr. was under treatment for more than 120 days will not automatically entitle him to an award of total and disability benefit citing *Magsaysay Maritime Corporation and Westfal-Larsen and Co. A/S vs. Wilson Capoy* [14] where it was held that -

“The Vergara ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus -

'[T]he seafarer, upon sign-off from his vessel, must report to the company designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.”[15] (Underscoring and Emphasis supplied by petitioners)

Petitioners further posit that the assessment of respondent Gantang, Jr.'s personal physician Dr. Fidel Magtira in May, 2013 should not be given weight because his diagnosis that respondent Gantang, Jr. is permanently unfit to work was issued after only one day of the latter's consultation without performing any diagnostic procedure on him.¹⁶ Further, Section 20 (A), paragraph (2) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) which is a binding contract between herein parties clearly provides that it is the company-designated physician who is mandated to determine the fitness or disability of a seafarer, viz -

“Section 20. A. Compensation and Benefits for Injury or Illness

xxx

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.”[17] (Underscoring and Emphasis supplied by petitioners)

Petitioners further assert that the findings of the company-designated physician should be upheld for failure of respondent Gantang, Jr. to comply with the procedure stated under the POEA-SEC mandating a seafarer to refer the conflicting assessments of his chosen physician and the company-designated doctor as to his disability grading to a third doctor whose finding shall be binding.[18]

Finally, petitioners maintain that respondent Gantang, Jr. is not entitled to attorney's fees since he failed to show that there was gross and evident bad faith on their part in dealing with him. Hence, there is no factual nor legal basis in awarding the same.

WE find merit in the petition.

Anent the first issue raised in this petition, the matter in question is whose medical pronouncement should prevail given that the company-designated physician assessed the disability of respondent Gantang, Jr. as Grade 10 while respondent Gantang, Jr.'s chosen physician assessed his disability as total and permanent or has given it a disability rating of Grade 1.

In the very recent case of *Montierro vs. Rickmers Marine Agency Phils., Inc.*[19] which was promulgated only on January 14, 2015, it answered the query as to how the conflict between the company-designated physician and that of the seafarer's chosen physician's findings as to disability grading, should be decided citing *Vergara vs. Hammonia Maritime Services, Inc.*[20], thus -

“Vergara also definitively settled the question how a conflict between two disability assessments — the assessment of the company-designated physician and that of the seafarer's chosen physician — should be resolved. In that case, the Court held that there is a procedure to be followed regarding the determination of liability for work-related death, illness or injury in the case of overseas Filipino seafarers. The procedure is spelled out in the 2000 POEA-SEC, the execution of which is a sine qua non requirement in deployments for overseas work.

The procedure is as follows: when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them.

Vergara ruled that the procedure in the 2000 POEA-SEC must be strictly followed; otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.”

The parties in this case are covered by the provisions of POEA-SEC. Consequently, they are obliged to follow the prescribed procedure to determine liability for a claim for disability benefits.

The Supreme Court in *Magsaysay Maritime Corp. vs. Velasquez*,[21] held that “[t]he POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them.”

In this case, respondent Gantang, Jr. failed to observe the agreed mechanism in determining liability for disability benefits claim. He immediately filed a complaint for payment of total and permanent disability benefits based on the disability assessment of his chosen physician without seeking the opinion of a third doctor as may be agreed upon by him with petitioners whose disability assessment is supposed to be final and binding on them. Respondent Gantang, Jr.'s failure to comply with the directive set-forth in the POEA-SEC to refer the conflicting assessments of his disability to a third doctor is detrimental to his disability benefits claim.

In Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), et al. vs. Dumadag[22], the Supreme Court ruled that the complaint for maritime disability claim of respondent seafarer therein should have been dismissed for non-compliance with the mandated procedure under the POEA-SEC to have the conflicting assessments of his disability referred to a third doctor for a binding opinion, thus -

“The filing of the complaint constituted a breach of Dumadag’s contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag’s physicians that he was unfit for sea duty, and awarded him permanent total disability benefits.

We find the rulings of the labor authorities seriously flawed as they were rendered in total disregard of the law between the parties — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag’s physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.

As we earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a third doctor as was his duty.[23] xxx

Whatever his reasons might have been, Dumadag’s disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer’s disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 – whether the Court’s ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)*[24] and similar other cases, or sustained the opinion of the seafarer’s chosen physician as in *HFS Philippines, Inc. v. Pilar*,[25] cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties’ level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay’s fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.*,[26] the Court declared: “[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago’s disability.”

In the light of the prevailing ruling of the High Court on the matter, considering that respondent Gantang, Jr. did not avail of the agreed procedure, this Court has no choice but to uphold the disability assessment of the company-designated physician.[27]

Further, WE cannot give greater weight to the diagnosis of Dr. Magtira over that of the company-designated physician because the former examined respondent Gantang, Jr. only for a day, that is, on May 22, 2013.[28] Notably, Dr. Magtira merely relied on the same medical history provided by the company-designated physician who conducted close monitoring of patient’s medical condition for several months.

In *Vergara*,[29] the High Court had the occasion to rule that the doctor who have had a personal knowledge of the

actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. Also, in *Andrada vs. Agemar Manning Agency, Inc., et al.*,^[30] the diagnosis of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition was given greater weight since the assessment of the private physician was based only on a single medical report summarizing the alleged findings and medical history gathered after conducting one examination.^{cral}

At this juncture, WE emphasize that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.^[31] The pronouncement in *Crystal Shipping, Inc., et al. vs. Natividad*^[32] that disability lasting for more than 120 days is considered total and premanent disability had already been modified in *Vergara*.^[33] Instead of being automatically declared totally and permanently disabled for being unable to work for more than 120 days, the prevailing rule now is that if the 120-day period of medical treatment is exceeded and no declaration is made concerning the seafarer's disability or fitness to go back to work because he requires further medical treatment, then treatment should continue up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. If after the lapse of 240 days the company-designated physician still was not able to render a final assessment of the seafarer's medical condition, then the latter's disability shall be automatically considered permanent and total and, as such, entitles him to the maximum disability benefit. In the 2013 case of *Kestrel Shipping Co. Inc. v. Munar*,^[34] which is also cited in *Montierro*, the effectivity of the *Crystal Shipping* and *Vergara* rulings was already delineated,^[35] thus-

“Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time *Munar* filed his complaint and observance of the principle of prospectivity dictates that *Vergara* should not operate to strip *Munar* of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.

Accordingly, as ruled in *Kestrel*, “if the maritime compensation complaint was filed prior to 6 October 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from 6 October 2008 onwards, the 240-day rule applies.”^[36]

In the instant case, inasmuch as respondent *Gantang, Jr.* filed his complaint on September 11, 2013, which was after the promulgation of *Vergara* on October 6, 2008, it is the 240-day rule that will apply and not the 120-day rule.

WE noted that the company-designated doctor in this case issued a final assessment of respondent *Gantang, Jr.*'s disability of Grade 10 on August 30, 2013 or 203 days after his date of repatriation on February 8, 2013 which is well within the 240-day period. Respondent *Gantang, Jr.* filed a complaint to claim for total and permanent disability benefit because his chosen physician issued a medical report finding him to be permanently disabled and permanently unfit in any capacity for further sea duties on May 22, 2013 or before the final assessment as to his disability rating was issued by the company-designated doctor. This Court reiterates that although respondent *Gantang, Jr.* has the right to dispute the findings of the company doctor, he should have observed the procedure mandated under the POEA-SEC which is to have the conflicting assessments as to his disability determined by a third doctor. As can be gleaned from the pronouncement of the High Court in *Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), et al. vs. Dumadag*^[37], it is the seafarer's duty to refer the conflicting findings of the company-designated doctor and his chosen physician to a third doctor whose finding shall be binding. Due to his failure to observe the procedure provided by the POEA-SEC, the

assessment of the company doctor should prevail.

Anent the issue of attorney's fees, WE hold that respondent Gantang, Jr. is not entitled to the same.

Indeed, the general rule is that attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of one's cause.[38] The rule, however, takes a turn when it comes to labor cases.[39]

The established rule in labor law is that the withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees under Article 111 of the Labor Code.[40] All that is required is that lawful wages be not paid without justification, thus compelling the employee to litigate.[41] In the present case, petitioners cannot be considered to have been unlawfully withholding benefits due respondent Gantang, Jr.. The former are merely contesting the amount of benefits being claimed by the latter because the same is not in accord with the final disability rating given by their company-designated physician.

The record shows that the medical treatment of respondent Gantang, Jr. had gone beyond 120 days without declaration of his fitness to work or that he is suffering from permanent disability. He had been subjected to series of medical treatment beyond 120 days from the time he was repatriated on February 8, 2013. Considering that his medical treatment required a period exceeding 120 days, the extension of another 120 days was justified. Consequently, the company-designated physician had a period of 240 days or until October 6, 2013 within which to make a finding on respondent Gantang, Jr.'s fitness for further sea duties or degree of disability. On August 30, 2013[42] or 203 days after respondent Gantang, Jr.'s repatriation on February 8, 2013, the company-designated physician issued a final assessment of respondent Gantang, Jr.'s disability grading stating that the latter is suffering from a Grade 10 disability. Considering that the disability rating was given by the company-designated physician within the 240-day period permitted under the rules, respondent Gantang, Jr. is entitled to the income benefit for temporary total disability during the extended period or for two hundred three (203) days.[43] Said benefit for temporary total disability along with the benefit for Grade 10 disability must be paid to him jointly and severally by petitioners in accordance with the provisions under Rule II, Part I of POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers as cited by the NLRC in its assailed March 31, 2014 Resolution, viz -

“The liability of the principal/employer and the recruitment/placement agency for any and all claims under Section 10 of R[.]A. No. 8042, as amended by RA 10022, is joint and several.

The POEA Rules define joint and solidary liability as referring to 'the nature of the liability of the principal/employer and the recruitment/placement agency or manning agency, in case of seafarers), for any and all claims arising out of the implementation of the employment contract involving Filipino workers (or seafarers) for overseas employment. It likewise refers to the nature and liability of officers, directors, partners with the company over claims arising from employer-employee relationship.”[44]

For grossly misappreciating the facts, the applicable law and the rules, as well as recent jurisprudence on maritime compensation claims, the NLRC gravely abused its discretion in affirming the Labor Arbiter award of permanent total disability benefits and attorney's fees in favor of respondent Gantang, Jr.

WHEREFORE, premises considered, the petition is GRANTED.

The assailed Decision and Resolution of the National Labor Relations Commission are SET ASIDE. Petitioners Alster International Shipping Services, Inc., Johann MK Blumenthal GMBH & Co. KG and Felix G. Valenzona are ORDERED, jointly and severally, to pay respondent Enrico Gaviola Gantang, Jr. income benefit for temporary total disability for two hundred three (203) days and Grade 10 disability benefit.

SO ORDERED.

Abdulwahid, H. S., Chairperson and Inting, S. B., JJ., concur.

[1] Rollo, pp. 3-53

[2] Id., pp. 55-62

[3] Id., pp. 64-69

[4] Rollo, pp. 56-58

[5] Per Revenue Memorandum Circular No. 39-2012, 03 August 2012, and NLRC Administrative Order No. 11-17 s. 2012, dated 16 November 2012.

[6] Rollo, p. 75

[7] Id., p. 74

[8] Id., pp. 74-75

[9] Id., p. 62

[10] Rollo, pp. 61-62

[11] Id., p. 68

[12] Id., p. 11

[13] Id., p. 6

[14] G.R. No. 191903, June 19, 2013

[15] Rollo, p. 16

[16] Rollo, p. 12

[17] Id., pp. 17-18

[18] Rollo, p. 27

[19] G.R. No. 210634

[20] G.R. No. 172933, October 6, 2008

[21] G.R. No. 179802, November 14, 2008

[22] G.R. No. 194362, June 26, 2013

[23] POEA-SEC, Section 1(B.1).

[24] G.R. No. 186180, March 22, 2010

[25] G.R. No. 168716, April 16, 2009

[26] G.R. No. 194677, April 18, 2012

[27] See Philman Marine Agency, Inc. (now DOHLE-PHILMAN MANNING AGENCY, INC.) and/or DOHLE (IOM) LIMITED vs. Cabanban, G.R. No. 186509, July 29, 2013.

[28] Rollo, pp. 122-123

[29] Supra.

[30] G.R. No. 194758, October 24, 2012

[31] Millan vs. Wallem Maritime Services, Inc., G.R. No. 195168, November 12, 2012

[32] G.R. No. 154798, October 20, 2005

[33] Supra.

[34] G.R. No. 198501, 30 January 2013.

[35] See Montierro vs. Rickmers Marine Agency Phils., Inc., supra.

[36] Id.

[37] G.R. No. 194362, June 26, 2013

[38] Montierro vs. Rickmers Marine Agency Phils., Inc., supra, citing Car Cool Philippines, Inc. vs. Ushio Realty & Development Corp., 515 Phil. 376 (2006).

[39] Montierro vs. Rickmers Marine Agency Phils., Inc., supra.

[40] Labor Code, Article 111 states:

Art. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[41] Montierro vs. Rickmers Marine Agency Phils., Inc., supra, citing Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union vs. Manila Water Company, Inc. G.R. No. 174179, 16 November 2011, 660 SCRA 263, citing PCL Shipping Phil., Inc. vs. NLRC, 540 Phil. 65. Cited in Tangga-an vs. Philippine Transmarine Carriers, Inc., G.R. No. 180636, 13 March 2013, 693 SCRA 340; See also San Miguel Corporation vs. Del Rosario, 513 Phil. 740 (2005).

[42] Rollo, p. 101

[43] See Magsaysay Maritime Corp., et al. vs. NLRC, et al., G.R. No. 191903, June 19, 2013;

Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code provides:

“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 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[.]”

[44] Rollo, p. 66

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