

PAL MARITIME CORPORATION AND/OR MANX OCEAN CREWING LIMITED AND/OR MR. MANUEL B. BAYOT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND REYNALDO M. ZARAGOSA, RESPONDENTS.

Ponente: PAREDES, J.

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PAREDES, J.:

The Case

BEFORE US is a petition[1] for certiorari under Rule 65 of the Rules of Court assailing the: (1) Decision[2] dated September 30, 2011 of public respondent National Labor Relations Commission (NLRC) in LAC No. 07-000593-11 (OFW (M)-09-13840-10); and (2) Resolution[3] dated December 29, 2011, denying petitioners' motion for reconsideration.

THE ANTECEDENTS

The facts, as culled from the record[4], are as follows:

Reynaldo M. Zaragosa (Zaragosa) was hired by PAL Maritime Corporation (PMC) as Chief Cook in behalf of its foreign principal, Manx Ocean Crewing Limited (Manx Ocean). The following terms and conditions appear in Zaragosa's Contract[5] of Employment, approved by the Philippine Overseas Employment Agency (POEA), dated November 27, 2009:

Duration of Contract Eight (8) months

Position Chief Cook

Basic Monthly Salary US\$774.00

Sub Allowance

US\$152.00/month

Other Allowance US\$31.00/month

Hours of Work 44 hours per week

Overtime US\$576.00 Fixed

Overtime US\$5.59/Hr in excess of 103 Hrs/Month

Vacation Leave with Pay US\$206.00 Per Month

Point of Hire Manila, Philippines

Zaragosa's employment contract has an overriding Collective Bargaining Agreement known as the Total Crew Cost Fleet Agreement[6] for German Beneficially Owned Flag of Convenience Ships between the International Transport Workers' Federation, London SEI 1PD (ITF) and Ocean Marine Management GmbH and Manx Ocean Crewing Limited (briefly, the CBA).

After he was declared fit to work, Zaragosa boarded the vessel M/V Manarias. On March 9, 2010, at around 8 o'clock in the morning, while anchored at Port Koper, Slovenia, he accidentally chopped off his left thumb while chopping a half frozen meat as the vessel was swaying and rolling due to waves caused by the inclement weather. Zaragosa was sent to the hospital where his left thumb was amputated[7]; and was, thereafter, recommended for repatriation. He was repatriated on March 12, 2010. He was referred to the Manila Doctors Hospital where an x-ray was conducted and the result revealed:

Bony and soft tissue amputation of the mid to distal segment of the distal phalanx of the 1[st] digit is evident.

Other visualized osseous structures and joint spaces are intact in these views[8].

He was sent to the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz), who, on March 15, 2010, made the following diagnosis:

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On physical examination, the patient was noted to have dressed left thumb. There is slight pain noted. There is also limited range of motion noted. He will be referred to our orthopedic surgeon for further management. He was advised to continue his medications.

DIAGNOSIS:

Amputated distal phalanx, 1[st] digit left hand.

RECOMMENDATION:

MEDICATION:

Flucloxacillin every x7days

Etoricoxib 120BID x5days[9]

xxx (Emphasis in original)

In another medical report dated April 14, 2010, it was noted that Zaragosa had “good wound healing” and “no infection noted”[10]. He had further examinations on several occasions[11] and he was provided with the necessary treatment. Despite surgery and physiotherapy, Zaragosa continued to have limited flexibility and difficulty in grasping objects, and still continued experiencing pain and numbness in his amputated finger. In view of this predicament, and due to the failure of the company-designated physician to come up with an evaluation and assessment of his disability, Zaragosa consulted a private medical practitioner on July 24, 2010. Dr. Manuel Fidel M. Magtira (Dr. Magtira) thoroughly examined and assessed[12] Zaragosa's disability as partial and permanent with Grade 10 (20.15%) impediment based on the POEA Standard Employment Contract (POEA SEC)[13], categorized as “Loss of grasping power for large objects between fingers and palm of one hand”, hence, Dr. Magtira declared him permanently unfit in any capacity for further sea duty.

Zaragosa went back to Dr. Cruz on August 5, 2010. Contrary to the finding of Dr. Magtira, Dr. Cruz declared Zaragosa fit to work as he was able to do activities of daily living. Although declared fit to work, Dr. Cruz issued Zaragosa a disability grading of ½ of Grade 10, equivalent to loss of ½ thumb, thus:

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At present, there is good prehension and the left handgrip has been restored. There is no swelling noted. He is for application of bivalve splint to improve the hyperesthesia of the stump. The distal portion of the left thumb is absent.

He is now able to do activities of daily living.

Diagnosis

Amputation 1[st] distal phalanx, Left

Recommendation

He is FIT To WORK effective August 5, 2010.

POEA Schedule of Disability Grading: $\frac{1}{2}$ of Grade 10 = $\frac{1}{2}$ loss of one thumb¹⁴.

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For such loss, Zaragosa was offered the sum of US\$10,000.00 pursuant to the schedule of disabilities under the CBA[16] computed at 8% of US\$125,000.00. He rejected the offer and claimed for total disability benefit of US\$250,000.00 under the CBA. Consequently, he filed a complaint[16] for disability benefits, illness allowance, reimbursement of transportation and medical expenses, damages and attorney's fees against PMC, its Vice-President and General Manager Manuel Bayot, and Manx Ocean (collectively, the petitioners).

Efforts to settle the dispute amicably during the mandatory conciliation conferences before the Labor Arbiter proved unsuccessful. After the submission of the parties' respective position papers[17], replies[18] to position paper and rejoinder[19], the Labor Arbiter issued a Decision[20] on April 28, 2011 disposing of the case in this wise:

WHEREFORE, a Decision is hereby rendered ordering Respondents jointly and severally to pay complainant total disability benefit in the amount of US\$125,000.00, plus 10% of the total award as and by way of attorney's fees.

SO ORDERED[21].

Both parties appealed[22] to the NLRC, assailing the Decision of the Labor Arbiter. On September 30, 2011, the NLRC issued the assailed Decision[23], disposing of the appeals thus:

WHEREFORE, THE FOREGOING CONSIDERED, judgment is hereby rendered dismissing the appeal of respondents (now, petitioners) for lack of merit and the decision appealed from is AFFIRMED.

SO ORDERED[24].

The subsequent motions[25] for reconsideration of the parties were denied by the NLRC in a Resolution²⁶ dated December 29, 2011; thus, the instant Petition, ascribing grave abuse of discretion on the part of the NLRC when it affirmed the decision of the Labor Arbiter, viz:

I. THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FIT TO WORK DECLARATION OF THE COMPANY PHYSICIAN. IT MUST BE EMPHASIZED THAT THE PRIVATE RESPONDENT SUFFERED A MERE PARTIAL AMPUTATION OF THE DISTAL PHALANX OF ONLY HIS LEFT THUMB. THE CONDITION CANNOT CLEARLY BE CONSIDERED TO HAVE RENDERED HIM INCAPACITATED TO RETURN TO WORK AS A COOK. MORE SO CONSIDERING THAT HIS LEFT HAND GRIP WAS ALREADY RESTORED TO NORMAL.

II. THE PUBLIC RESPONDENT COMMITTED REVERSIBLE ERROR IN AFFIRMING THE AWARD OF ATTORNEY'S FEES DESPITE ABSENCE OF ANY FINDINGS OF BAD FAITH OR MALICE ON THE PART OF PETITIONERS. IT MUST BE EMPHASIZED THAT ATTORNEY'S FEES ARE NOT CONVENIENTLY AWARDED JUST BECAUSE A PARTY WINS A SUIT. IT MUST BE SUPPORTED BY A FINDING OF BAD FAITH OR MALICE ON THE PART OF THE PARTY HELD LIABLE THEREFORE[27].

THE ISSUES

In fine, the issues for Our consideration are: (a) whether or not it was error for the NLRC and Labor Arbiter to disregard the fit to work declaration of the company designated physician; and (b) whether or not the payment of attorney's fees was proper.

THE COURT'S RULING

The petition lacks merit.

Petitioners claim that: it was error for the NLRC and Labor Arbiter to disregard the fit to work declaration of the company-designated physician[28]; the grant of disability benefits in the amount of US\$125,000.00 for a partially amputated left thumb as well as the award of 10% attorney's fees do not find justification in the facts and evidence as well as parties' governing agreements[29]; and no incapacity to work resulted in the impairment of his earning capacity[30]. They also aver that the manner of settling disputes should be according to the POEA-SEC[31] so an assessment from a third physician should be necessary[32]. We are not persuaded.

Nothing is more settled than the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order[33]. The burden of proof is on the petitioner to show that the assailed decision and resolution was tainted with grave abuse of discretion. This, petitioners failed to do in the present case.

As a rule, the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment (DOLE), and the parties' Collective Bargaining Agreement bind the seaman and his employer to each other[34].

Likewise, it is doctrinal that the findings of facts and conclusion of the labor arbiter are generally accorded not only great weight and respect but even clothed with finality and deemed binding as long as they are supported by substantial evidence, without any clear showing that such findings of fact, as affirmed by the NLRC, are bereft of substantiation[35]. The reason being that labor officials are deemed to have acquired expertise in matters within their respective jurisdictions[36].

In the challenged Decision[37], the NLRC affirmed the findings of the Labor Arbiter and stressed that the disability of an employee does not rest on the issue of whether or not he loses the use of any part of his body but the inability to work for more than 120 days, and that the reason for awarding disability benefits is not the loss of his thumb but the incapacity to work resulting in the impairment of his earning capacity[38]. We agree with the

NLRC.

It has been the Supreme Court's consistent ruling that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity[39]. In this case, while both parties are in agreement that the amputation of the part of the thumb of Zaragosa was due an injury sustained as a result of an accident while he was in the performance of his duties as Chief Cook of the vessel, petitioners did not agree to the claim of Zaragosa for total disability.

Disability should be understood not more on its medical significance, but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness[40]. In the case at bar, it must be noted that Zaragosa worked as a cook. While it may be that only a part of his thumb was removed, it cannot be denied that the use of the same is important in the performance of his work as such cook. Moreover, a reading of the certification[41] of Dr. Cruz would reveal that while he certified that Zaragosa was now able to do activities of daily living and is now fit to work, the same did not reveal whether or not he could return to work as cook.

As aptly found by the Labor Arbiter, whose decision was affirmed by the NLRC:

Respondents' company-designated physician declared complainant fit to work as he is already able to do the activities of daily living. However, the activities of daily living is not the parameter/measure that a seafarer is already fit work. It must be shown that he can perform with equal capacity as before he had an injury.

Since complainant's left thumb was amputated, this office gives credence to the finding of an independent doctor, Dr. Magtira, that complainant has limitation of flexion and difficulty in grasping object.

As a chief cook, complainant handles the meat products, fish, chicken, vegetables, etc. He has to cut, chop, arrange, peel and do anything necessary in the preparation of food. Hence, as his grasping power is already reduced, complainant could no longer perform the usual job he used to do. Therefore he is already unfit to his position as a chief cook.

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Respondents did not declare that complainant can already perform his usual job as chief cook. In fact, the company doctor issued complainant a disability grading of $\frac{1}{2}$ of Grade 10 = $\frac{1}{2}$ loss of one thumb.

Therefore, as complainant can no longer return to his previous job as in fact Respondents (petitioners) did not deploy him, he is entitled to total disability benefit[42].

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Moreover, while the company-designated physician issued a fit-to-work certification, the same was issued way beyond the 120 day period provided under the law, thus:

Section 20 B (6) of the POEA-SEC, viz.:

B. Compensation and Benefits for Injury or Illness

xxx

- 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.

We note that while the 120 days initial period may be extended up to a maximum of 240 days, this is applicable only under the conditions prescribed by law which is if the seafarer requires further medical attention[43]. In the case at bar, it has not been shown that the medical treatment of Zaragosa went beyond the mandated 120 day period so as to apply the maximum of 240 days within which the company physician could declare Zaragosa fit to work. The reason why he was forced to consult Dr. Magtira was because of the failure of Dr. Cruz to issue a certification to that effect after the expiration of the initial 120 day period.

With respect to the failure to abide by the procedure laid down under the POEA-SEC, We find the same inapplicable.

Zaragosa became entitled to total and permanent disability benefits after the expiration of the 120-day period and Dr. Cruz had not yet made any declaration as to Zaragosa's fitness to work. It was by operation of law that brought forth the conclusive presumption that he is totally and permanently disabled, and thus there was no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. A seafarer's compliance with such procedure presupposes that the company-designated physician had come up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent[44].

As to the payment of attorney's fees, while it had not been shown that petitioners acted in gross and evident bad faith in refusing to satisfy Zaragosa's demand for total disability, it is nonetheless true as a matter of law 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[45].

WHEREFORE, premises considered, the instant Petition is DENIED. The Decision of the National Labor Relations Commission dated September 30, 2011, and the Resolution dated December 29, 2011, in LAC No. 07-000593-11 (OFW (M)-09-13840-10), are AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Dicdican, I.P., Chairperson and [*]Antonio-Valenzuela, N.G., JJ., concur.

[*] Vice Justice Michael P. Elbinias per Raffle dated May 23, 2014.

[1] Rollo, pp. 3-49 (excluding annexes).

[2] Rollo. pp. 58-73.

[3] Rollo, pp. 74-6.

[4] Rollo, pp. 3-465.

[5] Rollo, p. 248.

[6] Rollo, pp. 270-92.

[7] Rollo, pp. 293-4.

[8] Rollo, p. 295.

[9] Rollo, p. 249.

[10] Rollo, p. 250.

[11] Rollo, pp. 251-6.

[12] Rollo, pp. 296-7.

[13] Sec. 32. Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted.

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THUMBS AND FINGERS

- Total loss of one thumb including metacarpal bone..... Gr. 9

- Total loss of one thumb..... Gr. 10

- Total loss on one index finger including metacarpal bone..... Gr. 10

- Total loss of one index finger..... Gr. 11

- Total loss of one middle finger including metacarpal bone..... Gr. 11

- Total loss of one middle finger..... Gr. 12

- Total loss of one ring finger including metacarpal bone..... Gr. 12

- Total loss of one ring finger..... Gr. 13

- Total loss of one small finger including metacarpal bone.....Gr. 13

- Total loss of one small finger.....Gr. 14

- Loss of two (2) or more fingers: Compensation for the loss or loss of use of two (2) or more fingers or one (1) or more phalanges of two or more digits of a hand must be proportioned to the loss of the hand occasioned thereby but shall not exceed the compensation for the loss of a hand:

- Loss of five (5) fingers of one hand..... Gr. 6
- Loss of thumb, index fingers and any of 2 or more fingers of the same hand..... Gr. 6
- Loss of the thumb, index finger and any one of the remaining fingers of the same hand..... Gr. 7
- Loss of thumb and index finger..... Gr. 8
- Loss of three (3) fingers of one hand not including thumb and index finger..... Gr. 9
- Loss of the index finger and any one of the other fingers of the same hand excluding thumb..... Gr. 9
- Loss of two (2) digits of one hand not including thumb and index finger. Gr. 10
- Loss of ten (10) fingers of both hand..... Gr. 3

HANDS

- Total loss of use of both hands or amputation of both hands at wrist joints or above..... Gr. 1
- Amputation of a hand at carpo-metacarpal joints..... Gr. 5
- Amputation between wrist and elbow joints..... Gr. 5
- Loss of grasping power for small objects between the fold of the finger of one hand..... Gr. 10
- Loss of grasping power for large objects between fingers and palm of one hand..... Gr. 10

- Loss of opposition between the thumb and tips of the fingers of one hand..... Gr. 9

- Ankyclosed wrist in normal position..... Gr. 10

- Ankyclosed wrist in position one third (1/3) flexed or half extended and/or severe limited action of a wrist..... Gr. 1

xxx

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade

Impediment

1

US\$50,000

x

120.00%

2

“

x

88.81%

3

"

x

78.36%

4

"

x

68.66%

5

"

x

58.96%

6

"

x

50.00%

7

"

x

41.80%

8

"

x

33.59%

9

"

x

26.12%

10

"

x

20.15%

11

"

x

14.93%

12

"

x

10.45%

13

"

x

6.72%

14

"

x

3.74%

To be paid in Philippine currency equivalent at the exchange rate prevailing during the time of payment.

xxxx

[14] Rollo, p. 223.

[15] Loss of half of Extremity of One Thumb (whether Left or Right Hand) has a percentage compensation of 8 under the Compensation Scale. See rollo, p. 282, 274.

[16] Rollo, p. 195-6.

[17] Position Paper of Respondents, rollo, pp. 198-256; Position Paper of Zaragosa, rollo, pp. 257-334.

[18] Reply of Respondents, rollo, pp. 335-47; Reply of Zaragosa, rollo, pp. 348-60.

[19] Rejoinder of Zaragosa, rollo, pp. 361-75.

[20] Rollo, pp. 78-87.

[21] Rollo, p. 86.

[22] Notice of Appeal with Memorandum of Appeal for Respondents, rollo, pp. 88-127 & Notice of Partial Appeal with Memorandum of Appeal for Zaragosa, rollo, pp. 162-8.

[23] Rollo, pp. 58-73.

[24] Rollo, p. 72.

[25] Motion for Reconsideration of Respondents, rollo, pp. 169-187; Motion for Reconsideration of Zaragosa, rollo, pp. 188-93.

[26] Rollo, pp. 74-6.

[27] Rollo, pp. 17-8.

[28] Rollo, p. 18.

[29] Rollo, p. 19.

[30] Rollo, p. 20.

[31] Sec. 20-B-3 reads:

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 postemployment 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.

[32] Rollo, p. 30.

[33] Novateknika Land Corp. vs. PNB, G.R. No. 194104, March 13, 2013.

[34] See INC ShipManagement, Inc. Et Al., vs. Moradas, G.R. No. 178564, January 15, 2014.

[35] See Acebedo Optical vs. NLRC, G.R. No. 150171, July 17, 2007.

[36] Gardens of Memories Park and Life Plan, Inc. vs. NLRC, G.R. No. 160278, February 8, 2012.

[37] Rollo, pp. 58-73.

[38] Rollo, pp. 67-8.

[39] Jebsens Maritime, Inc. vs. Undag, G.R. No. 191491, December 14, 2011; Oriental Shipmanagement Co., Inc. vs. Bastol, G.R. No. 186289, June 29, 2010; Remigio vs. NLRC, G.R. No. 159887, April 12, 2006.

[40] Jebsens Maritime, Inc. vs. Babol, G.R. No. 204076, December 4, 2013.

[41] Rollo, p. 223.

[42] Rollo, pp. 84-5.

[43] See PhilAsia Shipping Agency Corp. vs. Tomacruz, G.R. No. 181180, August 15, 2012.

[44] See Kestrel Shipping Co. Et Al. vs. Munar, G.R. No. 198501, January 30, 2013.

[45] See Aliling vs. Feliciano, Et Al. G.R. No. 185829, April 25, 2012.

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