

JOWELL P. SANTOS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), C. F. SHARP CREW MANAGEMENT, INC. /MANNY SABINO AND/OR NORWEGIAN CRUISE LINE LTD., RESPON...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[2] dated July 30, 2013 and the Resolution[3] dated September 24, 2013 of the National Labor Relations Commission (Fifth Division) in NLRC NCR OFW-M-04-06542-12, NLRC LAC No. 01-000071-13, entitled “Jowell P. Santos, Complainant-Appellee vs. CF Sharp Crew Management, Inc. and Manny Sabino and/or Norwegian Cruise Line Ltd., Respondents/Appellants.”, the dispositive portions of which read:

July 30, 2013 Decision

“WHEREFORE, foregoing considered, the appeal is partly GRANTED. The decision dated November 23, 2012 is MODIFIED. The grant of total and permanent disability benefits is set aside but the award of sickness pay in the sum of One Thousand Six Hundred Thirty Three US Dollars and 66/100 (US\$1,633.66) remains. In addition, appellants are ordered to pay appellee the sum of Five Thousand Two Hundred Twenty Five US Dollars (US\$5,225.00) as financial assistance for his illness.

SO ORDERED.”

September 24, 2013 Resolution

“WHEREFORE, complainants' Motion for Reconsideration is hereby DENIED.

SO ORDERED.”

The facts are:

Petitioner Jowell P. Santos (Santos for brevity) was hired by private respondent CF Sharp Crew Management, Inc. (CF Sharp for brevity), for and in behalf of its principal, private respondent Norwegian Cruise Line Ltd. (NCLL for brevity), as Environmental Operator on board the vessel “M/S Norwegian Gem” for a period of nine (9) months.[4] He was deployed on September 9, 2011.

Sometime in December 2011, petitioner Santos experienced dizziness, over fatigue, frequent urination and blurring of the eyesight. He was brought to the ship's clinic for initial medical examination and was found to have elevated blood sugar and blood pressure. He was immediately referred to Cape Canaveral Hospital in Miami Florida, USA, where he was found to have a family history of diabetes and has been smoking a pack of cigarettes daily for ten (10) years.[5]

On January 12, 2012, he was repatriated to the Philippines, and upon his arrival, he was immediately referred to

the company-designated physicians at Sachly International Health Partners Clinic (SHIP Clinic for brevity). The company-designated physician subjected petitioner Santos to several test and treatments. It was confirmed that he had diabetes and an elevated blood pressure. He was advised to continue his medications.[6]

On May 4, 2012, he was seen by a Nephrologist who noted that petitioner Santos is asymptomatic with a BP of 120/70. His urinalysis and serum creatinine were normal. Thus, he was cleared from nephrology standpoint and was advised to continue his maintenance medications[7]. Thereafter, private respondents secured a certification from their company-designated physicians that petitioner Santos' condition is not work-related and his final disability grading assessment is Grade 12.[8]

Petitioner Santos, however, claimed that 120 days had elapsed without any declaration or assessment having been made by company-designated physicians. Thus, he consulted Dr. May S. Donato-Tan, a specialist in Internal Medicine and Cardiology, who noted his high blood pressure and uncontrolled diabetes mellitus. In the Medical Certificate[9] she issued, Dr. Donato-Tan opined that petitioner Santos' condition is work-related due to pressure in cruise ship which elevated his blood pressure and that the food was not well balanced which elevated his blood sugar. Dr. Donato-Tan, thus, declared that petitioner Santos is permanently disabled to discharge his duties as a seaman.

On May 9, 2012, petitioner Santos filed a complaint[10] for disability and sickness benefits with damages pursuant to the provisions of the Collective Bargaining Agreement[11] covering his contract with private respondents.

Private respondents disclaimed liability for medical expenses and sickness wages of petitioner Santos contending that they shouldered the latter's medical needs from the time he was repatriated, and that these were not included in the complaint as among his' causes of action. Private respondents likewise claimed that the 120 days had not yet elapsed without any assessment having been made as to petitioner Santos' fitness or disability grading because only 118 days had passed since the latter began his medical treatment on January 13, 2012, thus, the invocation of the Crystal Shipping case was improper.

On November 23, 2012, the Labor Arbiter rendered a decision, the dispositive portion of which states:

“WHEREFORE, all the foregoing premises considered, judgment is hereby rendered, ordering respondent C.F. Sharp Crew Management, Inc., and/or Norwegian Cruise Line LTD., to pay, jointly and severally, complainant Jowell P. Santos the aggregate amount of NINETY ONE THOUSAND SIX HUNDRED THIRTY THREE AND 66/100 US DOLLARS (US\$91,633.66) or its Philippine peso equivalent at the time of actual payment, representing permanent disability benefits and sickness wages, plus ten percent (10%) thereof as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.”

Aggrieved, private respondents appealed the said decision before the public respondent NLRC which rendered the assailed decision dated July 30, 2013, partly granting the appeal by modifying the labor arbiter's decision. Petitioner Santos moved for the reconsideration of public respondent NLRC's decision. However, in a resolution dated September 24, 2013, public respondent NLRC denied petitioner Santos' motion for reconsideration. Hence, this petition anchored on the following grounds:

“A. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSE ITS DISCRETION AND SERIOUSLY ERRED IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER AND DENYING PETITIONER'S CLAIM FOR TOTAL PERMANENT DISABILITY BENEFITS.

B. THE PUBLIC RESPONDENT NLRC GRAVELY ABUSE ITS DISCRETION AND SERIOUSLY ERRED IN SETTING ASIDE THE DECISION OF THE LABOR ARBITER AND DENYING PETITIONER'S CLAIM FOR ATTORNEY'S FEES."

The petition is meritorious.

There is no quibble that petitioner Santos is entitled to disability benefits.

Deemed read and incorporated into the contract of employment between petitioner Santos and private respondents are the provisions of the 2000 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). Section 20(b) thereof reads:

"SECTION 20. COMPENSATION AND BENEFITS.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESSES

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

- 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.

x x x

- Those illnesses not listed in Section 32 of this Contract are disputably presumed work-related."

In this case, petitioner Santos was diagnosed with hypertension and diabetes mellitus 2. While he admitted having a family history of diabetes and being a "ten pack year smoker", it does not mean that private respondents are absolve from payment of petitioner Santos' disability compensation.

It must be stressed that petitioner Santos had been in the employ of private respondents for at least ten (10) years under separate contracts. Each time he was deployed, he underwent the required PEME and was determined to be fit to work or fit for sea duty by private respondents' accredited medical clinics. Thus, it belies private respondents' allegation that petitioner Santos' medical condition pre-existed his employment on board private respondents' vessel. Even assuming that petitioner Santos contracted the disease prior to his deployment, this fact would not exculpate private respondents from liability.

Petitioner Santos suffered a work-related illness in the course of his employment on board private respondents' vessel. The medical reports from the company-designated physician and that issued by Dr. Donato-Tan are indisputable proof of the illness suffered by petitioner Santos while in the performance of his duties on board the vessel. Petitioner Santos averred that as an Environmental Operator, he was exposed to stressful working environment. Apart from his rigorous tasks, he was oftentimes exposed to extreme temperature changes, observe stressful working hours, as he was always on call to perform his duties on board the vessel. He was also unable to observe regular eating habits due to the demanding nature of his job, and his dietary provision consisted mostly of

frozen foods, and foods rich in fat and sugar. Moreso, for at least three months following his embarkation, he was on night duty and was deprived of proper nutrition and rest. These circumstances took a toll on him which led to his hypertension and diabetes.

On the other hand, it is not necessary that petitioner Santos should be in perfect health at the time of his employment in order for him to recover compensation. Every employee brings to his employment certain infirmities, and the employer although not an insurer of the employees' health, takes them as they find them. It is not also necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the occurrence or, at the very least, aggravation of any pre-existing condition he might had.[12]

It is noteworthy that hypertension is enumerated as an occupational disease under Section 32-A of the POEA-SEC. Petitioner Santos was diagnosed to be suffering from this illness right after he was brought for medical check up by private respondents. On the other hand, Dr. Donato-Tan opined that petitioner Santos lost his opportunity for gainful employment due to his subsisting ailment. In the Medical Certificate she issued, Dr. Donato-Tan stated that:

“At present, despite his Lisinopril 10 mg OD medications, patient presented in my clinic with BP 160/100 (2x), accompanied with mild to moderate chest pain, blurry of vision, EF and SOB and increasing tingling and numbness over his lower extremities bilaterally and uncontrolled diabetes mellitus. Above condition will hinder him to perform his duties effectively and sufficiently as a seaman and is therefore given a permanent disability as a seaman. His condition is work related due to pressure in cruise ship which elevates his blood pressure and at the same time his food is not well balance which will surely elevate is blood sugar.”

Private respondents' asseveration that it is the company-designated physician who shall determine petitioner Santos' fitness or unfitness for work is misplaced. The POEA-SEC recognizes the prerogative of the seafarer to request a second opinion or consult a physician of his choice. In this case, it must be emphasized that both the company-designated physician and petitioner Santos' doctor of choice opined that he is suffering from hypertension and diabetes mellitus 2. The only difference is their assessment on the gravity of petitioner Santos' illness.

In *Maunlad Transport, Inc., et al vs. Manigo, Jr.*[13] the Supreme Court held that the company-designated physician's assessment of the nature and extent of a seaman's disability is not final and conclusive since it does not deprive the seafarer the right to seek a second opinion.

Similarly, in *HFS Philippines, Inc, et al vs. Ronaldo Pilar*[14], the Supreme Court pronounced that:

“There was clearly a discrepancy between the certification of the company-designated physician and those of respondent's chosen doctors. The company-designated physician expectedly downplayed his findings on the ratings. It is for this reason that the employment contract affords the seaman the option to seek the second opinion of an independent physician.

The company-designated physician declared respondent as having suffered a major depression but was already cured and therefore fit to work. On the other hand, the independent physicians stated that respondent's major depression persisted and constituted a disability. More importantly, while the former totally ignored the diagnosis of the Japanese doctor that respondent was also suffering from gastric ulcer, the latter addressed this. The independent physicians thus found that respondent was suffering from chronic gastritis and declared him unfit for work.

The bottomline is this: the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such situation, we adopt the findings favorable to respondent.

The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.”

Petitioner Santos was declared permanently unfit for sea duty by Dr. Donato-Tan. In the recent case of *Fil-Star Maritime Corporation, et al. vs. Rosete*[15], citing *Valenzona vs. Fair Shipping Corporation, et al.*[16], the Supreme Court elucidated the concept of permanent total disability in this wise:

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

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

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

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

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

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

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

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

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

Crucial to this condition is whether or not petitioner Santos could still perform his work as a seafarer

notwithstanding the disability he incurred.

Evidently, more than 120 days had elapsed, but petitioner Santos has not returned to his job as a seafarer, nor were private respondents able to prove that he found employment with the same kind of work, or work of similar nature that he was trained for or accustomed to perform as of date. Private respondents did not give him new overseas assignments after his disability which only shows that said disability barred his chances to be deployed aboard private respondents' ocean-going vessel. It is therefore fitting that petitioner Santos be entitled to permanent total disability benefits considering that he was not able to resume his work as a seafarer and the probability that he would be hired by other maritime agencies is nil. Petitioner Santos cannot stand on equal footing as his healthy co-applicants. For even under medication, no employer would readily hire him if it is known that he is suffering from the said illness.

Petitioner is entitled to permanent total disability benefits based on the provisions of his contract. Under Article 13 of the Collective Bargaining Agreement[17] covering his vessel of assignment, petitioner Santos should receive the amount of US\$90,000.00. Thus, the Labor Arbiter correctly ruled when he awarded petitioner Santos disability benefits under the more beneficial provisions of the CBA for his work-related illness which he contracted during the term of his employment.

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision dated July 30, 2013 and the resolution dated September 24, 2013 of the National Labor Relations Commission (Fifth Division) in NLRC NCR-OFW-M-04-06542-12, NLRC LAC No. 01-000071-13 are hereby REVERSED and SET ASIDE, and the decision dated November 23, 2012 of the Labor Arbiter is REINSTATED.

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.

Brusekas, Jr., A.D., and Gaerlan, S.H., JJ., concur.

[1] Rollo, pp. 3-22

[2] *id.*, pp. 23-35

[3] *id.*, pp. 38-39

[4] *id.*, p. 78

[5] *id.*, pp. 115-116

[6] *id.*, pp. 164- 173

[7] *id.*, pp. 174

[8] *id.*, pp. 177-178

[9] *id.*, pp., 140-141

[10] *id.*, p. 60

[11] *id.*, pp. 79-114

[12] *Nisda vs. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009

[13] G.R. No. 161416, June 13, 2008

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

[15] G.R. No. 192686, November 23, 2011

[16] G.R. No. 176884, October 19, 2011

[17] *Rollo*, pp. 79-114

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