

FERNANDO C. LUCIANO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FRIENDLY MARITIME SERVICES, INC., KRISTEN NAVIGATION INC., MS. ANALISA C. GIANNOPOULOS AND M/T “ASTRO P...

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition for Certiorari[1] filed by Fernando Luciano (“petitioner Luciano”), imputing grave abuse of discretion amounting to lack of jurisdiction on the part of the National Labor Relations Commission – Third Division (“NLRC”) in issuing the following: (1) Resolution[2] dated 18 January 2012 (“assailed Resolution”); (2) Resolution[3] dated 14 March 2012.

Petitioner Luciano filed the Complaint[4] before the Labor Arbiter for non-payment of permanent disability benefits in accordance with the Philippine Overseas Employment Contract (“POEA Employment Contract”), moral damages, exemplary damages, and attorney's fees against Friendly Maritime Services, Inc. (“respondent Friendly Inc.”), Kristen Navigation Inc. (“respondent Kristen Inc.”), and Analisa Giannopoulos (“respondent Analisa”).

Petitioner Luciano filed the Position Paper[5] before the Labor Arbiter, and alleged: petitioner Luciano worked in respondent Friendly Inc. since 2011 on board different vessels; every time respondent Friendly Inc. deployed petitioner Luciano to a new assignment, respondent Friendly Inc. required petitioner Luciano to undergo a pre-employment medical examination, and respondent Friendly Inc. consistently declared petitioner Luciano fit for seafaring duties; as indicated in the Contract of Employment,[6] respondent Friendly Inc. re-hired petitioner Luciano as Able Seaman on board the vessel M/T ASTRO, for a period of nine months, with a monthly basic salary of US\$ 500.00 (exclusive of overtime and other benefits); at petitioner Luciano’s last pre-employment medical examination prior to departure on board M/T ASTRO, he was declared fit for sea duty; while on duty, petitioner Luciano experienced chest pain, difficulty in breathing, and rapid heart beat; petitioner Luciano immediately reported his physical condition to the master of the vessel, and the master of the vessel advised petitioner Luciano to rest, however, despite the rest days given to petitioner Luciano, petitioner Luciano's condition did not improve; petitioner Luciano was medically repatriated to Manila; upon arrival in Manila, petitioner Luciano immediately reported to respondent Friendly Inc. for post-employment medical examination, but respondent Friendly Inc. refused to give petitioner Luciano the needed medical assistance mandated under the POEA Employment Contract; despite petitioner Luciano's insistence for medical assistance, respondent Friendly Inc. continued to refuse to give petitioner Luciano medical assistance, thus petitioner Luciano was constrained to consult independent physician Dr. Leandro Bongoisa (“Dr. Bongoisa”), and Dr. Bongoisa performed a doppler scan and 2D-echocardiogram on petitioner Luciano, and the results are indicated in the MCU-FDT Medical Foundation Cardiology Department 2D-Echocardiography dated 30 June 2008;[7] despite medication, petitioner Luciano's condition did not improve; petitioner Luciano consulted another physician, Dr. Viannely Berwyn Flores (“Dr. Flores”), and Dr. Flores conducted a doppler scan and 2D-echocardiogram on petitioner Luciano, and the

results are indicated in Medcare Diagnostic Center Report dated 17 October 2008;[8] petitioner Luciano consulted Dr. Flores again, and Dr. Flores performed another 2D-echocardiogram and doppler scan on petitioner Luciano, and the results are indicated in Medcare Diagnostic Center Report dated 13 October 2010;[9] petitioner Luciano consulted physician Dr. Rosario Fernandez (“Dr. Fernandez”), and as indicated in Fernandez Clinic Medical Certificate dated 28 February 2011,[10] Dr. Fernandez treated petitioner Luciano on 16 May 2008, and diagnosed petitioner Luciano to have “Hypertension I, Cardiac Arrhythmia;” petitioner Luciano consulted cardiologist Dr. Allan Ruales (“Dr. Ruales”), and per Medical Certificate dated 5 March 2011,[11] Dr. Ruales treated petitioner Luciano on 5 March 2011, and diagnosed petitioner Luciano with “Valvular Heart Disease, Severe MR, TR, CHF IV,” and declared petitioner Luciano as unfit to work; petitioner Luciano’s illness was work-related, and rendered him unfit for work, thus petitioner Luciano was entitled to permanent disability benefits under the POEA Employment Contract.

Respondents filed the Position Paper (For the Respondents),[12] and alleged: per Contract of Employment,[13] private respondent company hired petitioner Luciano as an Able Seaman on board the vessel MT Astro Phoenix with a monthly salary of US\$ 500.00; prior to petitioner Luciano's departure, petitioner Luciano underwent a pre-employment medical examination, and per Ygeia Medical Center, Inc. Medical Certificate dated 20 April 2007,[14] petitioner Luciano was declared fit to work; petitioner Luciano thus boarded the vessel; during the duration of petitioner Luciano's employment on the vessel, petitioner Luciano worked under normal conditions, had no medical complaints, and displayed no signs of any illness that would call for any medical attention; upon completion of petitioner Luciano's employment contract, petitioner Luciano disembarked from the vessel in Rotterdam on 12 May 2008, and arrived in Manila on 14 May 2008; the following day, petitioner Luciano reported to private respondent company's office, and accomplished the De-briefing Form For Disembarking Crew dated 15 May 2008[15] where petitioner Luciano stated that the reason for his disembarkation was due to “finished contract;” petitioner Luciano did not complain nor request for medical attention; petitioner Luciano also executed the Release and Quitclaim dated 15 May 2008[16] where he stated that he did not contract any illness or injury during his employment period, and that he disembarked from the vessel in good health;[17] petitioner Luciano had no cause of action against private respondent company for disability compensation because petitioner Luciano failed to satisfy the requirements under the POEA Employment Contract (i.e.: petitioner Luciano disembarked from the vessel due to completion of his contract of employment, and not due to medical reasons; petitioner Luciano's illness did not occur during the term of his employment with private respondent company; petitioner Luciano finished his employment contract without complaining of any illness; there was no medical record showing that a physician had seen petitioner Luciano for any illness during the term of his employment contract); the De-briefing Form For Disembarking Crew, and the Release and Quitclaim, clearly state that when petitioner Luciano disembarked from the vessel he was not suffering from any illness, thus there was no basis for petitioner Luciano's claim for disability compensation.

The Labor Arbiter issued the Decision dated 29 July 2011,[18] which dismissed petitioner Luciano's complaint for lack of merit.

Aggrieved by the Labor Arbiter's Decision, petitioner Luciano appealed to the NLRC.

The NLRC issued the assailed Resolution,[19] affirming the Labor Arbiter's Decision.

Petitioner Luciano filed the Motion for Reconsideration (On the Resolution Promulgated on January 18, 2012).[20] The NLRC denied the motion.[21]

Hence, this Petition for Certiorari,[22] petitioner Luciano imputing grave abuse of discretion on the NLRC, and making the following assignment of errors:

THAT THE HONORABLE PUBLIC RESPONDENT NLRC HAD COMMITTED CLEAR AND PALPABLE ERROR, GRAVE ABUSE OF DISCRETION, AND ARBITRARINESS WHEN IT DID NOT AWARD TO PETITIONER HIS FULL PERMANENT DISABILITY COMPENSATION AS PROVIDED FOR UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.

THAT THE HONORABLE PUBLIC RESPONDENT NLRC HAD COMMITTED CLEAR AND PALPABLE ERROR AND ARBITRARINESS WHEN IT DISMISSED PETITIONER'S CLAIM FOR PERMANENT DISABILITY COMPENSATION ALLEGEDLY FOR REASON THAT PETITIONER'S EMPLOYMENT CONTRACT HAS ALREADY EXPIRED, ALTHOUGH IT IS CLEAR THAT PRIOR TO PETITIONER'S EXPIRATION OF HIS EMPLOYMENT CONTRACT HE WAS ALREADY AFFLICTED WITH THE SYMPTOMS OF HIS HEART AILMENT.

THAT THE DECISION OF THE HONORABLE PUBLIC RESPONDENT NLRC IS CONTRARY TO THE EVIDENCE ADDUCED BY THE PARTIES, TO THE BENEVOLENT PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT AND CONTRADICTS APPLICABLE JURISPRUDENCE PROMULGATED BY THIS HONORABLE COURT OF APPEALS AND THE HONORABLE SUPREME COURT.

THAT THERE IS NO APPEAL OR ANY PLAIN SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW OTHER THAN THIS PETITION.[23]

The pivotal issue is whether the NLRC committed grave abuse of discretion in finding that petitioner Luciano was not entitled to permanent disability compensation upon the finding that petitioner Luciano's illness was not work-related.

Petitioner Luciano answers in the affirmative. The NLRC committed grave abuse of discretion when it ruled that petitioner Luciano was not entitled to permanent disability compensation. Petitioner Luciano's illness was work-related, hence he was entitled to permanent disability compensation.

The Petition for Certiorari[24] thrusts: prior to his deployment, petitioner Luciano underwent a pre-employment medical examination and he was found to be fit for work; it was in the course of petitioner Luciano's performance of his job as seafarer on board the vessel that he sustained his heart ailment, which rendered him unfit as seafarer in any capacity; it was unfortunate that petitioner Luciano felt the symptoms of his heart ailment only in the last week of April 2008 (one week before the expiration of petitioner Luciano's employment contract), and he merely relied on the master of the vessel's advice to just seek medical attention in Manila; when private respondent company failed to give petitioner Luciano proper medical attention, petitioner Luciano consulted several independent physicians, and all the physicians found petitioner Luciano to be suffering from a heart ailment; clearly, petitioner Luciano contracted his heart illness when his employment contract was still subsisting, and petitioner Luciano's employment with private respondent company contributed in the development, enhancement, and deterioration of petitioner Luciano's health and the progression of petitioner Luciano's heart ailment, thus the illness was work-related; the true test of compensability of an illness is not the absolute certainty that the nature of employment had caused the illness, but only the probability that it caused or contributed in the enhancement, development, or deterioration of such illness.

Private respondents answer in the negative. The NLRC did not commit grave abuse of discretion when it ruled that petitioner Luciano was not entitled to permanent disability compensation. Petitioner Luciano's illness was not work-related, hence petitioner Luciano was not entitled to permanent disability compensation.

Respondent's Comment (on the Petition for Certiorari)[25] parries: petitioner Luciano's illness did not occur during the term of petitioner Luciano's employment with private respondent company; petitioner Luciano did not display any indication that he was sick, nor complained of any illness while on board the vessel; petitioner

Luciano was in perfect shape when he disembarked from the vessel, and petitioner Luciano even indicated in the the De-briefing Form For Disembarking Crew and the Release and Quitclaim that the reason for his disembarkation was due to the expiration of his employment contract, and that petitioner Luciano was not suffering from any illness; petitioner Luciano failed to prove that he was medically repatriated, and that he reported his heart ailment to the master of the vessel and private respondent company (petitioner Luciano failed to present the required certification from the master of the vessel so that private respondent company can immediately refer petitioner Luciano to the company-designated physician upon repatriation), thus petitioner Luciano's disability compensation claim has no merit

THE COURT'S RULING

We rule in the negative. The NLRC did not commit grave abuse of discretion in denying petitioner Luciano's claim for permanent disability compensation. Petitioner Luciano failed to prove that his sickness was work related. Thus, there was no basis to award permanent disability compensation.

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 with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the Philippine Overseas Employment Administration – Standard Employment Contract for Seafarers (“POEA-SEC”), as provided under Department Order No. 4, Series of 2000 of the Department of Labor and Employment, and the parties’ Collective Bargaining Agreement bind the seaman and his employer to each other.[26]

Under the POEA-SEC, for a disability to be compensable, two requisites must be present: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer’s employment contract.[27] Notably, these two elements must both be proved, in order that a disability may be compensable. The absence of any of the elements would not justify a disability award. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer’s illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer’s illness or injury and the work for which he had been contracted.[28]

The first requirement was absent. Petitioner Luciano was diagnosed with hypertension and heart disease. However, petitioner Luciano failed to adduce evidence that these diseases were work-related.

While Section 32-A of the POEA-SEC[29] lists hypertension and heart disease as occupational diseases which are compensable, the mere inclusion of these two diseases in the list did not ipso facto mean that these diseases are work-related. As clearly defined by the POEA-SEC, a work related illness refers to “any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.” To be truly considered as an occupational disease, other than its inclusion under Section 32-A, the claimant must likewise prove that the conditions laid down by said provision are met. Otherwise, the claimed illness cannot be regarded as work-related.

In this case, petitioner Luciano failed to prove the existence of the conditions in Section 32-A (11) and (20) of the POEA-SEC. Petitioner Luciano failed to present clear evidence showing a reasonable connection that his hypertension, and his heart disease, were caused by his job as an Able Seaman. Neither was there evidence to prove that petitioner Luciano’s working conditions contributed to the development of hypertension and heart disease. In the absence of evidence, we cannot presume that petitioner Luciano’s job as an Able Seaman had a direct causal connection in the developing of his hypertension and heart disease.

The second element was absent. Petitioner Luciano failed to prove that his hypertension and heart disease existed during the term of his employment contract.

While petitioner Luciano claims that the hypertension and heart disease manifested during the last week of his employment period on board the vessel, and petitioner Luciano reported his condition to the master of the vessel, petitioner Luciano failed to present any evidence to prove his assertions.

On the other hand, evidence established that petitioner Luciano was in a healthy condition during his employment on board the vessel, and continued to be healthy when he disembarked from the vessel in Rotterdam (upon the expiration of his employment contract). As indicated in the De-briefing Form For Disembarking Crew which petitioner Luciano signed,[30] petitioner Luciano disembarked due to the expiration of his employment contract, and not due to sickness/injuries. The Release and Quitclaim[31] executed by petitioner Luciano likewise stated that petitioner Luciano did not contract nor suffered any illness or injury during his employment period, and he disembarked from the vessel in good health.

Clearly, petitioner Luciano's illness did not exist during the term of his employment contract, and when he disembarked from the vessel.

Considering the absence of the essential elements for the award of disability benefits, there was no grave abuse of discretion on the part of the NLRC when it ruled that petitioner Luciano's illness was not work-related, and thus not entitled to disability compensation.

We DISMISS the Petition for Certiorari.

IT IS SO ORDERED.

De Leon, M.M., Chairperson and Lantion, J.A.C., JJ., concur.

[1] C.A. Rollo, p. 3.

[2] Annex “B” of the Petition for Certiorari, C.A. Rollo, p. 47.

[3] Annex “C” of the Petition for Certiorari, C.A. Rollo, p. 59.

[4] Annex “D” of the Petition for Certiorari, C.A. Rollo, p. 61.

[5] Annex “E” of the Petition for Certiorari, C.A. Rollo, p. 67.

[6] Annex “A” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 91.

[7] Annex “B” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 92. The results read: “Flail posterior mitral valve leaflet with severe mitral regurgitation. Concentric left ventricular hypertrophy with adequate wall motion and contractility with preserve systolic function but with doppler evidence of grade 3 diastolic dysfunction. Aortic valve sclerosis. Atherosclerotic aorta. Dilated left atrium with elevated volume index. Tricuspid regurgitation, mild. Pulmonic regurgitation, trival. Mild, Pulmonary hypertension.” Id.

[8] Annex “D” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 95. The results read: “Valvular Heart Disease flail posterior mitral valve leaflet (P2 and P1) secondary to torn chordae with severe mitral regurgitation. Moderate tricuspid regurgitation. Concentric left ventricular hypertrophy with relative wall thickness of 0.49 with adequate contractility and systolic function. Concentric left ventricular hypertrophy with evidenced of pressure and volume overload. Dilated left atrium.” Id.

[9] Annex “C” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 94. The results read: “Valvular Heart Disease flail posterior mitral valve leaflet P2 and P1 segment 2 to torn chordae with severe mitral regurgitation. Moderate triscuspid regurgitation. Pulmonary artery pressure of 44 mmHg with pulmonary regurgitation. Eccentric left ventricular hypertrophy with adequate contractility and systolic function. Dilated left atrium, right atrium and main pulmonary artery. Compare with previous study done October 17, 2008, LVED increased from 5.7 tp 6.5 cm2 but LVEF is almost the same.” Id.

[10] Annex “E” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 96.

[11] Annex “F” of the Position Paper attached to the Petition for Certiorari, C.A. Rollo, p. 97.

[12] Annex “F” of the Petition for Certiorari, C.A. Rollo, p. 98.

[13] Annex “1” of the Position Paper (For the Respondents) attached to the Petition for Certiorari, C.A. Rollo, p. 116.

[14] Annex “2” of the Position Paper (For the Respondents) attached to the Petition for Certiorari, C.A. Rollo, p. 123.

[15] Annex “3” of the Position Paper (For the Respondents) attached to the Petition for Certiorari, C.A. Rollo, p. 124.

[16] Annex “4” of the Position Paper (For the Respondents) attached to the Petition for Certiorari, C.A. Rollo, p. 125.

[17] Id. Petitioner Luciano's declaration reads: “I have worked on board the said vessel under normal conditions and that I have not contracted or suffered any illness or injury from my work and that I disembarked from said vessel in good health and medically fit for sea duties.”

[18] Annex “A” of the Petition for Certiorari, C.A. Rollo, p. 38.

[19] Supra, note 2.

[20] Annex “J” of the Petition for Certiorari, C.A. Rollo, p. 192.

[21] Supra, note 3.

[22] Supra, note 1.

[23] Id., at p. 15.

[24] Supra, note 1.

[25] C.A. Rollo, p. 235.

[26] Vergara v. Hammonia Maritime Services, G.R. No. 172933, 6 October 2008.

[27] Nisda v. Sea Service Maritime Agency, G.R. No. 179177, 23 July 2009.

[28] Ayungo v. Beamko Shipmanagement Corporation G.R. No. 203161, 26 February 2014.

[29] Section 32-A OCCUPATIONAL DISEASES.

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11. Cardio-Vascular Diseases. Any of following conditions must be met:

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

(b) The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.

(c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

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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.

[30] Supra, note 14.

[31] Supra, note 15.

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