MICRONESIA RESOURCES, DYNACOM SHIELD SHIPPING LTD. AND SINGA SHIP MANAGEMENT, A. S., PETITIONERS, VS. FABIOLO CANTOMAYOR, RESPONDENT.

G.R. NO. 156573. June 19, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the September 13, 2002 Decision[1] and December 5, 2002 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 70388[3] which reversed and set aside the November 29, 2001 Decision[4] and January 31, 2002 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CA 027007-01 [OFW (M) 99-10-1799-00].

The antecedent facts are as summarized by the CA, viz.:

> On or about September 29, 1998, petitioner Fabiolo Cantomayor[*] entered into a contract of overseas employment with respondent Dynacom Shield Shipping Ltd. and Singa Ship Management A.S. represented by respondent Micronesia Resources[**] to work on board the vessel M/T "CLOUD" under the following terms and conditions approved by the Philippine Overseas Employment Administration (POEA):
>
> Duration of Contract: 9 mos. plus/minus 1 mo.
>
> Position: Third Officer
>
> Basic Mo. Salary: US $824.00/mo.
>
> Hours of work: 191 hrs./mo. (as per CBA '98)
>
> Overtime: US $ 512.00/mo.
>
> Vacation Leave with Pay: US $ 8 days/mo.
>
> Sometime in October 1998, petitioner joined the vessel M/T "CLOUD". Two (2) months thereafter, petitioner started to feel weak and encountered difficulty in breathing. Petitioner ignored his condition and continued with his employment. However, on or about February 17, 1999, petitioner, while working, suddenly felt dizzy and eventually collapsed. He regained consciousness not long after but since then he always felt weak and was constrained to work lightly.
>
> When the vessel reached Italy, petitioner was brought to a hospital and was diagnosed to have coronary artery disease and was advised to undergo by-pass surgery. In view thereof, petitioner was repatriated to the Philippines and immediately sought treatment at the Medical Center of Manila, attended by a company-designated physician who noted that three (3) of his artery vessels were blocked, thereby confirming the diagnosis made by the doctors in Italy and echoing the same recommendation for immediate by-pass surgery. Thus, on or about June 30, 1999, petitioner underwent coronary artery by-pass at the Philippine Heart Center.

> Considering his medical condition, petitioner was not able to return to his previous employment as a Third Officer. Consequently, he requested respondents to grant him permanent and total disability compensation as well as the reimbursement of his medical expenses in accordance with the terms and conditions of the Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarer on Board Ocean-going Vessels (otherwise known as the POEA Standard Employment Contract) and the JSU-AMOSUP CBA, of which he was allegedly covered.[6]

Micronesia, et al. denied the claim of Cantomayor but shouldered the expenses of his ongoing medical treatment. They also offered to pay him compensation for his Grade 7 permanent and partial disability based on the following recommendation of a company physician:

> There is no specific item in the POEA Schedule of Disability Grading regarding his illness. The nearest item is under "Abdomen" #4, instead of intra-abdominal organ involvement, the involved organ is the heart. Mr. Cantomayor suffered a disability grading of Grade 7 – moderate residuals of disorder of inthrathoracic organ (heart).[7]

Cantomayor pressed for payment of permanent and total disability compensation amounting to US $80,000.00 and filed a complaint with the National Labor Relations Commission (NLRC) Arbitration Board. Labor Arbiter (LA) Romeo Go rendered a Decision on October 16, 2000, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit. However, respondents are ordered to pay complainant the amount of US$20,900 pertaining to grade 7 disability benefits.[8]

Micronesia, et al. did not appeal from the foregoing award. It was only Cantomayor who filed an appeal with the NLRC, insisting that he be compensated for the permanent and total disability he suffered.

The NLRC dismissed his Appeal in its November 29, 2001 Decision. His Motion for Reconsideration was also denied in NLRC Resolution dated January 31, 2002.

Cantomayor filed a Petition for Certiorari which the CA granted in the September 13, 2002 Decision assailed herein, thus:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE, and the writ prayed for, accordingly GRANTED. The assailed Decision dated November 29, 2001 and Resolution dated January 31, 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR CA 027007-01 [OFW (M) 99-10-1799-00] are hereby REVERSED and SET ASIDE and a new one entered declaring petitioner to be suffering from a permanent and total disability justifying the grant in his favor of full benefits in accordance with law. In addition, attorney's fees equivalent to ten percent (10%) of the total monetary award herein is likewise granted to petitioner.
>
> No pronouncement as to costs.
>
> SO ORDERED.[9]

Micronesia, et al. filed a Motion for Reconsideration but to no avail.

Hence, the present Petition with the following issues:

> First, the Petition for Certiorari filed by private respondent is way out of time and should no longer have been acted upon, and because of this, the Decision of the NLRC below became final and executory and may no longer be disturbed;
>
> Second, the finding of the Court of Appeals that private respondent suffers total and permanent disability is baseless;

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> Third, the private respondent is entitled to no more than what the NLRC awarded him below, because: the mere fact that private respondent can no longer work as a seaman is not in itself sufficient justification to award him total disability compensation; b) entitlement to disability compensation under the Standard Terms of the POEA Contract is schedular in nature, and does not support the total disability compensation award granted to the private respondent; and c) private respondent is entitled only to the disability compensation justified by his condition, which is as assessed by the company's designated physicians.[10]

In their Memorandum, petitioners Micronesia, et al. insist that respondent Cantomayor is not entitled to any compensation because his illness is not compensable and, even if it were, the same was a pre-existing condition which he concealed from his employers. They also argue that, if Cantomayor is held entitled to compensation, then his award should be that corresponding to a Grade 7 disability for this was the assessment given by their company physician.

The petition lacks merit.

The procedural issue raised by Micronesia, et al. deserves short shrift. It is axiomatic that the CA has discretion to grant a motion for extension provided that it be interposed within the original filing period.[11] Cantomayor had until April 9, 2002 (April 8, 2002 being a holiday) to file a petition for certiorari but on said date he filed a Motion for Extension[12] of thirty (30) days or until May 9, 2002 to file his petition. He actually filed said petition on April 30, 2002. The timeliness of said petition was never questioned by Micronesia, et al. before the CA, not even in their Motion for Reconsideration from the September 13, 2002 CA Decision. The petition was therefore properly given due course by the CA.

Going now into the substantive matter raised by Micronesia, et al., we note that the LA denied the claim of Cantomayor for permanent and total disability compensation based on the finding that his ailment was a pre-existing condition. The LA explained:

> It is undisputed that complainant was repatriated to the Philippines due to coronary disease he suffered while employed as a seafarer abroad. Back home, he was confirmed to be suffering from coronary artery disease [in] 3 vessels and needed a bypass surgery. In fact, the findings of the hospital in Italy show that complainant suffered occlusions in three vessels, one ranging from 70% to 100%, the second 100%, and the third 80%, all of which indicate that two of the said vessels were almost completely blocked while the third has been reduced to 20% capacity. This [sic] findings prove that complainant's ailment was already in an advanced stage affirming the fact that the illness was not an overnight occurrence but already a pre-existing condition.[13]

The NLRC found no taint of grave abuse of discretion in the foregoing decision of the LA.

The CA overturned the NLRC and LA and held that the coronary artery disease which afflicted Cantomayor during his employment with Micronesia, et al. caused him to suffer a permanent and total disability with a Grade 7 impediment rate, for which he is entitled to full compensation. The reasons cited by the CA in reversing the NLRC and LA are summarized as follows:

First, Cantomayor's ailment is compensable under Section 32-A of the POEA Standard Employment Contract.[14]

Second, respondent's ailment was not pre-existing as shown by the result of his Pre-employment Medical Examination (PEME) where physicians designated by petitioners declared him fit to work. The finding that respondent's ailment was already in an advanced stage when it was discovered does not preclude the possibility that it developed during his employment with petitioners.[15]

Finally, respondent's disability is permanent and total because the severity of his ailment rendered him incapable of performing the work of a seafarer.[16]

The reasoning of the CA is well-founded, although we note that it was mistaken when it cited Section 32-A of the POEA Standard Employment Contract.

In Paragraph 2 of their September 29, 1998 Contract of Employment,[17] the parties incorporated the provisions of the 1996 POEA Standard Employment Contract (1996 POEA-SEC),[18] such as Section 20-B (5) which reads:

> Section 20 Compensation and Benefits
>
> x x x x
>
> B. Compensation and Benefits for Injury or Illness
>
> The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:
>
> x x x x
>
> - In case of permanent total or partial disability of the seafarer during the term of his employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

We have interpreted the foregoing provision to be a sufficient legal basis for a grant of disability benefits to a seafarer who suffers any injury or illness during the term of his contract. In the recent case of Remigio v. National Labor Relations Commission,[19] we held:

> "Disability" is generally defined as "loss or impairment of a physical or mental function resulting from injury or sickness." Clearly, "disability" is not synonymous with "sickness" or "illness," the former being a potential effect of the latter. The schedule in Sec. 30 of the POEA SEC is a Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted. It is not a list of compensable sicknesses. Unlike the 2000 POEA SEC, nowhere in the 1996 POEA SEC is there a list of "Occupational Diseases."
>
> The unqualified phrase "during the term" in Section 20(B) of the 1996 POEA SEC covers all injury or illness occurring in the lifetime of the contract. The injury or illness need not be shown to be work-related. In Sealanes Marine Services, Inc. v. NLRC, we categorically held:
> The argument of petitioners that since cancer of the pancreas is not an occupational disease it was incumbent upon Capt. Arante to prove that his working conditions increased the risk of contracting the same, is not meritorious. It must be noted that his claims arose from the stipulations of the standard format contract entered into between him and SEACORP which, per Circular No. 2, Series of 198420[30] of respondent POEA was required to be adopted and used by all parties to the employment of any Filipino seamen (sic) on board any ocean-going vessel. His claims are not rooted from the provisions of the New Labor Code as amended. Significantly, under the contract, compensability of the death or illness of seam[e]n need not be dependent upon whether it is work connected or not. Therefore, proof that the working conditions increased the risk of contracting a disease or illness, is not required to entitle a seaman who dies during the term thereof by reason of such disease or illness, of the benefits stipulated thereunder which are, under Section C(2) of the same Circular No. 2, separate and distinct from, and in addition to whatever benefits which the seaman is entitled to under Philippine laws.

This principle was reiterated in the recent case of Seagull Shipmanagement and Transport, Inc. v. NLRC.

While indeed, the Labor Code's provisions on disability benefits under the Employees' Compensation Commission (ECC) require the element of work-relation for an illness to be compensable, the 1996 POEA SEC giving a more liberal provision in favor of the seafarer must apply. As a rule, stipulations in an employment

contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. In controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State to give maximum aid and protection of labor. (Citations omitted)[20]

The aforecited ruling is controlling for it is based on facts and issues that are strikingly parallel to those obtaining in the present case: both cases involve Filipino seafarers stricken with coronary artery disease during the terms of their contracts.

As in Remigio v. National Labor Relations Commission, therefore, we apply to the present case Section 20-B(5) of the 1996 POEA-SEC as legal basis for the grant of disability benefits to Cantomayor who was afflicted with coronary artery disease during the term of his contract. The CA therefore was correct in ruling that the claim of Cantomayor had legal basis. We must point out, though, that it was mistaken in citing, not Section 20-B, but Section 32-A. The latter provision (Section 32-A) can be found only in the 2000 POEA-SEC,[21] which took effect after the parties entered into their 1998 employment contract.

As to the finding of the LA and NLRC that said ailment was pre-existing, the same is belied by the result of Cantomayor's PEME.

In his PEME result, Cantomayor declared that he did not suffer from high blood pressure or heart trouble or that he had not been told that he suffered from any such ailment.[22] Micronesia, et al. claim that such declaration is untruthful. We disagree.

In the same PEME result, there appears a certification that after physical examination, Cantomayor was found to have a normal heart. However, the result of his ECG is indicated as follows:

> - ECG Report () Within Normal Limits () Significant Findings Poor R-waves progression NSSTTWC.[23] (Emphasis added)

Yet, the examining physician, designated by petitioner, certified him fit to work.

The foregoing entries in his PEME result confirm that even if Cantomayor had declared himself free of heart ailment, Micronesia, et al. had the opportunity to pre-qualify, screen and verify, as it actually did in the case of Cantomayor for it even noted significant findings in his ECG result. This precludes the possibility that Cantomayor concealed his illness.[24] Rather, Micronesia, et al. hired him despite the ECG Report and should now accept liability for his ailment in the course of his employment.[25]

Having established that the illness of Cantomayor is compensable, we now resolve whether the amount awarded by the CA is proper.

The 1996 POEA-SEC requires that a claim for disability benefit be supported by a post-employment medical report issued as follows:

> - Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as

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> 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.[26]

There is no dispute that beginning March 26, 1999 or three days from his repatriation on March 23, 1999, Cantomayor submitted himself to a series of medical examinations conducted by a company physician.[27] On October 8, 1999, said company physician issued an assessment limiting his disability to a Grade 7 impediment rate.[28] Both the NLRC and LA relied on this assessment. Micronesia, et al. insist that said assessment is conclusive.

Not so. We have held that while it is the company-designated physician who must declare that a seafarer-claimant suffers a permanent disability, the former's declaration is not conclusive upon the latter or the court.[29] In the present case, there is no indication that Cantomayor sought a second opinion. Nonetheless, it is of record that the latter was rendered unfit to discharge his duties as Third Officer for more than 120 days. It is of record that Cantomayor was repatriated on March 23, 1999. Almost seven months later or on October 8, 1999, Micronesia, et al.'s designated physician issued the following medical findings on the condition of Cantomayor:

> x x x Post-operatively, he developed post-operative wound infection on care. Post-operative Treadmill Exercise Test was done last September 96, 1999 and the findings revealed signs of ischemia at the inferolateral wall.
>
> At present, the patient complains of on and off chest pain and easy fatigability on long distance ambulation. He has no shortness of breath and his blood pressure is controlled at 130/90.
>
> Based on the clinical course and findings, I am recommending a partial permanent disability. (Emphasis added)

Based on the foregoing medical record alone, it is clear that Cantomayor had not been able to resume work as a Third Officer for more than 120 days and that he continues to suffer chest pains and fatigability on long distance ambulation. The partial disability assessment of the company physician is therefore inconsistent with said record. To quote from Remigio v. National Labor Relations Commission once again:

> 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 her usual work and earn therefrom. On the other hand, a 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, we held:
> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body x x x
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of 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 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.

Applying the foregoing standards, we find that petitioner suffered from permanent total disability.

It is undisputed that petitioner started to suffer chest pains on March 16, 1998 and was repatriated on April 23, 1998 after having been found as "not fit for duty." The medical report dated June 25, 1998 of the company-designated physician, Dr. Abesamis, establishes the following facts, viz: a) petitioner underwent a

coronary bypass on April 2, 1998; b) petitioner was "unfit" from April 27, 1998 (date of referral) to June 25, 1998 (date of medical report); c) petitioner may not return to sea duty within 8-10 months after June 25, 1998; and d) petitioner may return to sea duty as a piano or guitar player after 8-10 months from June 25, 1998.

These facts clearly prove that petitioner was unfit to work as drummer for at least 11-13 months -- from the onset of his ailment on March 16, 1998 to 8-10 months after June 25, 1998. This, by itself, already constitutes permanent total disability. What is more, private respondents were well aware that petitioner was working for them as a drummer, as proven by the communication of respondent principal to respondent agency referring to petitioner as "DRUMMER WITH OUR ENCHANTED ISLE QUARTET."[30][55] Thus, the certification that petitioner may go back specifically as a piano or guitar player means that the likelihood of petitioner returning to his usual work as a drummer was practically nil. From this, it is pristine clear that petitioner's disability is total and permanent.

Private respondents' contention that it was not shown that it was impossible for petitioner to play the drums during the 8-10 months that he was on land is specious. To our minds, petitioner's unfitness to work attached to the nature of his job rather than to its place of performance. Indeed, playing drums per se requires physical exertion, speed and endurance. It demands the performance of hitting strokes and repetitive movements that petitioner, having undergone a triple coronary bypass, has become incapacitated to do.

The possibility that petitioner could work as a drummer at sea again does not negate the claim for permanent total disability benefits. In the same case of Crystal Shipping, Inc., we held:

> Petitioners tried to contest the above findings [of permanent total disability] by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. (Emphasis added; citations omitted)

Given that Cantomayor had not been able to resume the same work or activity for more than 120 days, the CA cannot be faulted in discarding the Grade 7 disability assessment of the company physician and in declaring that Cantomayor suffers from Grade 1 disability.

WHEREFORE, the Petition is denied for lack of merit.

Costs against petitioners.
SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Remedios Salazar-Fernando and Amelita Tolentino; rollo, p. 34.

[2] Rolllo, p. 44.

[3] Entitled "Fabiolo Cantomayor, Petitioner, versus National Labor Relations Commission, Micronesia Resources, Dynacom Shield Shipping Ltd. and Singa Ship Management, A.S., Respondents."

[4] Rollo, p. 89.

[5] Id. at 150.

* Herein referred to as Cantomayor.

** Herein referred to as Micronesia, et al..

[6] CA Decision, rollo, p. 35.

[7] Rollo, pp. 83-85.

[8] LA Decision, rollo, p. 97.

[9] Id. at 40.

[10] Petition, rollo, pp. 20-21.

[11] Yutingco v. Court of Appeals, 435 Phil. 83, 91 (2002).

[12] Rollo, p. 2.

[13] LA Decision, rollo, p. 95.

[14] CA Decision, rollo, p. 38.

[15] Id. It is noted that, for lack of evidence of its existence, the provisions of the JSU AMOSUP CBA were not considered by the CA.

[16] Id. at 39-40.

[17] Id. at 117.

[18] Approved under Department Order No. 33 and Memorandum Circular No. 55, both series of 1996.

[19] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

[20] Remigio v. National Labor Relations Commission, supra note 19, at 204-206.

[21] Approved under Department Order No. 04 and Memorandum Circular No. 09, both series of 2000.

[22] Medical Certificate for Seafarer, supra.

[23] Id.

[24] More Maritime Agencies, Inc. v. National Labor Relations Commission, 366 Phil. 646, 655 (1999).

[25]Seagull Ship Management and Transport, Inc. v. National Labor Relations Commission, 388 Phil. 906, 913 (2000).

[26] Cited in United Philippine Lines, Inc. v. Beseril, G.R. No. 165934, April 12, 2006, 487 SCRA 248, 261.

[27] Rollo, pp. 76-81.

[28] Id. at 83.

[29] Seagull Maritime Corp. v. Dee, G.R. No. 165156, April 20, 2007.

[30] Remigio v. National Labor Relations Commission, supra note 19, at 210-213.

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