# BERNARDO REMIGIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, C.F. SHARP CREW MGT., INC. & NEW COMMODORE CRUISE LINE, INC.,RESPONDENTS.

*G.R. NO. 159887. April 12, 2006*

Ponente: PUNO, J.

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**PUNO, J.:**

Before us is a petition for review on certiorari seeking the reversal of the decision[2] and resolution[3] of the Court of Appeals (CA) in CA-G.R. No. 67782 which affirmed the March 22, 2001 Resolution[4] of the National Labor Relations Commission (NLRC), awarding sickness allowance of US$3,400.00 to petitioner but denying his claim for disability benefits.

The facts are undisputed.

On November 27, 1997, petitioner Bernardo Remigio entered into a Contract of Employment[5] with respondent C.F. Sharp Crew Management, Inc. (respondent agency), for and in behalf of its foreign principal, co-respondent New Commodore Cruise Line, Ltd. (respondent principal). The contract provided that the terms and conditions of the standard employment contract governing the employment of all seafarers, approved per Department of Labor and Employment's Department Order No. 33 and the Philippine Overseas Employment Administration's Memorandum Circular No. 55, both Series of 1996 (1996 POEA SEC), were to be strictly and faithfully observed.[6] Under the contract, petitioner was to work as Musician II on board SS "Enchanted Isle," a vessel owned and operated by respondent principal, for ten (10) months, at a basic monthly salary of US$857.00, overtime rate of US$257.00 per month and vacation leave with pay of three (3) days per month.

After petitioner passed the pre-employment medical examination, he joined the vessel and started performing his job as a drummer in December 1997. On March 16, 1998, while the vessel was docked at the port of Cancun, Mexico, petitioner went ashore to attend to some personal matters. While walking, petitioner suddenly felt severe chest pain and shortness of breath. He returned to the vessel and experienced another such episode on the same evening. When his chest pain recurred the following day, he went to the vessel's infirmary where he again suffered from chest pain. Petitioner was brought and confined for seven (7) days at the Grand Cayman Island Hospital. His pain worsened upon physical exertion but improved with rest. Thus, he was instructed to refrain from performing any kind of physical activity and to have a complete bed rest. He rejoined the vessel on March 24, 1998.

Upon the vessel's arrival at the port of New Orleans, Louisiana, U.S.A., petitioner was brought to the West Jefferson Medical Center for a more thorough check-up and evaluation. Dr. S. Kedia's "impression" was that petitioner's chest pains were "probable secondary to severe coronary artery disease."[7] Dr. Armengol Porta conducted a physical examination on petitioner, including a coronary angiogram,[8] and found that he had several blockages in his coronary arteries. A triple coronary artery bypass was performed on petitioner on April 2, 1998 by a Dr. Everson.

On April 8, 1998, petitioner was transferred to the Marine Medical Unit for observation. After twelve (12) days of confinement, petitioner's cardiologist found him "not fit for sea duty" and recommended for him to be "[r]epatriated to home port for follow up with a cardiologist."[9] He was repatriated to Manila on April 23, 1998.

In a letter dated April 27, 1998, Henry P. Desiderio, the manager of the Crewing Administration and Business Development Department of respondent agency, referred petitioner to the American Outpatient Clinic for medical check-up.[10]

On May 13, 1998, petitioner, through counsel, sent a formal communication[11] to respondent agency demanding payment of unpaid wages, sickness allowance and permanent total disability benefits. The demand, however, was refused.

In a letter dated June 25, 1998 addressed to the manager of respondent agency, Jose Enrique P. Desiderio, the company-designated physician, Dr. Leticia C. Abesamis, of the American Outpatient Clinic wrote, viz:

> Mr. B. Remigio who had Coronary Bypass (6x) abroad last April 2, 1998 has completed his cardiac rehabilitation here at the Phil. Heart Center. Stress done on June 23, 1998 shows functional capacity at 8 METS.
>
> Lately he has been complaining of epigastric discomfort probably from Ecotrin. He has been on ulcer regimen.
>
> He may go back to sea duty as piano player or guitar player after 8-10 more months.He was unfit from April 27, 1998 to June 25, 1998.[12] (emphases supplied)

On November 12, 1998, petitioner filed the instant complaint[13] for (a) recovery of permanent total disability benefits amounting to US$60,000.00; (b) actual and compensatory damages for loss of earning capacity in the amount of US$154,260.00; and (c) moral and exemplary damages and attorney's fees.[14] Private respondents made an offer to settle the case at US$30,000.00 as evidenced by fax letters, to which petitioner made a counter-proposal of US$40,000.00.[15] No agreement was reached as the parties proceeded to submit their respective position papers and supporting evidence.

In support of his claims, petitioner submitted copies of: a) his Contract of Employment with private respondents; b) communication of respondent principal to respondent agency informing the latter about petitioner's "heart attack," repatriation and replacement; c) History and Physical Report of petitioner and Procedure Report of his cardiac catheterization; d) receipts from a drugstore and the Philippine Heart Center; e) 2D Echocardiogram-Color Doppler Report; f) filled up form of the Exercise Testing and Cardiac Rehabilitation Laboratory of the Philippine Heart Center showing the results of the tests done on petitioner; and g) the Discharge Summary of the Marine Medical Unit.[16] On the other hand, private respondents submitted copies of: a) the Contract of Employment; b) referral letter dated April 27, 1998 of respondent agency to the American Outpatient Clinic; c) demand letter dated May 13, 1998 of petitioner's counsel; and d) medical report of Dr. Leticia C. Abesamis of the American Outpatient Clinic addressed to the manager of respondent agency.[17]

On September 15, 1999, Labor Arbiter Manuel R. Caday rendered his decision,[18] the dispositive portion of which states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents jointly and severally to pay complainant, his sickness allowance in the amount of US$3,400.00.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[19]

In ruling that petitioner is not entitled to disability benefits, Labor Arbiter Caday noted that the Schedule of


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Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted under Section 30 of the 1996 POEA SEC does not provide for the payment of compensation benefits in cases of cardiac catheterization or heart bypass. Even assuming that it was included, he held that no medical report was presented to show that petitioner's disability was total and permanent as to be classified under Grade 1 of the said schedule of disability. Nonetheless, petitioner's claim for sickness allowance was granted as there was no showing that private respondents paid petitioner's basic wages after his repatriation, as provided under Section 20, B(3) of the 1996 POEA SEC. Petitioner was awarded US$3,400.00 as sickness allowance, computed on the basis of his monthly wage of US$850.00 multiplied by four (4) months.

On appeal by petitioner, the NLRC affirmed the decision of the Labor Arbiter in toto.[20] Petitioner filed a motion for reconsideration of the NLRC's resolution, to no avail. Accordingly, he filed a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order with the CA.[21] On March 31, 2003, the CA dismissed the petition.[22]

The CA likewise did not find substantial evidence to prove that the heart ailment incurred by petitioner during the term of his employment resulted to his disability, i.e., rendered him incapable of further seeking employment as a musician or to follow a substantially gainful occupation. It noted that petitioner's medical records abroad never mentioned that his heart ailment resulted to a disability. Petitioner's reliance on Dr. Abesamis's letter dated June 25, 1998 that he (petitioner) was "unfit from April 27, 1998 to June 25, 1998" was found as insufficient to prove that petitioner's earning capacity was either lost or diminished. The statement that petitioner "may go back to sea duty as piano player or guitar player after 8-10 more months" was likewise found as insufficient to prove that petitioner was actually "sidelined" or that it was impossible for him to work and earn as a musician during the 8-10 months that he was not on board the vessel. Finally, it considered that heart ailment is not included among the compensable sicknesses and injuries under the 1996 POEA SEC.

Petitioner's motion for reconsideration with the CA was denied.[23] Hence, this petition in which petitioner prays that he be awarded US$60,000.00 as permanent total disability benefits, US$3,428.00 as sickness allowance, attorney's fees and costs of suit. He assigns as lone error, the following:

> THE DECISION OF THE HONORABLE COURT OF APPEALS DISMISSING PETITIONER'S PETITION FOR CERTIORARI AND AFFIRMING IN TOTO THE HONORABLE PUBLIC RESPONDENT AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION IS CONTRARY TO LAW.[24]

The main issue is whether petitioner is entitled to permanent total disability benefits.

At the outset, private respondents' contention that the instant petition must be dismissed outright for being grounded on a question of fact must be rejected. The issue of whether petitioner is entitled to permanent total disability benefits is a question of law as it calls for the correct application of the law and jurisprudence on disability benefits to the established facts on record.[25] It raises the following sub-issues, to wit:

- Whether heart ailment suffered during the term of the contract is compensable under the 1996 POEA SEC even if there is no proof of work-connection; and

- Whether the concept of permanent total disability under the Labor Code applies to the case of a seafarer's claim for disability benefits under the 1996 POEA SEC.

First. In ruling that petitioner is not entitled to permanent total disability benefits, the Labor Arbiter and the CA considered that "cardiac catheterization," "heart bypass," or "heart ailment" is not found in the Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted under Section 30 of the 1996 POEA SEC. Petitioner contends that the schedule of disability under Section 30 of the 1996 POEA SEC is not

exclusive. Heart ailment, though not listed in the schedule, is compensable. Private respondents, on the other hand, concede that while petitioner's illness is not listed under the 1996 POEA SEC, "this does not mean that the same is not compensable."[26] However, since "heart ailment" is not listed under Section 30 of the 1996 POEA SEC, it is not an "occupational disease." It was therefore incumbent upon petitioner to prove by substantial evidence that his illness was work-related. Having failed to do so, he is not entitled to disability benefits.

We find merit in petitioner's argument.

Petitioner bases his claim for disability benefits under Section 20 in relation to Sections 30 and 30-A of the 1996 POEA SEC, viz:

> Sec. 20. Compensation and Benefits
>
> 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
>
> 5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness[,] the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of [t]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.
>
> Sec. 30. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES OR ILLNESS CONTRACTED
>
> x x x
>
> CHEST-TRUNK-SPINE
>
> - Fracture of four (4) or more ribs resulting to severe limitation of chest expansion - Gr. 6
>
> - Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion - Gr. 9
>
> - Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia - Gr. 12
>
> - Fracture of the dorsal or lumber spines resulting to severe or total rigidity of the trunk or total loss of lifting power of heavy objects - Gr. 6
>
> - Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk - Gr. 8
>
> - Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk - Gr. 11
>
> - Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches - Gr. 4
> Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches - Gr. 1
>
> - Injury to the spinal cord resulting to incontinence of urine and feces - Gr. 1
>
> x x x
>
> NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and

permanent disability.

Sec. 30-A. SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade

Impediment

1

Maximun Rate

x

120.00%

2

Maximun Rate

x

88.81%

3

Maximun Rate

x

78.36%

4

Maximun Rate

x

68.66%

5

Maximun Rate

x

58.96%

6

Maximun Rate

x

50.00%

7

Maximun Rate

x


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41.80%

8

Maximun Rate

x

33.59%

9

Maximun Rate

x

26.12%

10

Maximun Rate

x

20.15%

11

Maximun Rate

x

14.93%

12

Maximun Rate

x

10.45%

13

Maximun Rate

x

6.72%

14

Maximun Rate

x

3.74%

To be paid in Philippine Currency equivalent at the exchange rate prevailing during the time of payment. (emphases supplied)

"Disability" is generally defined as "loss or impairment of a physical or mental function resulting from injury or

sickness."[27] 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,[28] 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, [29] 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 1984[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. (emphasis supplied)

This principle was reiterated in the recent case of Seagull Shipmanagement and Transport, Inc. v. NLRC.[31]

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.[32] 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 formerï¿½s favor.[33] 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.[34]

Second. Is the Labor Code's concept of permanent total disability applicable to the case at bar? Petitioner claims to have suffered from permanent total disability as defined under Article 192(c)(1) of the Labor Code, viz:

> Art. 192 (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules; x x x

Petitioner likewise cites Vicente v. ECC[35] and Abaya, Jr. v. ECC,[36] both of which were decided applying the Labor Code provisions on disability benefits. Private respondents, on the other hand, contend that petitioner erred in applying the definition of "permanent total disability" under the Labor Code and cases decided under the ECC as the instant case involves a contractual claim under the 1996 POEA SEC.

Again, we rule for petitioner.

The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."[37] Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including

the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."[38]

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In Philippine Transmarine Carriers v. NLRC,[39] seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing ECC v. Sanico,[40] GSIS v. CA,[41] and Bejerano v. ECC[42] that "disability should not be understood 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." It likewise cited Bejerano v. ECC,[43] that in a 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.

The same principles were cited in the more recent case of Crystal Shipping, Inc. v. Natividad.[44] In addition, the Court cited GSIS v. Cadiz[45] and Ijares v. CA[46] that "permanent disability is the 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."

Finally. Applying the Labor Code concept of permanent total disability to the facts on record, is petitioner entitled to permanent total disability benefit?

Petitioner contends that the certification of the company-designated physician that he may go back to sea duty as a piano or guitar player after 8-10 months even if his job was a drummer proves that he suffered from permanent total disability and thus entitled to permanent total disability benefits of US$60,000.00 under the 1996 POEA SEC. Private respondents, on the other hand, contend that: 1) petitioner did not present any proof that he suffered from permanent total disability, i.e., that his earning power is now reduced and that he is incapable of performing remunerative employment; 2) petitioner did not present any medical certificate showing that he suffered any disability; 3) on the contrary, the company-designated physician attested that petitioner could return to further sea duty; 4) even if he could not go back to sea duty, this does not mean that his earning capacity is impaired since as a musician, he may still perform on land; and 5) having admitted that he was a heavy smoker, petitioner is disqualified under Section 20(d) of the 1996 POEA SEC from recovering compensation for any incapacity or disability he suffered.

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[47] 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. (emphasis supplied)


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> In Vicente v. ECC:[48]
>
> > x x x the test of whether or not an employee suffers from ï¿½permanent total disabilityï¿½ 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 ï¿½permanent total disabilityï¿½ regardless of whether or not he loses the use of any part of his body. (emphases supplied)

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.[49] On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days.[50] Thus, in the very recent case of Crystal Shipping, Inc. v. Natividad,[51] 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.[52] 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.[53] 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.[54]

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."[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. (citation omitted) 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.[56] (emphasis supplied)

That the company-designated physician did not specify that petitioner suffered from any disability should not prejudice petitioner's claim for disability benefits. In the first place, it is well to note that it was respondent agency which referred petitioner to the American Outpatient Clinic giving only the specific instruction that the designated physician indicate in the medical report "the estimated treatment period and the exam conducted."[57] Moreover, what is important is that the facts stated in the medical report clearly constitute permanent total disability as defined by law. It is well-settled that strict rules of evidence are not applicable in claims for compensation and disability benefits.[58] Disability should not be understood more on its medical significance but on the loss of earning capacity.[59] As in the case of Crystal Shipping, Inc.,[60] an award of permanent total disability benefits in the petition at bar would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.

We do not agree that petitioner's admission that he was a heavy smoker is enough ground to disqualify him from entitlement to disability compensation under Section 20(D) of the 1996 POEA SEC, viz:

> Section 20.D. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

We have held that a worker brings with him possible infirmities in the course of his employment and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability.[61]

In the case at bar, it is noteworthy that petitioner's habit of smoking was not a consideration when private respondents hired petitioner. It was likewise not shown that petitioner suffered from any form of ailment prior to the heart ailment he suffered during the course of his employment with private respondents. While smoking may contribute to the development of a heart ailment, heart ailment may be caused by other factors such as working and living under stressful conditions. Thus, private respondents' peremptory presumption, that petitioner's habit of smoking heavily was the willful act which caused his illness and resulting disability, without more, cannot suffice to bar petitioner's claim for disability benefits. Ruling otherwise would run contrary to the constitutional mandate to extend full protection to labor.

Having suffered from permanent total disability, petitioner is entitled to US$60,000.00 which is the amount due for permanent total disability under Section 30-A of the 1996 POEA SEC.

As to the claim for sickness allowance, petitioner prays that private respondents be held jointly and severally liable to pay him US$3,428.00, as opposed to the award of the Labor Arbiter, as affirmed by the NLRC and the CA, of only US$3,400.00. We find this claim warranted by the undisputed fact on record that petitioner's basic salary is US$857.00 per month.[62] Multiplying the 120-day sickness allowance due petitioner on the basis of the correct monthly rate of US$857.00, he should be awarded US$3,428.00 as sickness allowance.

Under Article 2208 of the New Civil Code, attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. Such conditions being present in the case at bar, we find that an award of attorney's fees is warranted.

IN VIEW WHEREOF, the decision and resolution of the Court of Appeals in CA-G.R. No. 67782 dated March 31, 2003 and August 14, 2003, respectively, are REVERSED and SET ASIDE. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US$60,000.00 at its peso equivalent at the time of actual payment; b) sickness allowance of US$3,428.00 at its peso equivalent at the time of actual payment; and c) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment. Costs against private respondents.

**SO ORDERED.**

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

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[1] Also referred to as New Commodore Cruise Line, Ltd. in some parts of the record.

[2] Dated March 31, 2003; rollo, pp. 28-35.

[3] Dated August 14, 2003; Id. at 64.

[4] CA rollo, pp. 33-41.

[5] Id. at 293.

[6] Note that said POEA SEC has been revised by DOLE Department Order No. 4, Series of 2000 (2000 POEA SEC).

[7] CA rollo, p. 206.

[8] Id. at 202-204.

[9] Id. at 48.

[10] Id. at 88.

[11] Id. at 89-90.

[12] Id. at 241.

[13] Id. at 186-187.

[14] Id. at 190.

[15] Id. at 36.

[16] Id. at 190-215.

[17] Id. at 87-91.

[18] Id. at 44-56.

[19] Id. at 56.

[20] Supra note 4.

[21] Id. at 2-28.

[22] Rollo, p. 88.

[23] Id. at 116.


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[24] Id. at 17.

[25] See Chiang Kai Shek College v. CA, G.R. No. 152988, August 24, 2004, 437 SCRA 171, citing Republic v. Sandiganbayan, G.R. No. 102508, January 30, 2002, 375 SCRA 145.

[26] Memorandum (For the Private Respondents); rollo, p. 172.

[27] Labor Code, Art. 167(n).

[28] See Sec. 32-A of the 2000 POEA SEC titled "Occupational Diseases."

[29] G.R. No. 84812, October 5, 1990, 190 SCRA 337, 346-347.

[30] The 1984 POEA SEC and 1996 POEA SEC are similarly worded.

[31] G.R. No. 123619, June 8, 2000, 333 SCRA 236, 242.

[32] See Arts. 1306 and 1308 of the New Civil Code; Delos Santos v. Jebsen Maritime, Inc., G.R. No. 154185, November 22, 2005, citing Lagunsad vs. Soto, No. L-32066, August 6, 1979, 92 SCRA 476.

[33] Mayon Hotel and Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, citing Nicario v. NLRC, G.R. No. 125340, September 17, 1998, 295 SCRA 619. (citation omitted)

[34] Id., citing Sarmiento v. Employeesï¿½ Compensation Commission, No. L-68648, September 24, 1986, 144 SCRA 421.

[35] G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195.

[36] G.R. No. 64255, August 16, 1989, 176 SCRA 507, 511.

[37] E.O. No. 247, Sec. 3(i) and (j).

[38] Art. 1700, New Civil Code. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

[39] G.R. No. 123891, February 28, 2001, 353 SCRA 47.

[40] G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271.

[41] G.R. No. 117572, January 29, 1998, 285 SCRA 430, 436 and G.R. No. 116015, July 31, 1996, 260 SCRA 133, 138.

[42] G.R. No. 84777, January 30, 1992, 205 SCRA 598, 602.

[43] Ibid., citing Ulibas v. Republic, No. L-43320, June 30, 1978, 83 SCRA 819 and Roma v. WCC, No. L-43675, October 28, 1977, 80 SCRA 170.

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

[45] G.R. No. 145093, July 8, 2003, 405 SCRA 450, 454.

[46] G.R. No. 105854, August 26, 1999, 313 SCRA 141, 149-150.

[47] Rule X. Temporary Total Disability

SECTION 2. Period of entitlement [to Temporary Total Disability Benefit]


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> (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; x x x

[48] Supra note 35.

[49] Austria v. CA, G.R. No. 146636, August 12, 2002, 387 SCRA 216, 221, citing Gonzaga v. ECC, No. L-62287, January 31, 1984, 127 SCRA 443.

[50] Rule XI, Section 1(b) of the Amended Rules on Employees Compensation.

[51] Supra note 44.

[52] Ibid., citing GSIS v. Cadiz, supra note 45; Ijares v. CA, supra note 46.

[53] Ibid., citing Philippine Transmarine Carriers, Inc. v. NLRC, supra Note 39.

[54] Ibid., citing Bejerano v. ECC, supra note 43.

[55] CA rollo, p. 64.

[56] Citing GSIS v. Cadiz, supra note 45.

[57] CA Rollo, p. 88.

[58] Philippine Transmarine Carriers, Inc. v. NLRC, supra note 39, citing NFD International Manning Agents, Inc. v. NLRC, G.R. No. 107131, March 13, 1997, 269 SCRA 486, 494.

[59] Supra note 39.

[60] Supra note 44.

[61] Seagull Shipmanagement and Transport, Inc. v. NLRC, supra, citing More Maritime Agencies, Inc. v. NLRC, G.R. No. 124927, May 18, 1999, 307 SCRA 189.

[62] Contract of Employment and the factual findings of the Labor Arbiter, NLRC and CA; CA rollo, pp. 34, 36, 45 and 63, rollo, p. 29.


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