

NYK-FIL SHIP MANAGEMENT INC. AND/OR NYK SHIP MANAGEMENT HK., LTD., PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND LAURO A. HERNANDEZ, RESPONDENT.

G.R. NO. 161104. September 27, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By a contract[1] forged on January 21, 1999, petitioner NYK Ship Management (HK) Ltd., through its local manning agent-co-petitioner NYK-Fil Ship Management, Inc., hired Lauro A. Hernandez (respondent) as a boatswain on board the vessel S.S. LNG FLORA for a period of eight months.

Before the contract was executed, respondent was made to undergo the routine Pre-employment Medical Examination

(PEME) and was found to be fit to work by the attending physician, Dr. Clarissa M. Mendoza.[2] On the query contained in the medical history portion as to whether he was suffering from or had been told that he had any disease or ailment, including "rheumatism, joint or back trouble,"[3] respondent answered in the negative.

On January 28, 1999, respondent boarded the above-named vessel and commenced to perform his duty as boatswain.

Twenty-five days later or on February 22, 1999, while the vessel was approaching Davao City, respondent requested for medical attention due to high fever and pains at his left hip bone socket.[4] He was immediately brought to the Davao Doctors Hospital and before the attending physician, Dr. C. Serrano, he disclosed that he had been experiencing "fever since January 17, 1999, moderate to high grade, intermittent, associated with chills, body malaise and pain on lumbosacral area radiating to left lower extremity." [5] The initial impression of his condition was that he was suffering from left gluteal abscess and septic arthritis left hip.[6]

Despite the administration of, among other things, antibiotics for five days, respondent's fever persisted along with the pain in his left lower extremity. The vessel thus left him behind.

Respondent was thereafter transferred to Manila and was referred to petitioners' company-designated physicians at the Metropolitan Medical Hospital (MMH). He was initially examined and admitted on March 2, 1999 and was referred to an orthopedic surgeon whose request for an x-ray of his lumbosacral spine and hip showed negative results.[7] He was likewise referred to a neurologist who performed EMG-NCV which showed left L4-L5 and S1 radiculopathy.[8]

Respondent also underwent MRI or magnetic resonance imaging of the thoracic and lumbosacral spine which showed negative results. Respondent was then prescribed medications, started on physical therapy, and was discharged on March 26, 1999.[9]

On April 8, 1999, respondent was admitted back to the hospital due to left hip pain especially on his left lower

extremity. His latest x-ray showed no deterioration of his hip joint condition, however.

By May 1999, respondent's condition was finally determined to be septic arthritis and/or avascular necrosis of the left hip.[10] His rehabilitation program with skin traction continued and he started taking antibiotics.[11]

On June 16, 1999, respondent's condition was re-evaluated and no significant improvement was noted. He was referred back to the orthopedic surgeon who opined that respondent needed surgery - left hip debridement and possible total hip replacement - which was estimated to cost between P160,000 to P180,000.[12]

By early November 1999, respondent's proposed surgery was approved but despite being notified of the approval, he failed to report for scheduling thereof.[13]

On November 16, 1999, respondent instituted a complaint against petitioners, praying for, among others, disability compensation benefits equivalent to Grade 1 or total permanent disability amounting to \$60,000.[14] The case was docketed as NLRC OFW (M) Case No. 99-11-1946-00.

In the meantime or on February 3, 2000, respondent underwent surgical operation for a total hip replacement at the MMH. Thereafter, he continued to report to his orthopedic surgeon and was advised to continue his home exercises.[15]

In a letter dated April 28, 2000, respondent's orthopedic surgeon, Dr. Tiong Sam N. Lim, wrote the medical coordinator of the MMH regarding respondent's case, recommending that respondent's disability grading be half of grade 9 or complete inability of a hip joint in full extension of the thigh, viz:

THIS IS WITH REGARDS TO YOUR QUERY REGARDING THE CASE OF MR. LAURO HERNANDEZ DIAGNOSED TO HAVE AVASCULAR NECROSIS WITH SEPTIC ARTHRITIS, LEFT HIP; S/P TOTAL HIP REPLACEMENT, LEFT ON FEBRUARY 03, 2000.

HE IS NOW TEN WEEKS POST-HIP REPLACEMENT AND IS RECOVERING WELL FROM HIS SURGERY.

IT IS MY OPINION THAT HE WILL EVENTUALLY RECOVER TO THE POINT THAT HE WILL BE SYMPTOMS FREE AS FAR AS PAIN IN THE HIP IS CONCERNED AND HE WILL BE ABLE TO BECOME INDEPENDENT IN ACTIVITIES OF DAILY LIVING.

HOWEVER, IT WOULD BE DOUBTFUL AND WOULD NOT BE ADVISABLE FOR HIM TO RESUME HIS WORK AS A SEAFARER WITH A MECHANICAL HIP JOINT IN PLACE AND CONSIDERING THE AMOUNT OF HEAVY WORK ABOARD A SEA VESSEL.

HIS SUGGESTED DISABILITY GRADING WOULD BE HALF OF GRADE NINE (COMPLETE INABILITY OF A HIP JOINT IN FULL EXTENSION OF THE THIGH).[16]

In the meantime, conciliatory proceedings were conducted on respondent's complaint but no settlement was arrived at.

In respondent's position paper, he proffered that the compensability of an illness is not dependent on whether it is work connected or not, it being sufficient that it was contracted during the term of the employment contract.[17] Additionally, he proffered that since he could no longer engage himself as a seafarer, he is entitled to disability benefits for total and permanent disability.[18]

Petitioners, on the other hand, insisted that the filing of the complaint was premature since respondent was under continuous treatment, and while there was possibility that he might end up disabled, he might also end up fully cured and fit to work.[19] In any event, petitioner emphasized that respondent's condition arose from a

pre-existing illness, hence, not compensable.[20]

By Order[21] of April 4, 2001, the Labor Arbiter directed respondent to submit himself before the Employees Compensation Commission or any government hospital for physical examination in order to determine whether he is fit to work, or in the event that he is disabled, to determine the extent of his disability.

Complying, respondent submitted himself for evaluation at the Philippine General Hospital. In the medical certificate dated June 25, 2001 issued by the attending orthopedic surgeon, Dr. Rafael Cruz Bundoc, the following pertinent portion is noted:

Presently, patient is ambulant with no hip pain. Patient however has limited range of motion over his left hip joint compared to the right, and has difficulty in squatting. Patient also cannot move briskly in going up and down stairways, walking in ramps and embankments. Difficulty in running is conspicuous even for very short distance.

Considering that the medical wall of his acetabulum over the operated side is thin, there is a danger that he might develop protusio acetabuli or some other attrition problems in the future. With these clinical conditions, it is not advisable for the patient to engage in manual work that would entail prolonged standing, running especially carrying heavy objects.[22] (Underscoring supplied)

By Decision[23] of October 18, 2001, the Labor Arbiter declared that respondent was entitled to disability benefits, equivalent to half of Grade 9 as found by the company-designated physician, Dr. Tiong Sam N. Lim. Held the Arbiter:

x x x x

As established, parties signed a POEA contract, the terms and conditions are specified therein. One of the provisions of the contract states that the company-designated physician determines the seaman's disability grading.

x x x x

The contract of employment specifically mentions company-designated physician. Dr. Tiong Sam N. Lim, M.D., who opined and suggested that complainant's disability grading would be half of Grade 9 (Complete inability of a hip joint in full extension of the thigh). To agree to the claim of complainant would be to encourage and disregard and violate the government approved contracts, in effect, promoting disrespect to government authorities.[24]

The Arbiter thus disposed:

WHEREFORE, judgment is hereby rendered ordering NYK Fil Ship Management, incorporated to pay Lauro Hernandez his disability benefit in the amount of US\$6,530.00 or its equivalent in Philippine Currency at the rate of exchange prevailing of actual payment.

Other claims are dismissed for lack of merit.

Ten percent of the award as attorney's fees.

SO ORDERED.[25] (Underscoring supplied)

Respondent appealed to the National Labor Relations Commission (NLRC), claiming that there was prima facie abuse of discretion on the part of the Labor Arbiter in not awarding permanent and total disability benefits, as well as moral and exemplary damages.[26]

Respondent averred that there is no such thing as an impediment grade of ½ of Grade 9 under the POEA Standard

Employment Contract as the company-designated physician could only choose among the impediment grades of 1 to 14.[27] He further averred that given petitioners' company-designated physician opinion that it would not be advisable for respondent to resume work as a seafarer, he is entitled to permanent total disability compensation.[28]

The NLRC found that while there was an interim grading of respondent's disability as suggested by the company-designated physician, petitioners were remiss in their duty to have the degree of complainant's disability assessed thereafter and while he was undergoing treatment and rehabilitation as provided in the standard employment contract.[29]

The NLRC thus ruled that petitioners' negligence, coupled with the fact that the nature of the illness of respondent renders him incapable of pursuing his profession as a seafarer, sufficed to categorize respondent's disability as permanent total disability.[30] Hence, it modified the decision of the Labor Arbiter, viz:

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. Accordingly, respondents are hereby ordered to jointly and severally pay the complainant the peso equivalent at the time of actual payment of the sum of SIXTY THOUSAND US DOLLARS (US \$60,000) representing total disability benefits, plus ten percent thereof as and by way of attorney's fees.

SO ORDERED.[31] (Underscoring supplied)

Petitioners' motion for reconsideration[32] having been denied by Resolution[33] of August 30, 2002, they elevated the case to the Court of Appeals on a petition for certiorari.[34]

By Decision[35] of August 18, 2003, the Court of Appeals affirmed that of the NLRC.

Their motion for reconsideration of the appellate court's decision having been denied,[36] petitioners lodged the present petition for review, faulting the appellate court as follows:

- The Appellate Court Disregarded The Terms And Conditions Of The POEA Standard Employment Contract When It Rendered Petitioners Liable To Private Respondent Hernandez For Disability Benefits;
- Corollarily, The Appellate Court Failed To Give Due Weight And Consideration To The Assessment Made By The Company-Designated Physicians As To Private Respondent Hernandez's Disability; And
- The Appellate Court Found Private Respondent Hernandez With Grade 1 Disability And Awarded Him Disability Benefits In The Amount Of US\$60,000.00 Which Is Equivalent To A Finding Of Total And Permanent Disability, Despite The Lack Of Any Basis Therefor.[37]

Petitioners contend that the appellate court failed to consider that the condition of respondent pre-existed his employment, thereby limiting, if not negating their liability.[38]

The petition is meritorious.

A seafarer is a contractual, not a regular employee, and his employment is contractually fixed for a certain period of time.[39] His employment, including claims for death or illness compensations, is governed by the contract he signs every time he is hired,[40] and is not rooted from the provisions of the Labor Code.[41]

Provision number 2 of respondent's employment contract specifically provides that "the terms and conditions of the revised Employment Contract governing the employment of all seafarers approved per Department order No. 33 and Memorandum Circular No. 55 both series of 1996 shall be strictly and faithfully observed."[42]

POEA Memorandum Circular No. 055-96 or the "Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-going Vessels" (POEA Seafarers Contract)[43]

provides for the minimum requirements acceptable to the POEA for the overseas employment of a Filipino seafarer. Section 20 (B)[44] of said contract enumerates the liabilities of the employer when the seafarer suffers injury or illness during the term of his contract.

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:

- The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
- If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

- 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 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.

- Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

- 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 his Contract, Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation application at the illness or disease was contracted.

In order to hold petitioners liable to respondent for disability benefits, respondent must present concrete proof that he acquired or contracted the injury or illness, which resulted to his disability, during the term of his contract. [45]

As stated early on, respondent and petitioner NYK Ship Management (HK) Ltd. forged the contract of employment on January 21, 1999 and respondent boarded the vessel on January 28, 1999 but was repatriated on February 21, 1999[46] on account of his ailment.

When respondent was examined at the Davao Doctors Hospital on February 22, 1999, he admitted that as early as January 17, 1999, or nine days prior to his deployment, he had been experiencing "fever" moderate to high grade, intermittent, associated with chills, body malaise and pain on [the] lumbosacral area radiating to left lower extremity."

From the chronology of events reflected above, it is clear that his ailment antedated his employment and that he

did not contract it while working on board S.S. LNG FLORA for more than three weeks.

Respondent was diagnosed as suffering from avascular necrosis with septic arthritis. Septic arthritis is a serious infection of the joints characterized by pain, fever, occasional chills, inflammation, and swelling in the infected joint.[47] Infectious arthritis in the hip may be experienced as pain in the groin area that becomes worse if the patient tries to walk.[48] In general, it is caused by the spread of a bacterial, viral, or fungal infection through the bloodstream to the joint,[49] the most common cause being *neisseria gonorrhoeae*, the bacterium that causes gonorrhea.[50]

Avascular necrosis on the other hand is a condition in which there has been a circulatory impairment of an area of the bone, leading to its eventual death.[51] In its early stage, physical examination of the affected area may be within normal limits, but a limp may be detected later if the lower extremity is involved.[52] Range of motion of the affected region may be limited and may cause pain.[53] Most of the cases involve younger adults and are associated with a variety of conditions that cause circulatory impairment, the most common among which are prolonged glucocorticoid administration and excessive alcohol intake.[54]

In *Sealanes Marine Services, Inc., v. NLRC*,[55] this Court held that an employer is not liable for death compensation arising under the standard format contract if the death of the seaman was due to an illness that was not contracted during the term of his employment contract.

x x x Capt. Arante could not have contracted cancer of the pancreas while working on board the vessel for only two (2) months. The conclusion is inevitable that when he was diagnosed to be differing from gastro-duodinitis, the same was merely the result of the metastatic spread of his original disease of cancer of the pancreas. It cannot be said that the disease, which caused his death, occurred during his employment. The pre-employment medical examination conducted upon him could not have divulged his disease considering the fact that most, if not all, such examinations are not so exploratory. Therefore, it would be unfair to hold petitioners liable for the amount of death compensation provided for under the standard format contract for such award is unwarranted under the circumstances.[56]

Thus, death arising from a pre-existing illness is not compensable. A fortiori, disability arising from a pre-existing illness is not compensable.

Respondent argues, however, that prior to employment, respondent underwent a thorough PEME conducted by the company-designated physician and was pronounced "fit to work." [57]

While a PEME may reveal enough for petitioners to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. It was only after respondent was subjected to extensive medical procedures including MRI of the thoracic and lumbosacral spine that respondent's illness was finally diagnosed as a case of avascular necrosis of the hip with septic arthritis.

Dr. Mendoza's memorandum dated June 29, 1999 shows that during the PEME, respondent was only subjected to routine chest x-ray, stool examination, and urinalysis, thus:

[Respondent] was initially seen in our clinic on January 5 & 6, 1999 for Pre-employment Medical Examination. At the time he denied any significant symptoms. The Physical examination chest x-ray and stool examination were unremarkable. His urinalysis however showed trace sugar and he was required to have an FBS done. He came back on January 16, 1999 for the test which turns out to be normal. He was never seen at the clinic after that. Enclose[d] are Xerox copies of his routine slip and laboratory results to a test to the dates mentioned. His PEME was dated January 18, 1999 because this was the date the report was printed and forwarded to our manning center. We were never made aware of the crew that he had an illness immediately

after PEME and prior to his embarkation. And probably even manning center as it is their practice to send back to us for pre-departure check-up if there were aware that he acquired an illness after his PEME. If the diagnosis is Avascular Necrosis of the hip with septic arthritis it was not apparent at the time of PEME, note also that it was not even one of the differential diagnosis when he was seen in Davao, and Metropolitan Hospital made the diagnosis only 3 months after disembarkation. X-ray of the hip is not part of the PEME and again would like to underscore the fact that even x-ray of his hip on March 3, 1999 was normal.[58] (Underscoring supplied)

For respondent to thus claim that the issuance of a clean bill of health to a seafarer after a PEME means that his illness was acquired during the seafarer's employment is a non sequitor.

We do not agree with the respondent's claim that by the issuance of a clean bill of health to Roberto, made by the physicians selected/accredited by the petitioners, it necessarily follows that the illness for which her husband died was acquired during his employment as a fisherman for the petitioners.

The pre-employment medical examination conducted on Roberto could not have divulged the disease for which he died, considering the fact that most, if not all, are not so exploratory. The disease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test. In pre-employment examination, the urine analysis (urinalysis), which is normally included measures only the creatinine, the presence of which cannot conclusively indicate chronic renal failure.[59] (Underscoring supplied)

It having been satisfactorily shown that respondent was really not fit to work as a boatswain due to his pre-existing illness and, therefore, he is not entitled to disability compensation, necessarily, he is not entitled to attorney's fees.

WHEREFORE, the petition is GRANTED. The decision appealed from is REVERSED and SET ASIDE. The complaint before the Labor Arbiter is hereby DISMISSED.

Costs against respondent.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] National Labor Relations Commission (NLRC) records, p. 57.

[2] Id. at 58.

[3] Ibid.

[4] Id. at 23-24.

[5] Id. at 36.

[6] Ibid.

[7] Id. at 61.

[8] Id. at 63.

[9] Id. at 65.

[10] Id. at 66.

[11] Ibid.

- [12] Id. at 67.
- [13] Id. at 68.
- [14] Id. at 2.
- [15] Id. at 70.
- [16] Id. at 71.
- [17] Id. at 28.
- [18] Id. at 29-30.
- [19] Id. at 45-46.
- [20] Id. at 53.
- [21] Id. at 83-85.
- [22] Id. at 96.
- [23] Id. at 108-117.
- [24] Id. at 114-116.
- [25] Id. at 117.
- [26] Id. at 125.
- [27] Id. at 130.
- [28] Id. at 129-130.
- [29] Id. at 207.
- [30] Ibid.
- [31] Ibid.
- [32] Id. at 214-228.
- [33] Id. at 229.
- [34] CA rollo, pp. 2-40.
- [35] Id. at 212-218. Penned by Associate Justice Eugenio S. Labitoria and concurred by Associate Justices Lucas P. Bersamin and Edgardo P. Cruz.
- [36] Id. at 244.
- [37] Rollo, pp. 22-23.
- [38] Id. at 33.
- [39] *Ravago v. Esso Eastern Marine, Ltd.*, G.R. No. 158324, March 14, 2005, 453 SCRA 381, 399-400.
- [40] Id. at 400.
- [41] *Sealanes Marine Services, Inc., v. NLRC*, G.R. No. 84812, October 5, 1990, 190 SCRA 337, 346.

[42] NLRC records, p. 57.

[43] Ibid.

[44] This was later amended by Department Order No. 04, Series of 2000, and the POEA Memorandum Circular No. 09, Series of 2000. As amended, Section 20(B) now reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

- The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
- If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of disability has been established by the company-designated physician.

- 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 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.

- Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.
- Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.
- In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of 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.

[45] Petroleum Shipping Limited v. National Labor Relations Commission, G.R. No. 148130. June 16, 2006.

[46] NLRC records, p. 2.

[47] B. NARINS, world of health 588 (2000).

[48] Ibid.

[49] bid.

[50] N. IZENBERG, HUMAN DISEASE AND CONDITIONS: SUPPLEMENT 2: INFECTIOUS DISEASES 63

(2003).

[51] N. KELLY, TEXTBOOK OF RHEUMATOLOGY 1749 (3rd ed., 1989).

[52] Id. at 1754.

[53] Ibid.

[54] Id. at 1770 .

[55] G.R. No. 84812, October 5, 1990, 190 SCRA 337.

[56] Sealanes Marine Services, Inc., v. NLRC, G.R. No. 84812, October 5, 1990, 190 SCRA 337, 345-346.

[57] NLRC records, p. 28.

[58] Ibid.

[59] Gau Sheng Phils., Inc v. Joaquin, G.R. No. 144665, September 8, 2004, 437 SCRA 608, 620-621.

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