

RIZALDY M. QUITORIANO, PETITIONER, VS. JEBSENS MARITIME, INC./ MA. THERESA GUTAY AND/OR ATLE JEBSENS MANAGEMENT A/S, RESPONDENTS.

G.R. No. 179868. January 21, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Respondent Jebsens Maritime, Inc. (represented by Ma. Theresa Gutay), on behalf of its foreign principal co-respondent Atle Jebsens Management A/S, hired[2] on January 13, 2001 Rizaldy M. Quitoriano (petitioner) as 2[nd] Officer aboard the vessel M/V Trimnes for a period of six months with a basic monthly salary of US\$936.[3]

On May 23, 2001, petitioner, who was assigned as navigating officer from 12:00 midnight to 4:00 a.m. and port watcher from 12:00 midnight to 6:00 a.m., complained of dizziness with severe headache, "general body weakness, chest pains, easy fatigability," "weak grip strength," and "numbness on the left side of his body" and was observed to be "dragging his left foot," "his mouth slightly down to one side," and his speech "slurred." [4]

When the vessel berthed on May 26, 2001 at Port Huelva, Spain, petitioner was brought to a hospital where he was diagnosed as suffering from "hypertension arterial" or "mild stroke." [5] Since his health condition did not improve, petitioner was repatriated to the Philippines on May 30, 2001 to undergo further medical examination and treatment.

Upon arrival in Manila, petitioner underwent several tests at the Medical Center Manila under the care of Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician. On June 6, 2001, Dr. Cruz, noting that petitioner "still complain[ed] of chest pain and easy fatigability," [6] gave the following diagnosis, medications and recommendation:

DIAGNOSIS:

Hypertension

Transient ischemic attack

MEDICATIONS:

Diovan 80mg/capsule once daily

Sulodexide one tablet two times daily

Aspilet one tablet once daily

RECOMMENDATION:

Cranial CT scan

Carotid Doppler

He is advised to come back on June 14, 2001. [7]

On November 16, 2001 or 169 days after petitioner's repatriation, Dr. Cruz issued a medical report declaring him

"fit to work," thus:

The patient has no nuchal pain, headache, chest pain and dizziness noted. His blood pressure is normal at 130/87. There is no motor or sensory deficit noted. Triglycerides and routine urinalysis were within normal limits. He was evaluated by our cardiologist and neurologist who allowed him to resume his previous activities.

DIAGNOSIS:

Hypertension

Cerebrovascular disease, right internal capsule probably ischemic or infarct

He is fit to work effective today, November 16, 2001.[8] (emphasis and underscoring supplied)

Petitioner later sought the opinion of an independent internist-cardiologist, Dr. Sharon A. Lacson of the Philippine Heart Center, who diagnosed him as suffering from "hypertension cardiovascular disease and hyperlipidemia." [9] Dr. Abdias V. Aquino of the same hospital also found him to have "cerebral infarction, R, basal ganglia area." [10]

Petitioner thereupon repeatedly asked respondents for full permanent disability compensation but was unsuccessful. He thus filed on February 26, 2002 a complaint to recover permanent total disability compensation of US\$80,000, as provided for in the Collective Bargaining Agreement (CBA) forged with respondents, and attorney's fees before the National Labor Relations Commission (NLRC) Arbitration Office in Quezon City, docketed as NLRC-NCR OFW Case No. 02-02-0561-00.[11]

Respondents disclaimed petitioner's entitlement to any disability benefits in view of the company-designated physician's certification that he is fit to work.[12] Petitioner countered, however, that the "fit to work" assessment did not reflect his real health condition; and that his illness, given its delicate nature, could recur anytime once he resumes sea duties.[13]

By Decision of July 5, 2004, Labor Arbiter Madjayran H. Ajan dismissed petitioner's complaint, finding that petitioner "ha[d] recovered from his disability" based on the company-designated physician's "fit to work" certification.[14]

On appeal by petitioner, the NLRC, by Decision[15] of August 31, 2005, affirmed with modification the Labor Arbiter's findings by ordering respondents to "allow [petitioner] to resume sea duty," thus:

Since x x x the Labor Arbiter based his decision on the opinion of the company-designated physician that appellant was declared "fit to work" to resume sea duty, We have no reason to disturb his finding, x x x.

But complainant should be allowed to resume sea duty considering the fit to work findings of the company-designated physician.

WHEREFORE, premises considered, judgment is rendered affirming the assailed decision of the Labor Arbiter with slight modification by ordering the respondents to allow complainant to resume sea duty.

SO ORDERED.[16] (Underscoring and emphasis supplied)

Petitioner's Motion for Reconsideration of the NLRC decision having been denied by Resolution of December 28, 2005, he brought the case on Certiorari to the Court of Appeals which, by Decision[17] of March 8, 2007 in CA-G.R. SP No. 93332, affirmed the NLRC decision, and by Resolution of September 14, 2007,[18] denied his Motion for Reconsideration thereof.

Hence, the present Petition for Review on Certiorari, petitioner faulting the Court of Appeals for not finding that his disability is considered permanent and total, and for not awarding him attorney's fees.

The petition is impressed with merit.

In accordance with the avowed policy of the State to give maximum aid and full protection to labor, the Court has applied the Labor Code concept of permanent total disability to Filipino seafarers,[19] it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity; hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[20]

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." 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" (Art. 1700).

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x.

x x x x

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

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

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

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

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

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

A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom (*Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, 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* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he 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.[21] (Emphasis and underscoring supplied)

Applying the standards reflected in the immediately quoted ruling of the Court vis-à-vis the fact that it was only on November 16, 2001 that the "fit to work" certification was issued by Dr. Cruz or more than five months from the time petitioner was medically repatriated on May 30, 2001, petitioner's disability is considered permanent and total.

Significantly, it is gathered that petitioner remained unemployed even after he filed on February 26, 2002 his complaint to recover permanent total disability compensation and despite the August 31, 2005 Decision of the NLRC which was affirmed by the Court of Appeals, ordering respondents to "allow complainant to resume sea duty."

That petitioner was not likely to fully recover from his disability is mirrored by the Labor Arbiter's finding that his illness would possibly recur once he resumes his sea duties. Such finding could account why petitioner was not re-deployed by respondents.[22]

Petitioner's disability being then permanent and total, he is "entitled to 100% compensation, i.e., US\$80,000 for officers," as stipulated in par. 20.1.7 of the parties' CBA.[23]

Petitioner, having been compelled to litigate due to respondents' failure to satisfy his valid claim, is also entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment, following prevailing jurisprudence.[24]

WHEREFORE, the March 8, 2007 Decision and September 14, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 93332 are REVERSED and SET ASIDE. Respondents are held jointly and severally liable to pay petitioner 1) permanent total disability benefits of US\$80,000.00 at its peso equivalent at the time of actual payment; and 2) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Del Castillo,[*] and Villarama, Jr., JJ., concur.

[1] The Court, MCTC, has deleted the name "National Labor Relations Commission (2nd Division)" as the main party impleaded in the present Petition, in light of Section 4, Rule 45 of the 1997 Rules of Civil Procedure.

[*] Additional member per Special Order No. 811-A in view of the inhibition of Justice Lucas P. Bersamin in the case.

[2] Petitioner alleged that this was actually his re-deployment; Petition, rollo, p. 9.

[3] Id. at 47.

[4] Court of Appeals Decision dated March 8, 2007, id. at 39; Medical report dated June 6, 2001, id. at 123.

[5] Labor Arbiter's Decision dated July 5, 2004, which was affirmed by the NLRC and the Court of Appeals; id. at 160.

[6] Medical report dated June 6, 2001, id. at 123.

[7] Ibid.

[8] Id. at 59-60.

[9] Medical Certificate dated February 22, 2002, id. at 63.

[10] Id. at 64-65.

[11] Labor Arbiter's Decision dated July 5, 2004, id. at 158-167.

[12] Respondents' Position Paper, id. at 99-120.

[13] Petitioner's Reply, id. at 124-128, 145-146.

[14] Id. at 164, 167.

[15] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[16] Rollo, pp. 212-213.

[17] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin (now a member of the Supreme Court), id. at 38-44.

[18] Id. at 46.

[19] Section 3, Article XIII of the 1987 Constitution; *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 206-211; *Austria v. Court of Appeals*, 435 Phil. 926, 933 (2002)

[20] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448.

[21] *Remigio v. National Labor Relations Commission*, supra note 19 at 207, 209-211.

[22] See *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, supra note 20 at 448.

[23] Rollo, p. 52 (underscoring supplied); cited also in the Labor Arbiter's Decision, rollo, p. 165.

[24] *Remigio v. National Labor Relations Commission*, supra note 19 at 215.

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