

**LEOPOLDO ABANTE, PETITIONER, VS. KJGS FLEET MANAGEMENT
MANILA AND/OR GUY DOMINGO A. MACAPAYAG, KRISTIAN
GERHARD JEBSSENS SKIPSRENDERI A/S, RESPONDENTS.**

G.R. No. 182430. December 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On January 4, 2000, Leopoldo Abante (petitioner) was hired by respondent KJGS Fleet Management Manila (KJGS) to work as able-bodied seaman aboard M/T Rathboyne, for a period of nine months and with a basic salary of US\$535.00 per month.

Sometime in June, 2000, while carrying equipment on board the vessel, petitioner slipped and hurt his back. Upon the vessel's arrival in Kaohsiung, Taiwan on July 4, 2000, petitioner was brought to a hospital whereupon he was diagnosed to be suffering from "lower back pain r/o old fracture lesion 4[th] lumbar body." Nevertheless, he was still declared to be fit for restricted work and was advised to see another doctor in the next port of call. Unable to bear the pain, petitioner was, on his request, repatriated to the Philippines on July 19, 2000.

On July 21, 2000, petitioner reported to KJGS and was referred to a company-designated physician, Dr. Roberto D. Lim (Dr. Lim), at the Metropolitan Hospital. After a series of tests, he was diagnosed to be suffering from "Foraminal stenosis L3-L4 and central disc protrusion L4-L5" on account of which he underwent Laminectomy and Discectomy on August 18, 2000, the cost of which was borne by KJGS. He was discharged from the hospital 10 days later, but was advised to continue physical therapy. He was seen by Dr. Lim around 10 times from the time he was discharged until February 20, 2001 when he was pronounced fit to resume sea duties. He, however, refused to sign his Certificate of Fitness for Work.[1]

Petitioner later sought the opinion of another doctor, Dr. Jocelyn Myra R. Caja, who diagnosed him to have "failed back syndrome" and gave a grade 6 disability rating[2] --- which rating rendered him medically unfit to work again as a seaman and called for the award of US\$25,000.00 disability benefits --- drawing him to file on April 27, 2001 a Complaint[3] before the National Labor Relations Commission (NLRC), docketed as NLRC OFW Case No. 01-04-0736-00, for disability compensation in the amount of US\$25,000.00, moral and exemplary damages and attorney's fees.

By Decision[4] of July 24, 2003, Labor Arbiter Jovencio Ll. Mayor, Jr. dismissed the complaint, holding that under Philippine Overseas Employment Administration (POEA) Memo Circular No. 9, series of 2000, in the event of conflict between the assessment of the company-designated physician and the doctor chosen by the seafarer, the opinion of a third doctor agreed on by both the employer and the seafarer should be sought. Hence, the Labor Arbiter held that petitioner's immediate filing of the complaint, insisting on his own physician's assessment, was premature and, therefore, the assessment of the company-designated physician that he is still fit to work prevails.

On petitioner's appeal, the NLRC, by Decision[5] of January 31, 2005, ordered the remand of the case to the

Labor Arbiter for further proceedings. It held that since there were two conflicting diagnoses as to petitioner's fitness to work, the matter must be referred to a third doctor to determine his entitlement to disability benefits under the new POEA Standard Employment Contract for seafarers. KJGS's Motion for Reconsideration of said Decision was denied by Resolution[6] of November 3, 2006, hence, it appealed to the Court of Appeals.

By Decision[7] of December 10, 2007, the appellate court reversed and set aside the NLRC ruling and reinstated the Labor Arbiter's Decision. It held that Sec. 20 (B) of POEA Memo Circular No. 9, series of 2000, which requires a third doctor in case of conflicting assessments, is inapplicable.

Noting that the employment contract between KJGS and petitioner was executed on January 4, 2000, the appellate court held that the contract is governed by Memo Circular No. 55, series of 1996, which did not have a similar provision, hence, it is the determination or assessment of the company-designated physician which is deemed controlling. Petitioner's motion for reconsideration having been denied by Resolution[8] of April 1, 2008, he interposed the present petition, insisting that he is entitled to Grade 6 disability benefits under the new POEA Standard Employment Contract.

The petition is meritorious.

Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides:

SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

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

x x x x

3. 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. (emphasis supplied)

Clearly, the above provision does not preclude the seafarer from getting a second opinion as to his condition for purposes of claiming disability benefits, for as held in *NYK-Fil Ship Management v. Talavera*::[9]

This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that "[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion," hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice." (emphasis and underscoring supplied)

In the present case, it is undisputed that petitioner immediately consulted with a physician of his choice after initially having been seen and operated on by a company-designated physician. It was after he got a second

opinion and a finding that he is unfit for further work as a seaman that he filed the claim for disability benefits.

Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, apropos is the ruling in *Seagull Maritime Corporation v. Dee*[10] involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.

Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These evidences will in turn be used to determine the benefits rightfully accruing to him. (emphasis and underscoring supplied)

It bears noting that Dr. Lim's medical findings did not significantly differ from those of Dr. Caja's. In essence, even if Dr. Lim declared petitioner to be fit to resume sea duties, still, the final diagnosis of "foraminal stenosis and central disc protrusion" remained six months post-surgery.[11] It is understandable that a company-designated physician is more positive than that of a physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA Standard Employment Contract to seek a second opinion from his preferred physician.

Petitioners are, at this point, reminded that the POEA standard employment contract for seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect. (emphasis and underscoring supplied)[12]

In *HFS Philippines v. Pilar*,[13] where the findings of the independent physicians were given more credence than those of the company-designated physicians, the Court held:

The bottomline is this: the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent.

The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice. (emphasis and underscoring supplied)

As to whether petitioner can claim disability benefits, the Court rules in the affirmative. Permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days.[14] In the case at bar, it was only on February 20, 2001 that the Certificate of Fitness for Work was issued by Dr. Lim, more than 6 months from the time he was initially evaluated by the doctor on July 24, 2000 and after he underwent operation on August 18, 2000.

It is gathered[15] from the documents emanating from the Office of Dr. Lim that petitioner was seen by him from

July 24, 2000 up to February 20, 2001 or a total of 13 times; and except for the medical reports dated February 5, 2001 and February 20, 2001 (when the doctor finally pronounced petitioner fit to work), Dr. Lim consistently recommended that petitioner continue his physical rehabilitation/therapy and revisit clinic on specific dates for re-evaluation, thereby implying that petitioner was not yet fit to work.

Given a seafarer's entitlement to permanent disability benefits when he is unable to work for more than 120 days, the failure of the company-designated physician to pronounce petitioner fit to work within the 120-day period entitles him to permanent total disability benefit in the amount of US\$60,000.00.[16]

Respecting the claim for moral and exemplary damages, the same cannot be granted, there being no concrete showing of bad faith or malice on the part of KJGS. The records show that it shouldered all the expenses incurred in petitioner's surgery and subsequent rehabilitation. And it regularly inquired from Dr. Lim about petitioner's condition.

The claim for attorney's fees is granted following Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. The same fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest[17] as in the present case following the refusal by respondent to settle his claims. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.

WHEREFORE, the decision and resolution of the Court of Appeals dated December 10, 2007, and April 1, 2008, respectively, are REVERSED and SET ASIDE. Respondents are held jointly and severally liable to pay petitioner the following: a) permanent total disability benefits of US\$60,000.00 at its peso equivalent at the time of actual payment; and b) 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, Bersamin, and Villarama, Jr., concur.

[1] Vide letter of Dr. Roberto D. Lim dated February 20, 2001, NLRC records, p. 54.

[2] Vide certification of Dr. Jocelyn Myra R. Caja dated March 10, 2001, id. at 58.

[3] Id. at 2.

[4] Id. at 123-129.

[5] CA rollo, pp. 21-25. Penned by Commissioner Ernesto S. Dinopol and concurred in by Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go.

[6] Id. at 26-28. Penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Romeo L. Go.

[7] Id. at 231- 239. Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices CJose L. Sabio, Jr. and Jose C. Reyes, Jr.

[8] Id. at 267. Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices CJose L. Sabio, Jr. and Jose C. Reyes, Jr.

[9] G.R. No. 175894, November 14, 2008 citing *Seagull Maritime Corp. v. Dee*, G.R. No. 165156, April 2, 2007, 520 SCRA 109, 117-119.

[10] Id.

[11] Vide February 20, 2001 certification of Dr. Roberto Lim, *supra*.

[12] *Seagull Maritime Corp. v. Dee*, *supra* at 121-122.

[13] G.R. No. 168716, April 16, 2009.

[14] *Palisoc v. Easways Marine Inc.*, G.R. No. 152273, September 11, 2007.

[15] Vide medical reports, NLRC records, pp. 42-54.

[16] Sec. 30-A of POEA Standard Employment Contract or Memo Circular No. 5, series of 2000 (Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels).

[17] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006. 487 SCRA 190.

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