NFD INTERNATIONAL MANNING AGENTS, INC./BARBER SHIP MANAGEMENT LTD., PETITIONERS, VS. ESMERALDO C. ILLESCAS, RESPONDENT.

G.R. No. 183054. September 29, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari[1] of the Court of Appeals' Decision dated October 23, 2007 in CA-G.R. SP No. 97941, and its Resolution dated May 9, 2008 denying petitioners' motion for reconsideration. The Decision of the Court of Appeals nullified and set aside the decision of the National Labor Relations Commission (NLRC), and ordered petitioners to pay respondent the amount of US$90,000.00 as disability benefit. The Resolution dated May 9, 2008 denied petitioners' motion for reconsideration and awarded respondent attorney's fees.

The facts are as follows:

On September 6, 2002, respondent Esmeraldo C. Illescas entered into a Contract of Employment with petitioner NFD International Manning Agents, Inc., acting for and in behalf of its foreign principal, co-petitioner Barber Ship Management, Ltd. Under the contract, respondent was employed as Third Officer of M/V Shinrei for a period of nine months, with a basic monthly salary of US$854.00. The employment contract complied with the Philippine Overseas Employment Administration (POEA) Standard Contract for Seafarers, and the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels under Department Order No. 4, series of 2000.

After respondent passed the pre-employment medical examination, he boarded the vessel and started performing his job on October 6, 2002.

On May 16, 2003, when respondent had been on board the vessel for seven months, Captain Jaspal Singh and Chief Officer Maydeo Rajev ordered respondent to carry 25 fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. The next day, while carrying a heavy basketful of fire hydrant caps, respondent felt a sudden snap on his back, with pain that radiated down to the left side of his hips. He immediately informed the ship captain about his condition, and he was advised to take pain relievers. As the pain was initially tolerable, he continued with his work. After a few days, the pain became severe, and respondent had difficulty walking.

On May 27, 2003, when the vessel was in Japan, respondent was brought to the Higashiogishima Clinic. Respondent was diagnosed to be suffering from lumbago and sprain. The doctor gave respondent medication and advised him to wear a corset, avoid lifting heavy objects and get further examination and treatment if the symptoms persisted.[2]

Despite the lighter work assigned to respondent, he continued to experience excruciating pain. On June 13, 2003,

petitioner was referred to a doctor upon arrival of M/V Shinrei at the port of Hay Point, Australia. The doctor declared that respondent was unfit to work, and recommended that respondent return home for further management.[3]

On June 14, 2003, respondent was repatriated to the Philippines. On June 17, 2003, respondent was referred to the Alegre Medical Clinic under the care of Dr. Natalio G. Alegre II. Dr. Alegre advised respondent to undergo a lumbo-sacral x-ray, and later a Magnetic Resonance Imaging (MRI) of his lumbo-sacral spine. The MRI revealed multi-level disc dessication, broad-based central and left-sided posterior disc herniation, L4 L5, with severe canal stenosis.[4] Dr. Alegre recommended laminectomy and discectomy.[5]

On August 27, 2003, respondent underwent a laminectomy with discectomy at the St. Luke's Medical Center. He was discharged from the hospital on September 6, 2003. Thereafter, he underwent physical rehabilitation. Nevertheless, medical examinations showed that there was still restriction in respondent's truncal mobility and in the lifting power of his trunk.

As his condition did not improve, respondent sought the expertise of Dr. Marciano F. Almeda, Jr., a specialist in occupational medicine and orthopedics, at the Medical Center Muntinlupa for the assessment and evaluation of his health condition and/or disability. Dr. Almeda found that respondent sustained partial permanent disability with an impediment Grade of 11 (14.93%), described as "slight rigidity or one-third loss of motion or lifting power of the trunk" under the POEA Standard Contract for Seafarers.[6] Dr. Almeda declared that respondent was unfit to work at sea in any capacity as a seaman.[7]

On December 29, 2003, petitioners received a letter[8] dated December 16, 2003 from respondent's counsel, demanding the payment of disability benefit. The claim was referred to Pandiman Philippines, Inc., the local correspondent of the P&I Club with which petitioner Barber Ship Management Ltd. was affiliated. In the meantime, respondent filed a Complaint with the Arbitration Branch of the NLRC.

During the preliminary conferences in this case, the parties explored the possibility of settlement. In a letter[9] dated April 12, 20004, Pandiman Philippines, Inc, in behalf of petitioners, offered to pay respondent disability benefit in the amount of US$16,795.00, corresponding to Grade 8 disability under the POEA Standard Contract for Seafarers. Respondent, through counsel, refused the offer on the ground that the injury sustained by him was caused by an accident, which was compensable in the amount of US$90,000.00 under the Collective Bargaining Agreement (CBA), thus:

> If a seafarer/officer, due to no fault of his own, suffers permanent disability as a result of an accident while serving on board or while traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which, including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000 for ratings and US$90,000 for officers.[10]

Since the parties failed to arrive at an agreement, the NLRC directed them to file their Position Papers.

In his Position Paper,[11] respondent submitted that Section 20 (B.6) of the POEA Standard Contract for Seafarers provides:

> x x x x
>
> In case of permanent total or partial disability of a 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 32 of his Contract. Computation of his benefits arising from the illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

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However, respondent stated that he is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), which has a CBA with petitioners. Under the CBA, he is entitled to a higher disability benefit in the amount of US$90,000.00, since his injury resulted from an accident while carrying a basketful of heavy fire hydrant caps on board the vessel.[12]

Respondent prayed that petitioners be ordered to pay him disability benefit in the amount of US$90,000.00, illness allowance equivalent to 120 days, as well as moral and exemplary damages, and attorney's fees.

In their Position Paper,[13] petitioners countered that it is the POEA Standard Contract for Seafarers, and not the CBA, that governs this case. They stated that Black's Law Dictionary defined "accident" as an unusual, fortuitous, unexpected, unforeseen or unlooked for event. They argued that respondent's disability was not the result of an accident, as respondent was merely performing his normal duty of transporting fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. During the performance thereof, no unusual, unforeseen and unexpected event transpired as proved by the absence of any accident report. Moreover, respondent's Affidavit did not mention the occurrence of any accident which gave rise to his injury. Petitioners argued that, since no accident took place, the disability benefits under the CBA do not apply to this case.

Petitioners further averred that based on the assessment of its accredited-clinic, the Alegre Medical Clinic, respondent suffered from Grade 8 disability, described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." During the preliminary conference, they offered to pay respondent disability benefit in the amount of US$16,795.00 for the Grade 8 disability under Section 32 of the POEA Standard Contract for Seafarers.[14]

The main issue for resolution before the Labor Arbiter was whether the disability of complainant (respondent) was compensable under the provision of Article 13 of the CBA in the amount of US$90,000.00.

On January 6, 2005, the Labor Arbiter rendered a Decision[15] finding respondent entitled to disability benefit under the CBA in the amount of US$90,000.00 as 100% compensation; US$3,456.00 (US$864 x 4) as sickness allowance equivalent to 120 days; and US$9,345.60 as attorney's fees, or a total of US$102,801.60. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents NFD International Manning Agents, Inc. and Barber Ship Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of ONE HUNDRED TWO THOUSAND EIGHT HUNDRED ONE US DOLLARS & 60/100 (US$102,801.60) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.
>
> All other claims are DlSMISSED for lack of merit.[16]

The Labor Arbiter held that the injury suffered by respondent was the result of an accident arising out of, and in the course of, his employment while carrying the heavy fire hydrant caps, and that his injury was unexpected and unforeseen by him.

Moreover, the Labor Arbiter stated that respondent was declared unfit to work by the physician who treated him in Australia, which was confirmed by Dr. Marciano Almeda, Jr. of the Medical Center in Muntinlupa when he declared complainant "unfit to work back at sea in any capacity as a Seaman." The Labor Arbiter also noted that both Dr. Natalio Alegre, the company physician, and Dr. Marciano Almeda, Jr., respondent's independent doctor, assessed respondent's disability as "partial and permanent disability." Hence, the Labor Arbiter held that respondent's disability was 100% compensable under the CBA in the amount of US$90,000.00, and not merely under the Standard Crew Contract.

Petitioners appealed the Labor Arbiter's decision to the NLRC.

In a Decision[17] dated July 13, 2006, the NLRC modified the decision of the Labor Arbiter, as it awarded respondent disability benefit under Section 32

of the POEA Standard Contract for Seafarers.[18] The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the assailed decision is hereby modified by deleting the award of US$102,801.60 and instead ordering respondent NFD International Manning Agents, Inc. and Barber Ship Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of Sixteen Thousand Seven Hundred Ninety-Five US Dollars (US$16,795.00) at the prevailing rate of exchange at the time of actual payment representing his disability benefit.[19]

The NLRC held that the injury sustained by respondent was not the result of an accident, although it arose out of his work. It stated that the task of carrying hydrant caps was not a fortuitous, unusual or unforeseen event, or a marine peril. According to the NLRC, back pains or chest-trunk-spine injuries are inherent in the job of carrying heavy objects, and the injury may occur over a period of time or on the spot depending upon the physical strength and posture of the workers.

The NLRC deleted the award for sickness allowance based on the letter dated June 9, 2004 of petitioner NFD International Manning Agents, Inc. to Pandiman Philippines, Inc. The letter stated that respondent's illness allowance from June 15, 2003 to October 14, 2003 (120 days) had already been processed and remitted to respondent's bank account. The NLRC held that the payment of the sickness allowance may be presumed, since respondent did not dispute the letter.

The NLRC also deleted the attorney's fees awarded to respondent on the ground that there was no unlawful withholding of payment of benefits in view of petitioners' compromise offer of US$16,795.00, which was the amount of disability benefit awarded by the NLRC to respondent.

Respondent's motion for reconsideration[20] was denied by the NLRC for lack of merit in a Resolution[21] dated December 7, 2006.

Respondent filed a special civil action for certiorari with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that his injury was not the result of an accident on board the vessel; in not applying the pertinent provisions of the CBA; and in deleting the award of attorney's fees.

On October 23, 2007, the Court of Appeals rendered a Decision[22] in favor of respondent. The dispositive portion of the Decision states:

> WHEREFORE, finding merit in the petition, We hereby GRANT the same. The assailed Decision and Resolution of the NLRC are NULLIFIED and SET ASIDE. Private respondents are ORDERED to pay petitioner the amount of US$90,000.00 as disability benefits.[23]

The Court of Appeals, citing Jarco Marketing v. Court of Appeals,[24] held that respondent's disability resulted from an accident as the injury was unforeseen and happened without any fault on his part.

The appellate court declared that the Labor Arbiter correctly applied Article 13 of the CBA[25] in awarding respondent disability benefit in the amount of US$90,000.00. It ruled that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in disregarding the CBA.

Petitioners and respondent filed separate motions for reconsideration. Petitioners contended that the absence of an accident report negated the appellate court's finding that the injury suffered by respondent was the result of an

accident arising out of, and in the course of, his employment. Respondent's motion for partial reconsideration sought an additional award of attorney's fees equivalent to 10% of the total monetary award.

In a Resolution dated May 9, 2008, the Court of Appeals denied the motion for reconsideration of petitioners, but granted the motion for partial reconsideration of respondent. The dispositive portion of the Resolution reads:

> WHEREFORE, finding merit in the Motion for Partial Reconsideration filed by petitioner, the same is hereby GRANTED. The Decision dated October 23, 2007 is MODIFIED in that private respondents are further ordered to pay TEN PERCENT (10%) of the total monetary award as attorney's fees.
>
> The motion for reconsideration filed by private respondents is DENIED.
>
> SO ORDERED.[26]

The Court of Appeals justified the award of attorney's fees under Article 111[27] of the Labor Code and Article 2208[28] of the Civil Code, as respondent was forced to litigate and has incurred expenses to protect his right and interest.

Petitioners filed this petition raising the following issues:

> I.
>
> THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT RESPONDENT'S MEDICAL CONDITION WAS A RESULT OF AN ACCIDENT DURING THE TERM OF HIS EMPLOYMENT WITH PETITIONERS, AND HENCE, COVERED BY THE PROVISIONS OF THE CBA.
>
> II.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT ORDERED THE PAYMENT OF ATTORNEY'S FEES TO RESPONDENT.[29]

The issues raised before this Court are: (1) whether or not the disability suffered by respondent was caused by an accident; (2) whether or not the disability is compensable under the CBA; and (3) whether or not respondent is entitled to attorney's fees.

Petitioners contend that respondent did not suffer a disability as a result of an "accident" as defined under existing laws or jurisprudence. They argue that Jarco Marketing v. Court of Appeals,[30] the case citied by the Court of Appeals to support its decision, defined an "accident" as:

> x x x an unforeseen event in which no fault or negligence attaches to the defendant. It is "a fortuitous circumstance, event or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens."

Petitioners point out that the above definition of the word "accident," subscribed to by the Court of Appeals, explicitly states that it pertains to a fortuitous circumstance, event or happening.[31] Petitioners cited Lasam v. Smith,[32] which defined "fortuitous event" as "an unexpected event or act of God which could neither be foreseen or resisted, such as floods, torrents, shipwrecks, conflagrations, lightning, compulsion, insurrections, destruction of buildings by unforeseen accidents and other occurrences of similar nature." Petitioners contend that the term "accident," as contemplated by the subject CBA provision, refers to a separate event or incident which gives rise to the injury of the seafarer.

Petitioners argue that in this case, no such unusual, fortuitous, unexpected or unforeseen event took place or was reported. Respondent merely went about his normal duties when he transported fire hydrant caps from the deck to

the engine workshop, then back to the deck to refit the caps. The sudden snap respondent felt on his back while carrying the fire hydrant caps cannot, by itself, qualify as an accident.

Hence, petitioners assert that respondent is not entitled to the benefits provided under the CBA. They add that if the ruling of the Court of Appeals would be sustained, it would open the floodgates for absurd claims for double or higher indemnity, especially in insurance cases, considering that an employee who suffers a stroke, congenital heart failure, or even appendicitis, while at work, would now be considered as resulting from an accident, since the same may be regarded as an unusual and unexpected occurrence which happened without the employee's fault.

Petitioners also contend that there is no basis for the award of attorney's fees, as they did not act in gross and evident bad faith. They merely acted in the interest of what was just and right, since respondent was not entitled to full disability benefit under the CBA.

The petition is denied.

The provisions of the CBA, which are relevant to this case, are as follows:

> Art. 13 (Compensation for Death and Disability)
>
> If a seafarer/officer, due to no fault of his own, suffers permanent disability as a result of an accident while serving on board or while traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000.00 for ratings and US$90,000.00 for officers.
>
> The degree of disability, which the Company, subject to this Agreement, is liable to pay, shall be determined by a doctor appointed by the Company. If a doctor appointed by the Seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Company and the seafarer and his/her Union, and third doctor's decision shall be final and binding on both parties.
>
> A seafarer who is disabled as a result of an injury, and whose permanent disability in accordance with the POEA schedule is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently disabled and be entitled to 100% compensation (USD90,000 for officers and USD70,000 for ratings).
>
> A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.
>
> x x x x
>
> The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:
>
> DEGREE OF DISABILITY %
>
> RATE OF COMPENSATION
>
> RATINGS
>
> OFFICERS US$
>
> 100
>
> 70,000
>
> 90,000

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75

52,500

67,500

60

42,000

54,000

x x x x

> Any payment effected under any section of this article shall be without prejudice to any claim for compensation made in law, but such payments shall be deducted from any award of damages.[33]

Was respondent's disability the result of an accident?

Black's Law Dictionary[34] defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."

The Philippine Law Dictionary[35] defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."

"Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:

> [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.
>
> The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events."[36]

The Court holds that the snap on the back of respondent was not an accident, but an injury sustained by respondent from carrying the heavy basketful of fire hydrant caps, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above.

Although the disability of respondent was not caused by an accident, his disability is still compensable under Article 13 of the CBA under the following provision:

> A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.

The Court notes that the CBA states that the degree of disability, which the company is liable to pay, shall be determined by a doctor appointed by the company. In this case, the POEA schedule is the basis of the assessment whether a seafarer's permanent disability is 50 percent or more, or less than 50 percent.[37] The Alegre Medical

Clinic, petitioners' accredited clinic, found that respondent had a Grade 8 disability (33.59%), described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." Dr. Almeda, respondent's independent doctor, on the other hand, found respondent to be suffering from Grade 11 disability (14.93%), described as "slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk."

In HFS Philippines, Inc. v. Pilar,[38] the Court held that a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherent merit.[39] In this case, petitioners never questioned the weight given by the Labor Arbiter and the Court of Appeals to the findings of respondent's independent doctor in regard to the disability of respondent.

Dr. Almeda, respondent's independent doctor, and petitioners' accredited medical clinic, both assessed respondent's disability in accordance with the POEA schedule as less than 50% permanently disabled. Moreover, Dr. Almeda, who is a specialist in occupational medicine and orthopedics, found that respondent was unfit to work in any capacity as a seaman. The Medical Report[40] of Dr. Almeda states:

> x x x x
>
> He is now three months post surgery, but still, Mr. Illescas continue to have back pain. There is still on and off pain and numbness on his left thigh. He is also unable to tolerate prolonged standing and walking. With his present complaints, Mr. Illescas cannot withstand the demands of his previous work at sea. Doing so could aggravate his existing back problem. I therefore recommend a partial permanent disability with Grade 11 Impediment based on the POEA Contract.
>
> Justification of Impediment:
> Grade 11 (14.93%)
> Slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk.
>
> Mr. Illescas started having back problems in a workplace incident where he lifted a basketful of hydrant caps. He underwent surgery which he claimed as afforded him partial relief initially. However, up to the present time, the residual symptoms continue to bother him. This has restricted him in the active performance of certain tasks.
>
> Often, symptoms following surgery are relieved only to recur after a variable period. The causes may include insufficient removal of disc material and further extrusion, rupture of another disc, adhesions about the nerve root and formation of an osteophyte at the site of removal of bone. Even a successful disc removal, therefore, does not guarantee a permanent cure as fibrosis can produce a dense constricting scar tissue, which is presumed to be a prime cause of recurrent symptoms.
>
> Diagnostic imaging studies, although important, is but a single facet of the overall evaluation of patients with suspected disc herniation or spinal stenosis, which must include thorough history taking and physical examination. It is not surprising to encounter some variation between the neurologic symptoms and the result of the patient's imaging studies. Each individual has a different spinal canal diameter. While a mild herniation may not produce any symptom at all in one person, it may be significant in one with a narrow spinal canal.
>
> Surgery can never stop the pathological process nor restore the back to its previous state. Similar poor results have been found with repeated attempts at surgical intervention for the relief of chronic low back pain. If long term relief is desired, continued mechanical stress of postural or occupational type must be avoided. Resuming his usual work, which includes increased loading, twisting, or bending and extension of the back, will further expose Mr. lllescas to dangers of enhancing his discomfort even more.
>
> It is for this reason that I find him UNFIT to work back at sea in any capacity as a Seaman.[41]

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The Court finds merit in the reasons stated by Dr. Almeda in his Medical Report for declaring respondent unfit to work in any capacity as a seaman. Respondent is, therefore, entitled to disability benefit in the amount of US$90,000.00 under the CBA, thus:

> A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.
>
> x x x x
>
> The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:
>
> DEGREE OF DISABILITY %
>
> RATE OF COMPENSATION
>
> RATINGS
>
> OFFICERS US$
>
> 100
>
> 70,000
>
> 90,000
>
> 75
>
> 52,500
>
> 67,500
>
> 60
>
> 42,000
>
> 54,000
>
> x x x x

In regard to the award of attorney's fees, the Court agrees with the Court of Appeals that respondent is entitled to the same under Article 2208 of the Civil Code:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> x x x x
>
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

This case involves the propriety of the award of disability compensation under the CBA to respondent, who worked as a seaman in the foreign vessel of petitioner Barber Ship Management Ltd. The award of attorney's fees

is justified under Article 2208 (2) of the Civil Code. Even if petitioners did not withhold payment of a smaller disability benefit, respondent was compelled to litigate to be entitled to a higher disability benefit. Moreover, in HFS Philippines, Inc. v. Pilar[42] and Iloreta v. Philippine Transmarine Carriers, Inc.,[43] the Court sustained the NLRC's award of attorney's fees, in addition to disability benefits to which the concerned seamen-claimants were entitled. It is no different in this case wherein respondent has been awarded disability benefit and attorney's fees by the Labor Arbiter and the Court of Appeals. It is only just that respondent be also entitled to the award of attorney's fees. In Iloreta v. Philippine Transmarine Carriers, Inc.,[44] the Court found the amount of US$1,000.00 as reasonable award of attorney's fees.

WHEREFORE, the petition is DENIED. The Court of Appeals' Decision dated October 23, 2007 in CA-G.R. SP No. 97941, and its Resolution dated May 9, 2008 are AFFIRMED insofar as respondent is awarded disability benefit in the amount of US$90,000.00, as well as attorney's fees, which is reduced to US$1,000.00. Petitioners NFD International Manning Agents, Inc. and Barber Ship Management Ltd. are hereby ORDERED to jointly and severally pay respondent Esmeraldo C. Illescas disability benefit in the amount of NINETY THOUSAND DOLLARS (US$90,000.00) and attorney's fees in the amount of ONE THOUSAND DOLLARS (US$1,000.00) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment.

Costs against petitioners.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Injury Illness Report, Annex "B," rollo, p. 53.

[3] Injury Illness Report, Annex "C," id. at 54.

[4] Annex "F," id. at 57.

[5] Id.

[6] CA rollo, p. 28.

[7] Id.

[8] Annex "I," rollo, p. 60.

[9] Annex "J," id. at 61.

[10] Emphasis supplied.

[11] Rollo, pp. 65-73.

[12] Position Paper of Complainant, id.

[13] CA rollo, p. 26.

[14] SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x
CHEST-TRUNK-SPINE

1. Fracture of four (4) more ribs resulting to severe limitation of chest expansion Gr. 6

x x x x

5. Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk Gr. 8

x x x x

[15] Rollo, pp. 111-118.

[16] Id. at 118.

[17] Id. at 149-163.

[18] Sec. 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x
CHEST-TRUNK -SPINE

1. Fracture of four (4) or more ribs resulting to severe limitation of chest expansion - Gr. 6

2. Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion - Gr. 9

3. Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia - Gr. 12

4. Fracture of the dorsal or lumbar spines resulting to severe or total rigidity of the trunk or total loss of lifting power of heavy objects - Gr. 6

5. Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk - Gr. 8

6. Slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk - Gr. 11

7. Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches - Gr. 4

8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches - Gr. 1

9. Injury to the spinal cord resulting to incontinence of urine and feces - Gr. 1

x x x x

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

Sec. 32-A. SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade

Impediment

1

Maximum Rate x

120.00%

2

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Maximum Rate x

88.81%

3

Maximum Rate x

78.36%

4

Maximum Rate x

68.66%

5

Maximum Rate x

58.96%

6

Maximum Rate x

50.00%

7

Maximum Rate x

41.80%

8

Maximum Rate x

33.59%

9

Maximum Rate x

26.12%

10

Maximum Rate x

20.15%

11

Maximum Rate x

14.93%

12

Maximum Rate x

10.45%

13

Maximum Rate x

6.72%

14

Maximum Rate x

3.74%

Maximum Rate: US$50,000

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

[19] Rollo, p. 162.

[20] CA rollo, p. 161.

[21] Rollo, pp. 199-200.

[22] Id. at 22-34.

[23] Id. at 33.

[24] 378 Phil. 991 (1999).

[25] If a seafarer/officer, due to no fault of his own, suffers permanent disability as a result of an accident while serving on board or while traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000 for ratings and US$90,000 for officers.

[26] Rollo, p. 36.

[27] Art. 111. Attorney's fees. -- (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees, which exceed ten percent of the amount of wages recovered.

[28] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; x x x.

[29] Rollo, p. 11.

[30] Supra note 24, at 1002.

[31] Emphasis supplied.

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[32] 45 Phil. 657 (1924).

[33] Rollo, pp. 359-360. (Emphasis supplied.)

[34] Eighth edition, © 2004.

[35] F.B. Moreno, Third Edition, ©1988.

[36] 1 Corpus Juris Secundum, pp. 427, 431. (Emphasis supplied.)

[37] CBA, Art. 13 (Compensation for Death and Disability)

x x x x

A seafarer who is disabled as a result of an injury, and whose permanent disability in accordance with the POEA schedule is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently disabled and be entitled to 100% compensation (USD90,000 for officers and USD70,000 for ratings).

A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation. (Emphasis supplied.)

[38] G.R. No. 168716, April 16, 2009, 585 SCRA 315.

[39] Id. at 326

[40] Annexes "E-1" to "E-2," rollo, pp. 82-83.

[41] Id. (Emphasis supplied.)

[42] Supra note 37.

[43] G.R. No. 183908, December 4, 2009, 607 SCRA 796.

[44] Id. at 806.

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