GILBERT QUIZORA, PETITIONER, VS. DENHOLM CREW MANAGEMENT (PHILIPPINES), INC., RESPONDENT.

G.R. No. 185412. November 16, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before this Court is a petition for review challenging the September 10, 2008 Decision[1] of the Court of Appeals (CA), which set aside the Resolutions[2] of the National Labor Relations Commission (NLRC) dated September 20, 2004 and May 24, 2005, and reinstated the Decision of the Labor Arbiter (LA) dated June 27, 2002.

The Facts

Records show that in 1992, Denholm Crew Management (Philippines), Inc. (respondent company), a domestic manning agency that supplied manpower to Denklav Maritime Services, Ltd. (Denklav), a foreign maritime corporation, hired the services of Gilbert Quizora (petitioner) to work as a messman on board the international vessels of Denklav. Based on Article 4.2 of the Collective Bargaining Agreement[3] (CBA) entered into by and between the Association of Marine Officers and Seamen Union of the Philippines (AMOSUP) and Denholm Ship Management (Singapore) Ltd., represented by Denklav, his contractual work as messman was considered terminated upon the expiration of each contract. Article 5.1 thereof provided that the duration of his sea service with respondent company was nine (9) months depending on the requirements of the foreign principal. After the end of a contract for a particular vessel, he would be given his next assignment on a different vessel. His last assignment was from November 4, 1999 to July 16, 2000 on board the vessel "MV Leopard."

After the expiration of his contract with "MV Leopard," petitioner was lined up for another assignment to a different vessel, but he was later disqualified for employment and declared unfit for sea duty after he was medically diagnosed to be suffering from "venous duplex scan (lower extremities) deep venous insufficiency, bilateral femoral and superficial femoral veins and the (L) popliteal vein." In layman's terms, he was medically found to have varicose veins.

Subsequently, petitioner demanded from respondent company the payment of disability benefits, separation pay and reimbursement of medical expenses. His demands, however, were denied. He then submitted his claim before the AMOSUP, but it was likewise denied. Thereafter, he filed with the LA a complaint for payment of disability benefits, medical expenses, separation pay, damages, and attorney's fees.

On June 27, 2002, the LA, after due hearing, rendered a decision dismissing petitioner's complaint for lack of merit.

On appeal, the NLRC issued its Resolution dated September 20, 2004 reversing the LA's decision and ordering respondent company to pay petitioner his disability compensation in the amount of US$60,000.00.

Upon the denial of its motion for reconsideration in the NLRC Resolution dated May 24, 2005, respondent company elevated the case to the CA with the following arguments:

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT IS ENTITLED TO DISABILITY BENEFITS OF $60,000.00 CONSIDERING THAT:

1) PRIVATE RESPONDENT FAILED TO PROVE BY SUBSTANTIAL EVIDENCE THAT HIS ACQUISITION OF VARICOSE VEINS WAS CAUSED BY HIS PREVIOUS EMPLOYMENT WITH PETITIONER COMPANY.

2) VARICOSE VEINS IS A COMMON DISEASE FOR THOSE WHO ARE AT LEAST 30 YEARS OLD. IT CAN BE ACQUIRED GENETICALLY OR CAN BE DUE TO LACK OF EXERCISE. HENCE, TO BLAME THE PETITIONER COMPANY FOR PRIVATE RESPONDENT'S VARICOSE VEINS IS MOST UNFAIR AND UNJUST.

3) WHILE PRIVATE RESPONDENT MAY HAVE ACQUIRED A DISABILITY, HE NEVER LOST HIS EARNING CAPACITY PERMANENTLY SO AS TO ENTITLE HIM TO DISABILITY BENEFITS UNDER THE CBA.

Decision of the Court of Appeals

On September 8, 2010, the CA rendered a decision setting aside the NLRC Resolution and reinstating the LA Decision. The CA explained that since having varicose veins was not among those listed as occupational diseases under Presidential Decree (P.D.) No. 626, petitioner bore the burden of proving that such ailment was brought about by his working conditions. His mere claim that his employment with respondent company was the cause of his varicose veins hardly constituted substantial evidence to convince a reasonable mind that his ailment was work-related or the risk of contracting it was increased by his working conditions with respondent company. There was even no proof that the disease progressed due to the circumstances of his work which did not fall under any of the factors that contribute to varicose veins. The mere fact that he had no other employer except respondent company did not necessarily impute to the latter the disease acquired by him. Since his claim was not supported by substantial evidence, he was not entitled to disability benefits.

Unsatisfied with the CA decision, petitioner raised before this Court the following

ISSUES

I

WHETHER RESPONDENT HAS THE BURDEN OF PROVING THAT PETITIONER'S ILLNESS IS NOT WORK RELATED

II

WHETHER PETITIONER'S ILLNESS IS WORK RELATED

III

WHETHER PETITIONER IS ENTITLED TO DISABILITY BENEFITS

In advocacy of his position, petitioner argues that the burden of proving that his illness is not work-related rests on the respondent company. Citing the provisions of the Philippine Overseas and Employment Authority Standard Employment Contract (POEA-SEC), he claims that illnesses not listed therein are disputably presumed work-related. It is only when the claim is under the provisions of the Employees Compensation Act that the claimant has the burden of proving that the illness is work-related. As it is not listed, he is relieved from the trouble of proving the work-relatedness of the illness because it is already disputably presumed by law. Hence,

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respondent company should rebut this presumption by proving otherwise but, unfortunately, it failed to do so.

To petitioner, there is little difficulty in showing that acquiring varicose veins is work-related for a seafarer. He avers that he was engaged by respondent company as a seafarer for nine (9) years covering seven (7) contracts with their vessels; that he was medically screened in every contract; and that he was found fit to work up to his last contract on board the vessel "MV Leopard."

Moreover, petitioner claims that he is entitled to total and permanent disability benefits because his varicose veins have rendered him permanently incapacitated to return to work as a seafarer.

Position of respondent company

Respondent company counters that there is no evidence showing that petitioner's varicose veins were caused by his previous employment with respondent company, that this disease was work-related, and that it caused him permanent disability.

Petitioner omitted to mention his health after his stint on the "MV Leopard." Also, his application for a new contract with respondent company came long after the contract ended. He was discovered to have varicose veins in March 2001, or months after his last employment contract with respondent company ended in July 2000. So, it is difficult to conclude that his varicose veins can only be attributable to his previous employment with the company.

Besides, petitioner's employment was not continuous but on a per-contract basis which usually lasted for nine (9) months depending on the requirement of the foreign principal. He was considered "signed-off" upon the expiration of each contract. It was possible that he acquired varicose veins while he was "signed-off" from the vessels of respondent company. Except for his bare allegations, there is nothing to support his theory that his intermittent contracts of employment with respondent company had reasonable connection with his acquisition of varicose veins. He neither presented proof on this point nor offered a medical expert opinion.

Respondent company further argues that the disputable presumption under Section 20(B) (4) of the 2000 POEA SEC is completely irrelevant to this case. First, the 2000 POEA-SEC initially took effect sometime in July 2002. Petitioner's last employment contract with respondent company was from November 1999 to July 2000. Thus, at the time the parties entered into an overseas employment contract in November 1999, the provisions of the POEA-SEC, which were deemed incorporated into the contract, were those from the 1996 POEA-SEC. Hence, it is the 1996 POEA-SEC, not the 2000 POEA-SEC, which should govern his claim for disability benefits. The disputable presumption relied upon by petitioner does not appear in the 1996 POEA-SEC but can only be found in the 2000 POEA-SEC.

Second, even assuming that the 2000 POEA-SEC governed petitioner's previous employment with respondent company, he was still not entirely relieved of the burden to submit evidence to prove his claim because Section 20(B) of the 2000 POEA-SEC specifically pertains to work-related injury or illness. Therefore, it is still incumbent upon him to present proof that his varicose veins were reasonably connected to his work.

Respondent company opines that varicose veins is a common disease for those who are at least 30 years old and it can be acquired genetically or through lack of exercise.

Lastly, respondent company asserts that there is no showing that petitioner's varicose veins caused him permanent disability. While affliction with varicose veins may bring pain and discomfort to the body of a person, the illness is not permanent as it can actually be treated, either through self-help or medical care.

The Court's Ruling

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The Court finds no merit in the petition.

Before tackling the issue of what rule governs the case, there is a need to compare the provisions of Section 20-B of the 1996 POEA-SEC and Section 20-B of the 2000 POEA-SEC. Section 20 (B) of the 1996 POEA-SEC reads as follows:

> SECTION 20. COMPENSATION AND BENEFITS
>
> 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:
>
> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
>
> 2. 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.
>
> 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.
>
> 4. 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.
>
> 5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

On the other hand, Section 20 (B) of the 2000 POEA-SEC reads:

> **SECTION 20. COMPENSATION AND BENEFITS**
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
>
> 2. 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.
>
> 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.
>
> 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.
>
> 5. 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.
>
> 6. 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 enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [Emphasis supplied]

Considering that petitioner executed an overseas employment contract with respondent company in November 1999, the 1996 POEA-SEC should govern. The 2000 POEA-SEC initially took effect on June 25, 2000. Thereafter, the Court issued the Temporary Restraining Order (TRO) which was later lifted on June 5, 2002. This point was discussed in the case of Coastal Safeway Marine Services, Inc. v. Leonisa Delgado,[4] where it was written:

> The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired; and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA rules and regulations require that the POEA Standard Employment Contract be integrated in every seafarer’s contract.
>
> A perusal of Jerry’s employment contract reveals that what was expressly integrated therein by the parties was DOLE Department Order No. 4, series of 2000 or the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, and POEA Memorandum Circular No. 9, series of 2000. However, POEA had issued Memorandum Circular No. 11, series of 2000 stating that:
>
> In view of the Temporary Restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000 on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be advised of the following:

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> Section 20, Paragraphs (A), (B) and (D) of the former Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of 1996 shall apply in lieu of Section 20 (A), (B) and (D) of the Revised Version;
>
> x x x x

In effect, POEA Memorandum Circular No. 11-00 thereby paved the way for the application of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996. Worth noting, Jerry boarded the ship [in] August 2001 before the said temporary restraining order was lifted on June 5, 2002 by virtue of Memorandum Circular No. 2, series of 2002. Consequently, Jerry's employment contract with Coastal must conform to Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996, in determining compensability of Jerry's death. [Emphases supplied]

Thus, petitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the 2000 POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.

At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

> For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.
>
> The 2000 POEA-SEC defines "work-related injury" as "injury[ies] resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[5]

Unfortunately for petitioner, he failed to prove that his varicose veins arose out of his employment with respondent company. Except for his bare allegation that it was work-related, he did not narrate in detail the nature of his work as a messman aboard Denklav's vessels. He likewise failed to particularly describe his working conditions while on sea duty. He also failed to specifically state how he contracted or developed varicose veins while on sea duty and how and why his working conditions aggravated it. Neither did he present any expert medical opinion regarding the cause of his varicose veins. No written document whatsoever was presented that would clearly validate his claim or visibly demonstrate that the working conditions on board the vessels he served increased the risk of acquiring varicose veins.

Moreover, although petitioner was rehired by respondent company several times, his eight-year service as a seaman was not actually without a "sign-off" period. His contract with respondent company was considered automatically terminated after the expiration of each overseas employment contract. Upon the termination of each contract, he was considered "signed-off" and he would have to go back and re-apply by informing respondent company as to his availability. Thereafter, he would have to sign an Availability Advise Form. Meanwhile, he

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would have to wait for a certain period of time, probably months, before he would be called again for sea service.

Thus, respondent company can argue that petitioner's eight (8) years of service with it did not automatically mean that he acquired his varicose veins by reason of such employment. His sea service was not an unbroken service. The fact that he never applied for a job with any other employer is of no moment. He enjoyed month-long "sign-off" vacations when his contract expired. It is possible that he acquired his condition during one of his "sign-off" periods.

As discussed in the decision of the CA, varicose veins may be caused by trauma, thrombosis, inflammation or heredity. Although the exact cause of varicose veins is still unknown, a number of factors contribute to it which include heredity, advance aging, prolonged standing, being overweight, hormonal influences during pregnancy, use of birth control pills, post-menopausal hormonal replacement therapy, prolonged sitting with legs crossed, wearing tight undergarments or clothes, history of blood clots, injury to the veins, conditions that cause increased pressure in the abdomen including liver disease, fluid in the abdomen, previous groin injury, heart failure, topical steroids, trauma or injury to the skin, previous venous surgery and exposure to ultra-violet rays.

Lastly, there is also no proof that petitioner's varicose veins caused him to suffer total and permanent disability. The Pre-Employment Medical Examination[6] (PEME) he underwent cannot serve as enough basis to justify a finding of a total and permanent disability because of its non-exploratory nature.

> The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus we held in NYK-FIL Ship Management, Inc. v. NLRC:
>
> While a PEME may reveal enough for the petitioner (vessel) 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.[7]

Besides, it was not expressly stated in his medical diagnosis that his illness was equivalent to a total and permanent disability. Absent any indication, the Court cannot accommodate him.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Velasco, Jr., (Chairperson), Brion,[*] Abad, and Perez,[**] JJ., concur.

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 1150 dated November 11, 2011.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

[1] Rollo, pp. 54-73. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Edgardo F. Sundiam.

[2] Id. at 40-52.

[3] Id. at 179.

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[4] G.R. No. 168210, June 17, 2008, 554 SCRA 590.

[5] Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International, N.V. v. National Labor Relations Commission, G.R. No. 186180, March 22, 2010, 616 SCRA 362.

[6] Rollo, p. 217.

[7] Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International, N.V. v. National Labor Relations Commission, supra note 5.

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