

ARNALDO G. GABUNAS, SR., PETITIONER, VS. SCANMAR MARITIME SERVICES INC., MR. VICENTE BRILLANTES AND IUM SHIP MANAGEMENT, RESPONDENTS.

G.R. No. 188637. December 15, 2010

Ponente: SERENO, J.

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SERENO, J.:

Before us is a Petition for review on certiorari filed under Rule 45 of the Revised Rules of Court. The Petition seeks to reverse the Decision[1] dated 24 December 2008 of the Court of Appeals (CA) in C.A. G.R. SP No. 99242. The CA Decision affirmed the Decision[2] dated 24 August 2006 of the National Labor Relations Commission (NLRC) in CA G. R. No. 045232-05.

The following are the established facts of the case:

Petitioner Arnaldo G. Gabunas, Sr. was a seafarer registered with the Philippine Overseas Employment Agency (POEA) under Seafarer's Registration Certificate No. 0263209-95 and also with the Maritime Industry Authority (MARINA).[3]

On 22 December 2000, petitioner signed a contract with respondent Scanmar Maritime Services, Inc. (Scanmar) to work as 2[nd] Assistant Engineer for its principal, IUM Ship Management, on board the ocean vessel M/V Chaiten for nine months.[4]

Prior to boarding his assigned vessel, petitioner was subjected to a pre-employment medical examination, on the basis of which he was declared by the company-designated physician "fit to work." [5] On 27 December 2000, petitioner left the Philippines to commence work on his assigned vessel.[6]

Sometime in July 2001, petitioner experienced a throbbing pain in his left leg while on board his vessel of assignment. He informed his officer about it and requested medical attention, but was ignored.[7]

After his contract expired, petitioner disembarked from the vessel on 16 October 2001 and arrived in the Philippines on the following day.[8] On 19 October 2001, he reported to the office of Scanmar to receive his final wages and to inform respondent of his preferred dates for next deployment.[9] He also asked for a medical check-up, but his request was ignored. Instead, respondent requested that he renew his license and attend a three-day seminar to upgrade his International Maritime Organization Certificate. On 19 September 2001, he underwent a pre-employment medical examination for future deployment and was declared "physically fit." [10] Thereafter, he awaited his reemployment.

On 02 February 2002, petitioner felt pain and numbness in his left leg. He sought medical attention at the Philippine Heart Center, where he was diagnosed with "Critical Limb Ischemia." Petitioner sought medical assistance from respondent Scanmar, but he was ignored.[11]

On 20 February 2002, petitioner underwent a femoro-popliteal bypass surgery on his left leg. Due to the failure of

the first operation, he was required to undergo a "redo" of the femoro-popliteal bypass. Despite undergoing these medical procedures, petitioner's condition did not improve. He finally underwent a below-knee amputation of his left leg.[12]

Due to the amputation of his leg, petitioner was prevented from engaging in his line of work. He consulted Dr. Efren Vicaldo, an internist-cardiologist at the Philippine Heart Center. Dr. Vicaldo opined that petitioner's disease incapacitated the latter from engaging in normal work, and that it was "work-aggravated." [13] Hence, petitioner demanded sickness allowance and permanent disability benefits from respondent. His demands were, however, ignored by respondent.[14]

On 10 June 2004, petitioner filed a Complaint with the National Labor Relations Commission, docketed as Case No. (M) 04-06-01636-00. On 25 May 2005, the Labor Arbiter found for petitioner and rendered the following monetary awards:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay complainant Arnaldo G. Gabunas his Permanent Disability Benefit in the amount of EIGHTY THOUSAND US DOLLARS (US \$ 80,000.00), Sickness Allowance in the amount of US\$3,800.00 or its equivalent in local currency at the time of actual payment plus ten (10%) percent of the total award as Attorney's Fees.[15]

Respondent Scanmar appealed the adverse Decision of the Labor Arbiter at the NLRC. On 24 August 2006, the NLRC reversed the Labor Arbiter's Decision and dismissed petitioner's Complaint as follows:

WHEREFORE, premises considered, the appealed Decision is hereby ordered SET ASIDE and a new one entered declaring the DISMISSAL of complainant-appellee's complaint for lack of merit.[16]

Aggrieved by the NLRC's Decision, petitioner appealed to the Court of Appeals raising the following issues:

- Whether or not the Honorable Commission erred in holding that the sickness of petitioner was not work-related and not acquired during the term of his contract contrary to the ruling of the Labor Arbiter;
- Whether or not the Honorable Commission erred in holding that the petitioner is not entitled to disability benefits for failure to comply with the mandatory reporting requirement;
- Whether or not the Honorable Commission erred in giving credence to the affidavit of Mr. Esta while disregarding the assertion of petitioner;
- Whether or not the Honorable Commission erred in ruling that the belated filing of petitioner's complaint weakens his claim for disability benefit;
- Whether or not the Honorable Commission erred in considering the assessment of the company-designated physician in the PEME of petitioner as physically fit;
- Petitioner is entitled to permanent disability; and
- Petitioner is entitled to attorney's fees.[17]

On 24 December 2008, the Court of Appeals, through its Twelfth Division, rendered a Decision affirming the ruling of the NLRC. The penultimate part of the Decision is worded as follows:

The claim that the complaint was filed based merely on surmises and conjectures does not deserve belief. The clinical abstracts issued by the attending physicians of petitioner Gabuans, Sr. showed that his sickness was a reality, however, petitioner's claim thereon has prescribed.

WHEREFORE, in view of the foregoing, the petition is DISMISSED. The decision of the NLRC in NLRC-NCR OFW Case No. (M) 04006-01636-00 (sic) is hereby AFFIRMED.

SO ORDERED.[18]

Petitioner moved for the reconsideration of the CA's Decision, but his Motion was denied through a Resolution dated 22 June 2009.[19] Hence, this instant Petition for certiorari assailing the appellate court's Decision.

Petitioner argues before this Court that he is entitled to claim permanent disability and other benefits, because his illness was work-related and his claim has not yet prescribed. In addition, he also prays for the award of damages and attorney's fees as a consequence of his instituting the suit to enforce his claims against respondents.

After a careful perusal of the records of the case, we rule to DENY the Petition.

The validity of petitioner's claim for permanent disability benefits against respondents hinges on whether or not his illness was work-related. The rest of his prayers likewise depend on the resolution of the main issue mentioned.

We have no compelling reason to deviate from the factual findings of the NLRC stating that petitioner has failed to establish that his illness was work-related. Hence, he is not entitled to claim permanent disability benefits. This Court has, time and again, held that the factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[20] This dictum is consistent with the settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court.[21]

In *De Jesus v. National Labor Relations Commission*,[22] judicial review by the Supreme Court does not extend to a re-evaluation of the sufficiency of the evidence that served as the basis for the proper labor tribunal's determination. The doctrine that this Court is not a trier of facts is firm and applies with greater force to labor cases.[23]

The NLRC dismissed the complaint after finding that petitioner's claims were not supported by substantial evidence. It noted that the records showed petitioner's failure to present credible evidence to prove that his illness was work-related. In fact, the NLRC regarded as mere allegation, his statement that "while busy doing his task, (he) felt a throbbing pain on his left leg," because he failed to support it with credible evidence, such as medical records and the daily logbook of the vessel.[24] Its finding was sustained by the Court of Appeals.

In affirming the findings of the NLRC, the appellate court found that the clinical abstracts presented by petitioner to support his permanent disability claims were taken only after his disembarkation from his assigned vessel.[25] The CA also noted that petitioner failed to present evidence that he had notified the ship captain about his alleged medical complaint while on board the vessel. Further, it found no proof, aside from mere allegations in the Complaint of petitioner,[26] that he had notified respondent of any medical problem upon disembarkation.

Contrary to petitioner's position, we do not find any error on the part of the appellate court, which gave credence to the Affidavit of witness Victorio Q. Esta, respondent Scanmar's Manning Manager. The Affidavit attests to the fact that respondent did not receive any complaint from petitioner, either while on board the vessel or after disembarkation.[27]

We scoured the records of the proceedings on the level of the Labor Arbiter and the NLRC and agree that petitioner could not substantiate his claim that he had complained of pain in his left leg while on board the vessel or upon his disembarkation. We also note that even the Labor Arbiter's Decision on this matter is wanting in reference to any evidence that would support findings in favor of petitioner. As between petitioner's bare allegation and the Affidavit of a witness to the contrary, we give credence to the latter.

In *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, et al.*,[28] we held that a notarized document carries

the evidentiary weight conferred upon it with respect to its due execution. It has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.

Petitioner failed to present convincing evidence to rebut the assertions made by Mr. Esta on a crucial point. The CA stated that while it was ready to construe in favor of labor in case of doubt, and while the Affidavit of Mr. Esta could be considered self-serving, there was absolutely no evidence to rebut this Affidavit; hence, the Affidavit must be believed.

On another point, petitioner faults the ruling of the appellate court that his illness is not work-related. Petitioner stresses that the law only requires a probability of the connection between the risk of contracting the illness and its aggravation due to the working conditions - not absolute certainty or direct causal relation - to prove compensability.[29] However, while petitioner correctly cites the principle, he must still adduce substantial evidence to prove that the principle can be applied to his case.

In *Spouses Ponciano Aya-ay, Sr. and Clemencia Aya-ay v. Arpaphil Shipping Corp. and Magna Marina, Inc.*,[30] the issue resolved by the Court was whether the petitioners therein were entitled to death benefits provided under the POEA Standard Employment Contract. Parenthetically, it was crucial to determine whether the death of the deceased was reasonably connected with his work, or whether the working conditions increased the risk of contracting the disease that resulted in the employee's death. In resolving the issue, the Court made this pronouncement:

Hence, it was incumbent on petitioners to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, that the eye injury sustained by Aya-ay during the term of his employment with respondents caused, or increased the risk of, CVA.

Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.

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This Court finds that under the circumstances petitioners' bare allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions. The beneficiaries must present evidence to prove a positive proposition.[31] (Emphasis supplied.)

In the instant case, it is apparent that petitioner's allegations in his supplications are bereft of any substantial proof that his illness was contracted while working as a 2nd Assistant Engineer on board the vessel, or that his illness was aggravated by his working conditions then. At best, his allegations were mere conjectures. Paragraph 7 of his Position Paper submitted to the Labor Arbiter states:

7. Sometime in July 2001, while busy doing his task, complainant felt a throbbing pain on his left leg. Immediately, he decided to inform his officer what he experienced. He requested for a medical check up hoping that he would be referred to a physician and be given the appropriate medical attention but such was not the case. No medical attention was extended and was left with no recourse so he continued to work until he was repatriated and was disembarked on board on 16 October 2001 and arrived in the Philippines on 17 October 2001. The date of his arrival is reflected in his seaman's book, the pertinent portion of which is hereto attached as Annex "D".[32]

Attached to the above paragraph is a record of his date of arrival upon disembarkation from his assigned vessel.

This fact is admitted by the parties and is undisputed. The allegation that he complained of pain and numbness while on board the vessel in July 2001 remains a bare allegation without any supporting evidence. This fact is reflected in the Labor Arbiter's overturned Decision, which summarily ruled that petitioner's sickness occurred during the term and validity of his contract. There was a palpable lack of reference to any basis for that ruling in the Labor Arbiter's Decision.

The proceedings before the NLRC and the CA reveal that even on appeal, petitioner failed to produce any evidence to substantiate his claim that his illness was work-related. The medical abstracts he introduced to support his case were all taken after his disembarkation from his vessel of assignment. Unfortunately, the pieces of documentary evidence that petitioner presented do not help in establishing that his illness was work-related so as to sustain a finding entitling him to compensation under his contract with respondents.

We agree with petitioner's argument that to establish whether the illness is work-related, probability - not certainty - is the touchstone.[33] However, the probability referred to must be founded on facts and reason. *Government Service Insurance System v. Emmanuel P. Cuntapay*[34] is instructive as regards the burden resting on a claimant's shoulder - that of proving the causal link between a claimant's work and the ailment suffered:

The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease. (Emphasis and underscoring supplied.)

Petitioner clearly failed to discharge the duty imposed upon him by law to claim the benefits as prayed for in his Petition. Section 20 (B) of the 2000 POEA Standard Employment Contract provides:

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:

xxx xxx xxx

- 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.)

The wording of the section cited above clearly states that for an injury or illness to be compensable under the POEA Standard Employment Contract, it must be work-related. Petitioner has failed to convince this Court that the illness he suffered can be reasonably linked to the performance of his work as 2[nd] Assistant Engineer on

board M/V Chaiten or to prove that it was aggravated during his stint in the vessel. We therefore find that the Court of Appeals correctly affirmed the findings of the NLRC dismissing his appeal for lack of merit.

We now address the issue raised by petitioner - whether the Court of Appeals correctly ruled on the law governing the contract he executed with respondents to determine the prescriptive period for his claim.

The CA dismissed petitioner's appeal on the ground that his Complaint was filed out of time. It applied Section 30 of POEA Circular No. 055, Series of 1996, and ruled that the prescription period for filing claims is one year from disembarkation. Hence, petitioner, having disembarked from his assigned vessel on 17 October 2001 and having filed his complaint on 10 June 2004, the Complaint was deemed to have been filed out of time.[35]

Petitioner, on the other hand, contends that the law under which his contract should be governed in relation to the prescription period for filing his action should be drawn from the terms of the 2000 POEA Standard Employment Contract, which grants him three years from disembarkation within which to file his action.

The Court of Appeals erred in applying POEA Circular No. 55, Series of 1996, to petitioner's contract in relation to the prescription period within which he should have filed his money claim. Section 30 of the 2000 POEA Standard Employment Contract, which took effect on 25 June 2000, provides for the prescriptive period for filing claims arising from the said contract:

SECTION 30. PRESCRIPTION OF ACTION

All claims arising from this Contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

Thus, when petitioner signed his contract with respondent on 22 December 2001, it was the 2000 POEA Standard Employment Contract that was already in effect. Consequently, his action, which was filed on 10 June 2004, was filed within the three year prescription period under the 2000 POEA Standard Employment Contract. Despite having filed his action within the prescriptive period, his action must fail.

As regards the prayer for damages and attorney's fees, we deny it for lack of legal basis.

WHEREFORE, the Petition is DENIED. The Decision (dated 24 December 2008) of the Court of Appeals in C.A. G.R. SP No. 99242 is hereby AFFIRMED.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Mendoza,[*] JJ., concur.

[*] Additional member per Special Order No. 921 dated 13 December 2010.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by then Court of Appeals Associate Justice Mariano C. del Castillo and Associate Justice Romeo F. Barza.

[2] Penned by NLRC Second Division Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[3] Rollo, p. 6.

[4] Id.

[5] Id. at 38.

[6] Id. at 47.

[7] Id. at 7.

[8] Id. at 38.

[9] Id. at 146.

[10] Id. at 175.

[11] Id. at 38.

[12] Id. at 180.

[13] Id. at 177.

[14] Id. at 39.

[15] Id. at 135.

[16] Id. at 53.

[17] CA rollo, pp. 332-333.

[18] CA rollo, pp. 392.

[19] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by then Court of Appeals Associate Justice Mariano C. del Castillo and Associate Justice Romeo F. Barza.

[20] Coastal Safeway Marine Services, Inc. v. Leonisa Delgado, G.R. No. 168210, 17 June 2008, 555 SCRA 590.

[21] Danny Mame v. Court of Appeals, G.R. No. 167953, 03 April 2007, 520 SCRA 552.

[22] G.R. No. 151158, 17 August 2007, 530 SCRA 489.

[23] PCL Shipping Philippines, Inc. v. National Labor Relations Commission, G.R. No. 153031, 14 December 2006, 511 SCRA 44 as cited in De Jesus v. National Labor Relations Commission, *supra*.

[24] Rollo, p. 50.

[25] Id. at 64.

[26] Id. at 66.

[27] *Supra*.

[28] G.R. No. 125283, 10 February 2006, 482 SCRA 164.

[29] Rollo, p. 14.

[30] G.R. No. 155359, 31 January 2006, 481 SCRA 282.

[31] Id.

[32] National Labor Relations Commission rollo, pp. 25-26.

[33] Rollo, p. 14.

[34] G.R. No. 168862, 30 April 2008, 553 SCRA 520.

[35] Rollo, p. 69.

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