

**JEBSSENS MARITIME INC., REPRESENTED BY MS. ARLENE ASUNCION
AND/OR ALLIANCE MARINE SERVICES, LTD., PETITIONERS, VS.
ENRIQUE UNDAG, RESPONDENT.**

G.R. No. 191491. December 14, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition for review assails the September 16, 2009 Decision[1] and the March 3, 2010 Resolution[2] of the Court of Appeals (CA), which set aside the October 17, 2005 and January 24, 2006 Resolutions of the National Labor Relations Commission (NLRC), dismissing the complaint of respondent Enrique Undag (respondent) for disability benefits.

Records bear out that respondent was hired as Lead Operator on board the vessel FPSO Jamestown owned by Alliance Marine Services, Ltd. and managed by its local agent, Jebsens Maritime, Inc. (petitioners). Respondent's contract with petitioners was for a period of four (4) months with a basic salary of US\$806.00 a month. He was deployed on March 24, 2003 and eventually repatriated to the Philippines on July 18, 2003 after his contract with the petitioners had expired.

On September 24, 2003, about two months after repatriation, he went to see a physician, Dr. Efren Vicaldo (Dr. Vicaldo), for a physical check-up and was diagnosed to have "Hypertensive cardiovascular disease, Atrial Fibrillation, Diabetes Mellitus II, Impediment Grade X (20.15%)." According to Dr. Vicaldo, respondent had a history of hypertension and diabetes and was at risk of developing a stroke, coronary artery disease and congestive heart failure. He likewise stated that respondent's ailment was aggravated by his work as a seaman and that he was no longer fit for work. For said reason, respondent requested for financial assistance from petitioners but the latter denied his request.

Constrained, he filed a complaint for sickness benefits against petitioners before the NLRC, alleging that he had been suffering from chest pains and difficulty of breathing since July 2003 when he was on board petitioners' vessel. Despite knowing his bad physical condition upon repatriation, the petitioners did not give him any financial assistance. Thus, he prayed that petitioners be ordered to reimburse him for his medical expenses and pay him sickness allowance amounting to US\$3,224.00, including damages and attorney's fees.

Petitioners countered that respondent was not entitled to disability benefits because his repatriation was not due to medical reasons but due to the expiration of his employment contract. Petitioners basically argued that, under the POEA Standard Employment Contract (POEA-SEC), a seafarer was entitled to disability benefits only if he had suffered a work-related illness during the term of his contract.

On June 30, 2005, after due hearing, the Labor Arbiter (LA) rendered a decision ordering petitioners to pay, jointly and severally, respondent the Philippine peso equivalent of US\$60,000.00 representing total permanent disability compensation benefits for US\$3,224.00 sickness allowance, and 10% attorney's fees.

On appeal, however, the NLRC reversed the LA decision and denied respondent's claim for disability benefits. The NLRC reasoned out that respondent failed to present substantial evidence proving that he had suffered any illness while on board or after disembarking from petitioners' vessel. Respondent's motion for reconsideration was later denied.

Not satisfied with the NLRC decision, respondent appealed before the CA. On September 16, 2009, the CA rendered a decision setting aside the ruling of the NLRC. The appellate court stated that respondent was able to prove by substantial evidence that his work as a seafarer caused his hypertensive cardiovascular disease or, at least, was a relevant factor in contracting his illness. The CA explained that as Lead Operator, respondent performed multi-tasking functions which required excessive physical and mental effort. Moreover, he was also exposed to the perils of the sea and was made to endure unpredictable and extreme climate changes in the daily performance of his job. The CA also took judicial notice of the fact that overseas workers suffer a great degree of emotional strain while on duty on board vessels because of their being separated from their families for the duration of their contract. The CA was of the strong view that the inherent difficulties in respondent's job definitely caused his illness. The CA added that because of the nature of his work, the illness suffered by respondent contributed to the aggravation of his injury which was pre-existing at the time of his employment. Finally, the CA ruled that respondent is entitled to claim total and permanent disability benefits because of the undisputed doctor's findings that he "is now unfit to resume work as a seaman in any capacity," which clearly constitutes a permanent and total disability as defined by law.

Not in conformity with the CA decision, petitioners filed this petition for review praying for its reversal raising this lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING FULL DISABILITY BENEFITS TO THE PRIVATE RESPONDENT.

In advocacy of their position, petitioners argue that the CA committed a reversible error in awarding respondent disability benefits on the principal ground that there are numerous substantial and competent evidence on record which clearly establish the fact that respondent was guilty of fraudulent misrepresentation, hence, forfeiting his right to any benefits under the POEA contract. For one, respondent intentionally lied when he declared that he was not suffering from a previous medical condition in his pre-employment medical examination (PEME). Specifically, he failed to disclose the fact that he was suffering from diabetes and heart problem, which is a clear case of concealment.

Secondly, respondent's illnesses were not acquired during the term of his contract with petitioners. He had no evidence showing that he acquired the heart problem and hypertension while he was on board the vessel. The fact that respondent passed his PEME does not automatically mean that he suffered his illness on board the vessel or that the same was not pre-existing.

Third, the Labor Code provision on permanent disability is not applicable in a claim for disability benefits under the POEA contract.

Respondent's Position

Respondent counters that petitioners never raised the issue of fraudulent misrepresentation before the labor tribunals despite being given the opportunity to do so. Hence, they are estopped from raising it for the first time on appeal. At any rate, he claims that he did not commit any fraud or misrepresentation because he underwent a stringent PEME, which included a blood and urine examination, conducted by the company-designated physician.

His illness, therefore, was not pre-existing. In any case, the pre-existence of an illness is not a bar for the compensability of a seafarer's illness. His non-compliance with the mandatory 3-day reporting upon signoff is irrelevant because it only applies to a seafarer who has signed off from the vessel for medical reasons.

Moreover, respondent argues that a repatriation due to a finished contract does not preclude a seafarer from recovery of benefits, as the only requirement is that the disease must be a consequence or a result of the work performed. He has shown by substantial evidence that his cardiovascular disease was work-related. The strenuous work conditions that he experienced while on sea duty coupled with his usual encounter with the unfriendly forces of nature increased the risk of contracting his heart ailment.

Lastly, he asserts that his disability is permanent and total because he has been declared to be unfit for sea duty for which he is entitled to recover attorney's fees and litigation costs under Article 2208.

THE COURT'S RULING

No substantial evidence that
illness was work-related

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.[3]

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

SECTION 20. COMPENSATION AND BENEFITS

X X X

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:

X x x

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 this 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.

Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The 2000 POEA Amended Standard Terms and Conditions 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 in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These are:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1)

The seafarer's work must involve the risks described herein;

2)

The disease was contracted as a result of the seafarer's exposure to the described risks;

3)

The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4)

There was no notorious negligence on the part of the seafarer.

Sec. 32-A(11) of the 2000 POEA Amended Standard Terms and Conditions explicitly considers a cardiovascular disease as an occupational disease if the same was contracted under working conditions that involve any of the following risks –

a)

If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

b)

The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.

c)

If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

Consequently, for cardiovascular disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.[4]

In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence.[5] 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.[6]

In this case, the Court is of the considered view that respondent failed to prove that his ailment was work-related

and was acquired during his 4-month sea deployment. Respondent claims that sometime in July 2003, he showed manifestations of a heart disease when he suddenly felt chest pains, shortness of breath and fatigability.[7] He, however, never substantiated such claim. He never showed any written note, request or record about any medical check-up, consultation or treatment. Similarly, he failed to substantiate his allegation that after his arrival in Manila on July 18, 2003, he reported to petitioners' office on July 31, 2003 to seek medical consultation for the discomfort he was experiencing but petitioners ignored him.[8]

He also alleged that on August 4, 2003, more or less sixteen (16) days after arriving in Manila, he underwent a physical and laboratory examination at the Maritime Clinic for International Service, Inc. conducted by petitioners where he was declared to be unfit for sea duty. Again, there is no record of this except his self-serving claim. What is on record is that on September 24, 2003, respondent surfaced demanding payment of disability benefits.

Respondent failed to comply
with the mandatory 3-day rule

More importantly, respondent failed to comply with the mandatory 3-day medical examination deadline provided in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. As earlier stated, it was only on September 24, 2003, or more than two (2) months after his arrival in Manila, that he sought a medical opinion from Dr. Vicaldo who declared him unfit to work as a seaman due to "hypertensive cardiovascular disease, atrial fibrillation and diabetes mellitus II." [9] Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, reads:

Section 20(B), paragraph (3) thereof states:

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. [Emphases and underscoring supplied]

While the rule is not absolute, there is no credible explanation from respondent why he failed to comply with the mandatory rule considering his claim that in July, 2003, he was suffering from chest pain, shortness of breath and fatigue. An award of disability benefit to a seaman in this case, despite non-compliance with strict mandatory requirements of the law, cannot be sustained. The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

Respondent claims that the 3-day mandatory rule is not applicable as it is only for those who were repatriated for medical reasons. This could only mean that he had no medical reason then. In his pleadings, he claimed that

sometime in July 2003, he showed manifestations of a heart disease as he suddenly felt chest pains, shortness of breath and fatigability.[10] He, however, failed to disclose when exactly in July 2003 that he felt those manifestations whether before or after his repatriation on July 18, 2003. If it was before the said date, he should have submitted himself to a medical examination three days after repatriation.

The Court's ruling is not novel. In the past, the Court repeatedly denied the payment of disability benefits to seamen who failed to comply with the mandatory reporting and examination requirement. Lately, in the recent case of *Alex C. Cootauco v. MMS Phil. Maritime Services, Inc.*,[11] it was written:

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.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three working days from arrival for diagnosis and treatment.

Applying the above provision of Section 20(B), paragraph (3), petitioner is required to undergo post-employment medical examination by a company-designated physician within three working days from arrival, except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period would suffice.

In *Maunlad Transport, Inc. v. Manigo, Jr.*, this Court explicitly declared that it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.

The NLRC and the Court of Appeals determined that petitioner did not observe the established procedure as there is no proof at all that he reported to the office of the respondents. We see no reason to depart from their findings. While petitioner remains firm that he reported to the office of the respondents for mandatory reporting, the records are bereft of any proof to fortify his claim. The onus probandi falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence. There is absolutely no evidence on record to prove petitioner's claim that he reported to respondents' office for mandatory reportorial requirement. Petitioner therefore failed to adduce substantial evidence as basis for the grant of relief. [Emphasis and underscoring supplied]

The Court reiterated the same ruling in the case of *Coastal Safeway Marine Services, Inc. vs. Elmer T. Esguerra*,[12] where it was written:

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.

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice

regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC. [Emphases and underscoring supplied]

WHEREFORE, the petition is GRANTED. The September 16, 2009 Decision of the Court of Appeals and its March 3, 2010 Resolution are hereby REVERSED and SET ASIDE, and the October 17, 2005 and January 24, 2006 Resolutions of the National Labor Relations Commission are REINSTATED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 13-25.

[2] Id. at 27.

[3] Magsaysay Maritime Corp. and/or Cruise Ships Catering and Services International N.V. v. National Labor Relations Commission and Rommel B. Cedol, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 372-373.

[4] Carlos N. Nisda v. Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving and Marine Services, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 695.

[5] Alex C. Cootauco v. MMS Phil. Maritime Services, Inc., Ms. Mary C. Maquilan and/or MMS Co. Ltd., G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544-545.

[6] Edgardo M. Panganiban v. Tara Trading Ship Management, Inc. & ShinLine SDN BHD, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 365.

[7] Rollo, p. 130.

[8] Id. at 213.

[9] Id. at 213-214.

[10] Id. at 130.

[11] G.R. No. 184722, March 15, 2010, 615 SCRA 529, 543-544.

[12] G.R. No. 185352, August 10, 2011.

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