

DAMASO R. CASOMO, PETITIONER, VS. CAREER PHILIPPINES SHIPMANAGEMENT, INC. AND/OR COLUMBIA SHIPMANAGEMENT LTD., RESPONDENTS.

G.R. No. 191606. August 01, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

Challenged in this petition for review on certiorari is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 102925 reversing and setting aside the Resolution[2] of the National Labor Relations Commission (NLRC) which, in turn, reversed and set aside the Decision[3] of the Labor Arbiter. The Labor Arbiter ruled against petitioner Damaso R. Casomo (Casomo), dismissing his complaint for permanent total disability benefits, reimbursement of medical and hospital expenses, damages and attorney's fees.

Pursuant to a Philippine Overseas Employment Agency (POBA) approved contract of employment dated 7 October 2005, Casomo was hired by respondent Career Philippines Shipmanagement, Inc. (Career Shipmanagement), for and in behalf of its foreign principal Columbia Shipmanagement, Ltd., as Ableseaman on board the vessel "YM DA NANG," for a period of nine (9) months with a basic monthly salary of US\$495.00. Prior to his employment, Casomo underwent a Pre-Employment Medical Examination (PEME) and was pronounced "Fit to Work" on board a vessel; he departed from the Philippines on 17 November 2005.

Sometime in January 2006, Casomo felt a lump forming on his right face. On 21 March 2006, when the vessel reached Nagoya, Japan, Casomo informed the captain of his condition who then ordered Casomo to undergo a medical check-up. The examining physician diagnosed Casomo to be suffering from "tumor of right lower jaw and secondary cystic infection" and recommended Casomo's disembarkation and repatriation to the Philippines for further medical examination.

In Manila, Dr. Nicomedes G. Cruz (Dr. Cruz), respondent Career Shipmanagement's physician, examined Casomo and ordered the latter to undergo a battery of tests. Results thereof indicated Casomo's condition as a case of Amelohlastoma. In layman's terms, Casomo had a serious case of an impacted wisdom tooth. Thereafter, Casomo went under the knife via a right hemimandibulectomy with mandibular reconstruction at the Medical Center Manila.

Significantly, Dr. Cruz declared Casomo's illness as not work-related. Nonetheless, even after the operation, Casomo was no longer hired by Career Shipmanagement, nor by any other ship company, as seafarer, specifically, an Ableseaman. Thus, Casomo claimed for permanent disability with Career Shipmanagement.

Career Shipmanagement denied Casomo's claim based on Dr. Cruz's finding that Casomo's illness was not work-related.

Not unexpectedly, Casomo filed a complaint before the NLRC for permanent disability benefits, reimbursement of medical and hospital expenses, moral and exemplary damages, attorney's fees and legal interest.

After the exchange of pleadings. Labor Arbiter Napoleon M. Menese dismissed Casomo's complaint for lack of merit. The Labor Arbiter did not find evidence to show that Casomo's Ameloblastoma was in any way connected to his work as an Ableseaman, much less the cause thereof

As previously adverted to, the NLRC reversed the Labor Arbiter and ordered Career Shipmanagement to pay Casomo permanent disability benefits in the amount of US\$60,000.00. The NLRC zeroed in on the Pact that Casomo contracted the illness during his term of employment. More to the point for the NLRC, Casomo was found by Career Shipmanagement's designated physician as "Fit for Sea Service" during the FEME. In all, the NLRC ruled that considering Casomo fell ill during his term of employment, with illnesses not listed in Section 32 of the POEA Standard

Employment Contract being disputably presumed as work-related,[4] the burden of proving that Casomo's Ameloblastoma was not work-related rested with Career Shipmanagement.

In yet another ruling reversal, the Court of Appeals granted the petition for certiorari filed by Career Shipmanagement and found grave abuse of discretion in the NLRC's decision.

The appellate court held that Casomo failed to make a showing that his illness was work-related; Casomo did not establish a causal connection between his Ameloblastoma and his work as an Ableseaman, performing all operations connected with the launching of life-saving equipment and making security inspections of the ship.

Hence, this petition for review on certiorari positing the following issues:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN REVERSING THE DIVISION OF THE NLRC AND IN IGNORING THE OVERWHELMING EVIDENCE THAT SUPPORTS PETITIONER'S ENTITLEMENT TO MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF USD60,000.00.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S DISABILITY BENEFITS SOLELY BECAUSE THE COMPANY-DESIGNATED PHYSICIAN HAS DECLARED HIS ILLNESS AS NOT WORK RELATED.[5]

We deny the petition. Casomo is not entitled to disability benefits since he failed to demonstrate that his illness, Ameloblastoma, was work-related.

Casomo insists that his illness is disputably presumed work-related as specified in Section 20(B)(4) of the POEA Standard Employment Contract. He lays the burden of proving otherwise on Career Shipmanagement. For Casomo, whose reasoning was favored by the NLRC, the fact that he fell ill during his employment coupled with the disputable presumption that his illness was work-related definitively trumps the declaration of Dr. Cruz that Casomo's illness was not work-related. Lastly, Casomo points out that Dr. Cruz's medical certification is self-serving and biased in favor of Career Shipmanagement, and thus, carries no evidentiary weight and value.

We are not persuaded.

To begin with, Casomo's bare allegation, with nary a linkage of his work as Ableseaman to his contraction of Ameloblastoma during his term of employment, hardly constitutes substantial evidence, i.e., such evidence as a reasonable mind might accept as adequate to support a conclusion.[6]

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.[7]

Contrary to the posturing of Casomo, the disputable presumption found in Section 20(B)(4) of the POEA Standard Employment Contract, that illnesses not listed in Section 32 thereof are work-related, did not dispense with the required burden of proof imposed on him as claimant. It remained incumbent upon Casomo to discharge the required quantum of proof of compensability. Awards of compensation cannot rest entirely on bare assertions and presumptions. The claimant must present evidence to prove a positive proposition.[8]

In the POEA Standard Employment Contract, a work-related illness is defined 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." Ameloblastoma is not listed under Section 32-A on Occupational Diseases. On this score, Casomo's claim is without stanchion.

As regards compensability of occupational diseases, Section 32-A of the same Standard Employment Contract lists the conditions before an occupational disease, and the resulting death or disability therefrom, may be compensated:

SEC. 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;

(4)

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

Clearly, it is not enough that a seafarer contracts the illness during his term of employment or such illness renders him or her permanently disabled: The seafarer must demonstrate that his work as such involved risks and within a period of exposure thereto resulted in his contraction of the disease. Moreover, the seafarer should not be guilty of notorious negligence in contracting the disease.

Section 20(B) of the POEA Standard Employment Contract maps out the compensation and benefits for injury or illness, to wit:

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 (320) 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.

Section 20(B), in relation to Section 32-A, covers various situations and requires the concurrence of several conditions before a disease, and the resultant disability of a seafarer, ought to be compensated by the employer. The text of the foregoing sections mandates that the seafarer, in this instance, Casomo, prove his claim of a work-related illness resulting in his permanent disability.

Along the same vein, a disputably presumed work-related illness under the very same POEA Standard Employment Contract must still be proven by the seafarer claiming permanent disability benefits.

In the recent case of *Quizora v. Denholrn Crew Management (Phil.), Inc.*,^[9] we categorically declared, 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.

[T]he 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. (Emphasis supplied)

Magsaysay Maritime Corporation v. National Labor Relations Commission^[10] schools us, thus:

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. (Emphasis supplied)

In the case at bar, Casomo simply asserts that: (1) he contracted his Ameloblastoma during his term of employment, (2) which illness is disputably presumed work-related, and (3) the Ameloblastoma has resulted in his permanent disability. Casomo does not elaborate on the nature of his work as an Ableseaman and his consequent exposure, if any, to certain risks which resulted in, or aggravated, his Ameloblastoma. Even if we were to subscribe to Casomo's arguments, his misplaced reliance that his illness is disputably presumed work-related, does not amply link his first and third assertions and lead us to the conclusion that his Ameloblastoma is compensably work-related.

Indeed, we have held on more than one occasion that to establish whether the illness is work-related, probability-not certainty—is the touchstone.[11] The probability referred to must be founded on facts and reason.

Nowhere in Casomo's petition before us, or even his position paper before the NLRC, does he attempt to demonstrate a causal connection between his work as an Ableseaman and his Ameloblastoma. In the two pleadings, Casomo asseverates:

21. The symptoms of [Casomo's] disease (ameloblastoma) were seen only during the course of the third contract while he was on board the vessel.

22. Dr. Nicomedes Cruz, the company-designated physician, failed to discuss what could have caused the illness. While Dr. Cruz himself admitted the illness is a rare disorder, he merely stated that [Casomo's] illness is not work-related, without showing any proof or studies or the reasons for the said findings.

23. The truth is nobody knows yet what the cause of ameloblastoma is. Hence, it could not be determined in the present case whether it is work-related or not.[12](Emphasis supplied)

x x x x

Before embarking, [petitioner] was in perfect health, x x x [Petitioner] was given a clean bill of health by the doctor when a medical clearance was issued certifying him as "fit, to work[.]" There was never any indication or symptom that he is suffering from such illness. It was only on January 2006 or barely three (3) months from date of departure or a total of almost four (4) years from the time [petitioner] was first employed as seafarer by [respondents that he started feeling the symptoms of Amenoblastoma (sic).

[T]it is very apparent from the physical condition of [petitioner] that the chance for him to go back to his former profession is very remote. The medical treatment must be on continuous basis as he is required to receive maintenance and medications. In addition thereto, his engagement in a strenuous physical activity would certainly endanger his life he having suffered continuous pain at any time of the day. It is even advisable that his place of work must be accessible to medical facilities.[13]

A quick perusal of Section 32 of the POEA Standard Employment Contract, in particular the Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted,[14] and the List of Occupational Diseases,[15] easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the POEA Standard Employment Contract which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the

conditions mentioned in Section 32-A of the POEA Standard Employment Contract. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

Moreover, we note that Casomo's pleadings merely lift general medical summaries from the internet to explain the recurrence and cause of Ameloblastoma:

General Discussion

Ameloblastoma is a rare disorder of the jaw involving abnormal tissue growth. The resulting tumors or cysts are usually not malignant (benign) but the tissue growth may be aggressive in the involved area. On occasion, tissue near the jaws, such as around the sinuses and eye sockets, may become involved as well. The tissues involved are most often those that give rise to the teeth so that ameloblastoma may cause facial distortion. Malignancy is uncommon as are metastases, but they do occur.

Causes

The cause of Ameloblastoma is not understood. It has been suggested that it may be caused by dental irritation during the growth of teeth, the pulling of teeth or in some cases by cavities in the teeth. Other causes may include injury to the mouth or jaw, infections of the teeth or gums, or inflammation of these same areas. Infections by viruses or lack of protein or minerals in the persons diet are also suspected of causing the growth or development of these tumors. In general, however, scientists do not understand the cause of cysts and tumors, nor the reasons why they can become malignant.[16] (Emphasis supplied)

By his own research, Casomo highlights his claim for permanent and disability benefits as a shot in the dark. The probable causes of Ameloblastoma mentioned in Casomo's research make no reference whatsoever to a seafarer's work.

Government Service Insurance System (GSIS) v. Cuntapay[17] iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder:

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 supplied)

Plainly, there is simply no probable causal connection between Casomo's work as Ableseaman and his contraction of Ameloblastoma.

Neither is Casomo's cause bolstered by the medical certificate issued by a certain Dr. Amado San Luis on his current medical condition. The medical certificate was confined to the doctor's finding that Casomo "is not physically and mentally fit to face the rigorous tasks expected of an able sea man." [18]

It is likewise of no moment that prior to his employment, Casomo had been declared "Fit for Sea Service" after undergoing a PEME. As we have previously ruled, a PEME is not exploratory in nature. It is not indicative of a seafarer's complete and whole medical condition which renders the subsequent contraction of illnesses by the seafarer as work-related.

Ultimately, while there is no quarrel that Casomo contracted his illness during his term of employment, and it remains arguable that such illness has led to his permanent disability, he made no showing that the illness is

causally connected to his work as an Ableseaman, which could have lead us to the conclusion that his Ameloblastoma was work-related.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 102925 is AFFIRMED. No costs.

SO ORDERED.

Carpio, (Chairperson), Abad,[*] Villarama, Jr.,[**] and Reyes, JJ., concur.

[*] Per S.O. No. 1278 dated 1 August 2012.

[**] Per S.O. No. 1274 daled 30 July 2012.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Jose L. Sabio, Jr. and Sixto C. Marella, Jr.; concurring, Rollo, pp. 26-35.

[2] Penned by Commissioner Tito F. Genilo with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog, III, concurring. Id. at 60-66.

[3] Penned by Labor Arbiter Napoleon M. Menese. Id. at 57-59-A.

[4] Section 20(B)(4) of the POEA Standard Employment Contract.

[5] Rollo, p. 9.

[6] Section 5, Rule 133 of the RULES OF COURT.

[7] Aya-ay. St. v. Arpaphil Shipping Corp., G.R. No. 155359, 31 January 2006, 481 SCRA 282, 294-295.

[8] Id. at 296.

[9] G.R. No. 185412, 16 November 2011.

[10] G.R. No. 186180, 22 March 2010, 616 SCRA 362, 373-374.

[11] Gubunas, Sr. v. Scammar Maritime Services, Inc., G.R. No. 188637, 15 December 2010, 638 SCRA 770, 780 citing Government Service Insurance System (GSIS) v. Cuntapay, G.R. No. 168862, 30 April 2008, 553 SCRA 520, 530.

[12] Rollo, p. 16.

[13] CA rollo, pp. 109 and 114.

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

HEAD

Traumatic head injuries that result to:

1. Apperture unfilled with bone not over three (3) inches without brain injury.....

Gr. 9

2. Aperture unfilled with bone over three (3) inches without brain injury.....

Gr. 3

3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity.....

Gr. 1

4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities.....

Gr. 6

5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities.....

Gr. 10

6. Severe mental disorder or Severe Complex Cerebral function disturbance or post- traumatic psychoneurosis which require aid and attendance as to render worker permanently unable to perform any work.....

Gr. 1

7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance.....

Gr. 6

8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant.....

Gr. 10

9. Incurable imbecility.....

Gr. 1

FACE

1. Severe disfigurement of the face or head as to make the worker so repulsive as to greatly handicap him in securing or retaining employment, thereby being no permanent functional disorder.....

Gr. 2

2. Moderate facial disfigurement involving partial ablation of the nose with big scars on face or head.....

Gr. 5

3. Partial ablation of the nose or partial avulsion of the scalp.....

Gr.9

4. Complete loss of the power of mastication and speech function.....

Gr. 1

5. Moderate constriction of the jaw resulting in moderate degree of difficulty in chewing and moderate loss of the power or the expression of speech.....

Gr. 6

6. Slight disorder of mastication and speech function due to traumatic injuries to jaw or cheek bone.....

Gr. 12

EYES

1. Blindness or total and permanent loss of vision of both eyes.....

Gr. 1

2. Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye.....

Gr. 5

3. Loss of one eye or total blindness of one eye.....

Gr. 7

4. Fifty percent (50%) loss of vision of one eye.....

Gr. 10

5. Lagophthalmos, one eye.....

Gr. 12

6. Ectropion, one eye.....

Gr. 12

7. Epiphora. one eye.....

Gr. 12

8. Ptosis, one eye.....

Gr. 12

NOTE: (Smeller's Chart -used to grade for near and distant vision)

NOSE AND MOUTH

1. Considerable stricture of the nose (both sides) hindering breathing.....

Gr. 11

2. Loss of the sense of hearing in one ear.....

Gr. 11.

3. Injuries to the tongue (partial amputation or adhesion) or palate-causing defective speech.....

Gr. 10

4. Loss of three (3) teeth restored by prosthesis.....

Gr. 14

EARS

1. For the complete loss of the sense of hearing on both ears.....

Gr. 3

2. Loss of two (2) external ears.....

Gr. 8

3. Complete loss of the sense of hearing in one ear.....

Gr. 11

4. Loss of one external ear.....

Gr. 12

5. Loss of one half (1/2) of an external ear.....

Gr.14

NECK

1. Such injury to the throat as necessitates the wearing of a tracheal tube.....

Gr. 6

2. Loss of speech due to injury to the vocal cord.....

Gr. 9

3. Total stiffness of neck due to fracture or dislocation of the cervical pines.....

Gr. 8

4. Moderate stiffness or two thirds (2/3) loss of motion of the neck.....

Gr. 10

5. Slight stiffness of neck or one third (1/3) loss of motion.....

Gr. 12

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

ABDOMEN

1. Loss of the spleen.....

Gr. 8

2. Loss of one kidney.....

Gr. 7

3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment.....

Gr.1

4. Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea.....

Gr. 7

5. Slight residuals or disorder of the intra-abdomjnal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea.....

Gr. 12

6. Inguinal hernia secondary to trauma or strain.....

Gr. 12

PELVIS

1. Fracture of the pelvic rings as to totally incapacitate worker to work.....

Gr. 1

2. Fracture of the pelvic ring resulting to deformity and lameness.....

Gr. 6

URINARY AND GENERATIVE ORGANS

1. Total loss of penis.....

Gr. 7

2. Total loss of both testicles.....

Gr. 7

3. Total loss of one testicle.....

Gr. 11

4. Scars on the penis or destruction of the parts of the cavernous body or urethra interfering with erection or markedly affecting coitus.....

Gr. 9

5. Loss of one breast.....

Gr. 11

6. Prolapse of the uterus.....

Gr. 6

7. Great difficulty in urinating.....

Gr. 13

8. Incontinence of urine.....

Gr. 10

THUMBS AND FINGERS

1. Total loss of one thumb including metacarpal bone.....

Gr. 9

2. Total loss of one thumb.....

Gr. 10

3. Total loss on one index finger including metacarpal bone.....

Gr. 10

4. Total loss of one index finger.....

Gr. 11

5. Total loss of one middle finger including metacarpal bone.....

Gr. 11

6. Total loss of one middle finger.....

Gr. 12

7. Total loss of one ring finger including metacarpal bone.....

Gr. 12

8. Total loss of one ring finger.....

Gr. 13

9. Total loss of one small finger including metacarpal bone.....

Gr. 13

10. Total loss of one small finger.....

Gr. 14

11. Loss of two (2) or more fingers: Compensation for the loss or loss of use of two (2) or more fingers or one (i) or more phalanges of two or more digits of a hand must be proportioned to the loss of the hand occasioned thereby but shall not exceed the compensation for the loss of a hand:

a. Loss of five (5) fingers of one hand.....

Gr. 6

b. Loss of thumb, index fingers and any of 2 or more fingers of the same hand.....

Gr. 6

c. Loss of the thumb, index, finger and any one of the remaining fingers of the same hand.....

Gr. 7

d. Loss of thumb and index finger.....

Gr. 8

e. Loss of three (3) fingers of one hand not including thumb and index finger.....

Gr. 9

.f. Loss of the index finger and any one of the other fingers of the same hand excluding thumb.....

Gr. 9

g. Loss of two (2) digits of one hand not including thumb and index finger.....

Gr. 10

12. Loss of ten (10) fingers of both hands.....

Gr. 3

HANDS

1. Total loss of use of both hands or amputation of both hands at wrist joints or above.....

Gr. 1

2. Amputation of a hand at carpo-metacarpal joints.....

Gr. 5

3. Amputation between wrist and elbow joint.....

Gr. 5

4. Loss of grasping power for small objects between the fold of the finger of one hand.....

Gr. 10

5. Loss of grasping power for large objects between fingers and palm of one hand.....

Gr. 10

6. Loss of opposition between the thumb and tips of the fingers of one hand.....

Gr. 9

7. Ankyclosed wrist in normal position.....

Gr. 10

8. Ankyclosed wrist in position one third (1/3) flexed or half extended and/or severe limited action of a wrist.....

Gr. 11

SHOULDER AND ARM

1. Inability to turn forearm (forearm in normal position-supination).....

Gr. 11

2. Inability to turn forearm (forearm in abnormal position-pronation).....

Gr. 10

3. Disturbance of the normal carrying angle or weakness of an arm or a forearm due to deformity of moderate atrophy of muscles.....

Gr. 11

4. Stiff elbow at full flexion or extension (one side).....

Gr. 7

5. Stiff elbow at right angle flexion.....

Gr. 8

6. Flail elbow joint.....

Gr. 9

7. Pseudoarthrosis of the humerus with musculospiral or radial paralysis.....

Gr. 6

8. Ankylosis of one (1) shoulder, the shoulder blade_remaining mobile.....

Gr. 9

9. Ankylosis of one shoulder, the shoulder blade remaining rigid

Gr. 8

10. Unreduced dislocation of one (1) shoulder.....

Gr. 8

11. Ruptured biceps or pseudoarthrosis of the humerus, close (one side).....

Gr.11

12. Inability to raise arm more than halfway from horizontal to perpendicular.....

Gr.11

13. Ankylosis of the shoulder joint not permitting arm to be raised above a level with a shoulder and/or
irreducible fracture or faulty union
collarbone.....

Gr. 10

14. Total paralysis of both upper extremities.....

Gr. 1

15. Total paralysis of one upper extremity.....

Gr. 3

16. Amputation of one (I) upper extremity at or above the elbow.....

Gr. 4

17. Scar the size of the palm in one extremity.....

Gr. 14

LOWER EXTREMITIES

1. Loss of a big toe.....

Gr. 12

2. Loss of a toe other than the big one.....

Gr. 14

3. Loss of ten (10) digits of both feet.....

Gr. 5

4. Loss of a great toe of one foot -i one toe.....

Gr. 10

5. Loss of two toes not including great toe or toe next to it.....

Gr. 12

6. Loss of three (3) toes excluding great toe of a foot.....

Gr. 10

7. Loss of four (4) excluding great toe of a foot.....

Gr. 9

8. Loss of great toe and two (2) other toes of the same foot.....

Gr. 9

9. Loss of five digits of a foot.....

Gr. 8

10. Loss of both feet at ankle joint or above.....

Gr. 1

11. Loss of one foot at ankle joint or above.....

Gr. 6

12. Depression of the arch of a foot resulting in weak foot.....

Gr. 12

13. Loss of one half (1/2) metatarsus of one (1) foot.....

Gr. 8

14. Loss of whole metatarsus or forepart of foot.....

Gr. 7

15. Tearing of achilles tendon resulting in the impairment of active flexion and extension of a foot.....

Gr. 12

16. Malleolar fracture with displacement of the foot inward or outward.....

Gr. 10

17. Complete immobility of an ankle joint in abnormal position.....

Gr. 10

18. Complete immobility of an ankle joint in normal position.....

Gr.11

19. Total loss of a leg or amputation at or above the knee.....

Gr. 3

20. Stretching leg of the ligaments of a knee resulting in instability of the joint.....

Gr. 10

21. Ankylosis of a knee in genuvalgum of varum.....

Gr. 10

22. Pseudoarthrosis of a knee cap.....

Gr. 10

23. Complete immobility of a knee joint in full extension.....

Gr. 10

24. Complete immobility of a knee joint in strong flexion.....

Gr. 7

25. Complete immobility of a hip joint in flexion of the thigh.....

Gr. 5

26. Complete immobility of a hip joint in full extension of the thigh.....

Gr. 9

27. Slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line.....

Gr. 13

28. Shortening of a lower extremity from one to three centimeters with either joint lesion or disturbance of weight-bearing joint.....

Gr. 13

29. Shortening of 3 to 6 cm. with slight atrophy of calf or thigh muscles.....

Gr. 12

30. Shortening of 3 to 6 cm. with either joint lesion or disturbance of weight-bearing joint.....

Gr.11

31. Irregular union of fracture with joint stiffness and with shortening of 6 to 9 cm. producing permanent lameness.

Gr. 9

32. irregular union of fracture in a thigh or leg with shortening of 6 to 9 cms.....

Gr. 10

33. Failure of fracture of both hips to unite.....

Gr. 1

34. Failure of fracture of a hip to unite.....

Gr. 3

35. Paralysis of both lower extremities.....

Gr. 1

36. Paralysis of one lower extremity.....

Gr. 3

37. Scar the size of a palm or larger left on an extremity.....

Gr. 14

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

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade Impediment

1. US\$50,000 x 120.00%
2. US\$50,000 x 88.81%
3. US\$50,000 x 78.36%
4. US\$50,000 x 68.66%
5. US\$50,000 x 58.96%
6. US\$50,000 x 50.00%
7. US\$50,000 x 41.80%
8. US\$50,000 x 33.59%
9. US\$50,000 x 26.12%
10. US\$50,000 x 20.15%
11. US\$50,000 x 14.93%
12. US\$50,000 x 10.45%
13. US\$50,000 x 6.72%
14. US\$50,000 x 3.74%

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

The following diseases are considered as occupational when contracted under working conditions involving the risks described therein:

OCCUPATIONAL DISEASES

NATURE OF EMPLOYMENT

1. Cancer of the epithelial lining of the bladder. (Papilloma of the bladder)

Work involving exposure to alphanaphthylamine, beta- naphthylamine or benzidine or any part of the salts; and auramine or magenta.

2. Cancer, epitheliomatous or ulceration of the skin or of the cornea! surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product.

The use or handling of, exposure to tar, pitch, bitumen, mineral oil (including paraffin) soot or any compound product or residue of any of these substances.

3. Deafness

Any industrial operation having excessive noise particularly in the higher frequencies.

4. Decompression sickness

Any process carried on in compressed or rarefied air.

(a) Caissons disease

(b) Aeroembolism

Any process carried on in rarefied air.

5. Dermatitis due to irritants and sensitizers

The use or handling of chemical agents which are skin irritants and sensitizers.

6. Infection (Brucellosis)

Any occupation involving the handling of contaminated food and drink particularly milk, butler and cheese of infected goats and cows.

7. ionizing radiation disease, inflammation, ulceration or malignant disease of skin or subcutaneous tissues of the bones or leukemia, or anemia of the aplastic type due to X-rays, ionizing particle, radium or radioactive substances.

Exposure to X-rays, ionizing particles of radium or other radioactive substance or other forms of radiant energy.

8. Poisoning and its sequelae caused by;

All work involving exposure to the risk concerned.

(a) Ammonia

(b) Arsenic or its toxic compound

All work involving exposure to the risk concerned.

(c) Benzene or its toxic homologues; nitro and aminotoxic derivatives of benzene or its homologue

All work involving exposure to the risk concerned.

(d) Beryllium or its toxic compounds

All work involving exposure to the risk concerned.

(e) Brass, zinc or nickel

All work involving exposure to the risk concerned.

(f) Carbon Dioxide

All work involving exposure to the risk concerned.

(g) Carbon bisulfide

All work involving exposure to the risk concerned.

(h) Carbon monoxide

All work involving exposure to the risk concerned.

(i) Chlorine

All work involving exposure to the risk concerned.

(j) Chrome of its toxic compounds

All work involving exposure to the risk concerned.

(k) Dinitrophenol or its homologue

All work involving exposure to the risk concerned.

(l) Halogen derivatives of hydrocarbon of the aliphatic series

All work involving exposure to the risk concerned.

(m) lead or its toxic compounds

All work involving exposure to the risk concerned.

(n) Manganese or its toxic compounds

All work involving exposure to the risk concerned.

(o) Mercury or its toxic compounds

All work involving exposure to the risk concerned.

(p) Nitrous fumes

All work involving exposure to the risk concerned.

(q) Phosgene All work involving exposure to the risk concerned,

All work involving exposure to the risk concerned.

(r) Phosphorous or its toxic compounds

All work involving exposure to the risk concerned.

(s) Sulfur dioxide

All work involving exposure to the risk concerned.

9. Diseases caused by abnormalities in temperature and humidity.

All work involving exposure to the risk concerned to excessive heat or cold.

(a) Heat stroke/cramps/exhaustion

All work involving exposure to the risk concerned.

(b) Chilblain/frostbite/freezing

All work involving exposure to the risk concerned.

(c) Immersion foot/general hypothermia

All work involving exposure to the risk concerned.

10. Vascular disturbance in the upper extremities due to continuous vibration from pneumatic tools or power drills, riveting machines or hammers.

Any occupation causing repeated motions, vibrations and pressure of upper extremities.

11. Cardio-Vascular Diseases. Any of following conditions must be met:

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

12. Cerebro- Vascular Accidents. All of the following conditions must be met;

(a) There must be a history, which should be proved, or trauma at work (to the head specially) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry.

(b) There must be a direct connection between the trauma or exertion in the course of employment and the worker's collapse.

(c) If the trauma or exertion then and there caused a brain hemorrhage, the injury may be considered as arising from work.

13. Pneumonia. All of the following conditions must be met:

a. There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.

b. There must be direct connection between the offending agent or event and the seafarer's illness.

c. The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.

d. The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration; and (4) physical signs of consolidation, with fine rales

14. Hernia. All of the following conditions must be met:

a. The hernia should be of recent origin.

b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues.

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment.

d. A protrusion of mass should appear in the area immediately following the alleged strain.

15. Bronchial Asthma. All of the following conditions must be met.

- a. There is no evidence of history of asthma before employment.
- b. The allergen is present in the working conditions.
- c. Sensitivity test to allergens in the working environment should yield positive results;
- d. A provocative test should show positive results.

16. Osteoarthritis

17. Peptic Ulcer.

Any occupation involving prolonged emotional or physical stress, as among professional people, transport workers and the like.

18. Pulmonary Tuberculosis.

In addition to working conditions already listed under Philippine Decree No. 626, as amended, any occupation involving constant exposure to harmful substances in the working environment, in the form of gases, fumes, vapors and dust, as in chemical and textile factories; overwork or fatigue; and exposure to rapid variations in temperature, high degree of humidity, and bad weather conditions.

19. Viral Hepatitis.

In addition to working conditions already listed under Philippine Decree No. 626, as amended, any occupation involving exposure to a source of infection through ingestion of water, milk, or other foods contaminated with hepatitis virus; Provided that the physician determining the causal relationship between the employment and the illness should be able to indicate whether the disease of the afflicted worker manifested itself while he was so employed, knowing the incubation period thereof.

20. Essential Hypertension.

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.

21. Asbestosis. All of the following conditions must be met:

- a. The seafarer must have been exposed to Asbestos dust in the work place, as duly certified to by the employer, or by a medical institution, or competent medical practitioner acceptable to or accredited by the System;
- b. The chest X-ray report of the employee must show findings of asbestos or asbestos-related disease, e.g. pleural plaques, pleural thickening, effusion, neoplasm and interstitial fibrosis; and
- c. In case of ailment is discovered after the seafarer's retirement/separation from the company, the claim must be filed with the System within three (3) years from discovery.

[15] Rollo, p. 16.

[16] Supra note 11 at 530.

[17] CA rollo, p- 132.

[18] NYK-FIL Ship Management, Inc. v. National Labor Relations Commission, G.R. No. 161104, 27 September 2006, 503 SCRA 595, 609.

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