

BENEDICT N. ROMANA, PETITIONER, V. MAGSAYSAY MARITIME CORPORATION / EDUARDO U. MANESE AND/OR PRINCESS CRUISE LINE, LTD., RESPONDENTS.

G.R. No. 192442. August 09, 2017

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] are the Decision[2] dated February 11, 2010 and the Resolution[3] dated May 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108036, which affirmed the Decision[4] dated March 28, 2008 and the Resolution[5] dated November 28, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 049079-06 / NLRC NCR OFW (M) 04-12-03296-00, dismissing petitioner Benedict N. Romana's (petitioner) claim for disability benefits.

The Facts

Petitioner was employed[6] by respondents Magsaysay Maritime Corporation, Eduardo Manese and/or Princess Cruise Lines, Ltd. (respondents) as a Mechanical Fitter and boarded the vessel M/V Golden Princess[7] on August 7, 2003.[8] He claimed that while he and fellow shipmates Alexander Mapa and Rogelio Acda were walking along the ship alley on April 20, 2004, the metal ceiling fell and wounded his head.[9] A few days thereafter, he experienced persisting headache and blurring of vision and consulted the ship's doctor who prescribed him medicines.[10] As his condition did not improve, he was referred to a specialist in Barbados, West Indies, and was found to have a tumor (or hemangioblastoma) at the left side of his brain, for which he underwent left posterior fossa craniectomy.[11]

He was repatriated on May 23, 2004 and the company-designated physician, in a medical report[12] dated May 24, 2004, issued a finding that petitioner's illness is not work-related[13] given that the same is an "abnormal growth of tissues in the brain's blood vessels." [14] He was later cleared and discharged on May 27, 2004.[15] No further consultations were made. On October 12, 2004, petitioner consulted an independent physician, who on the other hand, declared his illness to be work-related and gave him a Grade 1 impediment after finding him unfit to resume work as a seaman and incapable of landing a gainful employment because of his medical background.[16] As a result, petitioner filed a complaint,[17] seeking payment of his disability benefits, illness allowance, reimbursement of medical expenses, damages, and attorney's fees,[18] docketed as NLRC NCR OFW Case No. (M) 04-12-03296-00.

For their part, respondents denied petitioner's claim, contending that brain tumor is not listed as an occupational disease under Section 32-A of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (2000 POEA-SEC), and that the company-designated physician declared said illness to be not work-related, hence, not compensable.[19]

The Labor Arbiter's Ruling

In a Decision[20] dated March 30, 2006, the Labor Arbiter (LA) dismissed the complaint, finding that petitioner failed to establish that his illness is work-related.[21] In so ruling, the LA gave more credence to the findings of the company-designated physician that his employment did not increase the risk of contracting his illness, nor did his working conditions contribute to his illness.[22]

Thus, petitioner appealed[23] the LA ruling, contending that Section 20 (B) (4)[24] of the 2000 POEA-SEC expressly provides that his illness shall be disputably presumed to be work-related, and that it is compensable since the nature of his work constantly exposed him to harmful chemicals, extreme changes of temperature in the engine room, as well as to harsh sea weather conditions.[25] He likewise maintained that his injury on the head after having been hit by a falling metal ceiling on board the vessel may have contributed to his brain tumor.[26]

The NLRC Ruling

In a Decision[27] dated March 28, 2008, the NLRC affirmed the LA ruling, holding that there was no evidence to support petitioner's claim that the nature of his work exposed him to risks of contracting a brain tumor.[28]

Petitioner moved for reconsideration,[29] but the same was denied in a Resolution[30] dated November 28, 2008. Hence, petitioner elevated his case to the CA via a petition for certiorari.[31]

The CA Ruling

In a Decision[32] dated February 11, 2010, the CA dismissed the certiorari petition, finding no grave abuse of discretion on the part of the NLRC. It debunked petitioner's claims that he was hit on the head by a falling metal while on board the vessel, and that he was exposed to different chemicals that aggravated his condition, for lack of substantiation.[33] The CA likewise did not give credence to the independent physician's finding that petitioner's illness is work-related, noting that said physician is a specialist in internal medicine and not in diseases of the brain.[34] Besides, petitioner failed to observe the conflict resolution procedure on the appointment of a third doctor as provided under the 2000 POEA-SEC.[35]

Aggrieved, petitioner filed a motion for reconsideration,[36] which was, however, denied in a Resolution[37] dated May 27, 2010; hence this petition.

The Issue Before the Court

The main issue in this case is whether or not petitioner is entitled to disability benefits pursuant to the 2000 POEA-SEC.

The Court's Ruling

The petition is denied.

The Court affirms the CA's ruling that the NLRC did not gravely abuse its discretion as it, in fact, correctly dismissed petitioner's claim for disability benefits. Nonetheless, the Court finds it opportune to elucidate on certain principles relevant to the matter of seafarers' compensation.

Under the 2000 POEA-SEC, "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" is deemed to be a "work-related illness." [38] On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not

translate to an absolute exclusion from disability benefits.[39] Given the legal presumption in favor of the seafarer, he may rely on and invoke such legal presumption to establish a fact in issue. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the prima facie case created, thereby which, if no contrary proof is offered, will prevail." [40]

Thus, in *Racelis v. United Philippine Lines, Inc.*, [41] and *David v. OSG Shipmanagement Manila, Inc.*, [42] the Court held that the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion." [43]

Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. It does not cover and extend to compensability. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:

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:

- The seafarer's work must involve the risks described herein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer. (Emphasis and underscoring supplied)

As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met.

Thus, in *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, [44] the Court ruled that while work-relatedness is indeed presumed, "the legal presumption in Section 20 (B) (4) of the [2000] POEA-SEC should be read together with the requirements specified by Section 32-A of the same contract." [45]

Similarly, in *Licayan v. Seacrest Maritime Management, Inc.*, [46] it was explicated that the disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in Section 32-A to be also work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish its compensability. [47] The proof of work conditions referred thereto effectively equates with the conditions for compensability imposed under Section 32-A of the 2000 POEA-SEC.

In *Jebsen Maritime, Inc. v. Ravena*, [48] it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions under Section 32-A of the 2000 POEA-SEC in order for the disputably presumed disease resulting in disability to be compensable. [49]

To note, while Section 32-A of the 2000 POEA-SEC refers to conditions for compensability of an occupational disease and the resulting disability or death, it should be pointed out that the conditions stated therein should also apply to non-listed illnesses given that: (a) the legal presumption under Section 20 (B) (4) accorded to the latter is limited only to "work-relatedness"; and (b) for its compensability, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must be shown.[50]

The absurdity of not requiring the seafarer to prove compliance with compensability for non-listed illnesses, when proof of compliance is required for listed illnesses, was pointed out by the Court in *Casomo v. Career Philippines Shipmanagement, Inc.*,[51] to wit:

A quick perusal of Section 32 of the [2000 POEA-SEC], in particular the Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted, and the List of Occupational Diseases, 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 [2000 POEA-SEC] 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 [2000 POEA-SEC]. 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.

x x x x

Government Service Insurance System (GSIS) v. Cuntapay [576 Phil. 482, 492 (2008)] 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.[52] (Emphasis supplied)

Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

At this juncture, it is significant to point out that the delineation between work-relatedness and compensability in relation to the legal presumption under Section 20 (B) (4) has been often overlooked in our jurisprudence. This gave rise to the confusion that despite the presumption of work-relatedness already accorded by law, certain cases confound that the seafarer still has the burden of proof to show that his illness, as well as the resulting disability is work-related.

Among these cases is *Quizora v. Denholm Crew Management (Phils.), Inc.*,[53] wherein the Court failed to discern that the presumption of work-relatedness did not extend or equate to presumption of compensability, and concomitantly, that the burden of proof required from the seafarer was to establish its compensability not the work-relatedness of the illness:

At any rate, granting that the provision 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 contract. He cannot simply argue that the burden of proof belongs to the respondent company.[54] (Emphasis and underscoring supplied)

Later, in *Magsaysay Maritime Services v. Laurel*,^[55] Section 20 (B) (4) (which pertains to a presumption of work-relatedness) was mischaracterized as a presumption of compensability which stands absent contrary proof:

Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work related and compensable. Their posture does not persuade the Court.

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20(B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this contract are disputably presumed work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[56] (Emphasis and underscoring supplied)

Similarly, in *Dohle-Philman Manning Agency, Inc. v. Gazzingan*,^[57] a "presumption of compensability" was declared for illnesses not listed as an occupational disease:

More importantly, the 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[58] (Emphasis supplied)

To address this apparent confusion, the Court thus clarifies that there lies a technical demarcation between work-relatedness and compensability relative to how these concepts operate in the realm of disability compensation. As discussed, work-relatedness of an illness is presumed; hence, the seafarer does not bear the initial burden of proving the same. Rather, it is the employer who bears the burden of disputing this presumption. If the employer successfully proves that the illness suffered by the seafarer was contracted outside of his work (meaning, the illness is pre-existing), or that although the illness is pre-existing, none of the conditions of his work affected the risk of contracting or aggravating such illness, then there is no need to go into the matter of whether or not said illness is compensable. As the name itself implies, work-relatedness means that the seafarer's illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor, albeit the same is not listed as an occupational disease.

The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32 (A) of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim.

Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer:

On the one hand, when an employer attempts to discharge the burden of disputing the presumption of work-relatedness (i.e., by either claiming that the illness is pre-existing or, even if pre-existing, that the risk of

contracting or aggravating the same has nothing to do with his work), the burden of evidence now shifts to the seafarer to prove otherwise (i.e., that the illness was not pre-existing, or even if pre-existing, that his work affected the risk of contracting or aggravating the illness). In so doing, the seafarer effectively discharges his own burden of proving compliance with the first three (3) conditions of compensability under Section 32-A of the 2000 POEA-SEC, i.e., that (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; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it. Thus, when the presumption of work-relatedness is contested by the employer, the factors which the seafarer needs to prove to rebut the employer's contestation would necessarily overlap with some of the conditions which the seafarer needs to prove to establish the compensability of his illness and the resulting disability. In this regard, the seafarer, therefore, addresses the refutation of the employer against the work-relatedness of his illness and, at the same time, discharges his burden of proving compliance with certain conditions of compensability.

On the other hand, when an employer does not attempt to discharge the burden of disputing the presumption of work-relatedness, the seafarer must still discharge his own burden of proving compliance with the conditions of compensability, which does not only include the three (3) conditions above-mentioned, but also, the distinct fourth condition, i.e., that there was no notorious negligence on the part of the seafarer. Thereafter, the burden of evidence shifts to the employer to now disprove the veracity of the information presented by the seafarer. The employer may also raise any other affirmative defense which may preclude compensation, such as concealment under Section 20 (E)[59] of the 2000 POEA-SEC or failure to comply with the third-doctor referral provision under Section 20 (B) (3)[60] of the same Contract.

Subsequently, if the work-relatedness of the seafarer's illness is not successfully disputed by the employer, and the seafarer is then able to establish compliance with the conditions of compensability, the matter now shifts to a determination of the nature and, in turn, the amount of disability benefits to be paid to the seafarer.

In this case, petitioner's illness, hemangioblastoma or brain tumor, is a benign tumor, slow-growing and well-defined. Medical studies show that brain tumors arise from cells in the linings of blood vessels. The most common symptoms include headache, nausea and vomiting, gait disturbances, and poor coordination of the limbs.[61] Its exact cause is unknown and no risk factor accounting for the majority of brain tumors has been identified. However, exposure to ionizing radiation increases the risk of developing brain tumor.[62]

As records show, the company-designated physician, after due assessment of petitioner's condition, found that his illness was caused by an abnormal growth of tissue in the brain's blood vessels (brain tumor) and therefore not work-related. To refute the same, petitioner argued that he accidentally injured his head when a metal ceiling fell on his head that caused lesion and bleeding.[63] However, as correctly pointed out by the CA, no evidence was presented to substantiate the said incident.[64]

For another, petitioner asserted that the nature of his work may have contributed to his illness having been previously employed on board the same vessel under two (2) contracts, and that as a fitter, he was constantly exposed to inhalation of and direct contact to harmful chemicals, formaldehyde, hydrocarbons, fumes, and other deleterious emissions, changes of temperature of extreme hot and freezing colds at the engine room and deck areas and as the vessel crossed ocean boundaries.[65] However, there is no showing that the foregoing work conditions increased the risk of contracting his illness. While petitioner pointed out that brain tumors are linked to a genetic syndrome called Von Hippel-Lindau disease (the risk factors of which include radiation or chemical exposure),[66] and in such regard, had been recommended by the Neurosurgeon specialist to undergo screening for said illness,[67] petitioner failed to establish that he underwent such screening. It is therefore speculative to conclude that his exposure to "benzene, formaldehyde, hydrocarbons, chemicals, crude oil, gasoline, lubricants

and other harmful cleaning solutions"[68] may have caused, aggravated, or contributed to his brain tumor. Probability, not the ultimate degree of certainty, is the test of proof in disability compensation proceedings. Nevertheless, probability must be reasonable; hence it should, at least, be anchored on credible information. A mere possibility will not suffice, and a claim will fail if there is only a possibility that the employment caused the disease.[69]

In fine, petitioner's claim for disability benefits should be denied, considering that respondents were able to successfully debunk the presumption of work-relatedness and concomitantly, petitioner failed to prove by substantial evidence his compliance with the conditions for compensability set forth under Section 32-A of the 2000 POEA-SEC.

WHEREFORE, the petition is DENIED. The Decision dated February 11, 2010 and the Resolution dated May 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108036 are hereby AFFIRMED.

SO ORDERED

Leonardo-De Castro, Del Castillo, and Caguioa, JJ., concur.
Sereno, C.J., see concurring and dissenting opinion.

[1] Rollo, pp. 9-38.

[2] Id. at 246-258. Penned by Associate Justice Ramon R. Garcia with Associate Justices Rosalinda Asuncion-Vicente and Rodil V. Zalameda concurring.

[3] Id. at 273-274.

[4] Id. at 158-164. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[5] Id. at 172-173.

[6] See Contract of Employment dated July 8, 2003; id. at 41.

[7] "Golden Princes (NAV)" in the Contract of Employment; id.

[8] See id. at 136-137.

[9] Id. at 137.

[10] Id.

[11] See id. at 137-138. See also id. at 47-49.

[12] Not attached to the rollo.

[13] Rollo, p. 159.

[14] See id. at 148.

[15] See id. at 52.

[16] See id. at 54-55.

[17] Id. at 56-57.

[18] Id.

[19] Id. at 75.

[20] Id. at 136-144. Penned by LA Fedriel S. Panganiban.

[21] Id. at 144.

[22] Id. at 143.

[23] See Memorandum of Appeal dated May 2, 2006; id. at 145-156.

[24] SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

x x x x

4. Those illnesses not listed in Section 32 of this contract are disputably presumed as work related. (Emphasis supplied)

[25] Rollo, pp. 150-151.

[26] Id. at 151-152.

[27] Id. at 158-164.

[28] Id. at 161-162.

[29] See motion for reconsideration dated May 22, 2008; id at 165-171.

[30] Id. at 172-173.

[31] Dated March 27, 2009. Id. at 174-194.

[32] Id. at 246-258.

[33] Id. at 256.

[34] Id. at 257.

[35] See id. at 256-257.

[36] Dated March 4, 2010. Id. at 259-271.

[37] Id. at 273-274.

[38] See Item 12, Definition of Terms, 2000 POEA-SEC.

[39] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014).

[40] *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015, 767 SCRA 657, 669-670; emphasis supplied.

[41] G.R. No. 198408, November 12, 2014, 740 SCRA 122, 133.

[42] 695 Phil. 906, 921 (2012).

[43] See Section 5, Rule 133 of the Rules of Court.

[44] 738 Phil. 871 (2014).

[45] *Id.* at 888, citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010); emphasis and underscoring supplied

[46] G.R. No. 213679, November 25, 2015, 775 SCRA 586.

[47] *Id.* at 597.

[48] *Supra* note 39.

[49] See *id.* at 391-392.

[50] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 308-311.

[51] 692 Phil. 326 (2012).

[52] *Id.* at 339-350, citations omitted.

[53] 676 Phil. 313 (2011).

[54] *Id.* at 327.

[55] 707 Phil. 210 (2013).

[56] *Id.* at 227-228.

[57] G.R. No. 199568, June 17, 2015, 759 SCRA 209.

[58] *Id.* at 226.

[59] E.

A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

[60] B. Compensation and Benefits for Injury and 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 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. 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.

[61] Hemangioma, 2014, available at < <http://www.abta.org/brain-tumor-information/types-of-tumors/hemangioma.html> > (visited August 1, 2017).

[62] About Brain Tumors: A Primer for Patients and Caregivers, 2015, available at < <http://www.abta.org/secure/about-brain-tumors-a-primer.pdf> > (visited January 25, 2017).

[63] Rollo, pp. 59-60.

[64] See id. at 256.

[65] See id. at 21-24.

[66] See id. at 21-22.

[67] See id. at 49.

[68] Id. at 23.

[69] See *Status Maritime Corporation v. Delalamon*, G.R. No. 198097, July 30, 2014, 731 SCRA 390, 410.

CONCURRING AND DISSENTING OPINION

SERENO, CJ:

I concur with the majority that petitioner is not entitled to disability benefits for failing to establish the four requisites of compensability under Section 32-A of the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-going Ships (POEA-SEC). Notably, the initial theory of petitioner was that his illness was caused by an accident while he was on board, when a piece of metal ceiling fell and hit his head.[1] In his appeal before the National Labor Relations Commission (NLRC), he modified his theory by arguing anew that his brain tumor was probably aggravated by his constant exposure to different chemicals and dust particles.[2] He has not, however, supplied any proof of the accident, much less the details of his supposed exposure to carcinogens and other harmful chemicals.

We would be hard put to conclude that the brain tumor of petitioner was caused or aggravated by his work on the basis of his bare declaration that his duties as mechanical fitter constantly exposed him to carcinogens and other harmful chemicals. Mere allegations do not constitute evidence.[3]

I cannot agree, though, with the approach employed by the ponencia and the subsequent clarification that the majority now proposes with respect to the rulings in *Quizora v. Denholm Crew Management (Phils.), Inc.*, [4] *Magsaysay Maritime Services v. Laurel*, [5] and *Dohle-Philman Manning Agency, Inc. v. Gazzingan*. [6]

My misgivings stem from the established rule in compensation proceedings that whoever claims the benefits provided by law should prove the entitlement by substantial evidence. Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract.[7]

Besides, the proffered technical demarcation between work-relatedness and compensability diverges from the clear provisions of the 2000 POEA-SEC, Section 20(B) of which 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:

x x x x

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed, as work-related.[8]

Applying the above provisions, we ruled in a number of cases[9] that for an illness to be compensable under the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must have been work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

On the issue of whether or not the illness is work-related, *Estate of Ortega v. Court of Appeals*[10] is instructive:

Under the Definition of Terms found in the Standard 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". An illness not otherwise listed in Section 32-A is disputably presumed work-related. This presumption works in favor of petitioner, because it then becomes incumbent upon respondents to dispute or overturn this presumption.

Lung cancer is not one of the occupational diseases listed in the Standard Contract. In fact, the only types of cancer on the list are "cancer of the epithelial lining of the bladder (papilloma of the bladder), and "cancer, epitheliomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product." At most, there is only a disputable presumption that lung cancer is work-related. In determining whether an illness is indeed work-related, we will still use the requisites laid down by Section 32-A of the Standard Contract, to wit:

- The seafarer's work must involve the risks described herein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer.[11]

In *Jebesen Maritime, Inc. v. Ravena*,[12] we explained the interplay between the two requisites of compensability and the disputable presumption of work-relatedness under Section 20 (B)(4) as follows:

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.

Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting illness or injury which he may have suffered during the term of his employment contract.

This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable

diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation aid/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.

x x x x

The LA and the CA may have correctly afforded Ravena the benefit of the legal presumption of work-relatedness. The legal correctness of the CA's appreciation of Ravena's claim, however, ends here for as we pointed out above, Section 20-B (4) affords only a disputable presumption that should be read together with the conditions specified by Section 32-A of the POEA-SEC. Under Section 32-A, for the disputably-presumed disease resulting in disability to be compensable, all of the following conditions must be satisfied:

- The seafarer's work must involve the risks describe therein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such factors necessary to contract it; and
- There was no notorious negligence on the part of the seafarer.

Ravena failed to prove the work-relatedness of his ampullary cancer as he failed to satisfy these conditions.[13]

In the recent case *Madridejos v. NYK-FIL Ship Management*, [14] we applied a similar framework of analysis. In that case, the illness sought to be compensated was a sebaceous cyst, which was not listed as an occupational disease under Section 32 of the 2000 POEA-SEC. While we conceded that the disputable presumption of work-relatedness under Section 20(B)(4) worked in favor of the seafarer, his claim had to be denied for failure to establish causality. We ruled thus:

Even assuming that Madridejos was medically repatriated, he still cannot claim for disability benefits since his sebaceous cyst was not work-related.

x x x x

Madridejos was diagnosed with sebaceous cyst to the right of his umbilicus during the effectivity of his contract as evinced by the findings of Dr. Byrne. Conformably, Labor Arbiter Demaisip affirmed that Madridejos' illness was acquired during the term of his employment contract. Disputed, however, is whether Madridejos' sebaceous cyst was work-related.

x x x x

Madridejos insists that his sebaceous cyst was work-related and compensable since the risk of acquiring it increased due to his working conditions. NYK-FIL opposes, claiming that Madridejos' cyst was not attributable to the nature of his job. It asserts that Madridejos failed to show "even a single realistic connection" between his illness and his employment. NYK-FIL says that Madridejos never met any accident and there was no medical or accident report to prove its occurrence.

A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A with the conditions set therein satisfied."

Section 32-A provides:

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:

- The seafarer's work must involve the risks described herein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer.

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

A sebaceous cyst is not included under Section 32 or 32-A of the 2000 Philippine Overseas Employment Agency Standard Employment Contract. However, the guidelines expressly provide that those illnesses not listed in Section 32 "are disputably presumed as work[-]related."

Similarly, for an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer." It is enough that there is "a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."

The disputable presumption implies "that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits." Similarly, "the disputable presumption does not signify an automatic grant of compensation and/or benefits claim." There is still a need for the claimant to establish, through substantial evidence, that his illness is work-related.[15]

Section 32-A, therefore, sets the parameters of causality or reasonable linkage between the injury or illness suffered and the work conditions of the claimant. Accordingly, case law provides that the legal presumption of work-relatedness in favor of the claimant holds only to the extent that it allows compensation even for a non-occupational disease, as long the four conditions under Section 32-A are established. It is my view that this principle finds basis in the plain text of the 2000 POEA-SEC and settled evidentiary rules in compensation proceedings.

WHEREFORE, I vote to DENY the Petition for Review and AFFIRM the Court of Appeals Decision dated 11 February 2010 and Resolution dated 27 May 2010 in CA-G.R. SP No. 108306.

[1] Rollo, pp. 58-67.

[2] CA rollo, pp. 128-140 (Memorandum of Appeal dated 2 May 2006).

[3] *Dela Llana v. Biong*, G.R. No. 182356, 4 December 2013, 711 SCRA 522.

[4] 676 Phil. 313 (2011).

[5] 707 Phil. 210 (2013).

[6] G.R. No. 199568, 17 June 2015, 759 SCRA 209.

[7] *Dizon v. Naess Shipping Philippines, Inc.*, G.R. No. 201834, 1 June 2016 citing *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, 16 September 2015; *Talosig v. Philippine Lines, Inc.*, G.R. No. 198388, 28 July 2014; *Jebsen Maritime Inc., v. Ravena*, G.R. No. 200566, 17 September 2014; *Gabunas v. Scanmar Maritime Services*, 653 Phil. 457 (2010) citing *Spouses Aya-ay v. Arpaphil Shipping Corporation*, 516 Phil. 628 (2006); *Sante v. Employees Compensation Commission*, 256 Phil. 219 ((1989) citing *Raro v. Employees*

Compensation Commission, 254 Phil. 846 (1989).

[8] Underscoring supplied.

[9] *Jebsens Maritime v. Undag*, 678 Phil. 938 (2011); *Magsaysay Maritime Corporation and/or Cruise Ships Catering International, N. V. v. National Labor Relations Commission*, 630 Phil. 352 (2010); *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291 (2009).

[10] 576 Phil. 601 (2008).

[11] *Supra*. Underscoring supplied.

[12] G.R. No. 200566, 17 September 2014, 735 SCRA 494.

[13] *Supra*. Underscoring supplied.

[14] G.R. No. 204262, 7 June 2017.

[15] *Supra*. Underscoring supplied.

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