FIL-STAR MARITIME CORPORATION, CAPTAIN VICTORIO S. MIGALLOS AND GRANDSLAM ENTERPRISE CORPORATION, PETITIONERS, VS. HANZIEL O. ROSETE, RESPONDENT.

G.R. No. 192686. November 23, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the March 23, 2010 Decision[2] and the June 8, 2010 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 103256, which reversed the October 17, 2007 Resolution[4] of the National Labor Relations Commission (NLRC) and ordered the reinstatement of the May 21, 2007 Decision[5] of the Labor Arbiter (LA), awarding disability benefits to respondent Hanziel Rosete (respondent).

In 2005, petitioner Fil-Star Maritime Corporation (Fil-Star), the local manning agency of co-petitioner Grandslam Enterprise Corporation (Grandslam), hired respondent as third officer on board the ocean-going vessel "M/V Ansac Asia." He was in charge of the loading and unloading operations of the vessel's cargo primarily consisting of soda ash in bulk. Respondent stated that the nature of his work exposed him to minute particles of soda ash during the loading and unloading operations. On November 22, 2005, respondent finished his contract and returned to the Philippines.

Thereafter, the petitioners re-hired respondent to work as second officer on their vessel for a period of nine (9) months. On January 5, 2006, respondent underwent a pre-employment medical examination (PEME) with First Medical Team Health Care Specialist Group,[6] the company accredited physician, and was pronounced "fit to work." On board the vessel, he was tasked to make an inventory of the vessel's property for annual inspection. According to respondent, he worked diligently and oftentimes worked odd hours just to familiarize himself with his new job. He averred that overtime work and the violent motions of the vessel due to weather inclemency caused undue strain to his eyes and his physical well-being.

On February 14, 2006 or a little over a month from his embarkation, respondent experienced an abrupt blurring of his left eye. He reported it to his captain and was advised to do an eye wash to relieve his pain until they reached Chiba, Japan. After the vessel arrived in Chiba, respondent was not able to seek medical advice because he was tasked to man the ship's navigation equipment. Five days later, respondent was able to receive medical attention in Kawasaki, Japan. Respondent was diagnosed with Central Retinal Vein Occlusion and immediately underwent three rounds of laser surgery on February 28, 2006, March 2, 2006 and March 4, 2006.

On March 9, 2006, respondent was declared fit for travel and was subsequently repatriated to the Philippines. Upon arrival in Manila, respondent went to the Metropolitan Hospital but could not get immediate treatment. On March 19, 2006, he experienced severe pain in his left eye so he insisted that he be admitted to the hospital. Respondent underwent another series of laser surgery on March 22 and 25, April 6, 18, and 25, 2006.

On August 11, 2006, Dr. Antonio Say declared respondent's left eye to be legally blind with poor possibility of

recovery. Relevant portions of the medical certificate read:

> A. Left eye is legally blind
> B. Partial permanent disability
>
> - Partial because the visual activity of the right eye is 20/20.
>
> - It is permanent because the poor visual activity of the left eye, hand movement, has poor prognosis for visual recovery.[7]

The petitioners denied his claim for permanent total disability and only rated his incapacity as Grade 7. Respondent stressed that, under their Collective Bargaining Agreement (CBA), he should be considered legally blind meriting entitlement to permanent total disability benefits in the sum of US$105,000.00 for being unable to perform his job for more than 120 days from his repatriation.

Thus, on August 29, 2006, respondent filed a complaint against Fil-Star, Capt. Victorio S. Migallos and Grandslam for disability benefits, damages and attorney's fees.

The petitioners averred that after almost a month aboard the vessel, respondent complained of a sudden blurring of his left eye. They referred him to the Honmoku Hospital where a Dr. Yasuhiko Tomita diagnosed him with Central Retinal Vein Occlusion, left eye and Neo-Vascular Glaucoma, left eye, suspicion. After his repatriation, they immediately referred him to the Metropolitan Medical Center where he was treated and underwent a series of Panretinal Photocoagulation Session to prevent further neovascular formation. They shouldered the expenses for all these procedures. They, however, argued that respondent was not qualified for disability benefits, damages and attorney's fees because his illness was not an occupational disease or work-related.

On May 21, 2007, Labor Arbiter Pablo C. Espiritu, Jr. (the LA) ruled in favor of respondent.[8] The decretal portion reads:

> WHEREFORE, premises considered, respondents Filstar Maritime Corporation and Grandslam Enterprise Corp. are jointly and severally liable to pay complainant full total and permanent disability benefits in the amount of US$105,000.00 or its equivalent amount in Philippine currency at the time of payment.
>
> Respondents are further ordered to pay 10% attorney's fees based on the total judgment award.
>
> All monetary claims are hereby dismissed.
>
> SO ORDERED.[9]

The LA reasoned out that respondent left the Philippines in good condition, thus, it could be logically inferred that he contracted the illness while on board the vessel. As respondent was not able to perform his job for more than 120 days since his repatriation, he became entitled to permanent disability benefits. Based on their CBA, respondent should be awarded US$105,000.00.[10]

Not in conformity with the ruling, the petitioners appealed to the NLRC which, in its October 17, 2007 Resolution, modified the L.A. Decision by reducing respondent's disability benefits from US$105,000.00 to US$20,900.00.[11] As modified, the decretal portion reads:

> WHEREFORE, the assailed Decision dated 21 May 2007 is hereby MODIFIED by ordering the respondents to pay jointly and severally complainant Hanziel O. Rosete a disability benefit of US$20,900, the amount equivalent to Grade 7 under POEA Standard Employment Contract.
>
> The payment of ten percent (10%) attorney's fees based on the judgment award is hereby AFFIRMED.

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SO ORDERED.[12]

The NLRC ruled that the grant of US$105,000.00 based on the provisions of the CBA had no legal basis because disability benefits under Article 28 thereon would refer only to permanent disability resulting from accident while in employment.[13] The NLRC held respondent was entitled to disability benefits but only up to Grade 7 as recommended by his own physician, Dr. George Pile.[14]

Both parties moved for reconsideration of said decision, but their respective motions were denied by the NLRC in its Resolution dated January 15, 2008.[15]

Respondent elevated the case to the CA via petition for certiorari under Rule 65 of the Rules of Court.[16] On March 23, 2010, the CA reversed the NLRC's decision. The fallo reads:

> WHEREFORE, the petition is GRANTED. The Resolutions dated October 17, 2007 and January 15, 2008 of the National Labor Relations Commission (NLRC), Quezon City, in NLRC-LAC (OFW-M) No. 07-000018-07(3) NLRC-OFW Case No. 06-08-02629-00 are ANNULLED and SET ASIDE. The Labor Arbiter's Decision dated May 21, 2007 is REINSTATED in full.
>
> SO ORDERED.[17]

The CA held that there was no doubt that respondent was unable to work for more than one hundred twenty days (120) the requisite period for a grant of total disability benefits. Although the petitioners claimed that their CBA provision should be controlling, the CA clarified that "the relevant provisions of the POEA-SEC pertaining to permanent total disability remain essential parts of the parties' valid and binding contract."[18] The CA further stated that although respondent's Central Retinal Vein Occlusion was not listed as an occupational disease, he successfully established a causal connection from his work as a seaman to his illness. It stressed that compensability of a non-occupational disease, reasonable proof and not direct proof of a causal connection between the work and the ailment is required.[19]

Petitioners' Motion for Reconsideration[20] was likewise denied by the CA in its June 8, 2010 Resolution.

Hence, this petition.[21]

Petitioners submit the following issues for resolution:

> I
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO TOTAL PERMANENT DISABILITY BENEFITSII
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO DISABILITY BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENTIII
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO ATTORNEY'S FEES.[22]

The petitioners contend that the CA erred in ruling that respondent was entitled to permanent and total disability benefits and for applying the provision of their CBA to award respondent US$105,000.00. They aver that Article 28 of their CBA only pertains to permanent disability suffered as a result of an accident.[23]

The petition is partly meritorious.

The first issue is whether respondent is entitled to claim disability benefits from the petitioners.

There is no quibble that respondent is entitled to disability benefits. The Standard Employment Contract (SEC) for seafarers was created by the Philippine Overseas Employment Administration (POEA) pursuant to its mandate under Executive Order (E.O.) No. 247[24] dated July 21, 1987 to “secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith” and to “promote and protect the well-being of Filipino workers overseas.”[25]

In this case, respondent was diagnosed with Central Retinal Vein Occlusion of his left eye. Central retinal vein occlusion is medically defined as the blockage of the central retinal vein by a thrombus. It causes painless vision loss which is usually sudden, but it can also occur gradually over a period of days to weeks.[26] This condition, despite numerous medical procedures undertaken, eventually led to a total loss of sight of respondent’s left eye. Loss of one bodily function falls within the definition of disability which is essentially "loss or impairment of a physical or mental function resulting from injury or sickness."[27]

Although Central Retinal Vein Occlusion is not listed as one of the occupational diseases under Section 32-A of the 2000 Amended Terms of POEA-SEC,[28] the resulting disability which is loss of sight of one eye, is specifically mentioned in Section 32 thereof (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted). More importantly, Section 20 (B), paragraph (4) states that “those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.”[29]

The disputable presumption that a particular injury or illness that results in disability, or in some cases death, is work-related stands in the absence of contrary evidence. In the case at bench, the said presumption was not overturned by the petitioners. Although, the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability.[30] Consequently, the Court concurs with the finding of the courts below that respondent’s disability is compensable.

Now, the Court shall determine whether respondent is entitled to be awarded permanent total or permanent partial disability benefits.

It should be noted that the company-designated physician assessed the loss of respondent’s left eye as a permanent partial disability while respondent’s own physician indicated his disability as Grade 7.

The Court is more inclined to rule, however, that respondent is suffering from a permanent total disability as he was unable to return to his job that he was trained to do for more than one hundred twenty days already. The recent case of Valenzona v. Fair Shipping Corporation, et al.,[31] citing Quitoriano v. Jebsens Maritime, Inc.,[32] elucidated the concept of permanent total disability, in this wise:

> Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x
>
> x x x x
>
> There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:
>
> Sec. 2. Disability. - (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In Vicente v. ECC (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

> x x x the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.

A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom (Austria v. Court of Appeals, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. Thus, in the very recent case of Crystal Shipping, Inc. v. Natividad (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he lose[s] the use of any part of his body. x x x

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[33] [Emphasis and underscoring supplied]

A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it.[34] On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days.[35] What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred. Evidently, respondent was not able to return to his job as a seafarer after his left eye was declared legally blind. Records show that the petitioners did not give him a new overseas assignment after his disability. This only shows that his disability effectively barred his chances to be deployed abroad as an officer of an ocean-going vessel.

Therefore, it is fitting that respondent be entitled to permanent total disability benefits considering that he would not able to resume his position as a maritime officer and the probability that he would be hired by other maritime employers would be close to impossible. Indeed, a sight-impaired maritime applicant cannot stand in the same footing as his healthy co-applicant.

The next issue to be resolved is whether respondent’s entitlement to permanent total disability benefits should be based on the CBA or his POEA-SEC which integrated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

The Court holds that respondent is entitled to claim permanent total disability benefits based on his POEA-SEC and not based on their CBA as earlier ruled by the L.A. and later affirmed by the CA.

The CBA provisions on disability are not applicable to respondent’s case because Article 28 thereon specifically refers to disability sustained after an accident. Article 28 of the ITF-JSU/AMOSUP CBA specifically states that:

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> Article 28: Disability
>
> 28.1 A seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer as a result thereof, but excluding permanent disability due to wilful acts, shall be in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. [Emphasis supplied]

Respondent failed to show that the blurring of his left eye was caused by an accident on board the ship. Thus, Article 28 of the CBA cannot be used to compute his disability benefits.

Accordingly, what should govern the computation of his disability benefits is the POEA-SEC incorporating the 2000 POEA Amended Standard Terms and Conditions. Under Section 20 (B), paragraph 6, of the 2000 POEA Amended Standard Terms and Conditions, to wit:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x 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 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. [Emphases and underscoring supplied]

Based on the schedule of disability under Section 32 of the 2000 POEA Amended Standard Terms and Conditions, permanent total disability is classified as Grade 1. Thus, respondent's disability benefit should be computed as follows:

Grade 1: US$50,000.00 x 120% = US$60,000.00

As to the award of attorney's fees, the Court likewise affirms the ruling that respondent is entitled to it as provided under Article 2208 of the Civil Code:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> x x x x

In the case at bench, respondent was compelled to litigate in order to claim disability benefits from the petitioners. Thus, the award of attorney's fees is justified pursuant to Article 2208 (8) of the Civil Code.

WHEREFORE, the petition is PARTIALLY GRANTED. The March 23, 2010 Decision of the Court of Appeals is hereby MODIFIED in the sense that petitioners Fil-star Maritime Corporation and Grandslam Enterprise Corp. are jointly and severally liable to pay respondent Hanziel O. Rosete full total and permanent disability benefits in

the amount of US$60,000.00 or its equivalent amount in Philippine currency at the time of payment. All other aspects of the CA Decision stand.

SO ORDERED.

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

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

[1] Rollo, pp. 3-27.

[2] Id. at 29-40. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justice Mario L. Guariña III and Associate Justice Sesinando E. Villon, concurring.

[3] Id. at 42.

[4] Id. at 163-174.

[5] Id. at 219-228.

[6] Id. at 165.

[7] Id.

[8] Id. at 219-228.

[9] Id. at 227-228.

[10] Id. at 226-227.

[11] Id. at 163-173.

[12] Id. at 172.

[13] Id. at 171.

[14] Id. at 172.

[15] Id. at 175-176.

[16] Id. at 132-148.

[17] Id. at 39.

[18] Id. at 35.

[19] Id. at 33-38.

[20] Id. at 42-74.

[21] Id. at 3-27.

[22] Id. at 371-372.

[23] Id. at 11.

[24] Reorganizing the Philippine Overseas Employment Administration and for Other Purposes.

[25] E.O. No. 247, Sec. 3(i) and (j).

[26] (visited November 8, 2011).

[27] Labor Code, Article 167(n).

[28] Also known as Memorandum Circular No. 09, Series of 2000.

[29] Italics supplied.

[30] Seagull Shipmanagement and Transport, Inc. v. NLRC, 388 Phil. 906, 914 [2000], citing More Maritime Agencies, Inc. v. NLRC, 366 Phil. 646, 654-655 [1999].

[31] G.R. No. 176884, October 19, 2011.

[32] G.R. No. 179868, January 21, 2010, 610 SCRA 529.

[33] Id. at 534-536.

[34] Austria v. CA, 435 Phil. 926, 932 [2002], citing Gonzaga v. ECC, 212 Phil. 405, 414 [1984].

[35] Rule XI, Section 1(b) of the Amended Rules on Employees Compensation.

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