

**CENTENNIAL TRANSMARINE, INC. AND/OR MR. EDUARDO R. JABLA,
CENTENNIAL MARITIME SERVICES & MTV BONNIE
SMITHWICK, PETITIONERS, VS. PASTOR M. QUIAMBAO,
RESPONDENT.**

G.R. No. 198096. July 08, 2015

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DEL CASTILLO, J.:[*]

"[T]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled,"[1] as in this case.

This is a Petition for Review on Certiorari[2] assailing the February 28, 2011 Decision[3] and August 9, 2011 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 104798, which affirmed the April 23, 2008[5] and May 30, 2008[6] Resolutions of the National Labor Relations Commission (NLRC). The aforesaid NLRC Resolutions affirmed the July 31, 2007 Decision[7] of the Labor Arbiter which ordered petitioners Centennial Transmarine, Inc. and/or Mr. Eduardo Jabla, Centennial Marine Services and MV Bonnie Smithwick (petitioners) to pay respondent Pastor Quiambao (Pastor) total and permanent disability benefits amounting to US\$78,750.00 and attorney's fees equivalent to 10% thereof.

Antecedent Facts

Since 2004, Pastor was continuously employed by petitioner Centennial Transmarine, Inc. as a messman for and on behalf of its foreign principal, petitioner Centennial Maritime Services. His last contract of employment[8] of six months on board the vessel MV Bonnie Smithwick was approved by the Philippine Overseas Employment Administration (POEA) and was covered by the International Transport Workers' Federation-Collective Bargaining Agreement (ITF-CBA).[9]

Pursuant to the aforementioned contract, Pastor boarded MV Bonnie Smithwick on June 5, 2006. Shortly thereafter or during the first week of August 2006, however, he figured in an accident while carrying heavy food provisions. This caused him to suffer excruciating pain in his upper back. When he consulted the ship doctor, Pastor was prescribed with oral pain killer, but the same only offered temporary relief. As his condition continued to worsen, he was referred on September 5, 2006 to City Med Health Associates in Singapore for further evaluation and treatment. The result of the x-ray examination conducted on him revealed that he has lumbar muscular spasm with disc degeneration at L2/L3 and L5/S1 levels and thoracic spondylosis with disc degeneration from T4/T5 to T7/T8.[10] While the attending physician declared him fit for light duties only,[11] he was subsequently recommended for repatriation to Manila for further treatment.[12]

Upon Pastor's arrival in the Philippines on September 18, 2006, he was referred to the company-designated physician, Dr. Leticia Abesamis (Dr. Abesamis). On October 2, 2006, Dr. Abesamis diagnosed him to have

Thoraco Lumbar spine nerve impingement, R/O herniated disc.[13] She then referred Pastor for Magnetic Resonance Imaging (MRI) at the Makati Medical Center and to Dr. Antonio Acosta, Jr., who later advised him not to carry heavy objects as it might collapse his T-5 vertebral body.

While undergoing treatment, or on November 7, 2006, Pastor filed a complaint[14] against petitioners for permanent disability compensation in the sum of US\$78,750.00 pursuant to the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP)/ ITF TCCC CBA,[15] sickness wages for 120 days, moral and exemplary damages, attorney's fees and other benefits as provided by law.

Parties' Respective Positions

Pastor claimed that the lapse of 120 days from the time of his repatriation without any disability grading being issued by the company-designated physician, coupled by his worsening lumbar pain despite continuous treatment, rendered him permanently unfit for sea duties. In support of this, he presented a medical certificate dated April 17, 2007[16] issued by the Seamen's Hospital attesting to his unfitness for sea service due to work-related total disability.

For their part, petitioners countered that except for his bare allegations, Pastor had not proffered sufficient evidence to support his claim that his spinal disc degeneration or osteoarthritis is work-related or was aggravated by his working conditions. While admitting that osteoarthritis is considered as a work-related disease under the provisions of the POEA-Standard Employment Contract (SEC), they argued that Pastor has not satisfactorily established any of the conditions for compensability. For one, his work as a messman does not entail heavy physical labor as to have caused his illness. This only means that his ailment is a pre-existing disease.

Petitioners also asserted that Pastor cannot claim permanent disability compensation based on his mere inability to work for more than 120 days because a seafarer is only entitled to full disability benefits if he has been assessed with Grade I disability. If no such assessment has been made, the seafarer is not entitled to disability compensation even if he was unable to perform his job for more than 120 days. Petitioners further asserted that they are not liable for sickness allowance, damages and attorney's fees for they have already fulfilled their obligations in good faith by providing Pastor with medical assistance.

Ruling of the Labor Arbiter

In a Decision[17] dated July 31, 2007, the Labor Arbiter ruled that when an ailment is not listed as an occupational disease under the POEA-SEC or the conditions set forth therein for compensability have not been met, the ailment is nevertheless disputably presumed as work-related. Hence, it was not for Pastor to prove that his illness is work-related; rather, it behooved upon the petitioners to rebut such presumption. The Labor Arbiter, however, found that petitioners failed to discharge their burden and, therefore, held that Pastor's illness is work-related and compensable. Anent the nature of Pastor's disability, the Labor Arbiter considered the same as permanent and total per the medical certificate issued by the Seamen's Hospital. Thus:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the [petitioners] to pay [Pastor] the sum of US\$78,750.00 as disability benefits, plus ten percent (10%) thereof as and for attorney's fees.

SO ORDERED.[18]

Petitioners appealed to the NLRC.

Ruling of the National Labor Relations Commission

In its Resolution[19] of April 23, 2008, the NLRC sustained the Labor Arbiter's finding that Pastor's ailment is

work-related and compensable as, in fact, its proximate cause was the accident he figured in while on duty and his duties as messman show direct connection with his illness. It likewise gave weight and credence to the medical certificate issued by the Seamen's Hospital attesting to Pastor's disability as permanent since it observed that at the time the said certificate was issued, Pastor had actually been incapable of working for more than 120 days already. Moreover, aside from the fact that the findings contained in the said certificate appeared to be consistent with the findings and prognosis of the company-designated physician, it can be gleaned therefrom that Pastor was already under the care of the certifying doctor for a considerable length of time and his certification was not based on a mere one-time consultation. Ultimately, the NLRC ruled, viz:

WHEREFORE, premises considered, we deny the appeal and AFFIRM the decision of the Labor Arbiter.

SO ORDERED.[20]

Petitioners moved for reconsideration,[21] but the same was denied in the NLRC Resolution[22] dated May 30, 2008.

Hence, petitioners filed a Petition for Certiorari[23] before the CA.

Ruling of the Court of Appeals

On February 28, 2011, the CA rendered a Decision[24] holding that Pastor is suffering from osteoarthritis, an ailment listed as an occupational disease under the POEA-SEC. It concluded that the said ailment developed in the course of Pastor's employment and progressed due to the conditions of his job as a messman. Accordingly, the CA ruled that Pastor's illness is work-related. Moreover, it declared his disability as permanent and total given that his ailment resulted in the impairment of his earning capacity. Hence:

IN VIEW OF THE FOREGOING, the petition is dismissed.

SO ORDERED.[25]

Petitioners filed a Motion for Reconsideration[26] where they pointed out that the CA incorrectly declared Pastor as suffering from osteoarthritis. They maintained that his ailment is actually spinal disc degeneration, an illness completely different from osteoarthritis and is not listed as an occupational disease under the POEA-SEC. Moreover, Pastor failed to sufficiently meet the conditions for compensability as set forth in the POEA-SEC.

In a Resolution[27] dated August 9, 2011, the CA denied petitioners' Motion for Reconsideration.

Hence, this Petition for Review on Certiorari.

Issues

- What is the actual illness of the private respondent on board the vessel;
- Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in affirming the Decision and Resolution of the NLRC despite the glaring fact that the actual illness of the private respondent is not work-related;
- Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in awarding US\$78,750.00 despite the fact that the private respondent has failed to adduce evidence that he is suffering from a Grade 1 disability;
- Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in awarding attorney's fees.[28]

In the main, petitioners argue that Pastor suffers not from osteoarthritis but from spinal disc degeneration, an

illness not listed under the POEA-SEC as occupational disease and is neither work-related nor compensable. They likewise insist that without any medical or factual evidence of total and permanent disability, there is no sufficient basis to award him Grade 1 disability compensation. Citing *Vergara v. Hammonia Maritime Services, Inc.*,^[29] they aver that an illness which lasted for more than 120 days does not necessarily mean that a seafarer is entitled to full disability benefits because a seafarer's degree of disability is not measured by the length of time he is under treatment, but by the assessment of the company-designated physician, who, in this case, found Pastor's illness as not work-related. Pastor, therefore, is not entitled to disability compensation.

Our Ruling

The Petition lacks merit.

Pastor suffers from a work-related and compensable illness.

The Court notes that while petitioners impute error upon the CA in declaring Pastor's illness as osteoarthritis, it is extant on the records that they themselves, in the numerous pleadings they filed before the labor tribunals, consistently referred to his diagnosed ailment as osteoarthritis. It was only after the CA rendered its assailed Decision that petitioners contradicted this and now claim that Pastor's illness is actually spinal disc degeneration which, according to them, is a completely different illness from osteoarthritis. Suffice it to state, however, that petitioners cannot now take a contrary view as to Pastor's actual illness in view of their previous admission that he was suffering from osteoarthritis. It is settled that statements made in the pleadings in the course of judicial proceedings are considered judicial admissions.^[30] Judicial admissions cannot be controverted by the party making the admissions.^[31] They are conclusive and legally binding as against the pleader who cannot subsequently take a position contrary to or inconsistent with what was pleaded.^[32]

At any rate, in medical parlance, spinal disc degeneration/desiccation and osteoarthritis can be taken as the same. Degenerative disc disease is a spinal condition caused by the breakdown of the intervertebral discs which results in the loss of flexibility and ability to cushion the spine.^[33] When discs degenerate, the vertebral bodies become closer together and this increased bone on bone friction causes the wearing away of protective cartilage and results in the condition known as osteoarthritis.^[34] The degenerating discs place excessive stress on the joints of the spine and the supporting ligaments, which, overtime, can lead to the formation of osteoarthritis.^[35] Osteoarthritis is a stage of degenerative disc disease.^[36]

Here, as revealed by Pastor's medical records, he was found suffering from acute thoracic and lumbar spondylosis before he was repatriated for medical reasons.^[37] When he returned to the Philippines, he was then diagnosed with thoraco lumbar spine nerve infringement, R/O herniated disc on October 2, 2006 by Dr. Abesamis, the company-designated physician.^[38] When made to undergo MRI of the thoraco lumbar area a few days later, the result thereof revealed that the said area has a slightly straightened lumbar lordosis. He was thus advised to undergo physiotherapy. On November 6, 2006, Dr. Abesamis found Pastor positive for carpal tunnel syndrome.^[39] He was then subjected to further medical evaluation and treatment for the recurrent pain that he was experiencing.^[40] Through all these, no medical assessment of his fitness to resume work or disability grading was ever issued by Dr. Abesamis such that Pastor sought the opinion of an independent physician. He was then diagnosed to have chronic back pain and impending vertebral collapse T5 with thoracic and lumbar spondylosis and was assessed to be permanently unfit for sea duties due to a work-related total disability. This is evidenced by a medical certificate dated April 17, 2007 issued by the Seamen's Hospital.

Notably, the above-mentioned findings on Pastor's illness indicate that he was suffering from lumbar spondylosis. Spondylosis is a term used to describe osteoarthritis of the spine.^[41] Clearly therefore, the CA's declaration of Pastor's actual illness as osteoarthritis is supported by the findings of the company-designated physician, whose

prognosis, as aptly observed by the NLRC, appear to be consistent with the findings contained in the medical certificate issued by the Seamen's Hospital.

Petitioners argue against the work-relatedness and compensability of Pastor's illness. They harp on the alleged finding of the company-designated physician that his ailment is not work-related and this, according to them, should be given more weight than that of Pastor's independent physician. The argument, however, is untenable. The Court has gone over the records and found that the same is bereft of any evidence that Dr. Abesamis or any other doctor designated by the company ever rendered an assessment categorically declaring Pastor to be suffering from an illness which is not work-related.

Moreover, a seaman's entitlement to disability benefits, is governed, not only by medical findings, but by law (the Labor Code) and by contract (the POEA-SEC and the parties' CBA).[42] Here, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, which contains the Standard Terms and Conditions Governing The Employment of Filipino Seafarers On-Board Ocean-Going Vessels, governs the employment contract between Pastor and petitioners. Section 20(B), paragraph 6 thereof reads:

Section 20 (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 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 rules of compensation applicable at the time the illness or disease was contracted.

"Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have [arisen] during the term of the seafarer's employment contract." [43] For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness, which are defined as "injury(ies) resulting in disability or death arising out of and in the course of employment" and 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."

The said 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:

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.

As previously mentioned, Pastor was found to be suffering from osteoarthritis. Under Section 32-A(16) of the 2000 POEA-SEC, for osteoarthritis to be considered as an occupational disease, the same must have been

contracted in any occupation involving:

- a) joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics;
- b) minor or major injuries to the joint;
- c) excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;
- d) extreme temperature changes (humidity, heat and cold exposures); and
- e) faulty work posture or use of vibratory tools.

To recapitulate, the Labor Arbiter ruled that Pastor's illness is work-related. The NLRC affirmed this finding by holding that the accident he met while carrying heavy food provisions was the proximate cause of his injury. For its part, the CA ultimately concluded that the illness was acquired by Pastor due to his work as a messman whose primary duties and responsibilities include cleaning accommodations, galley, pantries, alleys, storerooms, salons and messrooms, washing, cleaning and preparing tables, collecting and laundering dirty linen, serving food and restocking supplies in pantries, engine room, bridge, etc. It further ruled that Pastor was able to prove the conditions necessary for osteoarthritis to be considered as having arisen in the course of his employment either by direct causation or aggravation due to the nature of his work. The Court is not inclined to depart from the aforementioned findings of the Labor Arbiter, NLRC and the CA. As it has been held, "where the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court."^[44] Besides, that Pastor figured in an accident while performing his duties on board the vessel was not at all disputed by petitioners. It is also plain from his duties and responsibilities as enumerated in the Company Standing Instructions Manual^[45] that his work involved carrying heavy loads and the performance of other strenuous activities such that it can reasonably be concluded that his work caused or at least aggravated his illness. In view of these, the Court sustains the uniform findings of the Labor Arbiter, the NLRC and the CA that Pastor's ailment is work-related and compensable.

Pastor's disability became permanent and total as no declaration of fitness to work was issued upon the expiration of the maximum 240-day medical treatment period.

Article 192(c)(1) of the Labor Code provides that:

Art. 192. Permanent total disability. - x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules

x x x x x x x x

Meanwhile, Rule X, Section 2 of the Amended Rules on Employees Compensation provides:

RULE X

Temporary Total Disability

x x x x x x x x

Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such

disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Based on the foregoing provisions, the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days, which was further extended to 240 days. The Court pronounced in *Vergara v. Hammonia Maritime Services, Inc., et al.*[46] that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability.

In this case, Pastor was repatriated on September 18, 2006. He was given a specific diagnosis as to his ailment by the company-designated physician, Dr. Abesamis, on October 6, 2006. Thereafter, he continuously received medical treatment from Dr. Abesamis. However and as earlier mentioned, nowhere in the records does it show that Dr. Abesamis arrived at a definite assessment of respondent's fitness to work or a declaration of the existence of a permanent disability before the expiration of the maximum 240-day medical treatment period. In fact, as of the date of the Rejoinder[47] they filed before the Labor Arbiter (June 25, 2007) or 281 days after Pastor's repatriation, petitioners themselves stated that no disability grading has yet been issued by Dr. Abesamis.[48] Clearly at that time, the period of 240 days had already lapsed without the company-designated physician issuing a declaration of Pastor's fitness to work or of the existence of his permanent disability. This only means that his condition remained unresolved even after the lapse of the said period and, consequently, his disability is deemed permanent and total.[49] No error, therefore, can be attributed to the Labor Arbiter, NLRC and CA in declaring Pastor's disability as permanent and total. In view of the foregoing, the Court sustains the CA in awarding Pastor disability compensation in the amount of US\$78,750.00 pursuant to the AMOSUP/ITF TCCC CBA that governed his contract of employment with petitioners.

As to the award of 10% attorney's fees, the same is justified pursuant to paragraphs 2 and 8 of Article 2208 of the Civil Code which provide that:

Article 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 x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x

WHEREFORE, the Petition is DENIED. The February 28, 2011 Decision and August 9, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 104798 are AFFIRMED.

SO ORDERED.

Peralta,[**] Bersamin,[***] Mendoza, and Leonen, JJ., concur.

[*] Per Special Order No. 2087 (Revised) dated July 1, 2015.

[**] Per Special Order No. 2088 dated July 1, 2015.

[***] Per Special Order No. 2079 dated June 29, 2015.

[1] Kestrel Shipping Co., Inc. v. Munar, G.R. No. 198501, January 30, 2013, 689 SCRA 795, 810.

[2] Rollo, pp. 24-74.

[3] CA rollo, pp. 526-533; penned by Associate Justice Mario L. Guarina III and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Rodil V. Zalameda.

[4] Id. at 583.

[5] Records, pp. 527-532; penned by Commissioner Gregorio O. Bilog, III and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[6] Id. at 563-564.

[7] Id. at 302-304; penned by Labor Arbiter Jose G. De Vera.

[8] Id. at 103-104.

[9] Id. at 105-106.

[10] Id. at 241.

[11] See Dr. Linda Ng's Medical Report dated September 5, 2006, id. at 240.

[12] See Dr. Chan Suen Mey's Letter-Memo dated September 11, 2006, id. at 243.

[13] See Dr. Abesamis letter dated October 2, 2006, id. at 244.

[14] Id. at 2.

[15] Id. at 37-50.

[16] Id. at 266.

[17] Id. at 302-304.

[18] Id. at 304.

[19] Id. at 527-532.

[20] Id. at 532.

[21] Id. at 536-560.

[22] Id. at 563-564.

[23] CA rollo, pp. 2-39.

[24] Id. at 526-533.

- [25] Id. at 533.
- [26] Id. at 536-575.
- [27] Id. at 583.
- [28] Rollo, p. 193.
- [29] 588 Phil 895 (2008).
- [30] Spouses Binarao v. Plus Builders, Inc., 524 Phil. 361, 365 (2006).
- [31] Rizal Commercial Banking Corporation v. Marcopper Mining Corporation, 619 Phil. 720, 729-730.
- [32] Constantino v. Heirs of Pedro Constantino, Jr., G.R. No. 181508, October 2, 2013, 706 SCRA 580, 596.
- [33] http://www.mayfieldclinic.com/PE-DDD.htm#.UJAxQn9qq_I; last visited June 9, 2015.
- [34] <http://spinalm.blogspot.com/2013/07/disc-desiccation.html>; last visited June 9, 2015.
- [35] <http://yourspineguide.com/is-degenerative-disc-disease-the-same-as-arthritis/>; last visited August 22, 2014.
- [36] <http://www.examiner.com/article/disc-desiccation-and-spinal-back-treatment>; last visited August 22, 2014.
- [37] Clinical Diagnosis of Dr. Ng Hweena dated May 9, 2006, records, p. 241.
- [38] Dr. Abesamis' letter dated October 2, 2006, id. at 244.
- [39] Dr. Abesamis' letter dated November 6, 2006, id. at 245.
- [40] Dr. Abesamis' letter dated November 20, 2006, id. at 246.
- [41] <http://www.spine-health.com/conditions/lower-back-pain/spondylosis-what-it-actually-means>; last visited June 5, 2015.
- [42] Jebsens Maritime, Inc. v. Undag, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 676.
- [43] Id. at 677.
- [44] Superior Packaging Corporation v. Balagsay, G.R. No. 178909, October 10, 2012, 683 SCRA 394, 400.
- [45] CA rollo, pp. 137-138.
- [46] Supra note 29.
- [47] Records, pp. 290-297.
- [48] Id. at 291.
- [49] Alpha Ship Management Corporation v. Cab, G.R. No. 192034, January 13, 2014, 713 SCRA 119, 139-140.

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