

MAGSAYSAY MARITIME CORP., CSCS BMTERNATIONAL NV AND/OR MARLON RONO, PETITIONERS, VS. RODEL A. CRUZ, RESPONDENT.

G.R. No. 204769. June 06, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The company-designated doctor is expected to arrive at a definite assessment of the fitness of the seafarer to work or to determine the degree of his disability within a period of 120 or 240 days from repatriation, as the case may be. If after the lapse of the 120/240-day period the seafarer remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability, the seafarer is deemed totally and permanently disabled.[1]

This Petition for Review on Certiorari assails the August 17, 2012 Decision[2] of the Court of Appeals (CA) in CA-GR. SP No. 120464. The CA set aside the March 31, 2011 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-000944-10, and reinstated the September 27, 2010 Decision[4] of the Labor Arbiter (LA) in NLRC NCR OFW Case No. (M)ll-16203-09 ordering Magsaysay Maritime Corp. (MMC) and CSCS International NV (CSCS) to jointly and severally pay Rodel A. Cruz (respondent) US\$39,180.00, as disability compensation, and 10% thereof as attorney's fees. Also challenged is the December 3, 2012 CA Resolution[5] denying reconsideration of its August 17, 2012 Decision.

Factual Antecedents

On November 5, 2007, MMC, in behalf of its foreign principal, CSCS, employed respondent as housekeeping cleaner on board the vessel *Costa Fortuna*. Respondent's employment was for eight months (with three months extension upon mutual consent of the parties) with basic monthly salary of €306.00 and other benefits.[6] On January 27, 2008, respondent boarded the vessel.[7]

On April 23, 2008, while lifting heavy objects in the course of performing his duties, respondent experienced low back pain.[8] As a result, he was repatriated on June 19, 2008, and was immediately referred to Dr. Benigno A. Agbayani (Dr. Agbayani), the company-designated doctor.[9]

On June 20, 2008, Dr. Agbayani noted that there was no limitation on respondent's motion but the latter still complained of pain on forward flexion of the lumbar spine.[10] On July 7, 2008, respondent's magnetic resonance imaging (MRI) scan revealed that he was afflicted with "Mild L4-5 disc bulge [but with n]o evidence of a focal disc herniation." [11] As of August 1, 2008, respondent had undergone 13 physical therapy (PT) sessions. He had shown improvement but still complained of slight but tolerable pain upon trunk flexion.[12]

On September 5, 2008, Dr. Agbayani diagnosed respondent with "Discogenic pain L4/L5; Myofascial pain syndrome erection sprain S/P Provocative Discogram and [P]ercutaneous Nucleoplasty." He gave respondent an interim disability rating of Grade 8 for "Moderate rigidity of two thirds loss of motion or lifting power of the trunk." [13]

On September 22, 2008, Dr. Agbayani declared that despite more than 20 PT sessions, respondent showed little signs of improvement and possible surgical intervention was being considered. He noted that respondent would be referred to the Pain Management Clinic.[14]

On October 2, 2008, Dr. Agbayani reported that the Pain Management Specialist recommended nucleoplasty, provocative discogram and trigger joint injection on respondent.[15] On November 4, 2008, respondent successfully underwent provocative discogram and percutaneous nucleoplasty.[16] On November 12, 2008, Dr. John Joseph O. Laceste (Dr. Laceste), Pain Management Specialist, declared that respondent's "discogenic pain over the L4-5 area has improved by at least 85% to a pain score of 0-1/10." [17]

On December 11, 2008, respondent underwent another MRI scan revealing that he was suffering from mild degenerative changes in the lumbar spine which remained unchanged when compared to his July 7, 2008 MRI scan.[18] On December 12, 2008, Dr. Agbayani declared that respondent's illness was work-related.[19]

On January 21, 2009, respondent received sickness allowance for 120 days (from June 18, 2008 to October 15, 2008) amounting to ₱1,198.66.[20]

On February 12, 2009, Dr. Agbayani reported that respondent's condition had not improved despite various treatments since April 2008. Nevertheless, he reiterated that respondent's condition was work-related.[21]

On March 10, 2009, respondent's MRI scan showed that there was "small central disc protrusion with disc desiccation changes at L4-L5 level" but there were no compression deformities, spondylolisthesis nor spinal canal stenosis.[22]

On June 1, 2009, after almost one year from respondent's repatriation, Dr. Agbayani gave respondent a disability rating of Grade 8 for "moderate rigidity or two third loss of motion or lifting power of the trunk." [23]

On June 11, 2009, Dr. Laceste noted respondent's slight numbness over his right buttock and posterior thigh when standing for one to two minutes, and his pain over the L4-L5 area as well as slight tenderness of his sacro-iliac joints.[24]

Consequently, on November 25, 2009, respondent filed a Complaint[25] for permanent and total disability benefits, sickness allowance, damages and attorney's fees against MMC, Marlon Rono, its President, and CSCS (petitioners).[26]

On February 5, 2010, respondent's physician-of-choice, Dr. Venancio P. Garduce[27] (Dr. Garduce), opined that it would be impossible for respondent to work as a seaman and recommended a disability rating of Grade 3.[28]

Respondent argued that he is entitled to disability benefits because of the reasonable connection between his work and his illness. He stressed that before his embarkation he was declared fit to work; as such, it can be logically inferred that he acquired his illness while aboard the vessel and by reason of its harsh working environment. He added that he is entitled to disability benefits as he already suffered loss and impairment in his earning capacity.[29]

Respondent denied that he is guilty of medical abandonment and insisted that he did not cause delay in his treatment.[30] According to him, his refusal to undergo surgery was valid as he previously experienced "pre-operative awareness" which caused post-traumatic stress disorder. Allegedly, he feared that he would experience the same trauma if an operation be pursued.[31]

For their part, petitioners affirmed that after having been medically repatriated respondent was diagnosed of mild L4-L5 disc bulge. They, nonetheless, asserted that respondent underwent PT sessions but in September 2008, he started to malingering and complained of pain; thus, his attending doctor referred him to a Pain Management Team.

They alleged that respondent abandoned his scheduled nucleoplasty on October 24, 2008 but admitted that the procedure pushed through on November 4, 2008.[32] They also averred that respondent refused to undergo the surgery scheduled on February 23, 2009.[33] They insisted that respondent is estopped from claiming permanent and total disability benefits because the delay in his treatment is due to his own fault.[34]

Ruling of the Labor Arbiter

On September 27, 2010, the LA rendered his Decision[35] ordering MMC and CSCS to jointly and severally pay respondent disability compensation amounting to US\$39,180.00 or its peso equivalent at the time of payment and 10% thereof as attorney's fees.

According to the LA, respondent already received sickness allowance for 120 days amounting to ₱1,198.66. Thus, the only remaining issue is whether he is entitled to disability benefits. On this, the LA gave credence to the fact that respondent was medically repatriated and that his "lumbajr disc disease (disc desiccation) L4-L5 with mild disc herniation lumbar" was work-related, as confirmed by the company-designated doctor himself. Accordingly, the LA awarded disability benefits to respondent amounting to US\$39,180.00 based on the Grade 3 disability rating given by respondent's physician-of-choice. He also awarded attorney's fees to respondent as he was compelled to litigate and incur expenses to protect his rights.

Petitioners appealed before the NLRC.

According to petitioners, respondent was guilty of delay and medical abandonment. They, however, contended that should respondent be entitled to disability benefits, the same must be pursuant to a Grade 8 disability rating given by the company-designated doctor. They also posited that the award of attorney's fees was unjustified as there were valid grounds denying respondent's claim for disability compensation.

Ruling of the National Labor Relations Commission

Oh March 31, 2011, the NLRC modified[36] the LA Decision. It found respondent entitled to partial and permanent disability compensation of Grade 8 amounting to US\$16,795.00.

The NLRC upheld the company-designated physician's Grade 8 disability rating on the ground that it was supported by medical findings and was arrived at after close monitoring and treatment of respondent. It also deleted the award of attorney's fees as petitioners faithfully complied with their duties, including payment! of sickness allowance.

On May 19, 2011, the NLRC denied[37] respondent's Motion for Reconsideration.

Respondent filed a Petition for Certiorari with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that he is not entitled to US\$39,180.00 and to attorney's fees.

Ruling of the Court of Appeals

On August 17, 2012, the CA granted[38] the Petition and accordingly set aside the March 31, 2011 NLRC Decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is GRANTED and the assailed NLRC Decision dated 31 March 2011 in NLRC LAC No. 11-000944-10 is NULLIFIED and SET ASIDE. In lieu thereof, the Labor Arbiter's Decision dated 27 September 2010 in NLRC NCR OFW CASE No. (M)l 1-16203-09 is REINSTATED.[39]

The CA decreed that while it is a rule that the company-designated physician is tasked to determine the degree of

disability of a seafarer, herein company-designated doctor assessed respondent's disability as Grade 8 only on June 1, 2009, or almost a year after his repatriation on June 19, 2008. It also noted that respondent failed to resume employment even after a year of continuous medical treatment, as he was still under treatment even until June 11, 2009. Furthermore, the CA held that respondent is entitled to attorney's fees equivalent to 10% of the total monetary award, pursuant to Article 2208[40] of the Civil Code.

On December 3, 2012, the CA denied⁴¹ petitioners' Motion for Reconsideration.

Issues

Thus, petitioners filed this Petition raising the following issues:

[CAN] RESPONDENT [BE] PRESUMED TOTALLY AND PERMANENTLY DISABLED ENTITLING HIM TO MAXIMUM BENEFITS UNDER THE EMPLOYMENT CONTRACT?

AS BETWEEN THE COMPANY-DESIGNATED DOCTORS (WHO ADMINISTERED TREATMENT AND MONITORED TREATMENT) AND A PRIVATE DOCTOR FROM WHOM MERELY A 'SECOND' OPINION WAS SOUGHT, WHOSE FINDING MUST PREVAIL?[⁴²]

Petitioners' Arguments

Petitioners posit that credence should be given to the assessment of the company-designated physician as he regularly monitored and treated respondent. They further assert that the company-designated doctor gave his declaration on respondent's condition on the 77[th] day from his (respondent's) initial referral, and thus within the 240-day period under the prevailing jurisprudence. They likewise maintain that respondent caused delay in his treatment; as a result he was guilty of medical abandonment.

Respondent's Argument

Respondent counters that the CA correctly reinstated the LA Decision entitling him to disability benefits because his earning capacity was impaired by reason of his ailment. He also claims that he did not cause delay or abandoned his treatment. He stresses that his refusal to continue with his surgery is justified because it is a normal choice of a person under normal circumstances. He adds that the brochure given by the company-designated doctor indicated that the final decision of whether to pursue surgery or not rests in him. He likewise maintains that he did not malingering since the feeling of pain is a usual occurrence during an operation.

Our Ruling

The Petition is without merit.

To begin with, there is now no dispute that respondent's illness is work-related, as the same had been repeatedly confirmed by the company-designated doctor himself. The remaining issues are: whether respondent is entitled to disability compensation; and, whether respondent committed medical abandonment, such that, even if he sustained a disability he is not entitled to any compensation.

Petitioners insist that on the 77[th] day from respondent's initial referral, the company-designated doctor gave him a Grade 8 disability assessment, which should have been given weight and credence. They likewise maintain that respondent committed delay and medical abandonment since he did not pursue the suggested surgery. As such, petitioners raise questions of fact, in effect, requiring the Court to re-examine the probative weight of the evidence adduced.

As a rule, the Court is not a trier of fact and only questions of law are reviewable under a Rule 45 Petition. This principle applies with greater force in labor cases as questions of fact are for labor tribunals to resolve.

Nonetheless, this rule admits of exceptions including instances where the findings of the lower courts or tribunals are contradictory with the other. Here, considering the opposing positions of the LA and the CA, on one hand, and the NLRC on the other, the Court is compelled to resolve the factual issues and examine the evidence on record.[43]

As above stated, petitioners contend that the company-designated doctor issued his declaration within the required period; hence, it is this declaration which should have been the basis of respondent's disability benefits.

The Court is unconvinced.

First, the Court notes that the subject September 5, 2008 Medical Report of the company-designated doctor was first presented when petitioners appended it to their Motion for Reconsideration with the CA. It was belatedly adduced even if it appears to be readily available.

In *Misamis Oriental II Electric Service Cooperative v. Cagalawan*,^[44] the Court held that while strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law. In this regard, belated submission of evidence may be allowed only if the delay in its presentation is sufficiently justified; the evidence adduced is undeniably material to the cause of a party; and the subject evidence should sufficiently prove the allegations sought to be established.

In this case, petitioners did not explain the reasons for their failure to present the September 5, 2008 Medical Report at the earliest opportunity. It was only after an unfavorable decision was rendered did petitioners present it with the CA. Petitioners' belated submission of this Report without any explanation casts doubt on its credibility especially since it does not appear to be a newly discovered evidence.^[45]

Second, the September 5, 2008 Report of the company-designated doctor cannot be considered as material evidence that would support petitioners' position. Neither did this Report sufficiently prove that respondent is only entitled to a Grade 8 disability compensation.

Notably, the September 5, 2008 Report provides: "Interim Disability Grade: If a disability grading will be made today[J our patient falls under 'Moderate rigidity of two thirds loss of motion or lifting power' - Grade (8) eight."^[46] Being an interim disability grade, this declaration is an initial determination of respondent's condition for the time being. It is only an initial prognosis of the health status of respondent because after its issuance, respondent was still required to return for re-evaluation, and to continue therapy and medication; as such, it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor.^[47]

Moreover, in *Carcedo v. Maine Marine Philippines, Inc.*,^[48] the Court did not give credence to the disability assessment given by the company-designated doctor as the same was merely interim and not definite. This is because after its issuance, Dario A. Carcedo (seafarer therein) still continued to require medical attention. Similarly, herein respondent needed further treatment and physical therapy even after the Interim Disability Grade was given by the company-designated doctor on September 5, 2008.

Third, we give emphasis to the finding of the CA that Dr. Agbayani in fact issued his disability rating on June 1, 2009, almost a year from respondent's repatriation.

The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days, On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the

company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled.[49]

Here, it is undisputed that respondent required medical treatment even after the lapse of 120 days from repatriation. As such, Dr. Agbayani should have made his definite assessment on respondent's condition within the aforesaid 240-day period. Unfortunately, Dr. Agbayani failed to timely issue a declaration as he only issued an assessment on respondent's disability on June 1, 2009, almost one year from the latter's repatriation. By operation of law, respondent is deemed permanently and totally disabled and is thus entitled to full disability compensation.

Moreover, by reason of the lapse of the 240-day period, the opinions of the company-designated physician and of respondent's personal doctor are rendered irrelevant. As stated, after the lapse of said period, respondent is already deemed totally and permanently disabled, which entitles him to full disability benefits amounting to US\$60,000.00.[50] Notably, in his complaint respondent prayed for total permanent disability benefits. Also, the medical opinion of his doctor-of-choice was issued only after the filing of the complaint.

To recapitulate, the company-designated doctor's interim assessment on September 5, 2008 is a mere initial finding on respondent's condition; on the other hand, his disability rating given on June 1, 2009 was issued beyond the 240-day period. Thus, petitioners' contention - that the disability compensation in favor of respondent must be based on the disability grading given by the company-designated doctor - is untenable.

At the same time, the Court observes that while the LA Decision, which the CA reinstated, decreed that respondent is only entitled to a Grade 3 disability compensation, the LA repeatedly declared that respondent is in fact entitled to permanent and total, or to full disability compensation, to wit:

In view of these disputed facts, this Office finds and, so hold, that [petitioners] should be held liable to [respondent] for total and permanent disability benefits x x x

x x x x

[Respondent] is now in a state of permanent and total disability because of his illness. He could no longer return to his job as Housekeeping Cleaner, neither can he find any employment as seaman on board ocean-going vessel. In short, [respondent] is totally and permanently unfit for sea-service now and in the future.[51]

Similarly, the CA stressed on respondent's entitlement to permanent and total disability benefits in this manner:

In arriving at its decision, the NLRC had obviously overlooked the fact that [respondent's] disability had already rendered him unable to perform his customary job for more than 120 days - thus making his disability total and permanent, x x x

xxxx

The records show that [respondent] was repatriated to the Philippines on June 19, 2008 and had since received continuous medical treatment. It was only a year later, or on June 1, 2009, that Dr. Agbayani was able to assess [respondent's] disability as Grade 8. However, even until June 11, 2009, [respondent] was still prescribed medication and attended to by Dr. Laceste for pain management. Due to his continuing medical treatment, [respondent] was rendered unable to work or resume employment for a continuous period of more than 120 days.[52]

Based on the foregoing, respondent is entitled to permanent and total disability compensation of US\$60,000.00 because of the absence of definite assessment from the company-designated doctor within the maximum period of 240 days within which he is allowed to make his declaration; and, by the established fact that respondent is unable to return to work and had been under continuous treatment even after more than one year from his repatriation.

Finally, the Court finds no sufficient basis to conclude that respondent is guilty of medical abandonment.

As discussed, respondent was under continuous treatment from his repatriation on June 19, 2008 and even until June 11, 2009. Moreover, there is no showing that surgery was the only way to address respondent's condition as the company-designated doctor did not inform him of such fact nor warn him of the effects of his choice. Clearly, respondent did not refuse treatment to address and resolve his condition.[53] In addition, as properly declared by the LA, abandonment cannot be presumed from the acts of respondent; there must be a deliberate intention on his part by some overt acts to abandon treatment, which acts are not present here.[54]

In view of the foregoing, the Court holds that respondent is entitled to permanent and total disability benefits amounting to US\$60,000.00.

WHEREFORE, the Petition is DENIED. The August 17, 2012 Decision and December 3, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 120464 are AFFIRMED with MODIFICATION that Magsaysay Maritime Corp. and CSCS International NV are ordered to pay Rodel A. Cruz US\$60,000.00 as permanent and total disability benefits, which shall be paid in its Philippine Peso equivalent at the time of payment.

SO ORDERED.

Carpio, (Acting C.J.[**] & Chairperson), Brion, Del Castillo, Mendoza, and Leonen, JJ., concur.

[*]Spelled in some parts of the records as Marlo.

[**]Per Special Order No. 2353 dated June 2,2016.

On official leave.

[1] Carcedo v. Maine Marine Philippines, Inc., G.R. No. 203 804, April 15, 2015.

[2] CA rollo, pp. 403-417; penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Apolinario D. Bmselas, Jr. and Samuel H. Gaerlan.

[3] Id. at 28-35; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

[4] Id. at 160-168; penned by Labor Arbiter Arden S. Anni.

[5] Id. at 461-462.

[6] Id. at 50.

[7] Id. at 40.

[8] Id.

[9] Id. at 40, 58.

[10] Id. at 81.

[11] Id. at 51.

[12] Id. at 84.

[13] Id. at 445.

- [14] Id. at 85.
- [15] Id. at 87.
- [16] Id. at 90.
- [17] Id. at 91.
- [18] Id. at 52.
- [19] Id. at 92.
- [20] Id. at 96.
- [21] Id. at 93-94.
- [22] Id. at 53.
- [23] Id. at 269.
- [24] Id. at 54.
- [25] Id. at 305-306.
- [26] Id. at 40.
- [27] Spelled in some part of the records as Garduque.
- [28] Id. at 55.
- [29] Id. at 43-45.
- [30] Id. at 98.
- [31] Id. at 100.
- [32] Id. at 58-61.
- [33] Id. at 63.
- [34] Id. at 66.
- [35] Id. at 160-168.
- [36] Id. at 28-35.
- [37] Id. at 37-38.
- [38] Id. at 403-417,
- [39] Id. at 416-417.
- [40] 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
- (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

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

[41] CA rollo, pp. 461-462.

[42] Rollo, p. 34.

[43] Tagle v. Anglo-Eastern Crew Management, Phils., Inc., G.R. No. 209302, July 9, 2014, 729 SCRA 677, 687.

[44] 694 Phil. 268, 270-271, 281 (2012).

[45] Id. at 281.

[46] CA rollo, p. 445.

[47] See Tagle v. Anglo-Eastern Crew Management Phils., Inc., supra 43 note at 693-694.

[48] Supra note 1

[49] Id.

[50] Alpha Ship Management Corp. v. Cab, G.R. No. 192034, January 13, 2014, 713 SCRA 119, 140.

[51] CA rollo, pp. 165-166.

[52] Id. at 413-415; bold-facing in the original.

[53] Eyana v. Philippine Transmarine Carriers, Inc., G.R. No. 193468, January 28, 2015.

[54] CA rollo, p. 166.

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