

TRADEPHIL SHIPPING AGENCIES, INC.,/GREGORIO F. ORTEGA, PETITIONERS, VS. DANTE F. DELA CRUZ, RESPONDENT.

G.R. No. 210307. February 22, 2017

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the June 28, 2013 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 125519, as modified in its December 4, 2013 Amended Decision,[2] which set aside the April 2, 2012 Decision[3] and the May 8, 2012 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 01-000024-12, a complaint for permanent and total disability benefits by seafarer Dante F. Dela Cruz (Dela Cruz).

The Antecedents

On July 2, 2009, Tradephil Shipping Agencies, Inc. (Tradephil) engaged the services of Dela Cruz to work as Ordinary Seaman on board the vessel, "M/V Venus," for a period of nine (9) months with a basic monthly salary of US\$377.00. Upon the expiration of the contract in April 2010, the parties signed a new one for an additional period of six (6) months, or until October 2010. For the extended period, he served as Able Seaman with a basic monthly salary of US\$520.00. Sometime in July 2010, after carrying heavy loads, Dela Cruz complained of pricking pains in his left scrotal area. He reported the matter to the Master of the vessel who gave him medicines for temporary relief. Thereafter, upon the vessel's arrival in Paranagua, Brazil, he was referred to Dr. Filippo Carmosino, who diagnosed him "to be afflicted with 'Varicocele' and recommended 'light work' and 'surgery in your country.'"[5]

On September 3, 2010, Dela Cruz was repatriated to the Philippines. Upon his arrival in Manila, he was referred to the company-designated physician, Dr. Esther G. Go (Dr. Go) at the Metropolitan Medical Center (MMC). On September 6, 2010, Dr. Go diagnosed him to be suffering from "suspicious varicocele, left." On September 14, 2010, Dela Cruz was recommended for operation and was admitted to the hospital on September 22, 2010. The next day, September 23, 2010, he underwent an operation called "Varicocoelectomy, bilateral"[6] and was discharged on September 25, 2010.[7]

Thereafter, Dela Cruz was entrusted to the care of the company--designated urologist, Dr. Darwin Lim (Dr. Lim). After a series of consultation, Dr. Lim examined him on December 29, 2010 because he still felt the on-and-off pains in his scrotal area. Dr. Lim observed that based on his condition at that time, his closest interim assessment was Grade 12 - slight residual disorder. Dela Cruz agreed to a reevaluation of his condition on January 4, 2011, the earliest date available for Dr. Lim; but for some reason, he missed this appointment with Dr. Lim.[8]

On January 6, 2011, Dela Cruz filed his complaint against Tradephil and Gregorio F. Ortega (Ortega), being the President of Tradephil, before the Labor Arbiter (LA).

On January 7, 2011, Dela Cruz sought the medical opinion of Dr. Manuel C. Jacinto (Dr. Jacinto), who issued a

medical certificate declaring him "to be physically unfit to go back to work" with a disability rating of "total permanent."[9]

On January 17, 2011, or eleven (11) days after the filing of his complaint, Dela Cruz went back to Dr. Lim for consultation and underwent repeat inguinoscrotal ultrasound which revealed normal ultrasound of both testes. On the same date, Dr. Lim declared him fit to work. He, however, refused to sign his certificate of fitness for work because he needed to observe his condition further.[10]

On March 10, 2011, during the hearing of the case, Tradephil suggested that the parties refer the matter to a third doctor. This was rejected by Dela Cruz at the hearing on March 15, 2011.[11]

The LA Ruling

In its July 29, 2011 Decision,[12] the LA ruled that Dela Cruz was not entitled to disability benefits, explaining that because of the conflicting assessments of the company-designated physician and his own doctor, there should have been a referral to a third doctor, which was, however, refused by Dela Cruz. The LA continued that, with the absence of an assessment coming from an independent third doctor as required by Section 20(B) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Filipino Seafarers (POEA-SEC), the assessment of the company-designated physician, which was arrived at after a series of actual examinations and treatment, would be more credible than the assessment of Dr. Jacinto after a single consultation.

The LA also denied Dela Cruz's claims for moral and exemplary damages. The LA, nevertheless, granted his prayer for sick wages noting that the Tradephil failed to present any evidence to prove that he received his sick wages, whether partially or wholly. For the same reason, the LA granted his claim for attorney's fees in an amount equivalent to 10% of the award for sick wages. The dispositive portion of the LA decision reads:

WHEREFORE, except as to the order for respondents to pay complainant US\$2,080.00 as sick wages (US\$520 x 4 mos.) and US\$208.00 as attorney's fees, judgment is hereby rendered dismissing the case for lack of merit.

SO ORDERED.[13]

Both parties elevated their respective appeals to the NLRC.

The NLRC Ruling

On April 2, 2012, the NLRC affirmed with modification, the July 29, 2011 Decision of the LA. It concurred with the LA that the assessment made by Dr. Lim, the company-designated physician, was more credible than the assessment made by Dr. Jacinto. It also dismissed his claim for permanent disability anchored on the failure of the company-designated physician to make a declaration on his fitness within 120 days from the date of his repatriation. Citing the case of Vergara vs. Hammonia Maritime Service, Inc.[14] (Vergara), the NLRC declared that the temporary total disability period of 120 days may be extended to 240 days.

The NLRC, however, modified the LA decision with regard to the award of sick wages and attorney's fees. It noted that in its Memorandum on Appeal, Tradephil attached the vouchers, which were signed by Dela Cruz, acknowledging payment of sick wages for 120 days. The decretal portion of the NLRC decision reads:

WHEREFORE, premises considered, judgment is rendered dismissing the appeal of complainant for lack of merit. Respondent's appeal is GRANTED.

The July 29, 2011 Decision of the Labor Arbiter is hereby MODIFIED by deleting the award for sick wages and attorney's fees. The Decision finding complainant not entitled to disability benefit STAYS.

SO ORDERED.[15]

Dela Cruz moved for reconsideration, but his motion was denied by the NLRC in its Resolution, dated May 8, 2012.

Aggrieved, Dela Cruz filed his petition for certiorari before the CA.

The CA Ruling

In its assailed Decision, dated June 28, 2013, the CA reversed and set aside the ruling of the NLRC. It asserted that the NLRC disregarded the 120-day rule under Section 20(B) of the POEA-SEC when it ruled that Dela Cruz could not claim disability benefits. The CA noted that from the time he was repatriated on September 3, 2010 until he was pronounced fit to resume sea duties on January 17, 2011, one hundred thirty six (136) days had already elapsed. Following Section 20(B) of the POEA-SEC, the CA concluded that he should have been declared totally and permanently disabled as early as January 2, 2011, the 121st day from his repatriation. The CA added that Vergara had not been consistently applied by the Court. The fallo reads:

WHEREFORE, the petition is GRANTED. Setting aside the assailed April 2, 2012 Decision and May 8, 2012 Resolution of the NLRC, the private respondents are hereby directed to pay petitioner his claimed total disability benefits of US\$60,000.00 dollars and ten percent (10%) thereof as attorney's fees.

SO ORDERED.[16]

Tradephil moved for reconsideration, but its motion was denied by the CA in its December 4, 2013 Amended Decision. It, however, reduced the award for disability benefits to US\$5,225.00, with 10% thereof as attorney's fees. In reducing the award, it considered the interim assessment of Grade 12 disability rating made by Dr. Lim on December 29, 2010.

Hence, this petition for review raising the following:

ISSUES

I.

The Court of Appeals committed a serious error when it rendered a judgment that is not in accord with the applicable decisions of this Honorable Court.

II.

The Court of Appeals committed a grave error when it reversed the decision of the NLRC and awarded disability benefits and attorney's fees to respondent.[17]

Petitioners Tradephil and Ortega argue that the CA's departure from the ruling in Vergara was in clear violation of the principle of stare decisis, which calls for the adherence by lower courts to the doctrinal rules established by the Court.

The petitioners further aver that respondent Dela Cruz had no cause of action when he filed his complaint on January 6, 2011. They assert that, at that time, he was neither assessed by the company-designated physician nor examined by his personal physician.

In his Comment,[18] dated April 28, 2014, respondent Dela Cruz countered that the CA correctly decided the case in his favor. He asserted that under the POEA-SEC, the company-designated physician was mandated to make an assessment of the seafarer's fitness for work within 120 days from his repatriation, failing which, he must be declared permanently disabled.

In their Reply,[19] dated April 1, 2015, the petitioners reiterated their previous arguments.

From the submissions of the parties, the Court is essentially being tasked to resolve the following issues: (i)

whether the doctrine enunciated in Vergara applies to this case; and (ii) whether Dela Cruz is entitled to total and permanent disability benefits.

The Court's Ruling

The petition is impressed with merit.

Vergara has been consistently adhered to by the Court.

In Vergara, the Court clarified that the rule on the failure by the company-designated physician to make a declaration of fitness to work within the 120-day period to constitute permanent total disability should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. Harmonizing the POEA-SEC provision with Article 192(c)(1), in relation to Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code (IRR), the Court in Vergara held that the treatment of the company-designated physician may be extended up to a maximum of 240 days when circumstances warranted it. Thus:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[20] [Emphasis and underscoring supplied]

Despite this holding, the CA reversed the April 2, 2012 NLRC Decision, declaring that the rule enunciated in Vergara was inapplicable to the present case as it had not been consistently followed by this Court. It explained that after the promulgation of Vergara, the Court still awarded disability compensation benefits on the basis of the 120-day rule.[21] This ratiocination is misplaced.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, [22] the Court essentially ruled that the 240-day period remained an exception which should not be applied unconditionally. The Court explained that to invoke the 240-day period, the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits as a consequence of such non-compliance. The Court stressed that:

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.[23]

The above rule was further refined in *Marlow Navigation Philippines, Inc. v. Osias*, [24] where the Court declared that:

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of

the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.[25] [Emphasis supplied]

From the foregoing, it is clear that the 120-day rule and the subsequent decisions applying it are consistent with the 240-day rule in Vergara. The Court had already harmonized its various rulings with respect to the periods within which a seafarer may be declared fit or unfit for sea duties for the purposes of his claim for permanent and total disability compensation. To emphasize, the general rule remains to be that-the company-designated physician must declare the seafarer fit for sea duties within a period of 120 days; otherwise, the latter must be declared totally and permanently disabled entitling him to full disability benefits. It is only when there is sufficient justification may the company-designated physician be allowed to avail of the exceptional 240-day extended period.

The 240-day rule is applicable to seafarers.

The CA opined further that Article 192(c)(1) of the Labor Code and its implementing rules, which provide for the 120-day temporary total disability period and which served as bases for the 240-day rule in Vergara, were not intended to apply to seafarers. In a lengthy discussion, the CA explained that Article 192(c)(1) was a provision under Book IV, Title II of the Labor Code which only applies to "employees" as defined under Republic Act (R.A.) No. 8282 or the Social Security Law, and R.A. No. 8291 or the GSIS Law. It reasoned in this wise:

Pertinently, seafarers, as a general rule, are not government employees. Neither would those who are recruited by foreign-based employers (through licensed recruitment agencies) be considered as compulsorily covered by the SSS because Section g(c) of the Social Security Law, as amended, is clear that:

"(c) Filipinos recruited by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis."

Being not "compulsorily covered by the GSIS xxx" nor "by the SSS xxx," seafarers are concededly, not governed by Book Four, Title II of the Labor Code. Their disability claims are not to be processed under the "Employees Compensation and State Insurance Fund" of Book N, Title II of the Labor Code but rather by, as admitted in the NLRC's April 2, 2012 Decision, the POEA- SEC.[26] [Emphases omitted]

This conclusion by the CA is likewise misplaced. Contrary to its opinion, the Court has applied the 240-day under Section 2, Rule X of the IRR to claims for disability compensation by seafarers, not because it considered seafarers as employees as defined under the SSS or the GSIS, but because of the express directive by the New Civil Code. This issue is actually not novel as it has already been previously addressed in several cases.

As early as 2006 in the case of Remigio vs. NLRC,[27] the Court affirmed the application of the Labor Code concept of permanent total disability to the case of seafarers. The Court stated therein that a contract of labor, such as a seafarer's contract, "is so impressed with public interest that Article 1700 of the New Civil Code expressly subjects it to 'the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.'"[28]

Considering, therefore, that the concept of total permanent disability under Article 192(c)(1) of the Labor Code is applicable to seafarers, it only follows that Section 2, Rule X of the IRR - the rule implementing the aforesaid Labor Code provision - is also applicable to seafarers. This was the conclusion of the Court in Vergara which led to the following pronouncements:

In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:
xxx 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 in the Rules;

xxx

The rule referred to - Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code - states:

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.[29] [Underscoring and emphases in the original]

Considering that the applicability of the 240-day temporary disability under Section 2, Rule X of the IRR to seafarers is now beyond question, the only issue to be resolved is whether Dela Cruz is entitled to disability benefits.

The exceptional 240-day period is applicable in the present case.

As previously stated, there must be a sufficient justification to extend the initial 120-day period to the exceptional 240 days. In this regard, the Court has considered as sufficient justification the fact that the seafarer was still undergoing treatment and evaluation by the company-designated physician.[30]

Upon careful examination of the records, the Court is convinced that there existed a sufficient justification to extend the period of medical treatment and assessment of Dela Cruz by the company-designated physician.

Dela Cruz was still undergoing medical treatment and evaluation by Dr. Lim after the lapse of the 120-day period. In fact, he agreed to a further medical evaluation on January 4, 2011, when he himself complained of the on-and-off pains in his scrotal area. Verily, these circumstances justified the allowance of the extension of the temporary disability period, and consequently of the period to treat and assess his medical condition, to the exceptional 240 days.

Furthermore, in *C.F. Sharp Crew Management, Inc. vs. Taok*,[31] the Court ruled that a seafarer's cause of action for total and permanent disability benefits accrued when, among others, "the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there was no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;" or upon the lapse of the 240-day period without any certification being issued by the company-designated physician.[32]

In this case, instead of attending his scheduled medical reevaluation on January 4, 2011, Dela Cruz opted to file his complaint on January 6, 2011, or 125 days after his repatriation. At that time, he had no cause of action yet because there was sufficient reason for the extension of the treatment and assessment period to 240 days; and that the 240-period had yet to lapse. In any case, Dr. Lim subsequently issued a certification of his fitness to work on January 17, 2011, or 136 days after the latter's repatriation - well within the extended 240-day period. His complaint was, therefore, prematurely filed.

No valid challenge to the company--designated physician's medical assessment.

Entitlement to disability benefits by seafarers is a matter governed, not only by medical findings but, by

Philippine law and by the contract between the parties.[33] As already stated, by law, the material statutory provisions are Articles 191 to 193 of the Labor Code, in relation to Rule X of the IRR. By contract, the seafarers and their employers are governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC which are required to be integrated in every seafarer's contract.[34]

In *Andrada vs. Agemar Manning Agency, Inc.*,[35] the Court ruled that the issue of whether the seafarer could legally demand and claim disability benefits from his employer for an illness or injury allegedly suffered or incurred was best addressed by the provisions of the POEA-SEC. Section 20(B)(3) thereof provides:

Section 20 [B]. Compensation and Benefits for Injury or Illness.

xxxx

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 his 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. [Emphasis supplied]

Section 20(B)(3) has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability during the term of his employment. This does not necessarily mean, however, that the said assessment is final, binding or conclusive on the seafarer, the labor tribunal or the courts. The seafarer may dispute such assessment by exercising his right to a second opinion and to consult a physician of his choice, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.[36] In case of disagreement between the findings of the company-designated physician and the seafarer's physician, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.[37]

Guided by the foregoing rules and jurisprudence, the Court is convinced that Dela Cruz failed to comply with the aforementioned procedure which now justifies the dismissal of his complaint. In the first place, an irregularity is readily apparent in this case. Aside from the premature filing of his complaint, it is beyond dispute that he consulted with his physician of choice before the company-designated physician could issue a certification of fitness to work. This is in clear breach of Section 20(B)(3) which essentially provides that resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment.

While the seafarer has the right to seek a second opinion, the final determination of whose assessment must prevail should be done in accordance with the agreed procedure stated in Section 20(B)(3).

Further, for reasons known only to him, Dela Cruz refused to refer the matter to a third doctor whose assessment would have been binding to all the parties concerned. The Court has held that non-referral to a third physician, whose findings shall be considered as final and binding, constitutes a breach of the POEA-SEC. The referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated

doctor whose assessment should prevail. "In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties." [38]

For failure of Dela Cruz to comply with the mandatory procedure of referral to a third doctor under Section 20(B)(3) of the POEA-SEC, the Court has no other option but to declare that the company-designated doctor's certification must prevail. After all, jurisprudence dictates that the assessment of the company-designated physician, such as Dr. Lim's, which was arrived at after several months of treatment and medical evaluation, is more reliable than the assessment made by Dela Cruz's personal doctor, Dr. Jacinto, who examined him only once on January 7, 2011.

WHEREFORE, the petition is GRANTED. The assailed June 28, 2013 Decision and the December 4, 2013 Amended Decision of the Court of Appeals in CA-G.R. SP No. 125519 are REVERSED and SET ASIDE. The April 2, 2012 Decision and the May 8, 2012 Resolution of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 01-000024-12 are REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Leonen, and Jardeleza, JJ., concur.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Jane Aurora C. Lantion and Associate Justice Eduardo B. Peralta, Jr., concurring; rollo, pp. 32-65.

[2] Id. at 66-68.

[3] Penned by Commissioner Dolores M. Peralta-Beley, with Commissioner Mercedes R. Posada-Lacap, concurring; id. at 78-85.

[4] Id. at 86-88.

[5] CA rollo, p. 89.

[6] Id. at 91.

[7] Id. at 92.

[8] Id at 152-153.

[9] Id. at 115.

[10] Id. at 151.

[11] Id. at 48.

[12] Penned by Labor Arbiter Adolfo C. Babiano; rollo, p. 69-77.

[13] Id. at 76-77.

[14] 588 Phil. 895 (2008).

[15] Rollo, pp. 84-85.

[16] Id. at 64-65.

- [17] Id. at 16.
- [18] Id. at 134-145.
- [19] Id. at 165-170.
- [20] Vergara v. Hammonia Maritime Service, Inc., supra note 14, at 912.
- [21] Quitoriano v. Jebsens Maritime, Inc., 624 Phil. 523 (2010); Valenzona v. Fair Shipping Corporation, 675 Phil. 713 (2011); Wallem Maritime Services, Inc. v. Tanawan, 693 Phil. 416 (2012).
- [22] G.R. No. 211882, July 29, 2015, 764 SCRA 431.
- [23] Id. at 453.
- [24] G.R. No. 215471, November 23, 2015.
- [25] Id.
- [26] Rollo, pp. 47-48.
- [27] 521 Phil. 330 (2006).
- [28] Id. at 346.
- [29] Vergara v. Hammonia Maritime Service, Inc., supra note 14, at 911-912.
- [30] Magsaysay Maritime Corporation v. National Labor Relations Commission, 711 Phil. 614 (2013).
- [31] 691 Phil. 521 (2012).
- [32] Id. at 538.
- [33] OSG Shipmanagement Manila, Inc. v. Pellazar, G.R. No. 198367, August 6, 2014, 735 SCRA 280.
- [34] The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc., 738 Phil. 374 (2014).
- [35] 698 Phil. 170 (2012).
- [36] Coastal Safeway Marine Services, Inc. v. Esguerra, 671 Phil. 56 (2011).
- [37] Andrada v. Agemar Manning Agency, Inc., supra note 35, at 182.
- [38] INC Shipmanagement, Inc. v. Rosales, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 450, 451.

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